

## The complaint

Miss L complains that Wakam unfairly cancelled her home insurance policy after turning down her claim. Miss L believes Wakam acted in a discriminatory way due to her race.

Wakam is the underwriter of Miss L's policy, so it's her insurer. This complaint is, in part, about one of Wakam's agents. As Wakam has accepted it's accountable for the actions of its agents, any reference to Wakam in my decision includes its agents.

## What happened

Miss L made a claim on her home insurance policy on 28 December 2022, after a third-party's car crashed through her living room the day before.

Early in 2023, Wakam sent its loss adjuster to investigate the damage. In his report, the loss adjuster said Miss L's home was unoccupied and undergoing building work. Miss L's policy excluded cover if her home was unoccupied for more than 30 consecutive days, so Wakam turned down her claim. Wakam also cancelled Miss L's policy because it said she'd breached a condition in it to tell Wakam about certain changes in her circumstances – in Miss L's case, that her home was unoccupied for more than 30 consecutive days and was undergoing building work.

Miss L says her home wasn't unoccupied or undergoing building work. Miss L also says Wakam's loss adjuster was "*extremely biased*" towards her, which she believes he wouldn't have been if she'd been "*a white woman in a wealthy neighbourhood*". Wakam denies this, saying its decisions weren't based on Miss L's skin colour or her income level but on the evidence. Since Miss L brought her complaint to us, I understand the damage to her home from the accident has been repaired through arrangements with a third party. But Miss L wants Wakam to reverse its decision to cancel her policy.

In her first view on this complaint, the investigator who looked at it didn't uphold it. She thought Miss L's home was unoccupied and undergoing building work at the time of the accident. And, since Wakam had shown it wouldn't have continued to offer Miss L cover if she'd told it about either of these things, our investigator thought Wakam had acted fairly in cancelling Miss L's policy.

Miss L disagreed and gave our investigator further testimony to support her position that her home wasn't unoccupied and wasn't undergoing building work at the time of the accident.

In light of this evidence, in her second view, our investigator upheld Miss L's complaint. She said she thought it was likely Miss L was living in her home and it wasn't undergoing building work at the time of the accident. Our investigator said Wakam should remove Miss L's policy cancellation from all internal and external databases. And she recommended Wakam pay Miss L £200 in compensation for the trouble and upset its decision to cancel her policy had caused her.

Wakam disagreed. It maintained Miss L's home was unoccupied and undergoing building

work at the time of the accident. Wakam also raised a new issue saying Miss L had misrepresented her home was in “a good state of repair” when she took the policy out in October 2021.

In my provisional decision of 11 December 2023, I set out the reasons why I intended to uphold Miss L’s complaint. Miss L has accepted my provisional decision. Wakam hasn’t and has given me a number of comments. So Miss L’s complaint has now come to me for a final decision.

### **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, for the reasons I gave in my provisional decision, I’ve decided to uphold Miss L’s complaint. In that decision I explained why I didn’t think Wakam had treated Miss L fairly, as follows:

*“The insurance industry regulator, the Financial Conduct Authority, sets out rules and guidance for insurers. One of these is that an insurer mustn’t unreasonably turn down a claim. Another is that it must handle claims promptly and fairly. I’ve taken these rules and guidance into account in deciding this complaint.*

*As I’ve already said, Wakam initially turned down Miss L’s claim because of the policy exclusion relating to occupancy and cancelled her policy because it said she’d breached a policy condition to notify it about certain changes in her circumstances. And, more recently, Wakam has also said Miss L misrepresented her home was in a good state of repair when she took the policy out. In this decision, I’ll look at each of these issues in turn, together with Miss L’s assertion that Wakam racially discriminated against her.*

#### *Policy exclusion and breach of condition*

*Miss L’s home insurance policy excludes cover for loss or damage if her home is “unoccupied” for more than 30 consecutive days. The policy definition of “unoccupied” is worded in much the same way as the exclusion – it says “unoccupied” means Miss L’s home is not occupied by her (as the policyholder) for more than 30 consecutive days. Miss L’s policy also has a condition saying she must tell Wakam if (among other things):*

- *any refurbishments, conversions, extensions or other structural works to the buildings are planned; and/or*
- *she plans to leave the property unoccupied for more than 30 consecutive days.*

