

## **The complaint**

Ms K complains about how Wakam dealt with a claim under her home insurance policy for damage to her property from water ingress.

Wakam use agents to administer the policy and to assess claims. Reference to Wakam includes these agents.

Ms K was supported by a representative when bringing her complaint. References to Ms K include her representative.

## **What happened**

Early in 2023 Ms K noticed damp spots appearing in the front corner of her living room wall, which then developed into bubbling paintwork and crumbling plaster. Ms K was concerned at the damage and the rate at which it appeared to be spreading. She contacted a specialist in water damage to inspect the affected areas and determine the cause of the problem. They advised the issue as a water ingress, caused by a defective/damaged gutter on an adjoining neighbour's porch canopy roof that abutted Ms K's property. The specialist said the damage could lead to the development of dry rot.

Ms K contacted Wakam (February 2023) and set out the nature of the problem and the damage. When asked when she'd first noticed the problem, Ms K said early to mid-January 2023. Wakam told Ms K the damage wouldn't be covered under the policy, as they didn't consider it to be caused by storm or flooding or (because there wasn't a one-off event) accidental damage. Wakam also told Ms K that accidental damage meant loss or damage caused by the policyholder (Ms K) or their family. And that the policy didn't cover water entering the property by any means other than storms or floods (or any damage arising from a lack of preventative maintenance). So, there wasn't an insured peril under the policy.

Ms K challenged Wakam's position, asking whether, if a storm had damaged the neighbour's gutter and led to flooding (or water build up) to ingress into her property, would this be covered under the storm or flood section of the policy. Wakam replied to say their weather data didn't indicate a storm in the area of Ms K's property prior to the damage appearing.

Ms K wasn't satisfied with Wakam's response so (given Wakam had said they were ceasing to provide insurance policies from May 2023) she complained to this service (having not had a response from Wakam to her challenge). She wasn't happy with how Wakam had responded to her claim, nor their refusal to send a loss adjuster to her property. And the damage was getting worse with each rainfall. She wanted Wakam to repair her property. Our investigator initially upheld the complaint, concluding Wakam hadn't acted fairly. He thought the damage wouldn't be considered as storm damage, as the weather data around the time of the damage indicated there wasn't a storm. And the damage wouldn't fall under the policy definition of accidental damage. However, water had entered Ms K's property and would fall within what this service considers flood damage, as water had built up (regardless of where it came from). Nor did it matter whether it was caused by a natural event. So, Wakam should pay the claim in line with the policy terms (and had the opportunity to reclaim

the cost from the neighbour's insurer). Wakam should also pay £100 compensation for unfairly declining the claim.

Wakam disagreed with the investigator's initial view, as the policy definition of flood referred to an overflow of external water sources – it was due to the neighbour's canopy allowing water to ingress into Ms K's property.

Our investigator considered Wakam's response and issued a second in which they didn't uphold the complaint. Wakam had referred to the policy definition and the investigator accepted Wakam's view the definition didn't cover the circumstances of the case. And this service's approach to flood damage was where a policy hadn't defined the term flood (which Wakam had shown it did).

Ms K disagreed with the investigator's second view and requested an ombudsman review the complaint. She thought Wakam's policy definition including the phrase 'overflow of external water sources' was ambiguous as the definition then listed some examples of a water source – but it wasn't an exhaustive list. So, the language used was unclear. Ms K referred to legal cases covering situations where contractual terms were either exhaustive or non-exhaustive. Ms K considered the wording of the definition to be non-exhaustive and that 'external water source' would encompass water entering from the neighbour's canopy. Ms K also referred to the legal principle of "*contra proferentem*" which meant that where a policy was unclear, it should be interpreted in favour of the policyholder. Ms K was also concerned that the damage to her property was worsening over time.

In my findings, I concluded the claim wouldn't fall under the accidental damage section of the policy. And as there were no indications there was a storm, I also concluded the storm section of the policy wouldn't apply.

I then considered whether the claim could fall under the flood section of the policy. I concluded the damage from water ingress from the neighbour's canopy could reasonably be held to fall within the policy definition of flood. That being the case, I concluded Wakam acted unfairly in declining Ms K's claim.

Having reached this conclusion, I considered what Wakam should do to put things right. As they'd unfairly declined the claim, I thought they should settle the claim in accordance with the remaining terms and conditions of the policy, including any policy excess.

As I concluded they'd unfairly declined the claim, and from what Ms K told us, I thought she'd suffered distress and inconvenience. Considering all the circumstances of the case, I thought £100 for distress and inconvenience would be fair and reasonable.

