

## **The complaint**

Mr D and Miss H complain that Wakam proportionately settled their claim. Wakam said Mr D and Miss H misrepresented information when they applied for a home and buildings insurance policy with it.

## **What happened**

Mr D and Miss H took out a home and buildings insurance policy with Wakam.

They made a claim for flood damage to their home, which Wakam accepted. But it discovered that Mr D hadn't disclosed a previous claim he'd made. This meant that the premium they had paid was less than it should have been, and the number of years No Claims Discount (NCD) they had declared was lower due to the claim.

Wakam said it would pay a proportionate cash settlement for the claim to reflect the difference in premium as a percentage that Mr D and Miss H should have paid for cover.

Mr D and Miss H complained to Wakam. But it said its decision was correct. So Mr D and Miss H brought their complaint to us.

One of our Investigators didn't recommend the complaint should be upheld. They thought Wakam had acted reasonably .

Mr D doesn't agree with the Investigator and has asked for an ombudsman's decision. He says while he accepts he misrepresented information about a previous claim, he doesn't agree the outcome is fair. Mr D wants the option to pay the difference in premium and for Wakam to settle his claim in full. He feels Wakam should separate the buildings element from the contents element – as he didn't disclose a previous contents claim. He doesn't believe the misrepresentation should affect the buildings part of his claim – only the contents part.

## **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.

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 says Mr D and Miss H failed to take reasonable care not to make a misrepresentation when they answered the following question:

*“How many claims have been made by the people covered on this policy in the past 5 years, which could have been covered under this policy?”*

Wakam also advised:

*“How many claims?”*

*Claims should be declared even if they were declined by the insurer Claims made on the contents or gadget portions of travel or home insurance policies, or on tenants liability insurance should also be declared.”*

Mr D and Miss H answered “None”.

However, Mr D had made a previous claim for a damaged TV within the past five years.

When Wakam asked Mr D about this, he said he had forgotten.

Wakam asked how many NCD years Mr D and Miss H had, which they answered; “*nine years*”. But this was incorrect due to the previous claim. The correct number of NCD years was two.

I think Wakam asked clear questions and Mr D failed to take reasonable care when answering it.

Wakam has provided its underwriting evidence to show that if it had known the correct information, it would have charged a higher premium. Wakam has shown that the premium would have been 29% higher.

This means I’m satisfied the misrepresentation was a qualifying one.

Wakam has said Mr D’s misrepresentation was careless. I don’t find the misrepresentation was deliberate or reckless. If deliberate or reckless, even if an insurer could offer cover, it is entitled to decline a claim and keep the premium paid. So by classifying the misrepresentation as careless, this is the most favourable outcome for Mr D and Miss H, and I agree this is fair.

As I’m satisfied Mr D’s misrepresentation should be treated as careless, I’ve looked at the actions Wakam can take in accordance with CIDRA.

Wakam has agreed to pay a proportionate settlement. I understand Mr D doesn’t believe this is a fair outcome. He says the re-building costs will be tens of thousands of pounds. So a deduction from the settlement taken will have a severe financial impact on him and Miss H.

But Wakam has reached its decision in line with CIDRA. Where a claim has been made and an insurer would have charged more, it is entitled to pay a proportionate settlement. So I can’t say Wakam has acted unreasonably in agreeing to pay 71% of the claim. This means I’m not asking Wakam to remove the proportionate element from the settlement.

Mr D has raised other issues with this service. As our Investigator explained, Mr D will need to first raise any new complaints with Wakam so that it has the opportunity to respond, If he remains unhappy, he and Miss H can bring any new complaint to us.

### **My final decision**

For the reasons set out above, I've decided not to uphold Mr D and Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Miss H to accept or reject my decision before 29 December 2024.

Geraldine Newbold  
**Ombudsman**