

The complaint

Mr P's complaint is about the rejection of a claim made under his legal expenses section of his home insurance policy with Wakam.

What happened

Mr P held the policy with Wakam since June 2022. The policy automatically renewed in June 2023.

In 2023, Mr P's neighbour started work on their property, which Mr P says caused damage to his property. Mr P contacted Wakam to make a claim for cover of his legal costs of pursuing a claim against the neighbour on 21 August 2023. Wakam sent an email the same day to acknowledge the claim had been received and would be reviewed and that it would be in touch with Mr P.

However, Wakam did not progress the claim and did not contact Mr P for some time. Mr P says that as noticeable damage was being caused, he had to act quickly to protect his property. He therefore contacted a party wall expert and solicitors and made an application for an injunction to stop and to claim for the damage.

In early February 2024, as he had still not heard anything from Wakam, Mr P chased it for an update. Wakam asked for some further information which Mr P provided. On 19 February 2024, Wakam confirmed to Mr P that a claim had been set up and it was being reviewed.

Mr P says he did not hear anything further until May 2024 when Wakam told him it would not renew his policy in June 2024. He says he had to chase Wakam again for an update about the claim.

In August 2024, Wakam said the claim was not covered. Wakam said the policy excludes events that arise before the start of the policy and, as the claim was submitted shortly after the start of the policy, Mr P would have been aware of the dispute with the neighbour when he took out the policy. In addition, Wakam said that Mr P he did not notify the claim until seven months after he became aware of the dispute and he had already started legal proceedings without its approval. The claim had been made on the court multi-track, which means it there are costs risks. It said this was a breach of policy conditions and will have prejudiced it, so the claim would also not be covered for these reasons.

Mr P complained and told Wakam that he had been insured with it since June 2022 and he had notified it of the claim as soon as he had noticed the damage to his property in August 2023.

Wakam did not change its position, so Mr P referred the matter to us. He wants the claim accepted and the costs he has incurred to be reimbursed. Mr P says he has had to borrow money on credit cards, loans and from relatives in order to pay the legal costs, which should have been paid by Wakam and this has caused him financial difficulty, as well as significant stress and anxiety that has impacted his health.

One of our Investigators looked into the matter. She recommended that the complaint be upheld. The Investigator said the solicitor's opinion was flawed, as it said the policy cover had started in June 2023, when it had started in June 2022, before any works were started by the neighbour and therefore before any circumstances that would give rise to the claim had started.

The Investigator said that Mr P had also notified the claim as soon as reasonably possible and there was not a delay of seven months; rather Wakam had not progressed the claim at all.

The Investigator recommended that the claim be reassessed and if deemed to have reasonable prospects, based on the evidence that was available in August 2023, the legal costs incurred should be reimbursed together with interest. She also recommended that Wakam pay Mr P £300 compensation for the trouble caused by its incorrect rejection of the claim.

Mr P accepted the Investigator's assessment, although he said the compensation should be higher. Mr P also said that when he spoke to Wakam about the claim on 21 August 2023 the adviser could not give him a timeframe for when he would hear anything; he told the adviser he'd have to get urgent legal advice and was told that would not impact his claim.

Mr P also says that the judge and his legal team advised that proceedings be issued on the multi-track and the dispute with the neighbour escalated very quickly.

Wakam does not accept the Investigator's assessment. It acknowledges that there was a previous policy in place from June 2022 but says that Mr P has breached the terms of the policy anyway, as he has issued court proceedings, which has resulted in a counterclaim, without its prior consent. Wakam says It has therefore been prejudiced as it has lost the opportunity to explore alternative dispute resolution, which might have avoided costs. Wakam also says that an acknowledgement of the claim notification was sent to Mr P on 21 August 2023 and he did not respond to it to follow it up.

The Investigator reviewed the responses from both parties. She told Wakam that the breach of the policy by incurring legal costs without its approval was because it had not progressed the claim. While Mr P could have chased Wakam for a response sooner, it failed to progress a claim as it should have done.

As the Investigator has not been able to resolve the complaint, it has been passed to me.

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.

Mr P's policy provides cover for various legal disputes, including protecting his rights in regard to his home, which occur within the period of insurance. The relevant section of the policy says it will cover:

“Advisers' costs to pursue a legal action for:

- a) nuisance or trespass against the person or organisation infringing your legal rights in relation to your main home.*
- b) financial compensation for damages against a person or organisation that causes physical damage to your main home or your personal effects.”*

This cover is subject to various terms and conditions. As well as the requirement that the insured incident (the dispute with the neighbour) should arise during the period of insurance, Wakam also seeks to rely on the following exclusions:

“There is no cover where:

- 1. You knew, or should have known, when buying this insurance that the circumstances leading to a claim, under this insurance, already existed...*
- 3. Advisers’ costs or any other costs and expenses are incurred which have not been agreed in advance or are above those for which we have given our prior written approval....*

There is no cover for:

- 1. The date of occurrence is outside of the period of insurance.*
- 2. Any costs incurred before our written acceptance of the claim:*

There is also a general condition that says:

“You must notify us as soon as reasonably possible once you become aware of the claim, the incident, or an incident which might give rise to a claim.”

