

The complaint

Mr M complains that Wakam have avoided his policy, retained his premiums and refused his claim for fire damage to his shed as they say they failed to declare his claims history, failed to declare building work, and exaggerated his claim.

What happened

Mr M took out a buildings and contents insurance policy online through a price comparison website with Wakam in February 2022. It auto renewed in February 2023.

In May 2023 Mr M had a fire in his garden shed which spread to his neighbours' sheds. The fire report shows it was accidental.

Wakam's surveyor advised Mr M to get the report from the fire brigade on the cause of the fire, which cost £114.

Wakam initially avoided the policy as they said that Mr M had failed to declare two previous claims at policy inception in February 2022. However, this decision was later overturned, as they discovered there was only one previous claim, and so they agreed to settle the claim proportionately.

However, following completion of further checks, Wakam then said that Mr M had failed to tell them that he had completed en-suite bathroom renovations in September 2022, and so they were declining the claim and avoiding Mr M's policy from September 2022. They were not returning the premiums. They also said that he had exaggerated his claim. Mr M complained.

In their final response, Wakam said that Mr M hadn't told them about building work at his property, and that they had concerns that he was overclaiming.

Mr M brought his complaint to us.

One of our investigators has looked into Mr M's complaint and she initially thought that the complaint shouldn't be upheld as there had been a qualifying misrepresentation and that Wakam was entitled to avoid the policy. She later issued a revised view saying that Wakam were entitled to cancel the policy but not avoid it, but they should return the premiums.

Mr M disagreed with our investigators view and asked for an ombudsman's decision so the case has come to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows: Having considered all the evidence, I'm partially upholding this complaint but with a different outcome to the investigator, and I will 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.

There are three issues in this case two of which concern alleged misrepresentations, and the latter relates to exaggeration of the claim. I will deal with each separately, and how it affects Mr M's policy and claim.

Initial voidance and offer to settle the claim proportionately

When Mr M initially made his claim in May 2023, Wakam first declined the claim and avoided the policy because they said they had discovered that Mr M had misrepresented his circumstances – and hadn't declared two previous claims when he took out the policy.

Wakam later discovered that there was only one previous claim, - which was an escape of water in December 2017 – and so they changed their decision. Mr M said that he had overlooked the claim thinking it was outside the five year period, and so Wakam said that this was a careless misrepresentation and agreed to proceed with the claim but to settle it proportionately.

This approach wasn't completely right.

This alleged misrepresentation occurred at inception of the first year of the policy in February 2022. Had the claim been made in that year, Wakam may have been entitled to settle proportionately depending on the outcome following CIDRA.

However, as the claim was in the second year, we need to look at the position at renewal. When a consumer renews a policy they take out a new consumer contract, and they are under a duty not to misrepresent again. By the time the renewal took place in February 2023, the claim from December 2017 for the escape of water was no longer within the last five years, and so the information provided, and confirmed by Mr M at renewal in relation to previous claims was correct, and so as there had been no claims in the previous five years, there was no misrepresentation in that respect.

Second avoidance of the policy because of building work.

The second avoidance decision by Wakam is because they say that Mr M failed to tell them that he was having building work completed. They found out during the claim process that the building work had taken place and they said that as he hadn't told them about this, it was a misrepresentation and they avoided the policy. Initially they said that the renovations had been completed in September 2022 and so they were avoiding the policy back to September 2022.

However, again this approach isn't completely right.

A misrepresentation can only occur at policy inception, at renewal, or if a customer contacts an insurer in between, and gives false information – so a failure to inform Wakam that

building work was taking place isn't capable of being a misrepresentation under CIDRA if it takes place mid-term. And so they aren't entitled to avoid the policy back to September 2022 as there can have been no misrepresentation in September 2022. As it happens, the evidence suggests the building work actually took place between May – July 2023 in any event and so I have reconsidered how this affects the policy year commencing February 2023, because if a question was asked at renewal about any planned works, and it was answered no, that may be capable of being a misrepresentation.

The renewal email that Mr M was sent said:

"It's important to keep your information up to date. If you need to check information or make any changes to your policy, then you can do so in the "My account" section of the website. By allowing the renewal of this product, you continue to agree to our terms and conditions."

In the policy booklet at page 3 it says:

"The statement of facts sets out what you have told us about yourself and the other people living at your home and about the home itself, when you were purchasing this insurance."

"We are providing cover on the basis of the information that you provided, so please check that the answers that you provided are true, complete and up to date. You must notify us immediately if any of the information in the policy schedule and statement of facts is incorrect"

In the statement of facts at page 10 it says:

"The home insured on the policy is currently in a good state of repair, free from damage or defect and is not currently undergoing any building work, and none is planned during the period of insurance"

The response pre populated says "This is true"

Mr M has provided us with evidence that the renovations were a loft conversion to provide a bathroom, bedroom and dormer windows and staircase. He has told us that planning was sought in November 2022 and granted in January 2023 and work took place between May - July 2023 and cost £44,000. He has provided evidence of one payment being made in May 2023. I have checked the planning application dates on the local authority portal and can also see from the photograph of the front of the property in Wakam's report that the loft conversion was completed by the date of their visit on 13 July 2023.

So, as planning wasn't granted until January 2023, I'm satisfied that at the time of policy renewal in February, no building work was actually taking place. But I think it's fair to say it was anticipated given that Mr M had sought planning permission which had just been granted prior to renewal.

And so I'm satisfied that in February 2023, Mr M didn't take reasonable care when checking his renewal documents. If he had done so, he would have known that he needed to let Wakam know about the proposed works.

Wakam have provided us with a copy of their underwriting criteria which shows that if they had known there was building work planned then they would not have offered cover for the year commencing February 2023. They have also confirmed that they would not have offered cover up until the point work started.

This means I'm satisfied that Mr M's misrepresentation here was a qualifying one. Wakam have said they will not be returning Mr M's premiums which implies that they consider this to be a deliberate or reckless misrepresentation. However, they haven't provided any evidence to support this, and I don't agree. I consider that Mr M wasn't diligent in his reading of the renewal documents, and so failed to update Wakam in accordance with their request, but I think this was careless rather than deliberate or reckless.

As I'm satisfied that Mr M's misrepresentation should be treated as careless, I've looked at the actions Wakam can take in accordance with CIDRA. They have provided evidence that they wouldn't have offered cover, and so I'm satisfied that Wakam was entitled to avoid Mr M's policy from renewal on 18 February 2023 in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Wakam does not have to deal with his claim following the fire at his property, but they will need to return the premiums to him in line with CIDRA's approach to careless misrepresentation

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Wakam to rely on it to avoid Mr M's policy produces the fair and reasonable outcome in this complaint.

Exaggerating the claim

As I have already decided above that Wakam are entitled to avoid the policy from 18 February 2023, and don't therefore need to consider the claim, I haven't considered this issue further.

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.

Wakam have accepted my decision without further comments, but Mr M hasn't responded. As Mr M hasn't made any further comment, I am making my final decision in line with the provisional findings above.

Putting things right

In order to put things right Wakam need to:

- Amend their records and CUE to reflect that the policy was voided from 18 February 2023, not September 2022
- Return Mr M's premiums to him for the policy year 2023 - 2024

My final decision

My final decision is I am upholding Mr M's complaint about Wakam and directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 January 2025.

Joanne Ward
Ombudsman