

## **The complaint**

Mr I complains Wakam unfairly avoided his motor insurance policy and declined his claim.

## **What happened**

In March 2023 a short term Wakam motor insurance policy was taken out in Mr I's name. Shortly after the 'insured car' was severely damaged by fire. Mr I claimed for the loss against the policy.

In June 2023 Wakam declined the claim and avoided the policy (treating it as though it had never existed). It said the policy had been falsely taken out with Mr I as the policyholder and listed as owner and sole driver of the insured car – when really it was owned and to be used by his son(s).

Mr I didn't accept that. So he referred a complaint to the Financial Ombudsman Service. He said the car was his and intended for his personal day to day use – but also to serve as a family vehicle. As a resolution to the complaint he asked that Wakam pay around £20,000 to settle the claim.

Our Investigator felt Wakam had shown Mr I had made a deliberate and qualifying misrepresentation. So she felt it decision to avoid the policy was fair – and made in line with the relevant legislation. As a result she didn't recommend it settle the claim, reinstate the policy or do anything differently. As Mr I didn't accept that outcome the complaint was passed to me.

There's been correspondence between Mr I and Wakam regarding disposal of the insured car's salvage. For clarity that issue hasn't been considered by this Service as part of this complaint.

## **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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr I and Wakam have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

The relevant legislation for me to consider is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It gives insurers the ability to take certain action, like avoiding a policy, if a 'qualifying misrepresentation' has been made.

I've first considered if there was a misrepresentation. Mr I and his sons – Mr IA and Mr IB share the same first and surname. All have different middle names. Wakam feels they have taken advantage of this to try to obtain cheaper insurance for the son(s).

Mr I is named, with his date of birth and driving licence number, on the policy documents as the policyholder. The policyholder is listed as the owner of the vehicle. Only the policyholder is listed as a person entitled to drive. Wakam say that information was a misrepresentation. Instead the car is owned and was to be used by Mr IA.

I haven't seen the questions asked when the policy was taken out. But I think it's likely the name, date of birth and driving licence number of the intended policyholder was asked. Mr I states he is the owner and sole intended driver under the cover. He doesn't claim there was any mistake when that information was given. So I'm satisfied it was Mr I's information that was provided when the policy was taken out.

I think it's likely there was a misrepresentation. Wakam's persuaded me Mr IA is the owner and intended user, under the policy, of the insured car. Whilst I've considered Mr I's account and explanations there's too much to support Mr IA being the actual owner and intended user of the car. This includes the insured car's finance not being in Mr I's name, Mr IA's car being part exchanged for the insured car, a private registration number owned by Mr IA being transferred to the insured car, Mr IA setting up a social media page for the insured car and various inconsistencies in Mr I's explanations.

There's been a claim Mr IA had different insurance for the insured car. That might show this policy was intended for his use. But I haven't seen enough evidence of alternative insurance to overcome the competing evidence.

So it's fair for Wakam to say there was a misrepresentation. But for it to take any action, like avoiding the policy and declining the claim, there would need to be a 'qualifying misrepresentation'. For that a few things are required. Firstly there must have been a failure to take reasonable care not to make the misrepresentation.

CIDRA sets out several things to be considered when deciding if a consumer took reasonable care not to make a misrepresentation. One is how specific and clear the questions asked were. Another is any relevant explanatory material.

I haven't seen the questions asked when the policy was set up. But I think it's unlikely those asking for the name of the policyholder, owner or users of the car were unclear. In any event I'm satisfied Mr I (or whoever set up the policy for him) understood the questions. That's supported by him claiming the information is correct. And I'm persuaded Mr I was aware he didn't own the car and didn't intend to be its sole user under the policy. So I'm satisfied, given the nature of the issue, there was a failure to take reasonable care not to make a misrepresentation when he was listed as owner and driver.

Wakam also needs to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. It's provided its underwriting and pricing. Having considered it I'm satisfied, had the misrepresentation not been made, if cover had been offered, it would have been at a higher premium. So it's reasonable to say there's been a qualifying misrepresentation.

For the reasons set out above I'm persuaded it was known, when the policy was set up, the relevant information being provided was untrue or misleading. So I'm satisfied the misrepresentation was deliberate. In those circumstances CIDRA allows insurers to avoid the policy, decline any claims retain any premiums. So I consider Wakam's action to have been fair and reasonable. I'm not going to require it to reinstate the policy, meet the claim or return any premium.

**My final decision**

For the reasons given above, I don't uphold Mr I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 10 July 2024.

Daniel Martin  
**Ombudsman**