

## The complaint

Mr S has complained that Wakam avoided his policy and refused to pay his claim under a home insurance policy.

References to Wakam include companies acting on its behalf.

## What happened

Mr S took out a home insurance policy with Wakam online. When Mr S's home was broken into, he made a claim. Wakam said he'd answered the questions about occupancy of the property incorrectly. And it considered this entitled it to void the policy and not to deal with the claim.

Mr S brought his complaint to us and our investigator thought it shouldn't be upheld. He said Wakam had shown it wasn't Mr S's primary residence and that the property was listed on a lettings website. He said it was reasonable for Wakam to decide this was a deliberate or reckless misrepresentation.

Mr S didn't agree and asked for an ombudsman's decision. He said he did sometimes rent the property out, but it was his primary residence.

I issued my provisional decision on 19 December 2023. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. 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 S failed to take reasonable care not to make a misrepresentation when he took out the policy. In complaints like this, I would normally look first at what a policyholder was asked, and how they answered, when they took out the policy. But, in this instance, I think this needs to be looked at in its wider context first.*

*When Wakam wrote to Mr S to void the policy, it referred to a general exclusion in the policy that said it would not pay for:*

*“Any loss or damage that occurs if you sublet your home for a short-term (for example through Airbnb or booking.com)”*

*It said Mr S had declared the property as his primary residence, but it was regularly listed on online rental sites. It said the policy was designed for homeowners to occupy the property, not landlords who rented the property out to tenants. Wakam said: “We view the subletting of the property as a breach of policy conditions”. It told Mr S it was voiding the policy and wouldn’t settle the claim.*

*I’ve looked at the policy and I think voiding a policy on this basis is inconsistent with the policy wording. It’s my understanding that Mr S’s claim was being considered under the Vandalism part of the policy. But, regardless of this, under the Theft part of the policy, it said there was no cover for:*

*“loss or damage while any part of the home is let or loaned to anyone other than a guest who is authorised by the homeowner to be in the property at the relevant time”*

*So, the policy explicitly allowed for the property to be let or loaned to someone who was an authorised guest of the homeowner – and that theft claims in those circumstances would be covered. The policy also had a section that explained about alternative accommodation during a claim, including for a tenant, and the circumstances in which the policy would cover loss of rent. So, I don’t think it was fair for Wakam to say the policy didn’t allow subletting, as it explicitly referred to it and provided cover for some claims.*

*I’m aware there was also a general exclusion elsewhere in the policy that said any claims while the property was let short-term wouldn’t be covered. I think it’s reasonable to take this to mean there was no cover while the property was actually let short-term, rather than the periods in between, although I think the policy is unclear on this. But, I didn’t read anything that said a short-term let was a breach of the policy terms or that it meant the policy was void. I’ve also looked at the underwriting guidance Wakam provided. This didn’t say the property couldn’t be sublet. Even if this general exclusion applied, Wakam applied the wrong remedy. The policy exclusion only allowed it to decline a claim. Despite Wakam not having shown the property was sublet at the time of the claim, it relied on this term and went on to void the policy, even though the wording didn’t give it the right to do that.*

*However, while the complaint has been with this service, Wakam has put more emphasis on the property not being lived in by Mr S, which it said meant it was unoccupied. The underwriting guidance said the policy wasn’t available for unoccupied properties. The policy defined “unoccupied” as “The home is not occupied by you for more than 30 consecutive days”.*

*I’ve looked at what Mr S was asked when he took out the policy. The online form included a statement that said:*

*“Primary Permanent Residence*

*The home is your primary residence and will never be unoccupied or unfurnished for more than 30 consecutive days in a row.”*

*There was also additional information that said:*

*“Your home must be your primary residence, and cannot be unoccupied or unfurnished for more than 30 days; occasional visits and overnight stays do not represent a break in this period. For a home to be considered furnished, it must have all the furniture and furnishings for normal living purposes.”*

*Mr S had to answer "True" or "False". He answered "True".*

*Wakam has provided online reviews for stays at the property. The stays were for varying lengths of time. One of the stays seemed to be 11 nights, but several were around two to five nights. I've also looked at the reviews online myself and can see there seemed to be various extended periods where there were no reviews for some time. I realise people might have stayed who didn't then leave a review, but it's the reviews that Wakam is relying on to show Mr S didn't live there as it said it was rented out "full-time".*

*I've also looked at the evidence Wakam relied on to say Mr S didn't live at the property. Mr S provided Wakam with his driving licence, which was registered at the property address. I've also seen bills for the address that were in Mr S's name. I've also thought about Wakam's surveyor visit. The surveyor visited Mr S's property about three weeks after the incident and said the property appeared to be unoccupied at that time. This was because there were no items of clothing or anything in the bathroom and a pile of post was on the side.*

