

The complaint

Miss F complains that Wakam unfairly avoided her home insurance policy following a claim for cracks in the property.

What happened

Miss F purchased a home insurance policy with Wakam. Around five months later she came home and there was flooding around the exterior of her property. The next morning Miss F said she discovered cracks and so claimed on her policy with Wakam.

Wakam inspected the cracks and issued an expert's report on the cause of the cracks. Following this it declined the claim. It said the expert's report said the cracks would have occurred gradually over time and therefore thought Miss F hadn't given accurate information about the condition of her property when buying the policy. Wakam therefore avoided (cancelled as if it never existed) the policy as it thought Miss F had deliberately or recklessly given incorrect information.

Miss F didn't think this was fair and complained. She said the cracks had only appeared after the flooding and didn't think it was fair Wakam had declined her claim. Wakam reviewed the complaint and didn't uphold it. It said the report showed Miss F's home was in a poor state of repair and the damage to it occurred before Miss F took out the policy. Unhappy with Wakam's response, Miss F brought her complaint to this service. Miss F said she'd decorated her house about six months before the claim and so didn't agree the cracks were there before the policy started. She didn't think Wakam had acted fairly by declining her claim.

I issued a provisional decision on this complaint on 18 July 2023 where I said:

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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 has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of 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.

Wakam thinks Miss F failed to take reasonable care not to make a misrepresentation when she bought her policy. It said during the sales process Miss F agreed to the following statement:

“The home insured on the policy is currently in a good state of repair, free from damage or defect and is not currently undergoing building work, and none is planned during the period of insurance.”

Wakam has provided the survey it did on Miss F’s property when she put the claim in and said it showed the property to be in a poor state of repair and the damage occurring before the policy started. I’ve reviewed the report and can see it notes that Miss F brought the property from the council a couple of years earlier. It goes onto say:

“when the council still owned the property, a few years prior to the loss date, Mrs F reports the council replaced some breeze blocks in this same wall. Mrs F reports there were no issues since.”

It also says:

“The damage has developed into a diagonal crack to the internal wall of the hallway which is mirrored on the other side of the wall behind the boiler. Around the property there are numerous cracks above window and door openings to the lounge and left bedroom. Externally there are diagonal, stepped cracks above windows.”

The report also goes onto say that the damage has not occurred because of a recent event and refers to subsidence. It explains it thinks the damage was caused by thermal shrinkage and “dilapidated plaster”. More importantly though there is a section in the report titled “Non-disclosure/Misrepresentation” and under this it says:

“We do not consider that there are any non-disclosure or misrepresentation issues on this occasion.”

So while Wakam has referred to this report to show why it thinks Miss F didn’t given accurate information when taking out the policy, I don’t agree it shows this. The reason for this is the report specifically refers to misrepresentation and concludes Miss F hasn’t misrepresented. Furthermore, while the cause of the damage could have occurred over time, it’s also possible the cracks didn’t show until after Miss F took out the policy. So, when taking into account the report as a whole I’m satisfied Miss F took reasonable care not to make a misrepresentation when taking out the policy.

As I’m not satisfied Wakam has shown Miss F made a misrepresentation, it therefore has no remedies available under CIDRA. I can see Wakam avoided Miss F’s policy incorrectly but has said that as Miss F has said her neighbour has an ongoing insurance claim, Wakam said it would review its position if Miss F’s neighbour’s insurer found the property has subsidence. To put things right Wakam should re-instate Miss F’s policy and reconsider the claim in line with the remaining policy terms and conditions. Wakam should also provide Miss F with a letter to show it avoided her policy in error so she can provide it to any future insurers if needed.

As Wakam incorrectly avoided Miss F’s policy, this meant she had to buy insurance elsewhere. Therefore, Wakam should pay Miss F what she paid for other insurance to cover her home, up until the date her policy with Wakam was due to end. This is because this is a cost Miss F shouldn’t have incurred if her policy with Wakam had lasted until its expiry date. Wakam should also add 8% simple interest per year to what it pays to compensate her for not having the money.

Incorrectly avoiding her policy also has caused Miss F unnecessary distress and inconvenience. I say this as Miss F has been accused of providing incorrect information at

the point of sale, she's also had to purchase cover elsewhere unnecessarily. To compensate Miss F for this unnecessary distress and inconvenience, Wakam should pay her £400 compensation."

Miss F responded and accepted my provisional decision. She also provided further photos of the flooding around her property and the neighbours.

Wakam responded and didn't accept it. It said there was a second question which it didn't think Miss F had answered correctly for the same reasons. Wakam also didn't agree the expert's report could be relied upon to show a misrepresentation hadn't occurred. Wakam also said if it had dealt with the claim then it wouldn't have offered Miss F a renewal as it wouldn't cover her property due to the cracking.

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 considered Wakam's response, but it's not persuaded me to depart from the findings in my provisional decision. I'll address each of Wakam's points below.

Wakam has now referred to a second question which it feels Miss F didn't answer correctly when she took out the policy. This is:

"To the best of your knowledge, your property, or any of your neighbouring properties has never suffered damage from subsidence, heave or landslip, been repaired or have any visible cracks in the internal or external walls?"

This question has not been referred to by Wakam as a reason for misrepresentation previously. It's disappointing to see Wakam bring this in at such a later stage of the complaint. However, I don't think Wakam has shown Miss F misrepresented this question either, for the same reasons as the original question it relied upon.

I understand Wakam doesn't think the expert's report can be relied upon to decide whether Miss F made a misrepresentation when taking out her policy as the expert is unlikely to know what question was asked. I've considered Wakam's comments, but it doesn't change the fact the report specifically refers to "Non-disclosure/Misrepresentation" as I've quoted above. If the expert wasn't aware of the information needed to answer this question, then I would have expected it to be answered differently to reflect that. So, I don't agree it would be fair or reasonable for me to discount that evidence within the report.

I've also considered Wakam's comments that the report refers to the cracking occurring over a period of time and therefore Miss F must have made a misrepresentation when taking out the policy. The report doesn't state that the cracks have been there for a long period of time it says that the causes appear to have been going on for longer than the policy was in force. I therefore think it's possible the cracks may have appeared after Miss F bought the policy. So, I still don't agree that Wakam has shown Miss F failed to take reasonable care when taking out the policy. I'm therefore not persuaded to depart from my provisional decision. I would also like to clarify for Wakam that when I'm directing Wakam to reinstate the policy I'm not directing it to renew Miss F's policy the following year. Wakam referenced this in its response to my provisional decision, so I wanted to clarify that this decision is only in regard to the 12-month policy which Wakam unfairly avoided. If Wakam decides it doesn't want to renew Miss F's policy going forward after that policy expires, that would be a separate

complaint Miss F would need to raise if she was unhappy about Wakam's decision. And so not something I'm going to comment on in this decision.

My final decision

For the reasons explained above and in my provisional decision, I uphold this complaint. I require Wakam to:

1. Reinstate Miss F's policy and remove records of the avoidance from internal and external databases. Wakam should also reconsider the claim in line with the remaining terms and conditions of the policy.
2. Provide Miss F with a letter saying it incorrectly avoided her policy.
3. Pay Miss F what she paid for other insurance to cover the time her policy with Wakam should have been in place. 8% simple interest per year should also be added to this amount calculated from the date Miss F bought the other insurance until the date settlement is made.
4. Pay Miss F £400 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 7 September 2023.

Alex Newman
Ombudsman