

The complaint

Mr S has complained in respect of a claim made under his taxi driving insurance policy with Wakam. Wakam has declined the claim, which is for theft of Mr S's car, because it thinks Mr S misled it when he renewed his policy.

What happened

Mr S bought a car on hire purchase in 2019. He used it as a taxi for which he had a licence and insurance (with Wakam). In August 2020, prior to his policy with Wakam renewing, Mr S's taxi licence expired. Mr S's policy renewed on 6 October 2020 and on 9 October 2020 Mr S found that his car was missing from where he'd last parked it. He said he had last seen it on 26 September 2020, although a family friend, whom he refers to as "Uncle" had said he'd seen it on third or fourth of October.

Wakam began investigating and interviewed Mr S. It asked for a contact telephone number for Uncle. Mr S gave Wakam's investigator Uncle's name and address but said he couldn't give it his phone number as Uncle didn't want him to. Wakam made enquiries with the finance provider for the car as well as with a car sales site which had run a credit check on Mr S's car in September 2020. In March 2021 Wakam told Mr S that its "enquiries remain outstanding" and it reminded him of the fraud clause on the policy as well as his duty to cooperate with it. But, Wakam also said Mr S hadn't told it when looking to renew his policy that his taxi licence had expired. It said he should have done and if he had it would have cancelled the existing policy and not offered renewal. It said it was considering whether to refund his premium.

In June 2021 Mr S spoke to Wakam, He said he had intended to reinstate his taxi licence but had needed insurance cover to get the licence. Wakam wasn't minded to change its decision and Mr S complained to us.

Wakam told us that it will issue insurance where it is told there is currently no licence in place. But it said, the policyholder has to commit to getting a licence within three weeks of cover starting. Wakam later said though that as Mr S, prior to renewal, had continued to use his car, albeit for non-commercial purposes, without a valid licence in place, it wouldn't have wanted to renew in those circumstances. It sent us its cover criteria which shows it will only accept renewing drivers which have a licence in place. It said it had no more enquiries to make in respect of the claim or cover – the claim had been declined and the policy cancelled. It confirmed it had cancelled the policy back to 30 January 2021. It said Mr S had not been up to date with payments to that point and he owed it £195.47.

Our investigator didn't think Mr S had misrepresented his situation at renewal, because at the time the car was stolen, he still had the better part of three weeks to obtain a licence. And she didn't think he'd breached any policy terms. She said Wakam should pay the claim, plus interest and £1,000 compensation.

Wakam disputed the outcome. It referred to Mr S having a duty under the Insurance Act to tell it all relevant facts at renewal, such that he gave it a fair presentation of the risk. It also said the policy, for cover to apply, requires Mr S to hold a valid licence, regardless of the

purpose for which the car is being used. It maintained that Mr S, whilst not responsible for whether or not Uncle ultimately cooperated with it, should have given it Uncle's contact details.

The complaint was passed to me for an ombudsman's consideration. I felt it should be upheld but for reasons different to those set out by our Investigator. So I issued a provisional decision. My findings from which were:

"I note that Wakam has sought to deny liability for this loss on a number of grounds, including fraud. It has also referred to Mr S having breached the previous policy as well as not disclosing key information to it at renewal. It says that because of all of these things it is declining the claim. But I'm not persuaded it's fair to tack all those things together and end up with the claim being declined as an overarching result. Especially not when, for example, one issue is to do with renewal but the theft which Wakam is declining liability for may well have occurred before the renewal. So I need to look at each element of Wakam's concerns, decide if those concerns are fair and reasonable, and, if they are, what that reasonably allows it to do. In the alternative, if I think they are not fair and reasonable, what I think Wakam must do to put things right.

Date of the theft, policy renewal and policy cancellation

Mr S last saw his car on 26 September 2020. He found it was gone on 9 October 2020.

The policy renewed at the end of the day on 6 October 2020.

