

The complaint

Mr E and Miss M complain that when their home was burgled and they made a claim on their household buildings and contents policy Wakam declined the claim and voided their policy from inception.

What happened

Mr E and Miss M had household buildings and contents insurance with Wakam. On 12 November 2023 their home was burgled while they were out. They submitted a claim to Wakam in respect of the damage caused by the burglars and for their stolen items.

On 13 February 2024 Wakam wrote to Mr E and Miss M advising them that during their investigations to validate the claim they'd established that they were significantly under insured. When they'd discussed this with Mr E Wakam said he told them that when taking out the policy he'd only selected enough cover for the items that were important to them, rather than cover for all their contents. So they said he knew they were under insured.

Wakam said that under the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA) it was Mr E and Miss M's responsibility to ensure they provided the relevant information they were asked for when purchasing the policy. And they considered that the information Mr E and Miss M had provided about the value of their contents was a deliberate or reckless misrepresentation. So they were voiding their policy from inception without refunding any premiums and they wouldn't be considering their claim.

Mr E and Miss M raised a complaint which Wakam responded to on 19 March 2024. In this they said that during the validation process their claims handlers had established that Mr E and Miss M's contents had a combined value of £47,900, when they'd chosen cover of £20,000. So they were only insured for 42% of the total value of their contents.

Wakam said they'd written to Mr E and Miss M on 13 February 2024 notifying them that their policy was being voided for misrepresentation and their claim wouldn't be considered. They also said that when they raised their complaint Mr E and Miss M had said they were unhappy that they'd been asked to provide duplicate evidence of ownership of their items, evidence of paying UK tax, and they were asked to complete a Value-at-risk (VAR) form. They also said they felt Wakam's claims handlers were biased against them.

Wakam responded saying that their policy terms and conditions required Mr E and Miss M to prove any loss and provide evidence of the value of their items. If an item had been purchased abroad they needed to provide evidence that UK tax has been paid. And they'd agreed to these terms when taking out their policy.

During the online quote process, when selecting their contents cover level, Wakam said Mr E and Miss M were asked to pick the full replacement value of "everything they keep at home, as being underinsured could affect claims." And they would have seen a pop-up box with a definition of full replacement value. This said "this means the total amount it would cost to replace all of your contents." There was also a warning that if they made a claim and their contents were worth more than the level of cover they'd selected "any claim may be

proportionally reduced.”

Wakam said Mr E and Miss M had been asked to complete a VAR form to show an inventory of all the items in their home and their value. And they said consumers were asked to provide full details of their contents and their value so they could decide whether to accept the risk and price the policy accordingly. And that someone who had £50,000 of contents but was prepared to accept £20,000 is a very different risk profile to someone who only has £20,000 of contents.

Mr E and Miss M had told Wakam they selected the level of cover for the “items that were important to them.” Wakam said this showed they knew that they were underinsured. Which they were treating as a reckless and/or deliberate misrepresentation under CIDRA.

Wakam also said the Mr E and Miss M’s policy stated that their policy document outlined that they had the right to reject their claim and void their policy with no refund of premium if they established that they deliberately or recklessly provided inaccurate or incomplete information. So they said they considered their decision to void the policy was correct and they didn’t uphold the complaint.

Mr E and Miss M then complained to our service. Our investigator considered the case and didn’t think Wakam had acted fairly so he upheld the complaint.

He said that he didn’t think CIDRA applied to the case and the policy shouldn’t have been voided, so he said Wakam should reinstate the policy and consider the claim under the remaining terms.

He said Wakam voided the policy because they said that Mr E and Miss M were reckless in the information they provided when purchasing it. But our investigator didn’t think they were asked a clear question about the level of cover they required. Instead they would have seen the following statement, “Make sure you pick the full replacement value of everything you keep at home.” He said this wasn’t a question that could be answered with a simple yes or no. And he said it’s unreasonable to assume customers will know the full replacement value of everything they keep at home.

Our investigator said that CIDRA doesn’t apply when the customer has given a statement of opinion. He said that the full replacement value of everything at home can vary depending on who’s assessing it, and for that reason he felt Wakam acted unfairly in relying on CIDRA to void the policy.

