

## **The complaint**

Mr L has complained about the fact that Wakam avoided (treated as if it never existed) his commercial motor insurance policy and refused his claim for damage to his van because of it. He has also complained about the way Wakam carried out its investigation and the salvage category it placed on his van.

Wakam is the underwriter (insurer) of this policy. Much of this complaint concerns the actions of its appointed agents. As Wakam accepts it is accountable for the actions of its agents, in my decision, any reference to Wakam should be interpreted as also covering the actions of its appointed agents.

## **What happened**

Mr L's van was damaged when he accidentally drove it in to a flood in November 2022. It was collected by Wakam and taken to a property belonging to a friend of Mr L and stored there. Wakam's engineer inspected it at this location soon after this. He said it would cost a lot more than its value to repair it and declared it a category B write off. Despite Mr L chasing, it took Wakam several months to decide what to do about his claim. In the end, it decided he failed to declare that his van had been modified with roof vents. And it avoided his policy and refused his claim on the basis it wouldn't have insured the van if Mr L had not declared it wasn't modified. It told Mr L that it had declared his van a category B write off and that it needed to dispose of it.

Mr T asked Wakam to provide evidence of the information Mr L had provided when he took out the policy. He also pointed out there couldn't be any structural damage to the van as it was water damaged. And he pointed out it still belonged to Mr L because Wakam had refused his claim. In the end Mr L disposed of the van. Wakam simply referred Mr L to its agent who arranged the policy to get the information Mr T had asked for and it wouldn't reverse its decision to avoid the policy.

Mr T asked us to consider Mr L's complaint. In the complaint form provided to us, Mr L alluded to the fact that as well, as being unhappy with Wakam's decision to avoid his policy, he was also unhappy with its investigation and the salvage category it had placed on his van. He also mentioned he wanted Wakam to cover the storage charges he'd incurred.

We told Wakam in September 2023 that Mr L wanted us to consider a complaint about what it had done with regards to his policy and claim and sent it a copy of his complaint form. It then issued a final response letter in December 2023, maintaining it was entitled to avoid Mr L's policy and that it was right to place a salvage category of B on his van, as it had structural damage.

One of our investigators considered Mr L's complaint. In his first view he concluded Wakam was entitled to avoid his policy and refuse his claim. And that it was right to class his van as category B for salvage.

Mr T challenged the investigator's view. He explained Mr L wasn't aware his van had been modified and that it couldn't have been structurally damaged in a flood.

The investigator then issued a second view upholding Mr L's complaint. He said Wakam should reinstate Mr L's policy and deal with his claim under it. He said nothing needed to be done about the salvage category as Mr L had disposed of the van. And he said that because Mr L hadn't complained about the delays in Wakam's investigation he needed to make a new complaint about this.

Wakam didn't respond to the investigator's view. Mr T responded on behalf of Mr L. He queried what would happen about the storage charges Mr L had incurred, which amounted to £3,320, plus a £50 disposal fee.

As Wakam didn't respond to the investigator's view the case was passed to me for a decision.

I spoke to Mr T at some length to understand why Mr L didn't think his van had been modified. And I established that he mainly used it for his business of transporting dogs.

I issued a provisional decision on 11 July 2024 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.*

*As Mr T has explained that Mr L mainly used his van for business, the relevant legislation for me to consider is the Insurance Act 2015. This requires customers to make a fair presentation of the risk they want the insurer to insure when they are taking out the policy. If they fail to do this and the insurer can show it wouldn't have offered the policy or the same terms or at all, then the customer's failure will be what the Act classes as a qualifying breach. And the remedy available to the insurer will depend on whether the breach was deliberate or reckless or neither deliberate nor reckless. And if it was neither deliberate nor reckless the remedy available to the insurer will depend on whether it would have offered the policy on different terms or not at all.*

