

The complaint

Mr B has complained that Wakam declined his claim under his courier insurance policy following the theft of his van.

Any reference to Wakam in this decision includes its agents.

What happened

Mr B's van was stolen in October 2022 and he made a claim under his policy. Wakam investigated it and then declined it on the basis he used his van for furniture removals, but hadn't said this was the case when he took out the policy. This was because Mr B had said when he was interviewed after the theft that he used his van for furniture removals and had been doing so since he bought the van.

Mr B also said in an email he had been using his van for removals prior to it being stolen. A complained to Wakam. It said that Mr B had lost work revenue as a result of being without his van and had been forced to buy a replacement van. And that it considered Wakam should settle his claim.

Wakam wouldn't alter its position, so A asked us to consider Mr B's complaint. One of our investigator's did this. She said it should be upheld and Wakam should deal with Mr B's claim. She also thought it should pay him £100 in compensation for distress and inconvenience. This was on the basis that there was nothing in the policy terms that excluded the use of Mr B's van for furniture removals. She also explained that – even if there was – it wouldn't be fair for Wakam to rely on this term as Mr B wasn't using his van for furniture removals when it was stolen. She also said it was too late for Wakam to avoid Mr B's policy on the basis he did not declare he was doing furniture removals when he carried it out, as it had affirmed the contract by relying on the policy terms to reject Mr B's claim.

Wakam didn't agree with the investigator's view and asked for an ombudsman's decision.

I reviewed the complaint and asked our investigator to check some things with A. I asked her to send a copy of Mr B's statement following the claim and ask why he had said he used his van for removals if he did not. I also asked her to send A a copy of the email Mr B sent to Wakam after his claim in which he'd said that prior to the theft he'd been using his van for removals. And to ask for A's comments on this.

A responded to say that Mr B did not use his van for furniture removals. They further explained that he stopped working as a courier in March/April 2022 and after this time his van was only used for commuting to and from his work, which was working on roads. A further explained that the statement taken after Mr B's claim, which refers to him doing removals, was done via a video meeting and Mr B informed them English was not his first language. But the interviewer wished to continue and a translator wasn't arranged. And the statement wasn't provided to Mr B in his own language before he signed it.

I issued a provisional decision on 12 September 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.

Whilst I agree with our investigator that Wakam cannot rely on the terms of Mr B's policy to reject his claim, I do not agree that it needs to settle it. This is because it is clear from the letter Wakam sent Mr B when it declined his claim that the reason it was doing this was that it wouldn't have offered Mr B a policy if he'd disclosed he was doing furniture removals. From this I take it that Wakam didn't think Mr B had made a fair presentation of the risk he was asking it to insure when he took out the policy in December 2021. And that it was relying on its right under the Insurance Act 2015 to avoid Mr B's policy on the basis he'd breached the requirement for him to do so and that this was what the Act describes as a qualifying breach.

I consider the Insurance Act 2015 is the relevant legislation for me to consider in this complaint. And – as I've alluded to above – the Act did require Mr B, as a commercial customer, to make a fair presentation of the risk when he took out the policy with Wakam in December 2021. If Wakam can show he didn't do this and that it wouldn't have offered cover to him at all or would have done so on different terms it will then have established Mr B's breach was a qualifying one. And then provided it wouldn't have offered him cover at all it would be entitled to avoid his policy, irrespective of whether this breach was deliberate or reckless.

For me to be satisfied Wakam has shown Mr B made a qualifying breach I needed to see the questions Mr B was asked when he took out the policy and the answers he gave to these. So I asked Wakam to provide these. And I can see from them that Mr B was asked what he did for a living and said he was a courier. He was also asked what he would be using his vehicle for and he said for the carriage of goods for hire or reward. Prior to going ahead with the policy Mr B was provided with a quotation letter which had a list of assumptions that had been made about him. These included that his vehicle would not be used for furniture removals. He then spoke with an adviser by telephone to confirm he wanted to go ahead with the policy. During this call the adviser told him his van would not be covered for furniture removals and Mr B said he understood this. After he decided to go ahead Mr B was provided with a Statement of Fact to check and this showed his occupation as a courier and that his vehicle would be used for carriage of goods for hire or reward. And Mr B didn't contact Wakam to make any changes to this.

