

The complaint

Mr S complains about Wakam avoiding his home insurance policy for failing to disclose a County Court Judgement (CCJ).

Any reference to Wakam in this decision includes their agents. Wakam was the insurer of the policy Mr S took out through a comparison website, arranged by an insurance intermediary (G).

This decision covers Mr S's complaint to this Service in June 2024 about the actions of Wakam in avoiding his policy from inception and declining a claim he made for damage to his property from an escape of water in January 2024. It doesn't cover the actions of G, which are included only as context for what happened in this case.

Mr S made a second claim later in January 2024 for damage to the rough casting of his property during bad weather. Following a visit from a surveyor appointed by Wakam, Mr S was advised the second claim wouldn't be accepted as the casting wasn't damaged by the bad weather. Mr S accepted this as he thought the casting was probably already weak. So, his complaint only included the decline of the claim for damage from the escape of water. So, this decision doesn't consider the decline of the second claim.

What happened

Mr S took out a home insurance policy online with Wakam through a comparison website in May 2023. In January 2024 Mr S contacted Wakam to say there was an escape of water at his property, from a burst pipe. Wakam appointed a loss adjuster (LA) to inspect the property and assess the damage. LA visited the property the following month and after taking pictures of the damage, asked Mr S whether he had ever had any County Court Judgements (CCJ) made against him.

Mr S replied that he had, some eight years previously. Mr S said LA told him he'd answered 'no' on this question when taking out his policy. Mr S said he wasn't asked the question when he took out the policy through the comparison website. LA said they would need to refer the matter to Wakam, as the policy underwriter.

Following the visit, Mr S was asked if he had any details about the CCJ, to which he replied he didn't, given the length of time involved (he thought record of the CCJ would have been removed after six years).

G, on behalf of Wakam, then wrote to Mr S in April 2024 to say they'd considered the claim in conjunction with the policy documentation. Prior to the policy being taken out, they said Mr S was asked to respond 'yes' or 'no' to a question that he had never had a CCJ issued against him. To which he answered 'yes'. G referred to the Statement of Fact document issued with the policy which contained this information. But following investigation, it had been found Mr S had a CCJ.

G said in answering the question incorrectly, Mr S made a misrepresentation under the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). They considered

the misrepresentation to be reckless and/or deliberate. Had Wakam been provided with the information about the CCJ they would not have offered cover under the policy. In light of this, Wakam said they would exercise their right to avoid the policy from inception with no refund of premium. They would also decline Mr S's claim for the damage from the escape of water.

Mr S challenged Wakam's decision. He didn't think he'd been asked the question about CCJ G said he had when taking out the policy through the comparison website (he'd gone back to the website and filled in his details again, but the question referred to by G wasn't asked. He mentioned the previous CCJ without hesitation when asked by LA. Had he been trying to conceal the CCJ, he wouldn't have disclosed it to LA.

G maintained the question appeared on the Statement of Fact document and the answer to the question would have been populated by the information Mr G provided during the quote process. The Statement of Fact document was sent to Mr S after the policy was taken out, so he would have had the opportunity to see the question and the answer recorded. G also said Mr S was reminded of the need to read the Statement of Fact and check all the information was true, complete and accurate.

Mr S then complained to this Service in June 2024. He maintained he'd answered questions asked truthfully when taking out the policy through the comparison website. And he hadn't made a misrepresentation. While accepting he should have checked the Statement of Fact, the question recorded on the Statement of Fact wasn't the one asked on the comparison website, the latter was what should have been recorded on the Statement of Fact. As a consequence of having his policy avoided and claim declined, he was left with damage to his property he couldn't afford to repair and without cover. He wanted Wakam to accept his claim and remove record of the policy avoidance, which he'd otherwise have to declare when looking to take out insurance in the future, making it more difficult to obtain cover.

As Mr S complained to this Service before Wakam considered his concerns formally as a complaint, we asked them to respond to Mr S. Wakam didn't provide a final response, but provided its business file on the case.

Our investigator initially didn't uphold the complaint, but following consideration of further representations from Mr S, issued a second view in which she upheld the complaint. She looked at the question Mr S was asked when he took out the policy through a comparison website. Wakam said some of the information and details Mr S provided to the comparison website would have been pulled through to their website, but the eligibility questions weren't. On the former, Mr S was asked to confirm he didn't have any CCJs, by answering true or false. Mr S had a CCJ some eight years previously, but this would have been removed after six years. So, the investigator thought it was reasonable for him to answer to the effect he didn't have a CCJ at the point he took out the policy.