He also said that Wakam had provided underwriting criteria which showed that they’d have provided cover for Mr E and Miss M’s contents if they’d said their contents were valued at £47,900, at a minimally increased premium. So he felt it was fair for Wakam to settle their claim proportionally. He said Wakam should calculate the premium they’d have charged for contents valued at £47,900, and then use this figure to calculate the percentage difference between this and the premium Mr E and Miss M paid. This percentage difference should be the amount Wakam pay in settlement of the claim.

As part of the claims process Wakam asked Mr E and Miss M to provide evidence that they’d paid UK tax on certain items. Mr E and Miss M didn’t think tax was payable as these were personal items purchased when living outside the UK.

Our investigator didn’t think Wakam had acted fairly as our approach to import tax is that it should be paid if required. So he said Wakam would need to show what duty was required to be paid, on what items, and if none was paid that Mr E and Miss M did this deliberately. Wakam hadn’t provided any evidence which showed that duty should have been paid and

hadn't been. Mr E and Miss M have said that they'd provided evidence that the items were purchased and photographs of them. So our investigator said indemnity should be provided.

Our investigator said the Wakam should also pay Mr E and Miss M £100 compensation for the distress and inconvenience caused by how their claim had been handled.

Mr E and Miss M accepted our investigator's opinion but Wakam didn't. They don't accept our investigator's view that CIDRA doesn't apply in this case. And they said that Mr E and Miss M's policy states that if an item was purchased abroad they had to provide evidence that the appropriate UK tax had been paid, it wasn't for them to show it hadn't been.

The case has now 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.

When entering into an insurance contract consumers have a duty to take reasonable care not to make a misrepresentation to the insurer. When applying for or renewing a policy the insurer uses the information provided by the consumer to weigh up the risk of providing cover in this case for Mr E and Miss M's home and contents.

Wakam have a remedy against Mr E and Miss M under CIDRA if there's been a misrepresentation, and it's a 'qualifying' misrepresentation.

If in choosing their level of contents cover Mr E and Miss M were simply expressing an opinion and giving an estimate of the value of their contents, then this wouldn't normally be treated as misrepresentation.

Wakam say that the VAR form Mr E and Miss M completed showed that their contents had a combined value of £47,900. And when asked about this Mr E told them he'd based the level of cover he'd sought on the items that were important to them, and which they'd replace if they needed to. Wakam say that the level of cover Mr E and Miss M selected was a misrepresentation as Mr E's response to them showed he knew their contents were worth much more than £20,000.

When selecting their level of contents cover Wakam have confirmed that Mr E and Miss M would have seen a pop-up which gave a definition of full replacement value. This said "This means the total amount it would cost to replace all of your contents. In the event of a claim, if it is discovered that your contents are worth more than the cover level you have selected, any claim settlement may be proportionally reduced."

And Wakam have also shown us that when Mr E and Miss M selected contents cover they'd have seen a definition of what was covered by home contents cover, a reminder to make sure the full value of their contents didn't exceed the level of cover they'd chosen, and a reminder that if they didn't select the appropriate level of cover, they were at risk of being under insured and if a claim was made this could be refused or proportionally settled. And when they selected £20,000 contents cover they'd have seen a further reminder of what contents cover insures, and that they should pick the full replacement value of everything they have at home.

I think in selecting the value of their contents as £20,000 Mr E and Miss M were giving a statement of opinion, albeit this was based on what cover they thought was sufficient for the items that were important to them. But in any event, when taking out their cover they weren't

asked a clear question such as “What is the value of all your home contents?”, with guidance on what this meant, how to calculate this, or what this should be based on – for example, the value of the items new, or the value of the items in their current condition, or new minus wear and tear.

And there is unlikely to be an exact answer which could be given which was factually correct in any event, as the value would vary depending on who was appraising the items, even with guidance on how to reach a valuation. So I don’t think CIDRA applies in this case as Mr E and Miss M weren’t provided with a clear question or guidance, so they were required to give an opinion.