I appreciate A has suggested that Mr A was a courier until March/April 2022 and it seems to be suggesting that after this he changed to working on roads. But this is contrary to the statement Mr A gave and signed saying he carried out furniture removals and had been doing so since he bought the van. And I've also listened to the call Mr B made to take out the policy and, although his English isn't perfect, he seemed able to understand the questions the adviser was asking him and what he explained to him about his vehicle not being covered for furniture removals.

So, while I appreciate the interview in which Mr B provided this statement wasn't in his first language, I consider it is more likely than not that he did say he had been using his van for removals since he first bought it. And I think this is supported by the fact that he said he had been using it for removals in the period before it was stolen both in the interview and in an email he appears to have sent himself after his claim. Therefore, I consider there is sufficient evidence for me to conclude that Mr B was not solely a courier when he took out the policy, despite saying he was; and that he did use his van for more than the carriage of goods for hire or reward at this point. And that he did actually use it for furniture removals despite effectively agreeing to an assumption that he did not.

This means I am satisfied Wakam has shown Mr B did fail to make a fair presentation of the risk when he took out the policy with it in December 2021.

I also asked Wakam to provide evidence to show it wouldn't have insured Mr B if he had said his occupation was at least in part furniture removal. And if he'd said his van would be used for more than carriage of goods for hire or reward and for furniture removals. And I'm satisfied from what it has provided that Wakam would not have offered the policy to him at all if he'd provided the above information. This stands to reason really as the policy is specifically designed for couriers.

It therefore follows that I consider Wakam has shown that Mr B failed to make a fair presentation of the risk when he took out his policy and that this was a qualifying breach. And that it was entitled to avoid Mr B's policy as a result of it. This means it is not obliged to deal with his claim under the policy.

In view of this, I do not consider Mr B's complaint about Wakam's decision to decline his claim should be upheld.

I gave the parties until 27 September 2024 to provide further comments and evidence in response to my provisional decision.

Wakam has not provided any further comments or evidence. A has responded with some further comments. They've said Mr B contends that he did not work in removals and the reference to this in his statement is due to a translation issue. And A has reiterated their point that an interpreter was not arranged for Mr B when he made the statement. A has also pointed out that Wakam's investigator took the statement on 10 November 2022, but it is signed on 18 October 2022. They believe this means the statement is invalid.

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.

Having done so it remains my view that it should not be upheld for the reasons I set out in my provisional decision.

I have noted A's point that an interpreter was not arranged for Mr B's interview with Wakam's investigator. However, as I explained in my provisional decision, from listening to a recording of the call Mr B made when he took out the policy, I'm satisfied his English was good enough for the interview to be conducted in English without a translator. And I am not persuaded that the references to Mr B doing removal work are due to a translation issue. This is because there is more than one reference to removal work in the statement in different contexts. And Mr B even said at one point he'd specifically driven a significant distance for a removal job. And I can't really see why he'd have driven this distance for any other reason and then got confused due to a translation issue and said it was to do a removal job. He also said in his statement in the same sentence that as well as using his van for removals he also removed rubbish sometimes, which doesn't suggest a lack of understanding on what he used his van for due to a translation issue. Mr B also said in his statement that he had used his van for removals since he got it and this ties in with the other references to removals and does not suggest a lack of understanding.

In addition, as I mentioned in my provisional decision, Mr B sent an email to Wakam on 19 January 2023 in which he said the job he did just before his van was stolen was a 'removing job'. So, if he didn't do removals and the fact he said in his statement he did was due to a translation issue, I do not think he would have sent this email.

So, overall I think the evidence that Mr B had used his van for removals since he got it is very strong indeed. And it remains my view that it is more likely than not that he was using it for removals when he took out the policy with Wakam. And this means I remain satisfied Mr B failed to make a fair presentation of the risk when doing so and Wakam was therefore entitled to avoid his policy and refuse his claim.

I have of course noted what A has said about the date the statement was signed. But I think this is likely to be due to Mr B putting the wrong date on it when he signed it, as the date box was left for him to fill in. Of course, Wakam should have picked up on this and asked Mr B to redate it. But I am satisfied the statement was provided by Mr B on 10 November 2022 and I do not consider the fact the date inserted next to Mr B's signature is 18 October 2022 invalidates it.

My final decision

For the reasons set out above and in my provisional decision dated 12 September 2024, I do not uphold Mr B's complaint about Wakam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 October 2024.

Robert Short
Ombudsman