

The complaint

Mr G has complained about his property insurer, Wakam. He made a claim when items were stolen from his shed, but Wakam said it was avoiding the policy (treating it as though it had never existed) and declining the claim.

What happened

Mr G arranged cover with Wakam. He was asked to confirm he had never ever had any county court judgements (CCJs). Mr G said “yes”, but meaning ‘yes, he had had CCJs’. When Mr G made a claim, Wakam found out about the CCJs. It said Mr G had answered the question incorrectly, he should have said ‘no’ – ‘no, he could not confirm he had no CCJs’. It said its cover was based on the incorrect information, so it was avoiding the policy and keeping the premium.

When Mr G complained to the Financial Ombudsman Service, our Investigator asked Wakam for its submission. She particularly wanted to see evidence of what Wakam would have done had it been told about the CCJs. Wakam did not provide anything in submission to this service.

Our Investigator, noting that Wakam had not shown it would not have offered a policy to Mr G had it known about the CCJs, felt it hadn’t shown itself to have acted fairly and reasonably in avoiding the cover. In the circumstances she didn’t feel it was worth requiring it to reinstate the policy – that it should amend the record to show a cancellation. But that it should also consider the claim in line with the policy terms.

Mr G was satisfied by that. Wakam did not reply. As Wakam did not agree to the Investigator’s view, the complaint was passed to me for an Ombudsman’s 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.

There is legislation which sets out the rights and obligations of both parties when arranging policies of insurance and at renewal. The legislation is designed to level the playing field between both parties and to set out what each can expect from the other. For example, a policyholder can expect an insurer to ask clear questions about important things it wants to be told about and an insurer can take any answers given (or the fact of detail not given) at face value as being likely correct. The legislation also sets out what insurers can do if incorrect information is given.

If a policyholder makes a mistake when answering an insurer’s questions, that is known as a misrepresentation. The legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – requires a prospective policyholder to take reasonable care to not make any misrepresentation to the insurer when applying for cover. If a misrepresentation is made which is a *qualifying* misrepresentation, then the insurer will be allowed to take certain action.

Whether or not a misrepresentation is seen to be a qualifying one depends on two things. First, did the prospective policyholder take reasonable care when they gave the answer they did? Second, can the insurer show that if correct/full detail had been given, it wouldn't have entered into the insurance contract, or it would but only on different terms?

Both must be shown for any misrepresentation to be seen as qualifying. Regardless of whether or not Mr G took reasonable care in answering Wakam's question, Wakam *has not* shown that it would not have offered the cover if it had been told of the CCJs.

Where a qualifying misrepresentation has not been established, the insurer has no reasonable entitlement to avoid the policy. In most cases similar to this I'd be requiring the insurer to reinstate cover. But I note that would achieve little here, and I can still require Wakam to consider the claim *as if* the policy had been in place. So that is what I will do, along with a direction for Wakam to amend the policy record to show it was cancelled by Mr G, rather than avoided. This will mean he won't have to declare an avoidance in future.

I haven't seen that Mr G was particularly distressed by the avoidance. And whilst he has been without his stolen items for some time now, I can't be sure what any claim outcome might have been (but for the unfair and unreasonable avoidance). So I'm not going to require Wakam to pay compensation.

Putting things right

I require Wakam to:

- Consider Mr G's claim as though the policy he had arranged with it was in place, and in line with the terms and condition of that policy.
- Amend its own and any external claim records to show the policy was cancelled by Mr G (as opposed to avoided, or cancelled by it).

My final decision

I uphold this complaint. I require Wakam to provide the redress set out above at "Putting things right".

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

Fiona Robinson
Ombudsman