*In Mr L's case Wakam referred to the wrong legislation, as it referred to The Consumer Insurance (Disclosure and Representations) Act 2012. This doesn't apply to commercial customers. So, I've considered whether Mr L made a fair presentation in accordance with the Insurance Act in deciding what the fair and reasonable outcome to this complaint is. In doing this I need to consider any questions Mr L was asked when he took out the policy.*

*Wakam has provided what I consider to be satisfactory evidence to show Mr L answered 'yes' to a declaration when he took out the policy confirming a number of statements were correct. One of these was 'The vehicle (his van) has no modifications other than those on the approved list'. Wakam has not provided the approved list, so it is possible air vents are on it. Although, I assume from Wakam's approach that they are not. Wakam has also failed to provide any actual underwriting evidence to show if Mr L had not clicked 'yes' to the declaration it wouldn't have offered him a policy or would have done so on different terms. But, again from its approach, I assume it is suggesting it wouldn't have offered Mr L a policy at all if he hadn't clicked yes to the declaration.*

*I can of course see why Wakam thinks Mr W's van had been modified. And why he should therefore not have clicked 'yes' to the declaration including the above statement. However, I think Mr L did genuinely not think his van had been modified in the way Wakam view modifications. I say this because Mr T explained to me that Mr L has had lots of vans like the one he insured with Wakam, which he used to transport dogs. And most of them had some sort of ventilation installed. And to him the van he insured with Wakam was fairly standard*

*and he would have thought by modifications Wakam meant things that enhanced the appearance of the van or improved the performance and increased the risk of insuring it. And this wouldn't apply with air vents in the roof.*

*I think Mr L's view was a reasonable one and one most customers in a similar position would have taken. In view of this, I do not think Wakam has done enough to show he failed to make a fair presentation of the risk by clicking 'yes' to the abovementioned declaration. So, as part of the fair and reasonable outcome to Mr L's complaint, I think Wakam should retrospectively reinstate his policy and remove any record of the avoidance from its records and any external databases it has placed it on. And it should consider Mr L's claim in accordance with the policy terms.*

*Wakam hasn't actually provided a copy of Mr L's policy terms. But I suspect they say Wakam will pay the market value of Mr L's van less the policy excess if it is a write off. Wakam's engineer suggested the value of Mr L's vehicle excluding VAT was £1,668. But I should say that Mr L is not VAT registered. So if it settles the claim by paying the market value of Mr L's van at the date it was damaged, this value should include VAT.*

*I also consider that as part of the fair and reasonable outcome to his complaint Wakam needs to cover the storage costs Mr L has incurred. This is because Mr L would not have incurred most of these if Wakam had accepted his claim. And any charges prior to it deciding what to do on his claim are Wakam's responsibility anyway. Mr T told me Mr L hasn't actually paid the storage costs as yet and that money owed to him by the person who stored his van is being held back because of them. So I think it is fair for Wakam to pay Mr L the full amount he has been charged for storage, plus what it cost him to dispose of his van in cash. He has said this is £3,370, but he will need to provide evidence to show this before Wakam pays it.*

*I have also considered the impact on Mr L of not having had the money for his van for well over a year as a result of Wakam's unfair decision to avoid his policy and turn down his claim. Mr T explained Mr L was unwell in this period and may not have worked that much if he had had the funds to replace his van. But I do think what Wakam's decision left Mr L with the general distress and inconvenience of being without a van. This has been the case for over a year and therefore I think it warrants a compensation payment of £500.*

*I've also considered Mr L's complaint about the way Wakam investigated his case and handled his claim. I think Wakam's communication on Mr L's claim was very poor indeed. It didn't respond properly to his or Mr T's requests for clarification on certain points and for information. And it took far too long to decide to avoid his policy. And then it referred to the wrong legislation. Plus, it was distressing for Mr L that Wakam unfairly avoided his policy. As well as this it also suggested his van was a category B write off because of structural damage when this couldn't have been the case because it was damaged in a flood. It may have been a category B for other reasons, but it was unhelpful that Wakam suggested this was due to structural damage. I think the distress and inconvenience this caused Mr L also warrants a compensation payment of £300.*

