

The complaint

Mr B complains that Wakam avoided his home insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr B took out a home insurance policy with Wakam online in December 2021 which he subsequently renewed.

In July 2023 he contacted Wakam and said there was water damage to his property and made a claim.

Wakam said when Mr B bought the policy, he'd answered the question it asked about previous claims incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid the policy from outset and keep the premium Mr B had paid.

Mr B brought his complaint to us and our Investigator thought it should be upheld. He didn't think Wakam had shown a qualifying misrepresentation had taken place. So he thought Wakam should remove the cancellation marker and refund the premiums Mr B had paid under the policy with interest. As Mr B no longer wanted to claim against the policy with Wakam, the Investigator didn't recommend the policy be reinstated. This meant Mr B was free to buy insurance elsewhere.

Mr B agreed with the Investigator. Wakam didn't agree and has asked for an ombudsman's decision. Wakam says that it now accepts the misrepresentation was careless rather than deliberate. But it says it asked a clear question about whether Mr B had made any claims which Mr B didn't answer with reasonable care. So it doesn't agree to removing a record of cancelling the policy.

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 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 said he hadn't made any claims in the past five years.

I've looked at the key question Mr B was asked when he applied for the policy. Wakam asked:

"Claims & Losses in the Last 5 Years

How many claims have been made by the people covered on this policy in the past 5 years, which could have been covered under this policy?"

Wakam said a central database revealed Mr B had made claims in September 2020 and November 2020 with a previous insurer.

Mr B said he made enquiries to his previous insurer, but didn't make a claim. In a letter dated 17 August 2023, Mr B's previous insurer confirmed the following:

"I can confirm claim (claim number inserted here) and (claim number inserted here) are enquiries only and nothing was paid out on either claim."

Wakam says that the central database showed one of the two claims as withdrawn and didn't record the claims as 'notification only' due to the codes used by the previous insurer.

However, it is clear from the letter provided by Mr B's previous insurer that Mr B didn't make a claim. And the question asked of Mr B was of how many claims had been made, not enquiries or incidents even if they didn't result in a claim. The explanatory note to go with this question on the website said:

"Previous Claims

Claims should be declared even if they were subsequently declined by the insurer.

Claims made on the contents or gadget portions of travel or home insurance policies, or on tenants liability insurance should also be declared"

As Mr B didn't have a claim declined by an insurer, and his previous insurer confirmed Mr B didn't make a claim, I think he answered the question correctly and he took reasonable care. So I'm not satisfied that Mr B's misrepresentation was a qualifying one.

Wakam was in receipt of the previous insurer's letter dated 17 August 2023 when it decided not to uphold Mr B's complaint and maintain its decision that Mr B deliberately misrepresented his claims history. I think this was unreasonable. I think the actions taken by Wakam are unfair and not in line with CIDRA.

I understand that when Mr B brought his complaint to us, he wanted Wakam to reinstate his policy. He explained that having to declare a cancellation by an insurer when looking to buy insurance elsewhere has had a significant impact on the cost of buying insurance.

But Mr B no longer wants to proceed with his claim and due to the time that has passed, I don't think a reinstatement of the policy serves any purpose, which Mr B is content with. So I think the fairest outcome is for Wakam to remove any record of an avoidance or cancellation

by an insurer – so that Mr B doesn't need to declare this to future insurers. Wakam should provide a refund of the premium Mr B paid from the date it avoided his policy and pay interest on the refund at the rates set out below.

My final decision

For the reasons set out above, I've decided to uphold Mr B's complaint. I require Wakam to do the following:

- Remove any record of a cancellation or avoidance against Mr B's name.
- Provide a refund of the premium Mr B paid from the date of avoidance or cancellation.
- Pay interest on the premium refund at a rate of 8% simple interest from the date of payment to the date of refund.
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 February 2024.

Geraldine Newbold
Ombudsman