

The complaint

Mr S complains about the decline of his motor insurance claim by Wakam.

As Wakam have accepted responsibility for any agent acting on their behalf, in my decision any reference to Wakam should also be interpreted as covering the actions of their appointed agents.

What happened

The background to this complaint is well known to Mr S and Wakam. Rather than repeat what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr S notified Wakam that his motorhome had been stolen from a storage yard. Wakam investigated the claim and ultimately repudiated it as they said Mr S had breached the policy terms as the motorhome had significant corrosion (rust). The motorhome was later recovered as badly damaged and Wakam agreed to pay for storage charges and the return of the motorhome to Mr S.

Unhappy with Wakam's response to the claim, Mr S raised a complaint. Wakam didn't uphold the complaint and Mr S referred the complaint to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. As Wakam didn't agree, the complaint has been referred to me for a decision.

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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Both parties were sent a copy of my provisional decision. Mr S responded by the deadline set, but Wakam didn't. As no new evidence has been provided that materially affects the outcome I'd intended to reach, I find no fair or reasonable reason to deviate from my earlier findings and they form the basis of this, my final decision.

The scope of my decision

My decision will only address what remains in dispute in this complaint. I make this point as initially Wakam relied on the motorhome not being maintained in an efficient condition to repudiate the claim. After the complaint was referred to our Service, they then referred to milage discrepancies and possible misrepresentation when the policy was taken out (relating to driving and non-driving convictions). Based on what I've seen, Wakam have conceded they can't fairly rely on those other reasons to decline this claim. As the one point of dispute remains the condition of the motorhome - this is what I'll largely focus on in this decision.

Theft or non-theft claim?

Wakam initially considered this claim under the theft section of cover. I agree this was fair based on the circumstances of the loss. But after the motorhome was recovered, they've told our Service:

"As the vehicle has been recovered the claim is no longer a theft claim but rather an AD Total loss claim."

I disagree with the above statement and will be considering if Wakam have fairly responded to a theft claim. I say this because the damage being claimed for here by Mr S arose following a *theft* event. I will deal with Wakam's points about the condition of the motorhome pre-loss event later in the decision. If I was to accept Wakam's argument that this shouldn't be a theft claim, I'd be setting to one side the damage the motorhome sustained after being stolen and that would be neither logical, fair or reasonable.

The theft claim

Wakam haven't disputed the circumstances of the theft. But they've chosen to rely on the following policy condition to repudiate the claim:

"You shall maintain Your Motorhome in efficient condition."

In their email to our Service dated 2 December 2024 they said:

"1: The images clearly show a substantial amount of Corrosion on the car ranging from Scale rust to Penetrating rust.

2: The location of the rust would have been spotted by the last MOT as none of the areas or corrosion would have happened in a few days or weeks, (1 images shows the metal has been eaten away completely and I attach the image) and this type of rust will take at least a year, to get into this state."

I've kept in mind the age of this motorhome (around 30 years), its' milage, having had 12 owners and what condition it might be reasonable to expect a motor home of this age to be in. I've also balanced this against this motorhome was clearly a passionate project of Mr S' and he had invested a lot of time, effort and money into it since purchase.

The Wakam inspection photos clearly show rust – that's not in dispute. But ours is an evidence-based organisation and the evidence shows the most recent MOT (31 March 2023) record prior to the loss event shows it passed and no advisory notices related to rust were added. Given the age of the motorhome and the conditions in which it was stored (outdoors), it's a strong possibility that rust developed (or worsened) between the last MOT and the inspection by Wakam around 14 months later. I find it less plausible that the rust only developed between the date of loss and it being inspected by Wakam after recovery.

In any case, Wakam have been unable to persuasively demonstrate why – even in a scenario where Mr S did breach the policy terms around the condition of the motorhome, how this is in any way related to the theft loss being claimed for. For example – they haven't shown that rust around locks meant they were not working and this made the theft easier.

The repudiation and ICOBS

Wakam should be familiar with ICOBS. Of relevance here is 8.1.2(B):

“For contracts entered into or variations agreed on or after 1 August 2017, a rejection of a consumer policyholder's claim for breach of a condition or warranty (that is not subject to and within section 10 or 11 of the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.”

I find that the theft of the motorhome is not connected to the condition of said motorhome.

Therefore, I find it unfair and unreasonable of Wakam to rely on this condition of the motorhome policy breach to decline the claim. It also goes against the principles of treating customers fairly.

The discovery of the loss

Wakam have recently referred to a possible failure by Mr S to report the theft within 12 hours of it taking place. The evidence shows that Mr S reported the loss to the police and Wakam shortly after discovering it and I consider that reasonable. Bearing in mind this motorhome wasn't being stored at Mr S' home and it was later recovered; I don't see the relevance of Wakam raising this point so late in the claim/complaint journey as justification for declining the claim.

The damage to the motorhome

It's clear that Mr S' motorhome suffered extensive damage, primarily internally, after it was stolen and Mr S has provided a list of items taken from it. However, in my opinion there more likely than not was also pre-existing damage unrelated to the theft. For example, areas of rust. I've explained my rationale around this point earlier in the decision.

With any type of indemnity insurance policy, the intention is not to place Mr S in a better position that he was in prior to the loss. Here, it's clear that there more likely than not was some rust on the motorhome prior to the loss event. It wouldn't be fair or reasonable to expect Wakam to repair those areas of damage or include as part of any indemnity settlement.

Storage costs

Wakam agreed to cover storage cost until the point the motorhome was returned to Mr S. I consider that a fair and positive action. My assumption is this part of the dispute is now resolved as Mr S had the opportunity to let us know otherwise after the provisional decision.

Putting things right

- Wakam have unfairly declined this claim. They will now need to reconsider it in line with the remaining policy terms and limits. This includes both damage to the motorhome and the theft of accessories, fitted equipment and personal possessions.
- If this claim progresses to settlement, Wakam can fairly deduct from any claim settlement or repair, the pre-existing rust damage identified by their engineer's report. 8% simple interest per annum should be added to any settlement figure from the date Wakam initially rejected the claim until the date any settlement is paid to Mr S.

Alternatively, if Wakam choose to repair the motorhome, they should give Mr S the option of contributing to the areas of damage not covered by the claim settlement.

- Wakam also need to pay Mr S a total of £400 compensation for avoidable trouble and upset they've caused by their handling of this claim. Under ICOBS 8.1.1, Wakam

have breached their responsibility to handle claims promptly, fairly and rejected the claim unreasonably. This has caused months of frustration for Mr S as well as depriving him of the enjoyment and option of using his motorhome.

My final decision

My final decision is that I uphold this complaint. Subject to Mr S accepting the decision by the deadline set below, Wakam need to follow my direction as set out under the heading *'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 5 April 2025.

Daniel O'Shea
Ombudsman