

The complaint

Mr and Mrs E have complained about Wakam's decision to decline their claim under their home insurance policy for damage to a septic tank and/or the pipes attached to it.

Any reference to Wakam includes its agents.

What happened

Mr and Mrs E made a claim for a problem with the septic tank that is in their garden and serves their home in February 2023. Wakam appointed a drainage firm, who I'll refer to as D, to investigate. It came out to do so and suggested further investigations. Instead of approving these Wakam rejected Mr and Mrs E's claim by relying on the wear and tear exclusion in their policy. We considered their complaint about this. And an ombudsman ordered Wakam to carry out further investigations into the cause of the problem. Wakam arranged for D to do this, and it got a sub-contractor to carry out a percolation test in Mr and Mrs E's garden. Wakam then rejected the claim again by relying on another exclusion for damage resulting from a rise in the water table.

Mr and Mrs E then asked us to consider their complaint about this. One of our investigators did this. She said Wakam had carried out the further investigations required and had therefore complied with the previous ombudsman's decision. And she also said she was satisfied its decision to turn down the claim was reasonable.

Mr and Mrs E didn't agree with the investigator's view. Mr E said that the sub-contractor used by D to carry out the percolation test said the ground surrounding their home was unsuitable as a drainage area for their tank 15 months after they reported the problem with it. And he explained why the ground was saturated at the time they did the test. And he argued that if they'd done it at a different time they may have concluded the ground was suitable.

I issued a provisional decision on 27 March 2025 in which I set out what I'd provisionally decided and why as follows:

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've provisionally decided it should be upheld.

Mr and Mrs E's policy covers accidental damage to underground services, which includes their septic tank. And from what they've said, and the reports provided by D, it is clear the tank hasn't been functioning properly since at least February 2023. And I think this means it has been damaged accidentally. The definition of accidental damage in the policy is 'unexpected and unintended damage caused by a single one-off event resulting from sudden, external and identifiable means'. And I think it is fair and reasonable to say loss of proper function is accidental damage. And in this case, it seems to have happened suddenly at a certain point in time as a result of a problem with a pipe external to the tank. I say it happened suddenly at a certain point in time because the tank was working properly and

then it wasn't, presumably at some point before Mr and Mrs E realised this was the case and claimed on the policy in February 2023.

I appreciate Wakam thinks it can rely on the exclusion in the policy for loss or damage caused by a rise in the water table. But I don't think it can for two reasons.

Firstly, I don't think it has provided sufficient evidence to show a rise in the water table is what has led to the tank not working properly. This is because the percolation test arranged by D was carried out in Mr and Mrs E's garden, when it is clear the outlet pipe from their septic tank discharges into the farmer's field next to their garden. So, even if the water table was higher in their garden than the bottom of the outlet pipe, this doesn't necessarily mean it was higher than the bottom of the pipe in the farmer's field where it discharges. Plus, not long before the sub-contractor did the test a water main had been discharging water near Mr and Mrs E's garden. And this could have been why the water level in the garden was higher when the test was carried out than normal. I also agree with Mr and Mrs E's point that, even if the water table in their garden was higher in May 2024 when the test was carried out, it doesn't necessarily mean it was when the problem with the septic tank first occurred.

However, even if I were to accept that it was most likely to be a rise in the water table that caused the septic tank not to function properly, I would not consider Wakam could rely on the abovementioned exclusion for loss or damage due to a rise in the water table to refuse Mr and Mrs E's claim. This is because the exclusion only applies to claims for storm, flood or weight of snow. It doesn't apply to claims for accidental damage. And Mr and Mrs E have claimed for accidental damage to their tank. And I think it is clear the problem with it is not due to storm, flood or weight of snow.

In summary, I am satisfied that Mr and Mrs E's septic tank has been damaged accidentally and that this is covered by their policy. And I do not consider that Wakam has shown it can rely on an exclusion in the policy to reject their claim. It therefore follows that I consider the fair and reasonable outcome to this complaint is for me to require Wakam to settle Mr and Mrs E's claim in accordance with the claim settlement terms of their policy. This will mean Wakam will need to carry out a lasting and effective repair that enables Mr and Mrs E's septic tank to start functioning properly again.

I also consider Wakam should cover what Mr and Mrs E paid to have a high-pressure water jet clear the pipework to their septic tank, as this would not have been necessary if Wakam had properly investigated and accepted their claim. They paid £192 for this on 12 November 2023. So Wakam should pay them this amount, plus interest at 8% per annum simple from this date to the date it pays the amount to Mr and Mrs E. This is to compensate them for being without funds they should have had.