*My provisional decision*

*For the reasons set out above, I've decided to uphold Mr L's complaint and make Wakam do the following:*

- Retrospectively reinstate Mr L's policy and remove any record of the avoidance of it from its records and any external databases it has placed it on.*
- Consider Mr L's claim in accordance with the policy terms.*
- Pay Mr L £3,370 to cover storage costs and the disposal of his van, subject to him*

*providing evidence he has to pay these.*

- *Pay Mr L a total of £800 in compensation for distress and inconvenience.*

I gave both parties until 25 July 2024 to provide further comments and evidence in response to my provisional decision.

Wakam has provided a copy of the approved list of modifications that Mr L would have been able to view when he took out his policy. It's said that, in view of this and the fact Mr L had had other vans like the one he insured with it, he should have been aware the roof vents on his van were not factory fitted. But that his comments around why he indicated his van hadn't been modified were taken into account and were why his misrepresentation was treated as careless, as opposed to deliberate/reckless.

Mr T has provided a copy of the invoice for the storage costs and disposal of Mr L's van. Also, after I sent him a copy of the approved list of modifications and queried why Mr L didn't realise his van was modified in light of it, he explained that Mr L did not realise that the roof vents on his van were not factory fitted, i.e. he did not think his van had been modified from the manufacturer's original specification.

He also explained that Mr L had to provide a photograph of his van prior to going ahead with the policy and that this meant Wakam must have been aware his van had been modified, but still insured it.

### **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 and it is helpful it sent the approved modifications document, but what it has said and the document doesn't alter my view that Mr L, or indeed most reasonable people, wouldn't realise that roof vents like the ones in Mr L's van weren't factory fitted. They look integral to the vehicle and I think Mr L was entitled to assume the vehicle was one specifically designed to carry animals. He's explained his van had an entire roof to floor bulkhead directly behind the seats, making the entire rear section of the van enclosed and essentially airtight, save for the air vents, which I think would have given more weight to Mr L's view it was factory designed for transporting animals.

I should also say that, while it has not had any impact on my decision, I am surprised that Wakam were not aware Mr L was required to provide a photograph of his van to its agent when he took out the policy, giving it the opportunity to check whether it thought it had been modified or not. And that it still agreed Wakam would insure it, having seen this photograph.

In the circumstances, it remains my view that Wakam has not demonstrated that Mr L failed to make a fair presentation of the risk when he took out the policy and indicated his van hadn't been modified, bearing in mind his understanding and the statements he was asked to confirm as correct. Therefore, I still think Wakam treated Mr L unfairly when it avoided his policy. And I still consider it needs to reinstate the policy and consider Mr L's claim for his van under it.

Mr L has now provided a copy of the invoice confirming £3,370 is due for the storage and disposal of his van, so I am satisfied this is the amount Wakam should pay Mr L to cover storage charges and disposal. I have asked our investigator to send a copy of this to Wakam.

My view also remains the same with regards to compensation for distress and

inconvenience. Therefore, in summary, it remains my view that the fair and reasonable outcome to Mr L's complaint is as set out in my provisional decision.

### **Putting things right**

For the reasons set out above and in my provisional decision dated 11 July 2024, I've decided to uphold Mr L's complaint and make Wakam do the following:

- Retrospectively reinstate Mr L's policy and remove any record of the avoidance of it from its records and any external databases it has placed it on.
- Consider Mr L's claim in accordance with the policy terms.
- Pay Mr L £3,370 to cover storage costs and the disposal of his van.
- Pay Mr L a total of £800 in compensation for distress and inconvenience.

### **My final decision**

I uphold Mr L's complaint about Wakam and order it to 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 L to accept or reject my decision before 3 September 2024.

Robert Short  
**Ombudsman**