

## **The complaint**

Mr L complains that Wakam has unfairly accepted liability for a claim following a collision which wasn't his fault and that this has caused him to lose his no claims discount ("NCD").

## **What happened**

In November 2023, Mr L was driving through a street when his vehicle collided with a ramp that was being used by a fast-food establishment, while a staff member was taking out the bins. Mr L's insurer, Wakam, chose to accept liability and Mr L was charged for the damage to the ramp, as the incident had caused it to come off its hinges.

Wakam decided to accept liability for the third-party damage and Mr L lost his NCD as a result of the fault claim. Mr L complained; he said the accident wasn't his fault – as there'd been no signage to warn drivers of a ramp in the street. He also said there'd been another incident of a vehicle colliding with the ramp just a few days earlier. And now the establishment had decided to alter their placement of the ramp after he'd pointed out his safety concerns.

In its response to his complaint, Wakam said it had taken CCTV footage into account and that as the damage was to a visible static item there were no grounds on which to dispute liability. It referred to an earlier driver having driven around the obstruction. Mr L didn't accept Wakam's response and referred his complaint to this service.

Our Investigator considered everything both parties had said, including Mr L's concerns that Wakam hadn't conducted a proper investigation before accepting liability, and that the invoice for the damage was incorrect. The Investigator didn't uphold Mr L's complaint. She said the ramp had been clearly visible at the time and that Wakam hadn't acted unfairly in accepting liability. She also confirmed that Mr L was only being charged for the damage he'd caused, not earlier damage to the ramp which had been fixed prior to Mr L's collision.

Because Mr L didn't agree with our Investigator's opinion, the complaint has now 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr L and Wakam have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

Mr L's policy with Wakam says:

*"We may at our sole discretion take over and conduct in Your name or in the name of*

*any person covered by this Motor Policy:*

- *The defence or settlement of any claim;*
- *Legal or other proceedings in Your name at Our expense and for Our benefit to recover any payments made or likely to be made under this Motor Policy.”*

Whilst the policy is clear that liability can be accepted on the policyholder's behalf, it's not my role to determine if Mr L was at fault for the incident. My role is to determine whether it was fair and reasonable for Wakam to take the actions it did in this particular case, based on the information available to it.

I've reviewed the CCTV footage, which Mr L says Wakam only obtained after he complained. Mr L says this shows Wakam's initial investigation into liability was flawed and it wasn't interested in hearing what happened from Mr L himself. But the CCTV footage is still relevant to the issue of liability, even if Wakam made its initial decision based on other evidence. So I'm satisfied Wakam confirmed its stance was fair after reviewing the footage.

The footage shows the vehicle and the ramp immediately following the collision. It's not clear from the video where the ramp was in relation to the road, but I find it likely that it was partially in the street like Mr L says, in order for Mr L's vehicle to hit it. There's no suggestion that Mr L's vehicle mounted the kerb and that's not what the eyewitness described either, so I'm satisfied Mr L's version of events is correct – that the ramp was overhanging the kerb on to the street at the time the collision occurred.

However, the fact that both Mr L's vehicle and the ramp can be seen clearly in the video once the collision occurs indicates that the lighting at the time of the incident was sufficient for drivers to be able to see the ramp and to be able to drive around it. This is further supported by additional CCTV footage showing another driver clearly driving around the ramp much more slowly, having seen it and being able to avoid a collision with it.

I've also considered the other evidence Wakam based its decision on. This included eyewitness accounts of what happened from the shift manager and an employee. Both accounts describe the ramp being driven into at speed despite the fact it was daytime and therefore the ramp was clearly visible to drivers. So I think Wakam was able to make a fair claim decision based on the evidence that was available.

The witnesses also confirm that the ramp was in use at the time of the incident. Mr L says it wasn't. I can tell from the CCTV footage and the witness statements that Mr L spoke to an employee after the collision occurred, so I'm satisfied the ramp wasn't left unattended as Mr L has said, but was out because it was being used.

Originally, the invoice presented to Mr L had both the repair jobs on it (from the incident prior to Mr L's in which another driver collided with the ramp, and from Mr L's collision). This was because the repair company used one invoice for both separate jobs. Mr L says the costs aren't reasonable – but I can confirm that the invoice has now been split with the two incidents now on two separate invoices, so Mr L has only been held liable for the damage he caused, after the previous damage had been repaired. And I can see that the damage caused in the second incident was greater than the first.

Mr L has told us about the changes the fast-food establishment has made in relation to its placement of the ramp. I've seen the photo provided. The change of location and the placement of cones doesn't indicate to me that the establishment was at fault, just that further precautions have now been taken to avoid more collisions occurring.

Mr L has asked for full reinstatement of his NCD. I'm afraid that as I've determined Wakam hasn't acted unreasonably in accepting liability, I won't require it to reinstate Mr L's NCD. The NCD wasn't protected under Mr L's policy and it's not unusual or unfair for the claim to have affected his NCD, as fault claims generally do. And in this case, Wakam had unrecoverable costs as it paid out for the third party to repair the ramp – even though Mr L didn't claim for the cost of the damage to his own vehicle. And Mr L's policy sets out clearly that his NCD will be lost in the event of a fault claim. So I haven't found Wakam to have acted unreasonably in reducing Mr L's NCD to zero.

Overall, I'm satisfied Wakam's decision wasn't unfair. The decision was in line with what it was entitled to do under the terms of its policy with Mr L, the decision took into account all the relevant available evidence, and it wasn't an unsound decision or contrary to the evidence surrounding the incident. Wakam has confirmed it's settled the claim on a without prejudice basis, which means Mr L is free to take the matter to court if he wishes.

I'm sorry to disappoint Mr L, but I won't require Wakam to do anything differently here.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 March 2025.

Ifrah Malik  
**Ombudsman**