

The complaint

Mr C complains about Wakam's decision to void his home insurance policy and decline to deal with his claim on the basis he made a misrepresentation.

What happened

Mr C took out a policy with Wakam and then, around six months later, he made a claim following a burglary at his property. During the course of investigating the claim, Wakam discovered that Mr C's property was located within 400 metres of water. They said, had this been disclosed when Mr C took out the policy, they wouldn't have made an offer of insurance. Wakam referred to a section of the policy terms and conditions relating to deliberate or reckless misrepresentation. They said, on this basis, they'd decided to void the policy from the inception date and the claim had been declined. Mr C complained about Wakam's decision and said he wasn't aware, until he received Wakam's claim decision, that his property was within 400 metres of water.

Wakam responded and explained that, as the policyholder it's Mr C's responsibility to ensure all information provided at the time of obtaining an insurance quote is correct. They said, this would also involve carrying out any additional checks to ensure this is the case. They said the questions listed in the statement of fact section are all conditions of coverage, and no insurance would've been offered at the outset if this criteria wasn't met.

Our investigator looked into things for Mr C. She thought Wakam hadn't acted unfairly in voiding the policy and declining the claim, but she felt they'd acted unfairly in treating the misrepresentation as deliberate or reckless. So, she recommended Wakam treat the misrepresentation as careless and refund Mr C the premium he'd paid together with 8% simple interest. Wakam agreed but Mr C disagreed so the matter has come to me for a 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.

Having done so, I've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters. I understand Mr C will be disappointed by this but I'll explain why I have made this decision.

My starting point is Mr C's home insurance policy booklet which sets out the terms and conditions. This says, *"Your statement of fact sets out the information you provided when you applied for the policy and your policy schedule makes up your agreement with us and is based on this information, so it's important that they're both correct...If any of the provided information is incorrect...please do let us know immediately, because this may affect your cover."*

Then, in the introduction section, it says, *"The contract is based on the statements and information you gave us...when you applied for this policy. We use that information to assess the cover we will provide you with and to set the premium and policy conditions. You must take care when answering any questions we ask, and make sure that all the information you provide is accurate and complete."* In a later section headed 'Always tell the truth', it says, *"It's really important that you're honest with us when you're buying a policy...If you've given us inaccurate information we may void the policy...and we wouldn't give you a refund...We might also refuse to pay a claim..."*

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 C failed to take reasonable care not to make a misrepresentation when, during the sales journey, he didn't disclose that his property was located within 400 metres of water. Wakam say this doesn't meet their acceptability criteria, so they had to void the policy.

The first point I've considered is whether Mr C took reasonable care not to make a misrepresentation. Wakam have provided a screenshot of the list of questions Mr C will have been presented with during the sales journey. One of the questions asked, *"My home is not within 400 metres (¼ mile) of water."* Wakam say Mr C answered this as 'True'. The statement of fact which followed the online sales journey said, *"You must read this Statement of fact carefully and check that all of the information is true, complete and accurate...If any of the information is not...true, accurate and complete, and you do not tell us, it could affect the validity of the policy or ability of the insurer to pay a claim."* A section headed 'We asked you' lists a series of questions and beside it is a heading which says, 'You answered' and this lists the responses provided by Mr C. One of the questions recorded on the statement of fact is *"Your house is not within 400 metres (¼ mile) of water"* and the answer given to this is 'Yes'. Wakam say had Mr C answered this question 'No' – as they believe he should've done – then they wouldn't have provided an offer of insurance.

So, I've looked at Mr C's circumstances to see whether he could reasonably have been expected to answer the question in the way Wakam have described. In his complaint to Wakam, Mr C said he wasn't aware until he received Wakam's claim decision that his property is within 400 metres of water. He said the reason for this was that it isn't obvious from his property that there was any water nearby. He said since Wakam's decision he'd looked at an online map and noted that there's a lake within 400 metres.

While I acknowledge the points made by Mr C and that the water wasn't immediately visible from his property, I think the question was clear and specific. The declaration in the statement of fact makes it clear this question is important to Wakam because the declaration says it's important the answer to this question is true and accurate otherwise it could impact the validity of the policy. That being the case, I don't think it's unreasonable for Wakam to expect Mr C to have taken reasonable care to answer this question by carrying out any

additional checks or making any reasonable enquiries to ensure the answer provided is true and accurate.

In this case, I can see Wakam's agent, when carrying out validation checks, was able to identify a body of water located 284 metres from Mr C's property by carrying out a search using an online map. So, in the circumstances of this case, and given Wakam had clearly highlighted the importance of this question and the possible consequences of this being answered inaccurately, I don't think it's unreasonable to expect Mr C to have carried out further enquiries to ensure he was taking reasonable care to answer this question accurately. So, given that I believe the question was clear and specific, I don't think Mr C took reasonable care when answering it.

