

The complaint

Mr S has complained about Wakam's decision to reject his claim under his Private Hire Insurance Policy for damage to his vehicle.

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 S drove his hybrid vehicle, which he uses as a taxi, through a flood in the road under a bridge. His vehicle stopped working soon after this. He left it at the roadside and contacted Wakam to make a claim for it. Wakam arranged for Mr S's vehicle to be recovered to a storage facility. Mr S then received a telephone call from Wakam to say that he could take his vehicle to a garage of his choice for repair. Mr S said he would prefer Wakam to arrange for it to be repaired. About five weeks later Mr S contacted Wakam for an update and was told his claim was being investigated and that he'd been sent a letter he'd need to read. A few days later Mr S received an email from Wakam saying that he needed to collect his vehicle from the storage facility as it was incurring storage charges. He contacted Wakam and it told him his claim had been rejected. Mr S complained to Wakam and received a final response letter on 31 July 2023 in which Wakam said his claim had been rejected. He then had a final letter rejecting his claim on the basis he'd failed to take reasonable steps to protect his vehicle on 18 August 2023.

Mr S asked us to consider his complaint. He explained that he thought Wakam were wrong to reject his claim. And also that it took too long to tell him it was doing so. He thinks if he'd been told straight away or soon after he made his claim he could have had his vehicle repaired and back on the road within a couple of weeks. He says he lost income because of Wakam's poor handling and is now faced with recovery costs and a large bill for storage. One of our investigators considered Mr S's complaint. He said he thought Wakam was entitled to reject his claim and that it had reached its decision to do so in a reasonable time.

Mr S didn't agree with the investigator's view. He said his car was damaged accidentally through no fault of his own and that he thinks this damage is covered by his policy.

I issued a provisional decision on 21 December 2023 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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr S's complaint.

Mr S's policy provides the following cover for his vehicle:

If you have chosen fully comprehensive cover for your vehicle(s) then, in addition to the cover set out in Section 2, Wakam will also pay for any loss or damage to the same items, subject to any terms, conditions, and exclusions which apply to this specific section or the policy generally.

It seems initially Wakam rejected Mr S's claim by relying on the following exclusion:

We will not provide for: Mechanical, electrical faults, breakdown, malfunction, failure or breakage.

But, in its final letter rejecting the claim Wakam said it was relying on the fact Mr S breached the following policy condition:

You or any other person covered by this Motor Policy must:

Take all reasonable steps to protect the Insured Vehicle from loss or damage.

I don't consider Wakam is entitled to rely on either the exclusion or a breach of this condition to reject Mr S's claim. And I've explained why below.

Mr S has explained he was driving on a dual carriageway that was flooded and, two miles after he'd driven through this flood and water had come up around his vehicle, it broke down. I think this shows it is most likely the water caused damage to his vehicle. This means the proximate cause of the damage to Mr S's car was most likely to be water getting into its engine and electrical components, as opposed to it being simply due to a mechanical or electrical fault. The water clearly caused mechanical and electrical damage, but I do not consider Wakam can rely on the abovementioned exclusion for this when it was a separate external event that caused this damage.

If Wakam wants to rely on the fact Mr S breached the abovementioned reasonable care condition to reject his claim, the onus is on it to show he did so. Mr S has explained that it was dark with no lighting and it was impossible to see the dual carriageway was flooded. In view of this, I do not consider Wakam has demonstrated he failed to take reasonable steps to protect his vehicle. I say this because it was clearly an accident, as opposed to Mr S realising there was a flood that could cause damage to his vehicle and driving through it anyway. Mr S could have provided witness statements and dash cam footage to prove this, but Wakam didn't ask for this evidence. So, I think its approach was very unreasonable indeed.

It therefore follows that I consider Wakam should settle Mr S's claim for damage to his vehicle in accordance with the claim settlement terms in the policy. It should also cover any storage charges.

I also consider Wakam's unreasonable rejection of Mr S's claim is likely to have caused him to lose income, as his vehicle was off the road longer than should have been the case and he couldn't use it as a taxi in this period. I think Wakam should have accepted the claim and had Mr S's vehicle repaired by the end of July 2023. This means I think it is fair and reasonable for it to cover any income Mr S lost in the period between 1 August 2023 and when he had his vehicle repaired and was able to use it as a taxi. This will be less any fuel costs he saved as a result of not using it and subject to Mr S providing evidence of the income he earned on average in the six weeks prior to the damage to his car occurring.

I also consider Wakam's unreasonable rejection of Mr S's claim caused him unnecessary distress and inconvenience. And that this warrants an additional compensation payment of £300.

I gave both parties until 8 January 2024 to provide further comments and evidence in response to my provisional decision.

Mr S has responded to say he accepts my provisional decision. Wakam has responded to say it will look to get Mr S's vehicle in for repairs and pay the £300 in compensation I suggested for distress and inconvenience. However, it has said it will not pay anything for loss of earnings and that Mr S should contact the Motor Insurers Bureau to see if these can be recuperated.

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, I see no reason to depart from the outcome I suggested was fair and reasonable in my provisional decision.

I am pleased Wakam now accepts it should arrange for Mr S's car to be repaired and pay the compensation I suggested for distress and inconvenience. And I have noted its comment about Mr S's loss of income. However, it doesn't seem to have understood the reason I suggested an award for loss of income was fair. I consider it is a loss that flows directly from Wakam's unreasonable handling of Mr S's claim. So it remains my view that Wakam should cover it. I also see no reason why it shouldn't cover the storage and recovery charges.

Putting things right

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

- Settle Mr S's claim for the damage to his vehicle in accordance with the claim settlement terms in his policy.
- Cover any storage and recovery charges for Mr S's vehicle.
- Pay Mr S compensation for loss of income as set in my provisional decision.
- Pay Mr S £300 in compensation for distress and inconvenience.

My final decision

I uphold Mr S's complaint and order Wakam 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 S to accept or reject my decision before 1 February 2024.

Robert Short
Ombudsman