

The complaint

Mrs C complains that Wakam unfairly avoided her home insurance policies after she made a claim.

Wakam is the underwriter of these policies i.e. the insurer. Part of this complaint concerns the actions of its agents. As Wakam has accepted it is accountable for the actions of the agents, in my decision, any reference to Wakam includes the actions of the agents.

What happened

In mid-2023, Mrs C made a claim under her home insurance policy with Wakam after finding internal damage to her property due to a leaking roof.

Following the inspection of the property by a surveyor, Wakam declined Mrs C's claim. It said she had two buildings and contents policies with it which were taken out at the same time. One of the policies was for the property address she was claiming for (property A) and the other one was for a slightly different address (property B).

Wakam said Mrs C had given inaccurate information when she took out the two policies. It said that, upon investigation, it had been revealed that it was one 4-bedroom detached property, rather than two semi-detached properties as she'd said.

Wakam said it was avoiding the policy for property A from the date of inception (in April 2023) due to reckless misrepresentation with no refund of premium and refusing the claim. It said it considered the policy for property B to have never existed and therefore it was void from inception but with a full refund of premium.

Mrs C raised a complaint, but Wakam maintained its position. So, Mrs C asked our service to consider the matter.

I issued a provisional decision on 4 March 2024 where I explained why I didn't intend to uphold Mrs C's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I don't intend to uphold Mrs C's complaint. I'll explain why.

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.

Reasonable care

Wakam says Mrs C failed to take reasonable care when she took out the policies in April 2023.

It's provided screenshots to show the questions she was asked when she took out the policies online. These include:

"What type of property is your home?"

What type of house is it?

How many bedrooms does the property have?

How many bathrooms or toilet rooms does the property have?"

The policy documentation indicates that Mrs C said both properties were semi-detached. Property A had two bedrooms and three bathrooms. And property B had two bedrooms and one bathroom.

Wakam says the information Mrs C provided was inaccurate. It's referred to its surveyor's report which says it is one detached property which was originally two properties and has four bedrooms.

Wakam says that it verified this by doing a local authority search for properties on Mrs C's road. It says there is no separate listing for property A, which adds further evidence to its assessment that it's a single property.

Wakam has provided a screenshot of its local authority search to support what it's said. But a more up to date search shows both properties listed separately. And Mrs C has also provided council tax bills to show that she and her husband have been paying council tax for both properties.

However, having reviewed the photographs Mrs C has provided, I think it's reasonable for Wakam to conclude that it is one property rather than two. There is an archway with an internal glass doorway between property A and property B, which suggests there is free access between them.

Wakam also says Mrs C made a misrepresentation by saying she was the sole occupier of the property on both of the policies she took out.

She was asked:

"How many other adults (18+) do you live with?"

The documentation indicates that Mrs C answered "0" for both policies.

She was also asked to confirm that the following statement was true:

“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.”

Both policies are showing Mrs C as the sole policyholder. So, I think it’s likely that she confirmed that both properties were her primary residence.

Mrs C disputes giving inaccurate information here. She says she is the sole occupier of property B and her husband (Mr C) is the sole occupier of property A. She says this is why they both qualify for a discount on their council tax.

However, I’m not persuaded this is accurate. Mrs C has told us that she and her husband initially purchased property A a number of years ago and then purchased property B a couple of years later.

Mrs C has provided council tax bills for both properties for 2023/24. The council tax for property B is in her maiden name, while the council tax for property A is in her husband’s name. I can see that the bills for both properties have a single person’s discount, which has been backdated for the past six years. However, the council tax bill Mrs C provided for 2020/21 indicates that property B was previously considered to be Mrs C’s second home. So, I don’t think the council tax bills are evidence of Mr and Mrs C’s living arrangements.

In any event, the glass internal door suggests there is free access between property A and property B, regardless of what Mr and Mrs C’s sleeping arrangements might be. I don’t think the glass door could reasonably be considered to separate two neighbouring properties.

The fact that Mrs C took out both policies in her name also suggests that she considered herself to reside in both properties. I note that Mrs C has said this was because her husband doesn’t use the internet. But she could have helped him take out the policy in his own name, if it was the case that he was the sole occupier of property A.

Even if I was to accept that Mr C is the sole occupier of property A and Mrs C is the sole occupier of property B, this would still mean Mrs C has given inaccurate information by stating that she’s the sole occupier of both properties.

Qualifying misrepresentation

If a consumer fails to take reasonable care, the insurer has certain remedies providing 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.

Wakam has provided a screenshot to show that Mrs C would have been quoted a premium of £319.20 if she’d declared her home as one detached four-bedroom property. I can see she was charged a total of £267 for the policies she took out. As she would have been charged a higher premium if she had given accurate information about the property, I’m satisfied her misrepresentation was qualifying.

Wakam has also provided a screenshot of its underwriting criteria to show that the premium is higher for two adults living in the property, compared to one. So, I’m also satisfied that Mrs C’s misrepresentation about the number of adults residing in the property was qualifying.

Remedy

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Wakam says Mrs C's misrepresentation was deliberate or reckless.

A qualifying misrepresentation will be deliberate or reckless if the consumer:

- Knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading: and*
- Knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.*

If it's not deliberate or reckless a qualifying misrepresentation will be taken to be careless.

Given that the properties are listed separately for council tax and utility purposes, I can see why Mrs C might have thought she needed to take out two separate insurance policies for them. So, I think it could be argued that her misrepresentation here was careless, rather than deliberate or reckless.

However, Mrs C appears to have stated that she was the sole resident of property A and of property B. She didn't mention Mr C who also lives in at least one of the properties. I think she would have known that the information she provided was untrue and she doesn't appear to have considered whether or not it was relevant to Wakam. So, I don't think it's unreasonable for Wakam to conclude that Mrs C's misrepresentation about who was residing in the property A was deliberate or reckless.

If a qualifying misrepresentation was deliberate or reckless, the insurer can avoid the policy and refuse all claims and need not return the premium. Wakam has avoided both policies, refunded the premium for property B and has refused the claim. This is what it's allowed to do under CIDRA. So, I'm not persuaded that it's acted unfairly.

I know my conclusions will be disappointing for Mrs C. I'm not suggesting that Mrs C deliberately intended to mislead Wakam when she took out the policies, or that she gave inaccurate information in order to benefit financially. But based on what I've seen so far, I think Wakam has acted fairly and reasonably."

I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Mrs C acknowledged receipt of my provisional decision. She asked if property A and property B were one or two dwellings for insuring purposes and rateable values.

Our investigator responded to Mrs C's query. She said it wasn't up to us to answer her questions. She explained that it's our services role to decide if Wakam had treated Mrs C fairly and reasonably. She suggested Mrs C might wish to discuss these matters with her local council and current insurer.

Mrs C didn't provide any further comments.

Wakam said it had nothing to add and my provisional decision aligned with its original views.

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 neither party has provided any further information for me to consider, I see no reason to change the conclusions I reached in my provisional decision.

My final decision

For the reasons I've explained, I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 April 2024.

Anne Muscroft
Ombudsman