

## The complaint

Mr A has complained about the payment made by Wakam ('Wakam') under his motor insurance policy after his car was stolen. Mr A is represented in his complaint, but for ease I'll refer to him throughout.

## What happened

Mr A's car was stolen in August 2022. He used the car for his work purposes as a private hire driver.

His car wasn't recovered and he made a claim. Wakam investigated his claim as it wasn't sure how it had been stolen. It rejected Mr A's claim.

Mr A complained about this. He approached this service and an ombudsman made a decision in July 2023 that Wakam should reconsider his claim subject to the terms and conditions of his policy.

In August 2023 Wakam agreed to settle his claim for the theft of his car. It said it would pay £15,000 less his excess, which was the amount he'd he paid for the car. Wakam's policy wording contains this section:

*"The maximum amount payable in respect of damage to the vehicle shall be the market value of the vehicle immediately prior to the time of such loss or damage, or your estimate of value of the vehicle as last declared to us, whichever is the lower amount."*

Wakam also added interest to this figure at 8% simple, so £1,160 for one year.

Mr A wasn't happy about this as he couldn't replace the car for the amount Wakam offered him. He also asks for the costs of him hiring a replacement car. He says he spent £5,760 on this over the course of about one year. Wakam said that wasn't covered under his policy.

An investigator looked into Mr A's complaint and upheld it. She said she didn't think it was made clear to Mr A that the value he gave would be used to limit the payout under the policy. She thought Wakam should pay the car's market value of £20,944, less Mr A's excess. In addition, she thought Wakam should pay interest at 8% simple from the date the initial payment was made, to the date this final payment was made, on the difference between the two amounts.

She thought Mr A had suffered distress and Wakam should pay him £150 compensation.

Mr A didn't accept the view. He thought the amount of compensation was too low and the interest calculation was incorrect.

Wakam didn't accept the view. It said its policy wording was clear and it would only pay £15,000.

I issued a provisional decision to allow the parties to consider the matter further:

*I'm issuing this decision on a provisional basis because I agree with our investigator that Mr A's complaint should be upheld, but I've gone further and intend to increase the compensation he should receive due to the length of time it's taken Wakam to deal with his claim. Importantly, I also think Wakam should pay Mr A's costs for hiring a replacement vehicle.*

### **Policy terms**

*I can see Wakam has a term in its policy wording about the amount it'll payout following a claim and I've included this above.*

*But I can't see any evidence that this term was brought specifically to Mr A's attention as part of the sales process. I think it's fair I say that I'd expect a term like this to be explained to a customer as I think it's significant enough to mean a customer might change their mind about whether to choose one particular policy over another.*

*Mr A's policy is one that would give "market value" at the time the car was stolen. So the use of the term saying "your estimate of value of the vehicle as last declared to us, whichever is the lower amount" wasn't fair as it only benefitted the insurer. I don't think the use of this term is fair and I don't reasonably think it was brought to Mr A's attention.*

### **Vehicle value**

*I've mentioned above that I don't think Wakam's use of the term limiting its payment is fair and I don't think it wasn't explained to Mr A adequately. So I think it's fair and reasonable to expect Wakam to settle Mr A's claim without applying that part of the term, meaning it should pay a "market value" figure.*

*At the time the vehicle was stolen, various trade guides showed the following values:*

*Trade guide A £20,612*

*Trade guide B £20,750*

*Trade guide C £20,660*

*Trade guide D £21,753*

*The average of the four valuations carried out is £20,944 which I think is a fair valuation for Mr A's vehicle at the time of loss.*

*So Wakam needs to pay Mr A this amount, less his excess.*

*Wakam had already agreed to pay interest on its lower initial offer. So I think it's fair it pays interest on this whole settlement amount from a period two weeks after the vehicle was stolen, to the date payment is made.*

*Payments made to date can be deducted from this figure.*

### **Loss of use**

*Mr A has also asked Wakam to pay for the cost of him hiring a car. He did this because Wakam took a year to offer him settlement whilst it was investigating the theft. He says he spent £5,760 on hiring a replacement vehicle in order to keep working as a private hire driver.*

*Wakam has refused to pay for this as it says there's no cover for it under the policy.*

*But Mr A has said he's not asking for the policy to cover this loss – he's asking that Wakam pay this amount because its decisions on his claim meant he didn't have a car for an extended time.*

*I think Mr A's request is fair and reasonable. He's been put in a position by Wakam that he didn't have a vehicle to work in. Another ombudsman has decided that Wakam's declination of his claim was unfair; so it's logical that Wakam now need to pay for Mr A's increased costs for the time it's taken to settle his claim.*

*Mr A has said he's spent £5,760 on this and I'd ask him to provide evidence of these costs to this service.*

### **Distress and inconvenience**

*Mr A's has told this service he's been struggling to have his claim paid over an extended period and that Wakam's decisions have affected his daily life. I've thought about this carefully and I think the appropriate level of compensation is £300, so I think Wakam should also pay him this amount.*

### **Responses to my provisional decision**

Mr A accepted my provisional decision. He provided evidence of hire costs.

Wakam asked for a further review. It maintained that it only had to pay Mr A the amount he'd originally paid for the car. It also disagreed with the loss of use payment awarded as it said it had taken three months for it to decline the claim originally, and the rest of the delay was while Mr A's complaint was passing through the complaints process.

### **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 read Wakam's response to my provisional decision and I don't think its response is fair or reasonable. An ombudsman decided Wakam had made an unfair decision in declining his claim, so Wakam can't now say that the subsequent problems faced by Mr A weren't its fault.

So Wakam needs to pay for Mr A's hire costs arising out of the loss of use of the car. Mr A should now provide his evidence for his hire costs to Wakam, and Wakam should pay these to him.

In its response, Wakam hasn't provided me with evidence that the specific term it's relying on to limit its payout for Mr A's car was specifically brought to his attention.

So I don't think its use of the term was fair, and so it needs to pay the reasonable market value of Mr A's car as mentioned above.

Mr A has already accepted this and the £300 compensation amount, so these parts of my decision will stand.

### **My final decision**

It's my final decision that I uphold this complaint. I direct Wakam to:

- Settle Mr A's claim for the loss of his car at a market value of £20,944, less his excess. Interest at 8% simple should be added to this figure from two weeks after the car was stolen, to the date payment is made. If payments towards this have been made, then they can be deducted.
- If Wakam considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr A how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay Mr A for his reasonable costs of hiring a replacement car, subject to evidence being provided by him.
- Pay Mr A £300 for his distress and inconvenience.

Wakam must pay the amounts within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 February 2024.

Richard Sowden  
**Ombudsman**