Wakam have provided evidence to show that they would still have insured Mr E and Miss M for contents valued at £47,900 but at a slightly higher premium than they paid. So I’m persuaded that they shouldn’t have voided the policy, and they should have agreed to cover the claim, but reduced proportionately the amount to be paid, which is what the policy terms and conditions say may happen in the event of underinsurance.

Mr E and Miss M have said they only wanted cover for the items that were important to them, so I don’t think that despite the reminders they’d have seen regarding choosing cover for all their contents, there was a deliberate attempt to mislead Wakam. And they weren’t asked “What is the value of all your home contents?” (With guidance on what this meant or how to calculate it). Which would have been a clear question.

As part of their claim Wakam required Mr E and Miss M to provide evidence that they paid UK tax on certain items they claimed for. Mr E and Miss M have told us that they were living and working outside the UK and these items were purchased for their personal use during this time. On this basis they believe that these items weren’t subject to tax when they moved to the UK.

They might have been required to pay tax and customs duty when moving personal belongings to the UK from abroad. But they may have been entitled to relief on any tax or duty payable. So Wakam should accept the evidence Mr E and Miss M provide that either they paid the appropriate tax or duty due or an exemption applied.

Before issuing this decision I asked our investigator to contact the parties and let them know that I intended to reach the same outcome as he had. But I also intended to award 8% interest on the payment due to Mr E and Miss M from Wakam and to increase the compensation for distress and inconvenience to £250.

Mr E and Miss M have responded confirming that they are happy with this. Wakam have responded saying they strongly disagree that CIDRA doesn’t apply to this case.

I’ve explained above why I think CIDRA doesn’t apply to this case. But I think it’s helpful if I say that even if I felt CIDRA did apply, I’d still have reached the same outcome. Having said that CIDRA applied to the case Wakam have treated Mr E and Miss M’s selection of contents cover of £20,000 as a deliberate or reckless misrepresentation.

Under CIDRA a misrepresentation is a ‘Qualifying Misrepresentation’ if the consumer a) made the misrepresentation in breach of the duty to take reasonable care and b) the insurer shows that without the misrepresentation, they’d not have entered into the contract at all, or would only have done so on different terms.

In this case Wakam would still have insured Mr E and Miss M but at a slightly higher premium than they paid. So if CIDRA applied and there was a qualifying misrepresentation, I don’t think it would have been fair and reasonable for Wakam to have treated this as

deliberate or reckless.

Mr E and Miss M have said they only wanted cover for the items that were important to them, so I don't think that, despite the reminders they'd have seen regarding choosing cover for all for their contents, there was a deliberate attempt to mislead Wakam. And they weren't asked 'What is the value of all your home contents?' Which would have been a clear question.

So if CIDRA applied I think any misrepresentation would have been careless. From this it would follow that as Wakam would have offered Mr E and Miss M insurance on £49,700 of contents cover but would have charged a higher premium, then they should have agreed to cover their claim but have reduced proportionately the amount to be paid. So I'd still have said they shouldn't have voided Mr E and Miss M's policy.

I'm satisfied that Mr E and Miss M have experienced distress and inconvenience as a result of how their claim has been handled by Wakam and they should be compensated for this. And that this was more than the usual level of distress and inconvenience that would have arisen after a burglary. Taking everything into account I think the appropriate level of compensation is £250.

Putting things right

To put things right I require Wakam to do the following

- a) Reinstate Mr E and Miss M's policy and consider the claim under the remaining policy terms.
- b) Calculate the premium Mr E and Miss M would have been charged on £47,900 of contents cover. Then use this premium to calculate the percentage difference to the premium they actually paid and pay their claim proportionately based on this percentage.
- c) Pay simple interest at 8% on the value of their claim from one month after the date it was first submitted until the date of settlement.
- d) Pay £250 compensation for the distress and inconvenience Mr E and Miss M have experienced as a result of how their claim has been handled by Wakam.

My final decision

For the reasons set out above my final decision is that I uphold Mr E and Miss M's complaint about Wakam. And to put things right I require Wakam to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Miss M to accept or reject my decision before 31 December 2024.

Patricia O'Leary
Ombudsman