*In turning down Miss L’s claim and cancelling her policy, Wakam relied on the findings in its loss adjuster’s report. Among other things, the report says:*

- *Miss L’s home was “evidently undergoing refurbishment to include a newly installed bathroom and kitchen (still incomplete), along with plasterwork throughout...”*
- *Although there were fitted kitchen units, there weren’t any kitchen worktops and “second fix electrical work” hadn’t been completed. As a result, the report says no integrated appliances were functioning.*
- *Miss L’s home wasn’t furnished. The report says the only contents were a kettle in the first-floor bedroom along with sofas in the lounge that were still in their cellophane wrapping.*
- *There were no beds or wardrobes in Miss L’s home which the report says “you would*

*reasonably expect to be evident had the property being occupied ...”*

*The loss adjuster’s report notes Miss L said she was living in her home but carrying out “refurbishment” on a room-to-room basis, as funds allowed. It says this “appears to be in contradiction to the level of contents evident at the risk address at the time of our visit.” The report also states: “...in our opinion, the property is not fit for habitation” because of the lack of cooking facilities there. The loss adjuster also says in the report Miss L would be asked for copies of her utility bills to see if her usage reflected her home being occupied.*

*Miss L says she’s on a low income and has to be frugal with money. She says her home only needs redecorating, which she agrees she told the loss adjuster she was doing room-by-room. Going through each of the specific points made in the loss adjuster’s report that I’ve listed above, Miss L says:*

- The “newly installed bathroom” was there before she bought the property more than a year earlier. Miss L says she’d had no work done on it recently. More generally, she says there was “literally no building work ongoing at all to my house”.*
- The loose electrical wires in the kitchen were to connect an induction hob that (along with a new worktop) Miss L was yet to buy. Miss L says that, otherwise, her kitchen had fully-functioning integrated appliances – including an oven – that she’d been using since she moved into the property. Miss L says her appliances were permanently plugged into their respective live sockets, which were underneath the kickboards and inside a cupboard. She says the loss adjuster didn’t check whether these appliances were working.*
- “There was definitely other furniture in the house including a dining table” (that is, in addition to the furnishings the loss adjuster noted in his report).*
- She was sleeping on a futon bed that she took to her partner’s parents after the accident because she didn’t feel safe sleeping in a house that had been boarded up.*

*Miss L says she had no wardrobes because she’d been living out of a suitcase since moving into her home and was saving to install inbuilt wardrobes. Miss L also says many of her windows didn’t have curtains (though she says her bedroom did) and, from the few photos in the loss adjuster’s report, at least some of her rooms had no carpet.*

*It’s clear Miss L and Wakam dispute the key facts that are central to this complaint. But it’s for Wakam to show it’s acted fairly and reasonably in relying on the policy exclusion and condition I’ve mentioned to turn down Miss L’s claim and cancel her policy.*

*From the evidence I’ve seen so far, I don’t think Wakam has shown it’s more likely than not Miss L’s home was unoccupied for more than 30 consecutive days or was undergoing structural building work.*

*Miss L’s testimony that her home wasn’t unoccupied and wasn’t undergoing building work has been consistent throughout. She’s offered detailed rebuttals of many of the loss adjuster’s factual findings. And I think the reasons she gives for how her home looked when the loss adjuster inspected the damage caused by the accident – mostly relating to her low income – are both plausible and persuasive.*

*On the issue of occupancy, as I’ve mentioned, the policy definition of “unoccupied” refers only to Miss L not occupying her home for more than 30 consecutive days. It doesn’t set out exactly what qualifies as Miss L’s home being “occupied” or “unoccupied”. For a home to be occupied, within the ordinary and natural meaning of that word, I’d say it involves a home regularly used to sleep, eat, wash, and/or live in. But I don’t think it necessarily means doing all of these things every day. And I don’t think it necessarily means a home being furnished*

beyond the level needed to do those things regularly. On the evidence I've got, I think Miss L was probably occupying her home at the time of the accident.

There's also other evidence that makes me think this is likely. Miss L gave Wakam one of her utility bills, which showed gas and electricity costing her just under £300 in the period 4 November 2022 to 4 December 2022. The statement date on the bill is only 23 days before the date of the accident. The bill also projects Miss L's energy usage for the year (around £1,000) based on her consumption the previous year.