If Wakam had intended him to answer a different question when transferred to their website (whether he had ever had a CCJ) they should have made it clear when he was transferred. Mr S hadn't realised the two questions were different on the Statement of Fact and there was no indication Wakam was looking for different information.. So, the investigator concluded Mr S hadn't breached the duty of care not to make a misrepresentation and therefore hadn't made a misrepresentation. In turn, this meant Wakam had acted unfairly (and not in line with CIDRA) in avoiding his policy, retaining the premiums and declining his claim.

To put things right, the investigator thought Wakam should reinstate Mr S's policy and reconsider his claim in line with the remaining policy terms and conditions. Wakam should also remove any record of the misrepresentation from internal and external databases and pay Mr S £200 compensation for distress and inconvenience.

Wakam disagreed with the investigator's view and requested that an Ombudsman review the complaint. They said the Statement of Fact was clear in the question about whether Mr S ever had a court judgement issued against him, including any CCJs. He was asked to check the Statement of Fact and be sure it was accurate. It didn't matter that the CCJ was removed after six years, as the Statement of Fact included a statement about whether Mr S had **ever** had a CCJ. Wakam also questioned whether the comparison website question had been answered correctly, as Mr S still had a CCJ made against him, even if it had been removed from the public register after six years. If he had been unsure, he could have contacted them to clarify the position, either before or after the policy was taken out – but he didn't do so.

Wakam added they wouldn't be able to reinstate the policy, as the investigator had recommended (should the ombudsman reach the same conclusion) as G were no longer selling or renewing Wakam policies. So Wakam wouldn't be able to put Mr S back on risk and reinstate cover. But they could update their records to show the policy was valid for the original policy term (again, should the ombudsman reach the same conclusion).

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.

My role here is to decide if Wakam have acted fairly towards Mr S.

Having reviewed the evidence I think Wakam haven't acted fairly and reasonably, so they need to put things right. My findings and conclusions explain why I've come to this decision. I've focused my comments on what I think is relevant. If I haven't commented on any specific point it's because I don't believe it's affected what I think is the right outcome.

The key issue in Mr S's complaint is whether Wakam acted fairly in avoiding his policy because of the non-disclosure of the previous CCJ. As a consequence of avoiding the policy, Wakam also declined Mr S's claim for the damage caused by the escape of water at his property. Mr S says he wasn't asked about previous CCJs when taking out the policy through the comparison website and while accepting he should have checked the Statement of Fact document, he thinks it should have reflected the question he was asked through the comparison website. He says he didn't make a misrepresentation and was open and honest in declaring the CCJ to LA when asked.

Wakam say they wouldn't have provided cover because of the previous CCJ under their underwriting criteria. They also say the question Mr S would have been asked when he took out the policy would have mirrored that in the Statement of Fact document, which he should have checked for accuracy and completeness. So, he made a misrepresentation (which they consider to be deliberate and/or reckless) to which they were entitled to avoid his policy from inception, retain the premium and decline his claim.

Looking at the case, I think the key lies on the questions Mr S was asked when he took out the policy, in the first instance through the comparison website. But then recorded in the policy documents, specifically the Statement of Fact document.

What isn't disputed is that Mr S had a CCJ made against him, which he recalls was some eight years before taking out the policy. He believes record of the CCJ would have been removed from the public register after six years. Mr S says he was asked about CCJs by LA during their visit. Looking at LA's report it does refer to Mr S confirming he had never been declared bankrupt or have any unspent criminal convictions. But he did confirm the CCJ and the details from what he could recall (a disputed energy bill). LA's report notes this wasn't declared at policy inception, but say they consider it wasn't a deliberate or reckless

misrepresentation and Mr S didn't disclose it because he considered it was 'spent'. LA say they reminded Mr S the questionnaire completed at policy inception required a policyholder to confirm they never had a CCJ, regardless of its current status.

Wakam point to the Statement of Fact within the policy document issued to Mr S when he took out the policy. It includes the following statement, under a heading *We asked you*:

"You have never been made bankrupt or insolvent, been subject to an individual voluntary arrangement, or ever had a court judgement issued against you, including any County Court Judgement."

