

The complaint

Miss H complains that Wakam unfairly cancelled her policy and limited a claim to a proportional settlement, under her home buildings insurance policy.

What happened

Miss H contacted Wakam to make a claim for an escape of water. Shortly afterwards it contacted her to say she'd made a claim to a different insurer within the last five years but hadn't declared this information. Miss H says her policy was cancelled and Wakam told her it will only consider paying 74% of her claim.

Miss H says that she'd contacted her previous insurer about an issue in October 2020 but didn't proceed with a claim. She says she didn't think she'd provided inaccurate information as she didn't think there had been a claim. Wakam didn't change its mind, so she complained.

In its final complaint response Wakam says it found a claim record on the Claims and Underwriting Exchange (CUE) after Miss H contacted it in June 2024. Because of this it wrote to her in July offering her the option to cancel her policy within 21 days, or it would. It says it will consider her claim proportionately reducing any settlement to 73.6% of the loss value. Wakam says this reflects the higher premium Miss H should've paid.

Wakam told Miss H that it viewed Miss H's non-disclosure as a careless misrepresentation. It says its policy terms allow it to cancel the policy and consider a proportional settlement in these circumstances.

Miss H didn't think she'd been treated fairly and referred the matter to our service. Our investigator upheld her complaint. She says that when the policy renewed in 2023 Miss H had taken reasonable care regarding the information supplied to Wakam. So, she didn't think it was fair to cancel the policy or reduce the amount of any settlement payment that was due. Our investigator says Wakam should also pay Miss H £350 for the distress and inconvenience it caused.

Wakam didn't accept our investigator's findings and asked for an ombudsman to consider the complaint.

It has been passed to me to decide.

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'm upholding Miss H's complaint. Let me explain.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA Miss H must take reasonable care not to make a

misrepresentation when taking out insurance. The test is that of a reasonable consumer. If Miss H doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, it would only provide cover under different terms, or it would only provide cover for a higher premium.

Miss H's policy with Wakam inceptioned in December 2022. Her policy was renewed in December 2023. It's this policy year that's relevant to her complaint. The renewal is essentially a new contract of insurance. What I need to consider is whether Wakam has shown that Miss H made a qualifying misrepresentation under CIDRA at the time of the renewal.

The policy renewal information, on page four, says cover is provided based on the information Miss H disclosed. It makes clear that she must notify Wakam immediately if anything is incorrect. Not doing so could result in the policy being considered invalid, claims rejected, and premiums retained. The document explains that false or misleading information can result in Wakam treating the policy as though it never existed, amendments can be made to the policy terms, it can reduce the amount it pays on a claim, and potentially cancel the policy.

Under the heading "*Policy Schedule & Statement of Fact*", on page eight, there's a box with the heading, "*Claims & Losses in the Last 5 years*". It says:

"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? Claims should be declared even if they were declined by the insurer.."

Next to this question the response provided is, "*none*".

I've thought carefully about whether Miss H took reasonable care not to make a misrepresentation when she didn't contact Wakam to amend this information.

Miss H doesn't dispute that she contacted her previous insurer about a leak in 2020. But she says nothing happened as a result of this. It hadn't been established that there had been an insured event. She says the insurer needed to know the cause of the damage. But no claim was pursued.

Miss H has a separate complaint about her previous insurer. The notes provided by the insurer from October 2020 are very limited. It says the cause of damage (COD) was unknown and that Miss H, "*will get COD*". The insurer confirms there was no further contact until after Miss H's dispute with Wakam in 2024.

I've seen the entry that the previous insurer added to the Claims and Underwriting Exchange (CUE) database. This refers to a claim for accidental damage on 18 October 2020 with no costs. So, there is no question that Miss H's previous insurer recorded a claim. But this doesn't mean she failed to take reasonable care at the time of her policy renewal with Wakam in 2023.

The question Wakam asked was how many claims have been made in the past five years, which could be covered under this policy. As far as Miss H was concerned the answer was none. She hadn't made a claim. She was told during the call she made that as no cause of damage had been established nothing further was to be done by her insurer. Miss H didn't contact the insurer again. She states that she arranged the repairs herself privately.

It's Wakam's role to determine whether a claim is covered under its policy terms. I don't think

Miss H can reasonably be expected to know if a claim could be covered. But in this case, as already mentioned, she didn't think a claim had been made. She was aware that she hadn't done anything to inform her insurer about a cause of the damage. And from what I've read her insurer hadn't declined a claim.

Having carefully considered all of this, I don't think Miss H acted unreasonably when she made no amendments to the renewal documents she received. This means she didn't make a misrepresentation under the CIDRA rules and none of the remedies can be applied.

Wakam says it relied on its policy terms as opposed to the CIDRA rules in this case. It says this provides the opportunity for it to cancel Miss H's policy in these circumstances.

I've read Miss H's policy terms. The cancellation section says it can cancel the contract of insurance if there are serious grounds to do so. This includes where Wakam establishes that Miss H has provided incorrect information. But for the reasons I've already explained, I don't think it's shown that it has grounds to cancel. I don't think Miss H failed to take reasonable care given the question she was asked, or that she gave inaccurate information. The policy can't be avoided under CIDRA in light of this, and I'm not persuaded that it's reasonable to cancel under the policy terms for the same reasons. To put this right Wakam should reinstate the policy and remove any cancellation records it added to any internal and external databases.

Under CIDRA if Miss H had made a careless qualifying misrepresentation, but Wakam would still have provided cover with a higher premium, then the business is entitled to proportionally reduce the amount it would pay on the claim. But as there is no qualifying misrepresentation this doesn't apply. So, Wakam must consider Miss H's claim and if it's accepted it must pay this in full. I note Miss H has already paid for the repairs. In the event that the claim is covered, it's fair that Wakam pays 8% simple interest from when Miss H paid for the work until this payment is made.

I've thought about the impact all of this has had on Miss H. She's explained that Wakam's cancellation marker meant she couldn't find affordable alternative insurance. This caused her a great deal of worry. She was also left to repair the damage to her property in the knowledge she may at best receive a reduced settlement. Miss H has been inconvenienced by the time and effort she's expended dealing with this matter. I acknowledge what she says about the impact it's had on her mental health. In these circumstances it's reasonable to expect Wakam to pay Miss H compensation. I agree with our investigator that £350 is fair.

In summary, I don't think Wakam treated Miss H fairly when it cancelled her policy and said it would only consider her claim on a proportional settlement basis. To put this right, it should reinstate her policy, remove any cancellation markers, consider her claim without using a proportional settlement approach, pay 8% simple interest on any delayed settlement, and pay Miss H £350 compensation.

My final decision

My final decision is that I uphold this complaint. Wakam should:

- reinstate the policy removing cancellation markers from both internal and external databases;
- reconsider Miss H's claim under the remaining policy terms without applying a proportional settlement. If a settlement is made to refund Miss H's repair costs Wakam should pay 8% simple interest* on this amount from the date she paid for the repairs until the refund is provided;
- pay Miss H £350 compensation for the distress and inconvenience it caused her.

**If Wakam considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss H how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 March 2025.

Mike Waldron
Ombudsman