*Looking at the photos, the property was furnished. I couldn't see whether there were clothes in the property or what items were in the bathroom, although I've no reason to doubt what the surveyor said. I could also see what appeared to be a small pile of post. But I also can't see that, before the policy was voided, Mr S was asked why there appeared to be no clothes or toiletries in the property. It might have been because he didn't live there, but I can also think of other reasons.*

*I'm aware Wakam spoke to Mr S on the phone to raise concerns about whether he lived at the property and that it thought it was rented out. I listened to the call recording. It was about five minutes long and was clearly a poor connection, including Wakam and Mr S finding it hard to hear each other for much of the time. Wakam's call note said Mr S ended the call. Even if that was the case, I don't think I can fairly read anything into that given the poor connection. But it did also mean it was a limited conversation. The occupancy wasn't discussed in much detail beyond Wakam outlining its concerns and Mr S saying he lived at the property and rented it out occasionally. The call then ended.*

*When the policy was voided, the letter said:*

*"Upon investigation, it has been revealed that your property has been listed on a holiday home website since 26/05/2022. When [Wakam's] surveyor visited the property they noted that there were no personal belongings at the property and it was clear you were not living there at the time."*

*Wakam needed to show that Mr S's answer to the question about the property being his primary residence wasn't reasonable at the time he gave it. Although I can see this information casts doubt on where Mr S lived, I don't think this provides anything definitive for Wakam to rely on. I'm not currently persuaded Wakam has provided evidence to show it wasn't Mr S's primary residence or that it was unoccupied for more than 30 days in a row.*

*Mr S also had to answer the question "How many other adults (18+) do you live with?". The additional information said "Please select how many adults (other than yourself) live in your home as a primary residence." Mr S answered "0".*

*Wakam provided this as evidence to this service that Mr S had incorrectly answered the questions. Given that Wakam has said it thinks Mr S was renting out the property through a series of short term lets, I don't think any of the people who stayed could fairly be seen as needing to be declared as an adult who lived at the property as a primary residence. So, I'm not persuaded Mr S answered this question incorrectly.*

*So, thinking about what happened, the policy was voided on the basis that sub-letting the property breached its terms. But the policy allowed for sub-letting. If the property was let out short-term, there was no cover at that time, but there was nothing that said the policy would be voided. I also don't think Wakam has done enough to show that Mr S didn't accurately answer the questions about whether it was his main residence or about who else lived at the property. I think Wakam's evidence has key gaps in it that don't persuasively show it wasn't Mr S's main residence.*

*So, based on what I've seen, I currently intend to uphold this complaint and to say that Wakam should reinstate the policy and accept the claim. I also intend to say that Wakam should pay Mr S £200 compensation because of the impact on him because of how it considered the claim.*

I asked both parties to send me any more information or evidence they wanted me to look at by 16 January 2024.

Wakam didn't agree with my provisional decision. In summary, it said:

- I had dismissed or massively downplayed the magnitude of the evidence. It said I hadn't taken into account whatsoever the overall picture.
- Mr S was demonstrably away from the property for 21 nights in the first month and 20 nights in month two. Wakam failed to see how this could be considered anything other than a misrepresentation when he answered the question about his primary residence. It also asked me to note that this was separate to the unoccupancy questions.
- It said it had provided clear evidence that Mr S wasn't living at the property for at least two-thirds of the time over a sustained period of the policy. Wakam didn't see how this could be compatible with Mr S saying it was his primary residence.
- It was factually incorrect for me to say that there seemed to be various extended periods where there were no reviews. Wakam had rechecked the reviews and provided a summary of these. It said there were stays every single month of the policy.
- I wasn't being fair and objective in considering the evidence.
- I hadn't taken into account Mr S's clear fraudulent statement about his property not being rented out and that he lived in it as his main residence. This was demonstrably untrue given the clear evidence of paying guests.
- Wakam hadn't heard an explanation from Mr S about how he could claim the property was his main residence when he rented it out so often and it didn't contain any of his personal clothing or items. He had continued to deny this despite the evidence to the contrary. Wakam asked whether I had been provided with any explanation.
- Wakam noted I was intending to ask it to reinstate the policy. Wakam thought this was entirely inappropriate given that Mr S's use of the property was now known. If my final decision was along the same lines, it would need to consider a judicial review.

Wakam also sent a further response providing a link to details of a company in Mr S's name and highlighted that the purpose of the business was "*other holiday and other collective accommodation*". It said this should clearly add to the evidence that Mr S was untruthful when he said he had allowed a few guests as a private individual and not as a business. Wakam said it couldn't see how I could simply take Mr S at his word, seemingly without asking him to satisfactorily explain his living situation, and continue to ignore the vast amount of evidence that Mr S was operating the property primarily as a rental property.

