

## The complaint

Mr H complains that Wakam (a French insurance company) mishandled a claim on a motor insurance policy.

## What happened

In 2013, a court sentenced Mr H to 30 months imprisonment for offences of wounding and possessing a bladed or pointed object.

In 2017, a court sentenced Mr H to 2 years imprisonment for violent disorder.

The subject matter of the insurance, the claim and the complaint is a small car, that had first been registered in 2020.

A woman acquired the car in November 2023, subject to a finance agreement for about 4 years.

From time to time, Mr H borrowed the car and insured it on a short-term policy. In late April 2024, Mr H went online to take out another such policy for the car. During the application, he agreed to a list of statements including the following statement:

*"I have no unspent criminal convictions or prosecutions pending (excluding motoring offences)."*

The cover was for the short period of 27 to 28 April 2024. The total cost was about £33.00. Wakam was the insurance company that was responsible for dealing with any claim.

Mr H reported that, while driving the car during that short period, he lost control, hit a tree and seriously damaged the front and offside of the car.

Much of the complaint is about acts, omissions or communications of claims-handlers on behalf of Wakam. Insofar as I hold it responsible for them, I may refer to them as acts, omissions or communications of Wakam.

On about 8 May 2024, Wakam decided the car was a total loss.

Wakam investigated, including by interviewing Mr H on about 21 May 2024.

By a letter dated about 19 July 2024, Wakam said that Mr H had made a qualifying misrepresentation that he had no unspent criminal conviction, so the policy was void under Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). Wakam said that it would treat the misrepresentation as careless and would refund the policy premium. Wakam declined the claim.

By a letter dated 20 July 2024, Mr H complained to Wakam that it should honour the claim.

By a final response dated 16 September 2024, Wakam turned down the complaint.

Mr H brought the complaint to us without delay.

Our first investigator didn't recommend in early January 2025 that the complaint should be upheld. She said that next to the statement about convictions, she could see an 'i' information symbol which provided further explanation, should the applicant need it. The first investigator thought that the actions Wakam took were in line with CIDRA.

Mr H, through the woman as his representative, provided further information including screenshots showing no 'i' information symbol.

Our second investigator recommended in March 2025 that the complaint should be upheld. She thought that the insurer's decision to treat Mr H's misrepresentation as a qualifying one wasn't fair and reasonable as the insurer hadn't provided enough information during the application to help him answer the relevant statement correctly.

She said that at the time Mr H purchased the policy, there had been no "i" information icon next to the statement about unspent convictions.

She also referred to the Association of British Insurers' ("ABI") Good Practice Guide Insurers' Approach to People with Convictions and Related Offences. This explains that if customers are not sure whether a previous conviction is spent, insurers should refer them to the link for [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk) or Unlock's public helpline.

The second investigator recommended that Wakam should:

*"Reinstate the policy.*

*Amend its records and any central databases to make sure any record of the avoidance and policy cancellation is removed.*

*Reconsider the claim under the remaining policy terms.*

*Pay £200 compensation to Mr [H] for the trouble and upset caused by avoiding the policy and declining to deal with the claim. This has been a very frustrating and worrying time for Mr [H], and I don't think it was fair to apply CIDRA in the first place and therefore the insurer isn't entitled to take the actions it did.*

*I understand the vehicle doesn't belong to Mr [H] but to [the woman], and the vehicle is on finance. Therefore, any claim settlement wouldn't need to be paid to Mr [H]."*

Wakam disagreed with the second investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- Mr H had two serious unspent convictions — wounding and possession of a bladed article — both of which fall under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as never spent.
- It disagrees that "unspent" must be explained in every instance for it to be enforceable.
- CIDRA places the onus on the consumer to take reasonable care — which includes checking the meaning of unfamiliar terms.
- The live chat service was prominently available for consumers to ask questions about the declaration.

- Wakam is not a member of the ABI, and therefore the guide does not apply.
- The customer made a qualifying misrepresentation, and the policy was justifiably avoided.

### **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 taken into account the relevant law, regulation and good practice. Above all, I have to decide what's fair and reasonable.

CIDRA imposes a duty on a consumer to take reasonable care not to make a misrepresentation when taking out an insurance policy.

I accept that Wakam's (confidential) underwriting criteria were such that it wouldn't knowingly offer cover to a consumer with an unspent criminal conviction for a non-motoring offence.

The longer sentence dated from 2013 and the shorter sentence dated from 2017. So I accept that Mr H believed that those convictions were spent by April 2024.

I'm not satisfied that the online process provided any explanation to Mr H of what an "unspent" conviction was – or any guidance as to how he could check this. In particular, I'm not satisfied that the 'i' icon was present near the statement about convictions.

In May 2024, Wakam did a recorded interview with Mr H. That was after the accident. From Wakam's questions and Mr H's answers, I don't consider that the interview sheds much light on Mr H's approach to his convictions when he took out the policy in April 2024.

On about 22 July 2024, Mr H had a live chat with Wakam. That was after the accident and after Wakam said it was treating the policy as void. From Mr H's questions and Wakam's answers, I don't consider that the chat sheds much light on Mr H's approach to his convictions when he took out the policy in April 2024.

I don't consider that it was unreasonable for Mr H to believe in April 2024 that the convictions were spent. So, whilst I accept that he made a misrepresentation that he had no unspent criminal convictions, I don't consider that he broke the duty to take reasonable care to avoid making a misrepresentation.

As I don't consider that he broke that duty, I don't consider that the misrepresentation was careless or qualifying under CIDRA. So I don't consider that Wakam treated Mr H fairly by relying on the misrepresentation to avoid the policy and decline the claim.

### **Putting things right**

I've thought about what it's fair to direct Wakam to do to try to put things right for Mr H at this late stage.

The policy was intended to be short-lived. So - unlike the second investigator- I'm not minded to direct Wakam to reinstate the policy.

Rather I find it fair to direct Wakam not to rely on the misrepresentation about unspent convictions to avoid the policy and decline the claim. I also find it fair to direct Wakam to

remove any adverse information about such avoidance and decline from any external database to which it has provided such information.

I find it fair to direct Wakam to reconsider Mr H's claim in line with all the terms of the policy.

I consider that – by unfairly relying on the misrepresentation about unspent convictions to avoid the policy and decline the claim – Wakam caused Mr H extra distress and inconvenience. That must've included difficulties between him and the woman who was responsible to pay for the car.

On balance, I agree that £200.00 is fair and reasonable compensation for such distress and inconvenience and in line with our published guidelines.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Wakam to:

1. not rely on the misrepresentation about unspent convictions to avoid the policy and decline the claim; and
2. remove any adverse information about such avoidance and decline from any external database to which it has provided such information; and
3. reconsider Mr H's claim in line with all the terms of the policy; and
4. pay Mr H £200.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask to accept or reject my decision before 27 May 2025.

Christopher Gilbert  
**Ombudsman**