I also think Wakam's decision to reject Mr and Mrs E's claim for a second time by relying on an exclusion which doesn't apply to accidental damage claims and without a proper investigation has caused them further distress and inconvenience. And I think this warrants a further compensation payment of £200.

My provisional decision

For the reasons set out above, I've provisionally decided to uphold Mr and Mrs E's complaint about Wakam and require it to do the following:

- *Settle Mr and Mrs E's claim for the accidental damage to their septic tank in accordance with the claims settlement terms in their policy.*

- *Reimburse the £192 Mr and Mrs E paid for the high-pressure water jet, plus interest at 8% per annum simple from 12 November 2023 to the date of payment.*
- *Pay Mr and Mrs E £200 in compensation for distress and inconvenience.*

I gave both parties until 9 April 2025 to provide further comments and evidence in response to my provisional decision.

Mr and Mrs E have responded to say they accept my provisional decision. And they've added that the water table around where their home is situated was at its highest when Wakam carried out the percolation test. And it's now lower, but the level in the septic tank hasn't dropped. They think this suggests it is not a rise in the water table that caused the problem with the tank.

Wakam has responded to my provisional decision to say it disagrees with it. It's said it is for the policyholder to show that an 'insured peril' applies before it needs to rely on a policy exclusion to decline a claim. It has pointed to the definition of accidental damage in Mr and Mrs E's policy and queried what the single on-off event is in Mr and Mrs E's case and how it is identifiable. It's said it has done multiple investigations to try and establish the cause of the problem with the tank and none of them have identified any accidental damage.

Wakam has also queried what accidental damage I expect it to repair. And it has pointed out the only way forward suggested by the experts was to investigate new areas outside the boundary of the insured property for a suitable disposal site. And this could involve the redesign and replacement of the drainage system at Mr and Mrs E's property, which is not what their policy is designed to cover. So, it doesn't see how my view it should settle their claim can be fair and reasonable.

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.

I've noted Wakam's comments, but they do not alter my view on the fair and reasonable outcome to Mr and Mrs E's complaint. As I explained in my provisional decision, the loss of function to the septic tank is clearly accidental damage and it happened suddenly because at one point the tank was working properly and then suddenly it wasn't. And it stopped emptying properly. And the evidence suggests the cause of the damage is external, as there is nothing inside the tank that I can see from the evidence that could have caused the problem. I appreciate it is hard to say exactly what the problem is, but this is largely due to Wakam's failure to carry out an adequate investigation. And I do not consider it would produce a fair and reasonable outcome if Mr and Mrs E were penalised for this.

Plus, it seems to me most likely there is a problem with wastewater getting out through the waste pipe. So this would be identifiable as the means (cause of the damage). And, bearing in mind Mr and Mrs E's comments in response to my provisional decision it seems more likely than not that there is some sort of problem with the pipe. A rise in the water table would also be an external identifiable means. But because of the inadequacy of Wakam's percolation test it is impossible to say whether this caused the damage to the tank. But if it did it would be covered by Mr and Mrs E's policy, as the exclusion for this does not apply to claims for accidental damage.

It therefore follows that my view on the fair and reasonable outcome to Mr and Mrs E's complaint is for Wakam to settle Mr and Mrs E's claim in accordance with the claims settlement terms of their policy. And do the other things I also set out as fair and reasonable in my provisional decision.

I appreciate Wakam is unsure how it is going to repair the damage to the tank, but this is for it to establish. And, if it needs to carry out further investigations to do this, then it should do so. However, it is required under the policy to carry out a lasting and effective repair, so I consider it will need to arrange and/or pay for whatever is necessary to achieve this and ensure Mr and Mrs E's septic tank starts working properly again.

Putting things right

For the reasons set out above and in my provisional decision, I've decided to uphold Mr and Mrs E's complaint about Wakam and require it to do the following:

- Settle Mr and Mrs E's claim for the accidental damage to their septic tank in accordance with the claims settlement terms in their policy.
- Reimburse the £192 Mr and Mrs E paid for the high-pressure water jet, plus interest at 8% per annum simple from 12 November 2023 to the date of payment.*
- Pay Mr and Mrs E £200 in compensation for distress and inconvenience.**

* Wakam must tell Mr and Mrs E if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Mr and Mrs C if asked to do so. This will allow Mr and Mrs to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

** Wakam must pay the compensation within 28 days of the date on which we tell it Mr and Mrs E accept my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I uphold Mr and Mrs E's complaint about Wakam and require it do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 28 April 2025.

Robert Short
Ombudsman