From his report, I can understand why Wakam's loss adjuster's initial opinion when he saw Miss L's home was that it was unoccupied. But I think he failed to give due consideration to the reasons Miss L gave for this from the start. And then there's the utility bill. The loss adjuster says a single utility bill "showing the central heating may have been left on" didn't dismiss his concerns. But I think it's highly unlikely someone on the low income Miss L describes would leave gas and electricity running if she wasn't at home using it – for heating, for lighting or for cooking (although I know the loss adjuster says Miss L didn't have cooking facilities). All of this means, from the evidence I have so far, I don't think Wakam treated Miss L fairly and reasonably when it turned down her claim and cancelled her policy for her home being unoccupied.

On the issue of building work. Miss L's policy says she must tell Wakam about any "refurbishments, conversions, extensions or other structural works to the buildings" she's going to carry out to her home. I think it's important to note the words "or other structural works to the buildings". This language suggests to me Miss L only needed to notify Wakam if any refurbishments etc she was carrying out were structural. The comments the loss adjuster makes in his report about this don't persuade me structural building work of this nature was going on.

From what I've seen so far, including the few photos in the loss adjuster's report, it looks as if parts of Miss L's home were being re-decorated (including being re-plastered in places) and it seems there was also a new hob and worktop yet to go in the kitchen. I don't think any of these things are "structural works". That means I don't think Wakam has shown Miss L breached the policy condition about notifying it of structural building work. It follows that, from the evidence I have so far, I don't think Wakam treated Miss L fairly and reasonably when it cancelled her policy for this reason.

### *Misrepresentation*

As I've already mentioned, Wakam has recently said it was entitled to turn down Miss L's claim and cancel her policy because she misrepresented her home was in a good state of repair when she took the policy out in October 2021.

When our investigator first started looking at this complaint, Wakam said it had no evidence there was building work or an unoccupancy situation going on at that time, so it "did not consider this a case of misrepresentation at purchase". I think it's very unfortunate, having initially said this wasn't a case of misrepresentation, for Wakam now to change its mind. The information it's relied on in making this new argument late on in the process was available to it at the start of the claim. I think Wakam should've presented all of its arguments when answering Miss L's complaint at the latest. But, in the interests of fully resolving her complaint, I've decided this is an issue I now need to consider.

The relevant law 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 an insurance policy. The standard of care is that of a reasonable consumer. Wakam says Miss L failed to take reasonable care when she bought the policy in October

2021. It says, as part of her online journey during the quote process, Miss L was asked to answer “True” or “False” to the statement:

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

Wakam says Miss L answered “True” and this is confirmed in a Statement of Fact it gave her.

Wakam says that, even if it accepts Miss L’s version of events at the time of the accident, it’d maintain she was doing “building work” at various points before then, while “renovating” her home. And Wakam says that, had Miss L disclosed she’d be doing this during the quote process, it wouldn’t have offered her cover.

To support its position, Wakam relies on statements in its loss adjuster’s report. In particular, it refers to Miss L’s comment that she was “refurbishing” her home on a room-by-room basis and to the loss adjuster’s comments about loose electrical wiring, re-boarded walls and the “lack” of cooking facilities.

But the loss adjuster’s report was given more than a year after Miss L took the policy out, so it gives his opinion in January 2023, not in October 2021. That means the report isn’t evidence Miss L’s home wasn’t in a “good state of repair, free from damage and defect” when she took the policy out. And I don’t think Miss L saying she was (to use the loss adjuster’s word) “refurbishing” her home room-by-room meant it wasn’t in a good state of repair – as I’ve said, I’m persuaded by Miss L’s testimony about the nature of the redecoration and kitchen work she was doing. From the evidence I’ve seen so far, I don’t think Miss L made a misrepresentation when she said her home was in a good state of repair when she took the policy out. That means I don’t think it would be fair and reasonable of Wakam to seek to avoid her policy on this basis.

#### *Race discrimination*

I now turn to Miss L’s assertion that Wakam discriminated against her under the Equality Act 2010 (the Act) based on her race. It’s not our role to decide if a business breached the Act, that’s for a court to decide. But it is our role to decide what’s fair and reasonable in the circumstances of an individual complaint. That includes taking into account the relevant law, so that’s what I’ve done here.