Wakam cancelled the cover. But only during the course of the period of cover for the renewed policy. The cancellation was effective as of 30 January 2021.

Fraud

Regardless of the renewal date, if Wakam can show that the claim was fraudulent – that would likely entitle it to decline the claim and cancel the policy. And the cancellation would typically be effective as of the date the fraud was considered to have occurred.

This service views fraud as a serious matter, an allegation in respect of which might have serious repercussions for the policyholder. As such if an insurer wants to decline a claim on grounds of fraud, this service expects it to present strong proof to justify its decision. Here whilst citing fraud as one of the reasons for it declining the claim, all Wakam has done is remind Mr S of the fraud condition in the policy. It hasn't, as far as I can see, told him in what respect it considers his claim to be fraudulent. And nothing I've seen makes me think it has grounds for suggesting fraud has occurred.

From reviewing Wakam's submissions, I see it found out various information during the course of its enquiries which had given it cause for concern. However, seemingly nothing substantively pointing to Mr S having made a fraudulent claim had been found. Had it been, I'd have expected Wakam's decline letter to focus on that in order that it could hold its argument in this respect in reserve in case needed.

Wakam has confirmed that having declined the claim in March 2021, it had no enquiries outstanding. So Wakam's enquiries have concluded and the net result of those is that it has not established, to my satisfaction, that it's fair and reasonable to accuse Mr S of fraud. Therefore, Wakam cannot either decline the claim or cancel the cover on the grounds of fraud.

Misrepresentation at renewal

I think, to an extent, Wakam has a point about what Mr S told it, or rather failed to tell it at renewal. But that, in this instance, won't affect the claim. Not even if Wakam can show that the car was most likely stolen after the policy renewed.

Wakam said that Mr S didn't tell it at renewal that his taxi licence had expired, and he should have done. And if he had it wouldn't have renewed his policy.

In respect of this issue Wakam has referred to what Mr S's obligations are under legislation known as the Insurance Act. That legislation applies to commercial insurance contracts. And this is a commercial policy. So strictly speaking Wakam is correct to refer to that legislation. However, Mr S is an unsophisticated consumer, so his complaint needs to be considered in that light. In other words, to be fair to Mr S, he has to be treated as a consumer. There is legislation which set out the rules which apply to consumer contracts; the Consumer Insurance (Disclosure and Representations) Act 2021 (CIDRA). In line with this service's usual approach in this type of situation I've considered this part of the complaint in light of that legislation, as if that legislation applies.

CIDRA sets out the obligations and rights of the parties to the insurance contract. It requires the prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. A misrepresentation would be incorrect detail or possibly missing information of some kind. If a misrepresentation is made which is a qualifying misrepresentation, then the insurer will be allowed to take certain action.

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care when they gave the answer they did? Second, can the insurer show that if correct/full detail had been given, it wouldn't have entered into the insurance contract, or it would but only on different terms? What the insurer would have done is often a matter of fact – and I have seen evidence in that respect here which I'll come onto shortly. Whether the prospective policyholder took reasonable care will depend largely on whether the question asked by the insurer was clear and/or specific enough to elicit from the consumer what it really was the insurer wanted to know.

Mr S spoke to Wakam to agree the renewal. In that call Wakam did ask him if anything, including in respect of his arrangements with the council (with whom the taxi licence had been held) had changed. He was asked that at least twice and in quick succession he was also asked about the area of cover for his licence. At that time Mr S's licence had expired, it was out of date by some six weeks. So his position with the council had changed as he was no longer a licenced taxi driver. Mr S, in my view, gave Wakam incorrect details when arranging the renewal. I know he at times has said he thought he had an extension for the licence due to Covid – but I think he is wrong about that. And his livelihood depends on him properly understanding the regulations that allow him to work as a taxi driver. So I think he failed to take reasonable care when answering Wakam's question.

