

The complaint

Mr E complains about how Wakam dealt with a claim he made on his car insurance policy after he was involved in an accident.

What happened

Mr E has a car insurance policy with Wakam.

Unfortunately, in January 2023 Mr E was involved in an accident so he made a claim on his policy.

Wakam instructed an engineer to inspect the vehicle and it was deemed a category B total loss. Wakam provided Mr E with a valuation for the car, less the excess.

Mr E disputed the valuation of the vehicle. Wakam asked for some evidence in the form of advertisements for similar vehicles so it could send those to the engineer and reconsider the valuation.

Mr E received a letter from Wakam to say it would be voiding the policy since he had failed to notify it of the modifications to the vehicle. It said it would provide Mr E with the salvage value of the vehicle but wouldn't deal with the accident loss. Mr E wasn't happy with the service from Wakam and so he complained.

Wakam said it instructed an engineer to review the damage to the vehicle in January 2023. The engineer's report confirmed the vehicle was deemed a category B total loss, with a pre-accident valuation of £4715 less the excess of £650. Wakam said the following month it was notified that the car had a number of modifications such as aftermarket alloy wheels, rear bumper splitter, a boot lid spoiler, and front kidney grills. So, the policy was voided since modifications aren't permitted by the terms of the policy; and Mr E was notified of the same. Since the car was a category B it needed to be destroyed, so Wakam offered Mr E an offer in respect of the salvage value of the car.

Mr E wasn't satisfied with the response from Wakam so he asked us to consider his complaint. One of our investigators did this. He said before he could consider the valuation of the vehicle he needed to consider the avoidance of the policy. He said while he considered there was a misrepresentation made by Mr E when taking out the policy, he didn't think it was a deliberate one. The investigator said while Wakam was entitled to avoid the policy, he thought it should have refunded the premiums. The investigator said Mr E's car was deemed a category B so Wakam acted reasonably in disposing of it. In respect of the personalised number plate Wakam advised Mr E should be able to contact the DVLA to retain the registration since he remained the registered keeper of the car. So he said Wakam should refund the premiums and pay the salvage to resolve the complaint.

Mr E didn't agree with the investigator's view. He said the car hadn't been modified and all the parts were factory fitted. He also said he should have been able to retain the vehicle. Because Mr E didn't agree the complaint has come 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.

I'd like to start by assuring Mr E that I've considered all the information provided as well as his comments in coming to my decision.

I appreciate Mr E feels very strongly that Wakam has treated him unfairly. In reaching my conclusions I've needed to consider the relevant law which is Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA), as well as the terms and conditions of the policy, and the circumstances of the claim.

Misrepresentation

The relevant law in this case is CIDRA as detailed above. This requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. And if a consumer fails to do this the insurer has certain remedies provided the misrepresentation is a qualifying one. For it to be qualifying the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Wakam think Mr E failed to take reasonable care not to make a misrepresentation when he didn't declare the modifications on the vehicle. There are a number of key assumptions Mr E must agree to when taking out the policy and one of those relates to vehicle modifications. Mr E said there were no modifications and all parts were factory fitted. But I haven't seen any evidence to support this. I've seen the engineers report and photographs where the modifications are referred to and listed. So I think, on balance, its more likely the vehicle did have modifications that should have been declared. And Mr E would have had the opportunity to review his cover when the documents were sent to him after he took out the policy. I would have expected him to check the cover at that stage to ensure the details were correct. And I can't see he did that.

So, I'm satisfied that it was made clear that any modifications to the vehicle needed to be declared and Mr E failed to take reasonable care not to make a misrepresentation.

I will now move on to whether the misrepresentation was a qualifying one. And what Wakam would have done had it known the correct information.

Wakam provided evidence by way of the relevant underwriting criteria which shows that part of the decline criteria is vehicle modification. So had Wakam been aware of the modifications it would not have provided cover for Mr E's car. And so I agree with Wakam's view that Mr E made a qualifying misrepresentation.

Wakam didn't tell us whether it thought Mr E's misrepresentation was careless or reckless. And this effects what remedies are available to it under CIDRA. Our investigator says he thinks the misrepresentation was careless and I agree.

I have looked at what Mr E has said about his car. I empathise with Mr E's position here and can see why he is frustrated; he perhaps didn't appreciate the potential consequences of his actions. But I can't say Wakam treated him unfairly.

Taking all this into account I'm satisfied Wakam acted fairly and reasonably when avoiding the policy and treated it as though it didn't exist. And its actions are in line with the actions it can take in accordance with CIDRA; however I agree with the investigator that Wakam must return the premiums to Mr E.

Disposing of the vehicle

Mr E has said he wanted to retain the vehicle and Wakam shouldn't have disposed of it.

The engineer said the car was a category B total loss, which means the car isn't suitable for repair but usable parts can be recycled. I haven't seen anything in the notes to suggest Mr E made enquiries about retaining the vehicle. In any event the terms of the policy say, "*if its damaged beyond economical repair (if this happens, the vehicle will then belong to us.*" So Wakam acted within the terms of the policy. Wakam has offered Mr E the salvage amount for his car and I think that's fair.

Personalised number plate

As the investigator said Mr E is the registered keeper of the car and so will be able to retain the registration through the DVLA.

Conclusion

I understand this isn't the outcome Mr E is hoping for. But any decision I make must be both fair and impartial. In this situation I think Mr E made a qualifying misrepresentation when he took out his policy.

Mr E's failure not to take care meant he was provided with a contract of insurance that he wouldn't have been offered otherwise. So Wakam voided the policy and treated it as if it never existed so its details were removed from the motor insurance database. And in doing so acted in accordance with CIDRA.

But I consider as part of the fair and reasonable outcome to Mr E's complaint Wakam should refund the consumer's premiums back to the date of avoidance.

Putting things right

For the reasons set out above, I've decided to partially uphold this complaint and direct Wakam to do the following;

- Refund the policy premiums Mr E paid for his policy
- Pay the salvage amount to Mr E if not already done so

My final decision

For the reasons set out above I partially uphold Mr E's complaint and direct Wakam to resolve matters by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 June 2024.

Kiran Clair
Ombudsman