Because I reached different conclusions to our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

#### *What I've provisionally decided – and why*

*I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*My role here is to decide whether Wakam has acted fairly towards Ms K.*

*The main element of Ms K's complaint is that Wakam unfairly declined her claim, on the grounds that the damage to her property was covered by an insured peril, either storm or flood, or accidental damage. Ms K says her claim should be considered under the flood section, given what she feels is ambiguity in the definition of the term 'flood'. She thinks the definition would include her situation, where water is entering her property from a*

*neighbour's canopy. Wakam say the damage doesn't fall under any of the sections of the policy, including that for flood.*

*In considering the complaint, I've first noted there isn't any dispute that the cause of the damage to Ms K's property is water overflowing from a neighbour's canopy. This was the conclusion of the specialist in water damage engaged by Ms K to inspect her property. And I've not seen anything to indicate Wakam dispute the specialist's conclusions.*

*So, the issue becomes one of whether the damage would fall under one of the insured perils under the policy. In declining the claim, Wakam refer to the following policy terms and exclusions. With respect to accidental damage, the relevant policy section states:*

*"Accidental damage is sudden, unexpected loss or damage that you or your family did cause, albeit unintentionally"*

*Looking at the definition, I don't think the circumstances of Ms K's claim (the damage) would fall under the term. The damage wasn't caused by Ms K or her family (it was the neighbour's canopy) and (arguably) it wasn't 'sudden' as it occurred over a period.*

*So, I've concluded the claim wouldn't fall under the accidental damage section of the policy.*

*With respect to storm or flood, Wakam refer to the following exclusion in the policy:*

*"We won't cover water entering your home by any means other than storms or floods – or any damage arising from a lack of preventative maintenance."*

*I've then considered each of the two elements included in the exclusion – storm or flood. Taking storm first, Wakam say there weren't any storm conditions in the area of Ms K's property around the time Ms K says she first noticed the damage. This is based on data from a recognised weather source. I've checked the data for the area using the weather source used by this service and this also indicates no storms in the area around the time of the incident (even allowing for Ms K not being certain when the damage first occurred).*

*So, as there are no indications there was a storm, then I've concluded the storm section of the policy wouldn't apply.*

*This then leaves the option of flood. When disagreeing with our investigator's first view, Wakam said water ingressing into Ms K's property from the neighbour's canopy wouldn't fall within the definition of flood in the policy, which they say is:*

*"An overflow of external water sources, such as rivers, lakes, and the sea."*

*Ms K says this definition isn't clear and is non-exhaustive, given the use of the term 'such as'. Which means the listed sources are not exhaustive (so don't preclude other external water sources). Ms K refers to legal cases on this point where contractual terms were either exhaustive or non-exhaustive. Ms K considers the wording of the definition to be non-exhaustive and that 'external water sources' would encompass water entering from the neighbour's canopy. Ms K also referred to the legal principle of "contra proferentem" which means where a policy is unclear, it should be interpreted in favour of the policyholder.*

*I've considered both views carefully, but I agree with Ms K's view. Use of the term 'such as' can reasonably be held to mean the sources that follow are not exhaustive, rather they are illustrative. So, the question then becomes one of whether the term 'external water sources' can reasonably be held to include the situation in this case, where the water is entering from*

*a neighbour's canopy. I think it does, as it's clearly external (as it's from the neighbour's property). It obviously is water and a source.*

*While I think the term can reasonably be applied to water ingressing from the neighbour's canopy, I also agree that the term could also be seen as ambiguous, as the term 'source' isn't defined. And I agree with Ms K's view, which is where there is ambiguity in a contract (an insurance policy is a contract) it should be interpreted in favour of the party that didn't draft it. Which in the case of an insurance policy would be the policyholder.*

*So, I've concluded the damage from water ingress from the neighbour's canopy could reasonably be held to fall within the policy definition of flood. That being the case, I've concluded Wakam acted unfairly in declining Ms K's claim.*

*Having reached this conclusion, I've considered what Wakam should do to put things right. As they've unfairly declined the claim, they should settle the claim in accordance with the remaining terms and conditions of the policy, including (as appropriate) any policy excess.*

*As they've unfairly declined the claim, and from what Ms K has told us, I think she's suffered distress and inconvenience. Considering all the circumstances of the case, I think £100 for distress and inconvenience would be fair and reasonable.*

#### *My provisional decision*

*For the reasons set out above, it's my provisional decision that I uphold Ms K's complaint. I intend to require Wakam to:*

- *Settle the claim in accordance with the remaining terms and conditions of the policy, including (as appropriate) any policy excess.*
- *Pay Ms K £100 in compensation for distress and inconvenience.*

*Wakam must pay the compensation within 28 days of the date on which we tell them Ms K accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.*

Both Ms K and Wakam responded to accept the provisional decision.

#### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether Wakam have acted fairly towards Ms K.

As both Ms K and Wakam have accepted my provisional decision, then my final decision is unchanged from my provisional decision.

#### **My final decision**

For the reasons set out above, it's my final decision that I uphold Ms K's complaint. I require Wakam to:

- Settle the claim in accordance with the remaining terms and conditions of the policy, including (as appropriate) any policy excess.
- Pay Ms K £100 in compensation for distress and inconvenience.

Wakam must pay the compensation within 28 days of the date on which we tell them Ms K accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 1 December 2023.

Paul King  
**Ombudsman**