As I mentioned though, Wakam has to show what it would have done had it received the correct detail. I know that, for new policyholders, Wakam applies some discretion in respect of whether they hold a valid taxi licence or not. Seemingly a prospective licence holder has to be able to show the relevant licencing authority that they hold insurance. But Wakam has also shown me that it does not apply the same discretion to existing customers. Wakam's cover criteria shows that for it to accept renewing customers for the upcoming year, they must hold a taxi licence. Mr S, at the point of renewal, did not hold a taxi licence. So, I'm satisfied that, if he had told Wakam that, it would not have renewed his cover.

In that scenario Wakam then would, strictly speaking, be entitled to act as though the policy had never existed. Which would, amongst other things, mean it would have no liability for

any loss which had occurred during the period the policy would have covered. But it can't fairly do that if – whilst knowing it had a cause which might allow it to act as though the policy had never existed – it acts to affirm the policy's existence.

So Wakam knew as early as 15 October 2020 that Mr S had failed to tell it at renewal that his taxi licence had expired. That was something, as I've explained, which would reasonably have let Wakam act as though the policy had never been in place. But Wakam didn't act on that information at that time. And in January and February 2021 it noted Mr S was behind on his policy payments. In February it cancelled the policy with effect from 30 January 2021. By cancelling the policy Wakam, effectively, affirmed it had existed between 7 October 2020 and 30 January 2021. Wakam can't then reasonably treat the policy as never having existed. Which means that Wakam can't decline liability for the claim – the loss subject of which might have occurred during the period covered by the renewed, but later cancelled, policy.

Cancellation of old policy

Wakam also said though that it would have cancelled the old policy during its term if Mr S had told it the licence had expired. However, Wakam didn't, once it knew of the expiry, act to actually cancel the old policy. Had it wanted to, it should have done so. But if it had, I likely wouldn't have found that fair.

What Wakam can or would do at renewal, doesn't speak to how it must act during the term of the policy. When an insurer cancels a policy that can have an impact on the policyholder. As such this service expects an insurer to act fairly and reasonably when cancelling a policy. And we also take the view that a policyholder can't reasonably tell an insurer about every change which occurs during the policy year. Rather they must tell the insurer of material changes. In short an insurer can't fairly cancel a policy mid-term merely because a policyholder didn't tell it of a non-material change.

What constitutes a material change will vary dependant on the issues and policy wording at hand. Here the policy does seem to allow an existing policyholder during the usual term of the policy to use the car even without a taxi licence in place. There is cover for taxi work but also 'social, domestic and pleasure'. The certificate says any of the named drivers can drive as long as they hold a licence or have held one and are not disqualified from doing so. And the policy booklet says there must be an MOT and/or taxi plate (licence) "where applicable". So I don't think the policy does mandate that a taxi licence 'must' be held. As such, I don't think the expiry of the taxi licence was a material change that Mr S should have made Wakam aware of during the course of the policy. Therefore, if it had cancelled the policy, that in my view, would have been unfair and unreasonable.

I'm satisfied that Wakam did not try to cancel the policy that was in effect until 6 October 2020, and if it had done so that would have been unfair and unreasonable. As such the policy was validly in place and Mr S's claim under it cannot just be dismissed.

Non-cooperation

The final reason Wakam has put forward for declining Mr S's claim is that he did not cooperate with it. A policyholder does need to cooperate with an insurer. But an insurer also has to apply its policy terms fairly and reasonably. It's fair to say that there is often a balance to be struck and, on this occasion, I think Wakam has tipped that balance.

Wakam wanted to interview Uncle. Mr S gave Wakam Uncle's full name and address but wouldn't when asked, pass on his telephone number. Strictly speaking, he did not cooperate with it. However, I understand that Mr S said he did not have permission from Uncle to share that number and I think he did try to assist Wakam as far as he felt able to by providing it

with the other details. And I think his failure to give the phone number didn't materially affect Wakam's investigation. Even if Mr S had given Wakam Uncle's phone number it's far from clear that Uncle would have spoken to it in response to what would have amounted to a 'cold call' from one of its agents. Having been given Uncle's full name and address Wakam could have established a more professional line of communication with Uncle and, from there, looked to arrange to complete its further investigations. I can't see that Wakam ever tried to establish contact with Uncle with the details it was given. I don't think it's fair or reasonable, in this instance, for Wakam to decline the claim on the basis of Mr S not cooperating with it.

