

The complaint

Miss H has complained Wakam declined a claim she made for a leak from an underground pipe. Any reference to Wakam includes its agents or representatives.

What happened

Miss H reported a potential leak, on the mains water supply feeding her home, to her home insurer – Wakam – and it appointed specialists to investigate the claim on its behalf. Wakam’s specialists excavated two sections of pipework and identified evidence of previous repairs which had been undertaken poorly. Based on this, it declined to cover Miss H’s claim.

Miss H brought her complaint to the Financial Ombudsman service where it was looked at by an investigator. The investigator thought Miss H’s complaint should be upheld. She said Wakam’s investigation report hadn’t linked the poor repairs discovered to the actual leak which was the subject of the claim and so it was unreasonable to decline the claim on this basis. She also said Wakam was responsible for avoidable delays and that it communicated poorly with Miss H, causing avoidable distress and inconvenience. She recommended Wakam carry out further investigations into the leak before deciding whether it would be covered or not and that it should pay Miss H £400 compensation for the service issues.

Wakam agreed with the investigator’s opinion on the service issues and compensation, but it disagreed that the claim decision was unfair. It said the report suggests there have been multiple leaks over a period of time on the supply rather than sudden or one-off accidental damage, so it said Miss H hadn’t shown the loss was likely covered under the policy.

The investigator issued two follow-up assessments maintaining her view that Wakam should carry out further investigations. This was because she was satisfied the problem occurred suddenly for Miss H and because Wakam hadn’t evidenced that the issues it identified with previous poor repairs to other leaks were actually linked to the current leak.

Wakam didn’t agree. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

Having done so, I agree with the outcome reached by our investigator. I’ll explain why.

Miss H’s policy provides the following cover for accidental damage to mains services:

“We will pay the costs of repairing accidental damage to underground pipes, tanks, cables and services (including their inspection covers) that reach from the buildings to the public supply and septic tanks, which you are legally responsible for.”

Accidental damage is defined as:

“accidental damage

Sudden, unexpected and physical damage which:

a) happens at a specific time; and

b) was not deliberate; and

c) was caused by something external and identifiable.”

The following exclusions apply to the accidental damage to mains services section of cover:

“We don’t cover:

a) loss or damage due to wear and tear or gradual deterioration;

b) loss or damage caused by gradual deterioration which means an installation has reached the end of its useful life;”

And this general exclusion applies to all sections of cover:

“13. Poor workmanship

Loss or damage caused by poor workmanship, use of faulty materials (Including latent defects) or poor design (a latent defect is a fault which exists, but which only causes a problem at a later stage under certain conditions).”

Wakam told Miss H that the reason it declined the claim was because it had identified poor workmanship as being the cause of the leak. But like our investigator, I’m not satisfied that Wakam’s report shows this. Rather it shows that there was evidence of previous leaks and poor repairs on the areas of pipework which had been excavated. But it also says the cut and cap works to these areas didn’t resolve the leak and instead helped them to identify that the actual leak was beneath the driveway – which doesn’t appear to have been excavated. I’ve seen no evidence that the actual area of pipework leaking has been excavated or observed directly.

In response to the investigator’s assessment, Wakam argued that it wasn’t relying on the exclusions it had highlighted to decline the claim. Instead, it said there was no evidence of accidental damage – as defined – and so Miss H hadn’t evidenced that her loss was one which would be covered under the policy.

It is a general principle of insurance that it is first for a policyholder to show that, on the face of it, they have a claim which would likely be covered by their policy, before the onus shifts to the insurer to either accept the claim or show that an exclusion or condition applies which would enable it to refuse the claim. And I accept that Miss H’s policy only covers her for accidental damage to her mains services. But I don’t agree that it is fair or reasonable for Wakam to refuse to investigate Miss H’s claim further, on the basis there isn’t sufficient evidence of accidental damage.

I say this because with claims of this nature, it’s difficult for policyholders to either know, or show, whether an issue with an underground pipe has been caused by accidental damage or something else. Usually, where a policyholder demonstrates that there is a leak from an underground pipe, that’s enough for an insurer to accept, based on first impression, there is likely a potential claim, and for it to carry out more intrusive investigations to either confirm or rebut this. And crucially, that appears to have been enough for Wakam in this case, as it appointed an expert to carry out various excavations when the claim was reported.

Wakam seems to have concluded that because it has discovered areas of poor workmanship, which potentially suggest there have been historic leaks, that this shows the leak in question has not been caused by accidental damage. But I don't agree that it's been sufficiently shown that these areas are the cause, or a contributory factor, of the leak which is the subject of the complaint. And until such a link is, on balance, shown by Wakam, I don't think it can fairly or reasonably decline the claim. I also don't think it's fair for Wakam to now decide that Miss H hasn't done enough to show the leak is one which is likely to be covered by her policy, when it had essentially already accepted she'd done enough by appointing experts to carry out some intrusive investigations in the first instance.

To put things right, I think Wakam should carry out further investigations into the cause of the leak, before deciding whether to accept or decline the claim in line with the policy terms and conditions.

It doesn't appear to be in dispute that the level of service Miss H has received from Wakam up to now has fallen short. And Miss H has explained how this impacted her, her family, and her relationship with her neighbours. Taking all of this into account, in addition to reinvestigating and reconsidering the claim, I think Wakam should pay Miss H £400 compensation for the avoidable distress and inconvenience it has caused her.

My final decision

For the reasons I've explained above, I uphold Miss H's complaint.

Wakam must:

- Carry out more detailed investigations into the cause of the leak before reaching a new decision on whether to accept or decline the claim.
- Pay Miss H £400 compensation for the distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 October 2024.

Adam Golding
Ombudsman