

The complaint

Mr B complains that Wakam avoided his home contents insurance policy and failed to return his insurance premiums.

What happened

Mr B took out a home contents insurance policy with Wakam. This was purchased online and was a non-advised sale. In August 2022 he made a claim under the legal insurance part of his policy and Wakam carried out validation checks. These checks revealed that Mr B had a County Court judgement (CCJ) issued against him.

Wakam said Mr B had answered the question it asked about the CCJ incorrectly as he hadn't declared it. It considered this to be a deliberate or reckless qualifying misrepresentation which entitled it to avoid the policy and keep the premiums already paid.

Mr B brought his complaint to this service. Our investigator didn't think the complaint should be upheld. He agreed there had been a qualifying misrepresentation and that it was deliberate or reckless. He thought that Wakam were entitled to avoid the policy and retain the premium.

Mr B didn't agree and asked for an ombudsman's decision. He said the question asked wasn't clear. He said he thought he'd answered correctly and had no intention to deliberately provide incorrect information.

My provisional decision

I issued a provisional decision on 24 July 2023. 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 Mr B failed to take reasonable care not to make a misrepresentation when he didn't declare that he had a CCJ against him. I've looked at the online application process. Mr B was asked "Please confirm if the following statements apply to you" and one of the statements was "You have never been made bankrupt or insolvent, been subject to an individual voluntary arrangement, or ever had a court judgment issued against you, including

any County Court". Mr B could select true or false by clicking on the correct answer, and he selected true. This statement and Mr B's response were then sent to Mr B and included in the Statement of Fact. The answer to the statement was shown as "Yes".

Mr B says that the statement was confusing as it was effectively three statements in one. Whilst I understand the point Mr B is making, I think the overall statement is clear. If a policyholder had ever had a CCJ, the correct answer would be that the statement was false. I therefore don't think that Mr B took reasonable care in responding to this statement. I also note that Mr B was sent the Statement of Fact and was asked to check that the information was correct. The Statement of Fact repeated the statement and noted the answer as "Yes". If there had been any confusion, Mr B could have queried this with Wakam.

Wakam has told us that it wouldn't have offered cover had it known that Mr B had a CCJ. This means I'm satisfied that Mr B's misrepresentation was a qualifying one.

Wakam has said that Mr B's qualifying misrepresentation was deliberate or reckless as he knew about the CCJ and failed to declare it. However, I disagree – as I don't think Mr B intended to deliberately, or recklessly, provide incorrect information – but rather I think he was careless in how he read and answered the question. I say this because Mr B suggests that the statement was asking him if he had a CCJ – and his answer was yes. However, the statement is asking Mr B to say whether it's true or false that he's "never" had a CCJ. So, I think Mr B mis-read the statement and I think this was careless.

I've looked at the actions Wakam can take in accordance with CIDRA. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Wakam to rely on it to avoid Mr B's policy produces a fair and reasonable outcome in this complaint. This is because Wakam wouldn't have offered cover at all had it known about Mr B's CCJ. However, as I'm satisfied Mr B's misrepresentation was careless not reckless or deliberate, I don't think Wakam acted fairly when it declined to refund Mr B's premiums.

I therefore intend to uphold this complaint in part and require Wakam to refund all premiums paid by Mr B. I also think it fair for Wakam to pay interest at 8% on this sum from the date the policy was voided to the date the premiums are refunded to Mr B. I say this because Mr B has been without the use of this money.

I've also considered the issue of compensation for distress and inconvenience. Whilst I'm satisfied that it was reasonable for Wakam to avoid the policy, I can see from Mr B's correspondence that he was caused upset by being accused of deliberately or recklessly providing incorrect information. I therefore intend to require Wakam to pay Mr B £50 compensation. I think this is fair."

Response to my provisional decision

Mr B accepted my provisional decision. Wakam didn't respond.

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.

Given that neither party has provided any new information, I see no reason to change my decision. My final decision and reasoning remain the same as my provisional decision.

My final decision

My final decision is that I uphold this complaint and require Wakam to refund to Mr B his policy premiums plus 8% interest. I also require Wakam to pay Mr B £50 compensation for distress and inconvenience.

If Wakam considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 September 2023.

Elizabeth Middleton
Ombudsman