Mr P notified Wakam of the claim on 21 August 2023. He says this was as soon as he was aware that works carried out by the neighbour was impacting his home. There is no evidence to suggest this is not the case. It is accepted that Mr P had cover with Wakam since June 2022. I am therefore satisfied that this incident occurred within the period of cover and there is no evidence that he did not notify the claim in a reasonable time after he became aware of the dispute.

Wakam acknowledged the claim and said it would contact Mr P once it had been reviewed. The written acknowledgment does not give any time frame and does not say he should not take any legal action in the meantime.

I’ve also noted what Mr P says he was told over the phone. I have no recording of this but I don’t think I need that to fairly decide this complaint, as I am satisfied that the claim was made and Mr P was entitled to expect it to be fairly and reasonably progressed. It was not, however, progressed at all.

Mr P says damage was being done to his home, so the same day he submitted the claim, he contacted a solicitor for advice and around a week after notifying the claim he contacted a party wall expert. Mr P says he was advised to apply for an injunction to stop further works. I understand that just before the hearing, Mr P’s neighbour agreed to give undertakings to not trespass on Mr P’s property and to raise a party wall notice for any other works and there is a hearing listed to take place about the matter this year.

Wakam says Mr P should not have taken any legal action without its approval and should have chased it up.

Mr P did chase Wakam up in February 2024. It then agreed to progress the claim but it was not assessed until August 2024, when it was incorrectly rejected on the basis cover had only started in 2023.

Given these failings on Wakam’s part, I do not think it is fair or reasonable that Mr P does not receive any benefit under his policy. He reported the claim promptly and I do not consider it fair or reasonable that Mr P be penalised for not chasing Wakam sooner, to the

extent that none of his claim is considered. In addition, even after Wakam accepted the claim, it took a further six months to review it. Given this, even if he had chased Wakam sooner, it seems to me that Mr P would likely have needed to take legal steps to protect his home before Wakam had completed its assessment. Mr P had independent solicitors advising him on the actions to take and I do not think he acted unreasonably in the circumstances.

While I acknowledge that the policy excludes cover for costs incurred without Wakam's consent, this is not a situation where Mr P incurred costs before claiming under the policy. In this case he submitted a claim that was effectively ignored and then when he chased Wakam, it was incorrectly refused.

Having considered everything carefully, I agree with the Investigator that Wakam should put Mr P back in the position he should have been in, had it reviewed the claim as it should have done in August 2023. That means it should assess the claim based on the evidence available in August 2023 against the remaining terms of the policy and it cannot seek to rely on any policy terms that exclude or limit cover due to late notification or costs incurred already.

If that reassessment determines the claim would have been covered in August 2023, then I would expect Wakam to backdate cover to August 2023. Wakam should also consider whether interest should be paid on any backdated costs. If cover is backdated then I also do not think that it would be reasonable for Wakam to seek to rely on any policy terms that restrict the solicitor's charging rates, as Mr P would not have had the opportunity to negotiate their terms, although Wakam would be entitled to have the costs assessed for general reasonableness, in terms of charging rate and time taken.

In order to manage Mr P's expectations, my decision does not mean the costs he has already paid will definitely be reimbursed, or that any further legal costs will be covered. This is because there are other terms in the policy, such as that the claim must always have reasonable prospects of success, that Wakam will be entitled to apply. We expect insurers to apply such terms fairly and Mr P can raise a complaint about the reassessment if he does not agree with the outcome.

Compensation

I can see this has been a long and upsetting saga for Mr P. He should have had the support of the policy but instead has had the worry of funding the legal action himself. Mr P has provided details of the impact of having to fund the legal costs on him, including details of his credit card debts and loans.

For the sake of clarity, as I cannot determine based on the evidence currently available to me, whether the claim would have met the other policy terms and therefore that Mr P would have had his legal costs met, I cannot make an order in this decision that the costs already incurred must be paid, or that interest should be added. This also means I cannot in this decision make any award to take account of the fact Mr P has incurred debt as a result.

If after reassessing the claim, it is decided the claim should have been met, then whether any compensation should be paid for the fact Mr P has had to fund the legal costs himself can be considered then. Mr P can raise this with Wakam first and bring a new complaint to us if he remains unhappy.

In this decision, I can only consider the compensation due for the fact Wakam failed to progress the claim at all for four months and that there was then a delay of six months in

assessing it after it did start to progress it. I agree that some compensation to reflect the impact of this on Mr P is appropriate.

Mr P needed legal help and Wakam failed to properly progress and consider his claim. Even if his claim is not ultimately covered (and I make no finding about that here) I can understand why this would have caused additional distress and inconvenience at the time. The Investigator recommended £300 compensation for the incorrect refusal of the claim but I don't think this adequately takes into account the delays leading to that incorrect refusal, including between February and August 2023. I therefore intend to increase this award to £600. I consider this to be a more appropriate sum to recognise the impact on Mr P. Again, to be clear, this is not intended to compensate for any impact on Mr P of having to pay the legal costs in the meantime.

My final decision

I uphold this complaint against Wakam Limited and require it to do the following:

1. reassess Mr P's claim in line with the remaining terms of the policy (aside from any regarding date of notification or costs already incurred, in line with my comments above). If that assessment is that the claim should have been accepted in August 2023, then Wakam should backdate cover; and
2. pay Mr P the sum of £600 compensation for the distress and inconvenience caused by its wrongful rejection of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 October 2025.

Harriet McCarthy
Ombudsman