

The complaint

Mr and Mrs P complained their claim was unfairly declined due to a misrepresentation made at policy inception. Their policy was voided. They had a home insurance policy with Wakam.

What happened

Mr and Mrs P made a claim on their policy following a burglary at their home. Wakam validated the claim. Wakam identified that Mr and Mrs P had a county court judgement (CCJ) against them. Wakam thought Mr and Mrs P had misrepresented their circumstances when they took out the policy. Wakam said it wouldn't have insured Mr and Mrs P had it known about the CCJ. Therefore, Wakam decided to void the policy and declined the claim / wouldn't consider it.

Mr and Mrs P said they hadn't knowingly made a misrepresentation. They said they weren't aware of the CCJ, as all the paperwork related to it had been posted to their previous home that they no longer resided in. They said they had their post re-directed for six months after the move and had tried to update their postal details with various parties. However, details of the CCJ weren't sent until after the six-month re-direction service expired.

Mr and Mrs P wants their claim to be considered and their policy reinstated. Wakam acknowledged Mr and Mrs P didn't misrepresent their circumstances on purpose when they arranged the policy, but it did say they were careless. It decided to refund the premiums for the remaining term after the policy was voided.

Our investigator decided to uphold the complaint. He thought Mr and Mrs P *"answered the question about CCJ's to the best of their knowledge at the time, which means no qualifying misrepresentation took place under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA)"*. Wakam disagreed, so the case has been referred to an ombudsman.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

So, I've considered Mr and Mrs P's circumstances in respect to CIDRA.

Was there a misrepresentation?

Mr and Mrs P applied for their policy through Wakam's online website. They were asked if any of the insured parties had ever been declared bankrupt, served with any CCJs, individual voluntary arrangements or arrangements with creditors. There is a message on the screen where these questions were asked that states *"these questions are very important and if answered incorrectly could invalidate your cover"*.

I can see from the statement of fact (where all the answers from this questionnaire are recorded) that Mr and Mrs P said they hadn't experienced any of these circumstances, including CCJs.

When Mr and Mrs P's claim was validated, there was evidence that Mr and Mrs P did have a CCJ against them. They haven't denied this, although they have explained some mitigating circumstances that I will describe later.

Strictly speaking though, as Mr and Mrs P didn't disclose the correct facts about themselves, they have misrepresented their circumstances. Therefore, I think Wakam has been fair in saying there was a misrepresentation. However, I've considered whether Mr and Mrs P took reasonable care when providing this information to Wakam.

Did the consumer take reasonable care?

Mr and Mrs P has provided information explaining why they weren't aware of the CCJ at the time of taking out the insurance policy – which led to the misrepresentation when the question was asked about CCJs.

Mr and Mrs P have explained that they weren't aware of the CCJ as they hadn't received notification of it. They had moved to a new house and the CCJ wasn't sent to the new house. They had their mail forwarded for six months after the move from the old house to the new house. The notification was sent to their old house after their mail forwarding service had ended.

Wakam said *"we believe that an insurer (or another financial services business) is entitled to rely on the fact that a court considers a judgement correctly served (and still on the record) to be evidence that a reasonable customer should have known about the judgement, and declared it correctly"*.

I appreciate Wakam's position, but I think the circumstances in this case are rare. I am persuaded that when Mr and Mrs P answered Wakam's questions, they did so truthfully and based upon what they knew to be correct at the time. Therefore, I do think they took reasonable care.

Mr and Mrs P have provided evidence that they had their mail forwarded and that they notified authorities of their house move. I can't be sure how the authority who sent the CCJ would've sought out the correct address for Mr and Mrs P. However, I can see the CCJ was sent to Mr and Mrs P's old residence after they had moved out, so Mr and Mrs P wouldn't have seen this.

I think Mr and Mrs P have taken reasonable actions to ensure their affairs are in order. I don't think there is anyway Mr and Mrs P would've been aware of the CCJ unless they'd received the notice. I have no reason to doubt if they had known about it, they'd have ensured the authority could send it to the correct address.

However, as I think Mr and Mrs P took reasonable care, I am upholding this complaint. Therefore, I require Wakam to re-instate the policy and I require them to consider the burglary claim and any other subsequent claims that may have been made in the remainder of the term. Wakam are entitled to recover any premiums they've refunded.

My final decision

My final decision is that I uphold this complaint. I require Wakam to:

- Re-instate the policy
- Consider the burglary claim and any subsequent claims under the term.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 3 April 2023.

Pete Averill
Ombudsman