I can see Mr C has provided a screenshot from a sales journey through a price comparison site and this also asked a question about the proximity of Mr C's property to water. This question asked, "*Is your house within 400 metres (¼ mile) of water?*" and there's a description which says, "*By water, we mean a river, stream, watercourse, sea or lake. You don't need to tell us about puddles or a pond.*" Mr C says the water near his property is a duck pond – so the answer he provided when taking out the policy wasn't a misrepresentation. I do acknowledge Mr C's point, but different brokers or insurers will ask different questions – and this will be based on their underwriting criteria and risk models. Wakam have provided a screenshot showing the question Mr C was asked, and this shows they wanted to know about any 'water' rather than narrowing this down to different bodies of water. So, I'm still persuaded the question Wakam asked was clear and specific.

Mr C also refers to the duck pond being drained and left empty some time ago. I've seen the images provided by Wakam's agent and Mr C – and I've also carried out my own search using an online map facility. And this all shows the presence of the water. So, I've seen no evidence or any information to persuade me that, had a map search been carried out at the time Mr C took out the policy, this wouldn't have shown the presence of any water.

There's been a misrepresentation here but an insurer will only be entitled to take action if it's a 'qualifying misrepresentation' in accordance with CIDRA. So, I've now considered whether the information provided by Mr C amounts to a qualifying misrepresentation.

The next point I've looked at is whether the misrepresentation actually made a difference to Wakam. In other words, if the information Wakam received had been accurate, would they have offered the insurance policy at all or only on different terms - including whether they would've charged more.

Wakam say Mr C's property being within 400 metres of water is an unacceptable risk based on their underwriting criteria. And, had this been disclosed by Mr C when taking out his policy, they wouldn't have offered a policy. Wakam have provided our service with their underwriting criteria and, having reviewed this, it shows they wouldn't have provided cover had Mr C disclosed that his property was within a 400 metre distance of water. I say this because the circumstances of Mr C's case, when compared against the underwriting criteria, shows that Wakam wouldn't have made an offer of insurance.

So, taking this information into account, I think Mr C has made a qualifying misrepresentation. I can see Wakam believe the qualifying misrepresentation was deliberate or reckless, but I don't agree with this. When Mr C challenged Wakam's decision to void his policy, he said, "*However, I was not aware of this [property being located within 400 metres of water] as there is no direct route to the pool. The park in which the pool is is at a higher level than the road where my house is (there is a steep bank) and cannot be seen from my house. To get to it, one has to walk around the roads...[Mr C describes three roads]...which journey is much longer than 400 metres. It therefore never occurred to me that the property*

was near water and I had no reason to think it was without looking at a map. I therefore do not believe that my failure to mention this in my proposal was deliberate or reckless."

Mr C has provided an aerial view of his immediate area and marked the route he would need to take to get to the water – and this supports the description Mr C provided to Wakam. For Wakam to treat the qualifying misrepresentation as deliberate or reckless, one of the parts of the test require Wakam to show Mr C knew the information he provided was untrue or misleading or didn't care whether it was untrue or misleading. And I'm not persuaded Wakam have demonstrated this. I'm more persuaded by Mr C's account about the route he would need to take to get to the water – and how this demonstrates he didn't make a qualifying misrepresentation knowing his answer was untrue or misleading or didn't care whether it was. So, if the qualifying misrepresentation wasn't deliberate or reckless, Wakam should treat it as careless.

Wakam have provided evidence which shows they wouldn't have offered a policy. So, I don't think they have acted unreasonably in voiding Mr C's policy from the inception date. And, given that's the case, CIDRA allows Wakam to refuse any claim and return any premiums paid where the qualifying misrepresentation is deemed careless. Wakam retained the premium paid by Mr C based on how they treated the qualifying misrepresentation. But given that I believe it should've been treated as careless, Wakam should return the premium paid to Mr C, and also add 8% simple interest per year on this amount. Wakam should also correct any records to show the qualifying misrepresentation as careless.

I understand Mr C will be disappointed, and I am very sorry to hear about the impact the burglary had on him and the resulting impact following Wakam's decision to void his policy. But for the reasons I've mentioned above, I can't say Wakam have acted unfairly in voiding his policy and declining to deal with his claim. I wish to reassure Mr C I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Putting things right

I've taken the view that Wakam have unfairly treated Mr C's qualifying misrepresentation as deliberate or reckless and should instead have treated it as careless. So, Wakam should record this as a careless misrepresentation. Wakam should also refund Mr C any premium paid together with 8% simple interest per year on this amount from the date they voided the policy to the date they make payment. Wakam should provide Mr C with a certificate showing any taxation deducted.

My final decision

My final decision is that I uphold the complaint. Wakam must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 July 2024.

Paviter Dhaddy
Ombudsman