When Miss L brought her complaint to us, she said Wakam’s loss adjuster made her feel very uncomfortable during his inspection and she felt he was very judgmental. I’ve already referred to Miss L’s comments that she felt his actions showed he was “extremely biased” towards her and she didn’t believe he’d have treated her in the same way had she been “a white woman in a wealthy neighbourhood”.

Wakam says it disputes “in the strongest terms” Miss L’s assertion that any of its decisions were made based on her skin colour or her income level. It says the evidence for its findings is “quite clear”.

Recently, we asked Miss L if she had anything else she could add about what the loss adjuster said or did, or if she had any further insights into how he behaved towards her, that made her feel she was being treated differently because of her race. We also asked Miss L if there was anyone else around who could hear or see what happened.

Miss L has responded saying the loss adjuster made some unjust negative comments and was clearly looking down on her and her house. She says her partner, who was with her,

can confirm this.

*As I've said, I think Wakam's loss adjuster should've considered more carefully than he did Miss L's explanations as to why her home looked as it did. And I accept Miss L says the approach he took made her feel she was treated differently due to her race and income. That said, while I don't agree with the reasons Wakam gave for turning down Miss L's claim and cancelling her policy, I think it's clear how it reached the outcome it did. In any event, for the reasons I've already given, I think Wakam treated Miss L unfairly in how it handled her claim.*

*Finally, I've thought about the impact on Miss L of Wakam's decisions to turn down her claim and cancel her policy. Miss L was clearly distressed by the way he behaved towards her. And I think it must then have come as a huge shock to Miss L to have her claim turned down. It's been frustrating for Miss L that Wakam didn't properly consider her explanations as to why her home looked as it did. I think Wakam's failings have caused Miss L considerable distress, upset and worry. And I think trying to sort things out has caused Miss L significant inconvenience. For all of these things, I intend to award Miss L £500 in compensation."*

As I've said, Miss L has accepted my provisional decision but Wakam hasn't. Wakam has given me a number of comments.

### *Building work*

On the issue of building work, Wakam says my view on the interpretation of the policy condition about "*refurbishments, conversions, extensions or other structural works to the buildings*" isn't correct in the grammatical sense or in the wider sense of its intention. It says grammatically the word "or" is a conjunction to connect alternatives and doesn't mean the preceding parts of the list are "*structural*" by necessity. Wakam says the intention of the condition is to protect an insurer from the greater risks that can result from building work which it says are "*clearly ... much more than just structural work hazards*". And it says the electrical work Miss L was having done in her kitchen (which it says increased the fire risk) was a "*refurbishment*" and is the term "*most commonly used by customers themselves when describing re-fitting of a bathroom or kitchen*".

My view is that, grammatically, the use of the words "*other structural works*" in the condition "*refurbishments, conversions, extensions or other structural works to the buildings*" has the effect of limiting the meaning of the preceding words "*refurbishments, conversions, extensions*" to works that are structural in nature. Also, in looking at the ordinary, everyday meaning of the condition, I think it gives the impression the insurer is only referring to works of a structural nature – and I also think the words "*refurbishments, conversions, extensions*" themselves strongly suggest structural work. While Wakam says the intention of the condition is to protect against greater risks than the risks from building work, I don't think the drafting of the condition achieves that wider intention.

### *Misrepresentation*

Wakam says it's surprised I've said it was "*very unfortunate*" that, having initially said this wasn't a case of misrepresentation, Wakam then changed its mind. Wakam says it made a decision on Miss L's claim at the earliest opportunity, with the evidence it had available at the time, so she knew where she stood as soon as possible. It says the further testimony Miss L gave when her complaint came to us meant Wakam needed to look at what Miss L said about the condition of her home when she bought the policy.

As I said in my provisional decision, in my view the information Wakam has relied on to make its misrepresentation argument (essentially Miss L's testimony) was available to it from the outset. Miss L has been very consistent in what she's said – it's clear from the time of Wakam's loss adjuster's initial report. And while I can understand why Wakam didn't consider the misrepresentation issue when initially deciding her claim (for the reasons it's given), I think it could (and should) have addressed it when Miss L made her complaint.