Under a heading *You answered* next to the statement the answer recorded is 'Yes'. Under the title of the Statement there's a section that says:

"You must read this Statement of fact carefully and check that all of the information is true, complete and accurate. Please note that some of the information may have been assumed by us."

"If any of the information in the Statement of Fact is false, incomplete or inaccurate, you must let us know before cover starts..."

While the Statement of Fact is clear about a policyholder never having a court judgement, including a CCJ, Mr S maintains this wasn't the question he was asked when he took out the policy through the comparison website. From screenshots of the journey Mr S would have followed, the question he was asked about CCJs (on the G platform from the comparison website) was:

"I have no county court judgements"

To which a 'true' or 'false' answer was requested.

This question isn't the same as the wording of the Statement of Fact. Mr S says he wasn't asked about CCJs, but even given the screenshot question above does ask about CCJs, it isn't specific or clear it refers to any CCJs ever having been made against a policyholder. It refers to a policyholder 'having' (have) a CCJ. At best that's ambiguous and I think it could reasonably be interpreted to mean any **current** CCJs. That is, those still recorded as such. Mr S says his CCJ was some eight years previous and would no longer be recorded after six years. In effect, it would be the equivalent of a 'spent' conviction.

I've considered this point carefully, taking account of the views of Mr S and Wakam. On balance, I've concluded it was reasonable for Mr S to have interpreted the comparison website (G) question to mean only current CCJs need be disclosed, not those no longer recorded (I think 'have' can reasonably be interpreted as present tense in meaning, so only current CCJs, not historical ones no longer recorded). So, I've concluded he answered the question accurately.

I also think it would have been reasonable for him to think the question he answered would be the same as that subsequently recorded on the Statement of Fact document. Whereas it was different. Wakam acknowledge the difference between the two, but say they use slightly different, but equivalent language. I don't agree, I think the two are significantly different, for the reasons I've set out.

I accept the questions asked on some comparison websites (and, as in this case, on G's platform) can differ from those an insurer may ask or require to be answered. I think Wakam should have known this and made it clear to Mr S they wanted different information about

CCJs (all CCJs, not just current ones). While the question about all CCJs was in the Statement of Fact, the difference to the question asked of Mr S wasn't clearly drawn out.

Given this, I've concluded Mr S didn't make a misrepresentation when he took out the policy through the comparison website (either careless, deliberate or reckless). That being the case, then it follows Wakam couldn't use the remedies under CIDRA for a qualifying misrepresentation. So, I've concluded they acted unfairly and unreasonably in avoiding the policy from inception and retaining the premium paid.

Having reached this conclusion, then as Wakam unfairly avoided his policy from inception, then I've also concluded they unfairly declined his claim for the damage caused by the escape of water.

I've then considered what I think Wakam need to do to put things right.

Wakam say they wouldn't be able to reinstate the policy, as G are no longer selling or renewing Wakam policies. So they couldn't put Mr S back on risk and reinstate cover, but they could update their records to show the policy was valid for the original policy term.

While I accept Wakam may not be able to reinstate the policy on an ongoing basis, it wouldn't preclude them – as they say - treating the policy as being valid for the policy term (May 2023 to May 2024). That being the case, Wakam should re-assess Mr S's claim for the damage from the escape of water in January 2024, in line with the policy terms and conditions that would have applied during the policy term.

As I've concluded Wakam acted unfairly in avoiding Mr S's policy, then they should also remove any record of the avoidance from internal and external databases.

I've also considered the impact of what has happened on Mr S, including the distress and inconvenience of having his policy avoided and his claim declined. Considering the circumstances of this case and the published guidance from this Service on awards for distress and inconvenience, then I think £200 compensation for distress and inconvenience would be fair and reasonable.

My final decision

For the reasons set out above, my final decision is that I uphold Mr S's complaint. I require Wakam to:

- Re-assess Mr S's claim for damage from the escape of water in line with the policy terms and conditions.
- Remove any record of the policy avoidance from internal and external databases.
- Pay Mr S £200 compensation for distress and inconvenience.

Wakam must pay the compensation within 28 days of the date we tell them Mr S accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 January 2025.

Paul King
Ombudsman