Mr S agreed with my decision. However, he said he didn't think the level of compensation was enough. He described the level of damage to the property and the impact it had on him for his claim to be declined and the policy voided. He said he also had no savings to carry

out the repairs and had expected the insurance company to deal with it. The process took ages and whatever document he provided, Wakam always asked for more. Mr S felt terrible and as a person with long term mental health problems, he went downhill rapidly.

As the process took so long and prevented Mr S from moving back in, he had to borrow money from friends and didn't pay essential bills. He also sold items to pay for the repairs and did so at below market value due to the rush. He had also tried to insure his home since then but wasn't able to do so because the Wakam policy had been voided. This added to his stress and vulnerability. Mr S described the impact of being a victim of crime and that this was added to by the stress of his claim being declined. He said £200 wasn't enough for the financial loss and distress caused. He said Wakam might also consider it worth paying and not learn lessons from their mistake.

### **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, I uphold this complaint and for the reasons given in my provisional decision. I've considered all of the comments from both parties and this doesn't change my view on how this complaint should be resolved. I have focussed my comments on what I think is relevant to make a fair and reasonable decision.

When Wakam told Mr S it was voiding the policy, it said it was because "*We view the subletting of the property as a breach of policy conditions*". As I explained in my provisional decision, the policy allowed for the property to be sublet and also for there to be tenants. Wakam therefore couldn't fairly or reasonably void the policy on that basis. To do so wasn't consistent with what the policy terms and conditions said.

Wakam has also said that I hadn't taken into account the overall picture or the amount of evidence that showed Mr S didn't live at the property. I can assure both parties that I did this. I considered each piece of evidence individually and thought about what this might indicate as a body of evidence. I discussed the wider context, including Wakam's concerns, in my provisional decision. I explained that I thought there were key gaps in Wakam's evidence. That remains the case. In terms of unoccupancy, Wakam hasn't shown things like there was a 30-day period in which Mr S didn't live there. As I said in my provisional decision, Wakam said the property was rented out full-time, but the evidence doesn't show that.

Wakam also said my provisional decision was factually incorrect to say there were extended periods where there were no reviews. I will explain that further. The letting website listed reviews, the month of the stay and the number of days. For November 2022, there were two reviews. These were for stays totalling eight nights, which meant there were 22 nights when no-one was staying there. In December, there were three stays totalling 11 nights, which meant there were 20 nights when no-one was staying there. In January 2023, Wakam said there were three stays. I could only find two, totalling six nights. This meant there were 25 days when no-one was staying there. I also considered this in the context of the policy allowing the property to be sublet, including the policy booklet naming the actual website Mr S advertised his property on. Wakam has suggested there might be stays that aren't listed. Wakam hasn't provided evidence to support this so, equally, there might not be. Wakam is making the allegation, so the onus is on it to show it's reasonable to do so.

Wakam also provided a link to a company in Mr S's name that seemed to be accommodation related. I've not seen evidence that Wakam put this to Mr S so he could respond to it, which I consider unfair. However, looking at the record, it said the company was dissolved in June 2022. Mr S first took out the policy with Wakam in May 2022 and the

first review was in June 2022. So, I don't think this demonstrated that Mr S was renting out the property as a business during the time he was insured by Wakam. Wakam also seems to have assumed that the business related to renting out the insured address. But, Wakam hasn't provided evidence to support this.

Wakam has also referred to Mr S's "*fraudulent*" statement. It hasn't put an allegation of fraud to Mr S and didn't void the policy on that basis. However, I did look at all the evidence, including that statement, and consider whether it supported what Wakam was saying and its reasons for voiding the policy. Wakam's evidence didn't persuade me that that it had acted fairly.

In terms of reinstating the policy, Wakam voided the policy for a reason that wasn't valid under its terms. So, it shouldn't have voided it. It also needs to accept the claim and it is normal for a policy to be in place for a claim to be considered. So, Wakam needs to reinstate the policy.

Mr S has also asked that I consider more compensation. I've read what he described about the impact on him. I think some of what Mr S has described is a consequence of the event that caused the claim. However, I'm aware he has said the impact was increased because of Wakam's handling of it. I'm also mindful that some of the financial loss Mr S has described is for things like selling items for lower than their market value. I think there are a number of factors that could influence a price that an item was sold at, many of which would be beyond what an insurer could be seen as responsible for. Having thought about the compensation again, I remain of the view that Wakam should pay £200.

### **Putting things right**

Wakam should reinstate the policy, remove all reference to its voidance from databases and accept the claim. It should also pay £200 compensation.

## **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint. I require Wakam to:

- Reinstatement the policy
- Remove all references to its voidance from internal and external databases
- Accept the claim
- Pay £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 February 2024.

Louise O'Sullivan  
**Ombudsman**