On the issue of misrepresentation itself, Wakam says Miss L's testimony is that she's been "*refurbishing the property room by room since she moved in*". It says this is surely evidence her home was in a worse state of repair at policy purchase than it was when the loss adjuster inspected it. But I think it's very common when people move into a new home to make changes that put their own "stamp" on it. So I can't assume, based purely on Miss L's testimony that she was working on her home room by room, that it was in a worse state of repair in October 2021 than it was in January 2023.

As a general comment on my provisional decision, Wakam says it doesn't think it's procedurally appropriate for me to dismiss the expert evidence of its loss adjuster, who physically visited the property itself. But as I said in my provisional decision, having looked at the evidence as a whole, I think the loss adjuster failed to give due consideration to the reasons Miss L gave for how her home looked, especially given the utility bill he saw subsequently.

Wakam is also concerned I haven't considered its loss adjuster's expert opinion that Miss L's home was "*not fit for habitation*". In my provisional decision I refer to the loss adjuster's report saying the property wasn't fit for habitation "*due to the lack of cooking facilities*". And I refer to Miss L saying she had an oven she used. I've seen no evidence the loss adjuster checked if Miss L's oven was working. And I'm persuaded by Miss L's testimony that it was working and that she therefore had cooking facilities.

Finally on this issue, Wakam says its view is that a reasonable consumer wouldn't consider a home with loose electrical wires in the kitchen to be in a good state of repair and free from defects. But, even if I were to assume this statement is correct, I've seen no evidence there were loose electrical wires in Miss L's kitchen when she bought the policy, which is when she made the representation.

### *Distress and inconvenience*

On the issue of distress and inconvenience, Wakam doesn't think the compensation award of £500 I've said I intend to make is fair. It says I've used a great deal of hindsight to reach my view and have had the benefit of further testimony from Miss L that Wakam's loss adjuster didn't. Wakam also says the investigator who looked at Miss L's complaint, who didn't uphold it initially, only changed her view in light of Miss L's further testimony – testimony it says its loss adjuster didn't have access to.

As Wakam is aware, our service offers a two-stage process. First, an investigator looks at a complaint and lets the business and the consumer know if they think the business has treated the consumer fairly. Then, if either of the parties disagrees with what the investigator has said, the complaint gets referred to an ombudsman. The ombudsman's role is to look at the complaint afresh, entirely independently of the investigator's findings.

That's what I've done here. At the time of the loss adjuster's visit to Miss L's home, she said her home was occupied and explained why it looked as it did. The loss adjuster then got a utility bill showing Miss L was using gas and electricity, which I think is consistent with her home being occupied as I've described in my provisional decision. When the loss adjuster then got the bill, I don't think his conclusion that a single utility bill "*showing the central*

*heating may have been left on*” didn’t dismiss his concerns was fair or reasonable – especially given Miss L’s consistent testimony that she was on a low income.

Further, when Wakam got Miss L’s complaint (sent by email at the beginning of February 2023), in which she again sets out her explanations – and, again, these explanations are consistent with those referred to in the loss adjuster’s report – I think it should’ve reconsidered its decision to turn down her claim. But Wakam didn’t do that. And so, for the reasons I gave in my provisional decision, I think an award of £500 in compensation for the distress and inconvenience Wakam has caused Miss L is fair and reasonable.

### **My final decision**

For the reasons I’ve given here and in my provisional decision (which now forms part of this final decision), I uphold Miss L’s complaint.

Miss L has said the damage to her home has been repaired through arrangements with a third party, so I don’t direct Wakam to reconsider the claim. But I do direct Wakam to:

- Remove all records of the policy cancellation from all internal and external databases.
- Send Miss L a letter confirming her policy was cancelled in error and its records have been amended. Miss L can then show this letter to the insurer(s) she’s had since to see if her premiums need to be adjusted.
- Pay Miss L £500 in compensation for the distress and inconvenience it has caused her. Wakam must pay Miss L this amount within 28 days of the date we tell it Miss L accepts my final decision. If it doesn’t, Wakam must pay Miss L simple interest on this amount at the rate of 8% a year from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss L to accept or reject my decision before 19 February 2024.

Jane Gallacher  
**Ombudsman**