The claim

Having considered Wakam's concerns, I've found nothing that I think fairly and reasonably allows it to either decline or refuse to deal with Mr S's claim. Therefore, I think it must now move to settle it, in line with the policy's remaining terms and conditions.

Compensation

I think Wakam should also pay Mr S £500 compensation as its refusal has clearly caused him upset and worry. But I think it was a claim which would always have taken a while to be investigated and I also note Mr S has had access to his wife's car. And I also can't be sure that if Mr S had had his own car, he would have renewed his taxi licence and used his car for that purpose. He may have done but I can't be sure that is the case."

Mr S said he had no further comment to make. Wakam said it disagreed with my findings. It asked for certain points to be taken into account. In summary they are:

- It hasn't specifically accused Mr S of fraud, but it does have concerns in that regard, including that it believes that Mr S was in financial difficulty at the time of the loss, and would like them taken into account.
- It declined the claim for more than one reason, and didn't do so when it found out about the lack of a licence in October 2020 because it had other claim enquiries to make.
- It feels the reference to material changes is not relevant as it is a policy requirement for a licence to be held, including on the certificate of insurance.
- The policy requires Mr S to cooperate with its enquiries and he didn't give it a full address for Uncle, and the partial address which was given was for a small block of flats.
- It thinks it's unclear how the car could have been stolen.

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.

As I noted provisionally, Wakam seemed to be relying on a number of reasons for refusing to settle the claim. And one of the things it referred to was fraud. So I considered whether there were grounds, given Wakam's concerns, for cancellation in that respect. As I said provisionally, I don't think there were. My view hasn't changed. Whilst Wakam's response suggests it has not made a record of 'fraud' anywhere, for completeness, I'll leave my award in this respect in place.

I understand that, in October 2020, Wakam had claim enquiries it was still progressing. But it also, at that time, knew information which might reasonably give it cause to avoid its liability for the policy in its entirety. Wakam could have notified Mr S in this respect, letting him know that its claim enquiries were ongoing and that these, along with any other action it might take, were being carried out on a "without prejudice" basis to its position on policy liability.

But it didn't do that. As I said, Wakam's act in February 2021 of cancelling the cover affirmed the policy had been in place. I remain of the view that Wakam can't reasonably treat the policy as never having existed or decline liability for the claim on the grounds Mr S misrepresented to it at renewal.

As I said provisionally, I don't think the policy, including the certificate of cover, does mandate that a taxi licence must be held at all times. Wakam's further comments in this respect haven't changed my view on this.

All policies I am aware of require the policyholder to cooperate with the insurer's enquires. And Mr S should have done so. But an insurer relying on a technical breach of a term to decline a claim is usually seen by this service as unfair and unreasonable. Mr S had given Wakam some detail, and I'm satisfied that was enough to allow Wakam to have made other enquires and complete further investigations. But it didn't do so. I remain of the view that it would be unfair and unreasonable for Wakan to decline the claim on the grounds that Mr S failed to cooperate with it.

I appreciate that Wakam is unsure about how the car might have been stolen. But its concerns in that respect weren't given as one of its reasons for declining the claim. It isn't reasonable for it to seek to add to its stated position so much after the fact.

Putting things right

I require Wakam to:

- If it has made a record of 'fraud' anywhere, remove that reference.
- Settle the claim for theft in line with the remaining terms and conditions of the policy.
- Pay Mr S £500 compensation.

My final decision

I uphold this complaint. I require Wakam to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 October 2022.

Fiona Robinson

Ombudsman