

The complaint

Mr A is unhappy that (“Wakam”) voided his home insurance policy and refused to pay his claim.

Mr A had a buildings and contents insurance policy, including home emergency, underwritten by Wakam. When I refer to what Mr A has said and what Wakam has said, it also includes anything said on their behalf.

What happened

Both parties are familiar with the background to this complaint, so I’ve summarised what I think are the key events.

Mr A took out a buildings and contents insurance policy using a price comparison website. The policy came into effect in August 2022. In July 2023, Mr A claimed under his policy when his kitchen hob stopped working. Wakam looked into his claims history on the claims database (CUE) and found evidence of seven claims within the last five years. When Mr A took out his policy, he’d declared just one claim in the previous five years.

Wakam told Mr A that if he had declared all of the claims when he applied for insurance, it wouldn’t have offered him a policy. It considered this to be a reckless qualifying misrepresentation, which entitled Wakam to avoid the policy, keep the premium, and decline his claim.

Mr A told Wakam the claims were for motor and home emergency, and he wasn’t required to disclose other types of claims when he bought the policy. Mr A wanted Wakam to reinstate his policy and pay the claim. Wakam said the CUE evidence showed that the claims were for home insurance – buildings and/or contents – and its position remained the same.

When Mr A brought his complaint to us, our investigator didn’t think it was one we should uphold. He said the evidence Wakam relied upon indicated that there’d been a qualifying misrepresentation and it was reasonable to decide it was reckless.

Mr A didn’t agree. He said it was Wakam’s responsibility to show that he’d made buildings and contents claims, and it wasn’t for him to provide evidence that the claims were motor and home emergency.

Mr A asked for an ombudsman’s 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.

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 thinks Mr A failed to take reasonable care not to make a misrepresentation when he took out the policy online. That was because he said he'd made one claim in the last five years, whereas Wakam's evidence indicated he'd made seven.

I've looked at what Mr A was asked when he took out the policy. The application asked:

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?

Mr A said he'd made one claim, in November 2019.

Wakam provided evidence from CUE showing seven claims between May 2019 and February 2022.

I'm aware that Mr A disputes the nature of the claims. That is, he said they were motor and home emergency claims, so he didn't need to declare them in response to the question about claims which could've been covered under his policy. I've looked at the CUE data and I'm satisfied that all seven claims are recorded as buildings, or buildings and contents claims.

Although Mr A said the claims were unrelated to his buildings and contents insurance, he didn't provide Wakam, or this service, with any evidence of that. Mr A's previous insurer(s) provided CUE with the data having handled his claims, and Wakam could reasonably expect them to provide accurate information. Therefore, I'm satisfied that it was fair and reasonable for Wakam to rely upon the evidence recorded on CUE that Mr A had made seven claims rather than one.

Wakam provided its underwriting criteria, which showed that if Mr A had declared all seven claims, it wouldn't have offered a policy. Because Wakam would've done something different if it had known about the claims, I'm satisfied Mr A's misrepresentation was a qualifying one.

Wakam decided Mr A's misrepresentation was reckless. If Mr A had failed to declare, say, one older claim, and he could reasonably explain that he'd forgotten about it, then it might've been reasonable for Wakam to treat it as careless. However, Wakam identified seven claims made over the three years preceding Mr A's policy purchase. According to CUE evidence, one of those seven was a storm damage claim made just five months before he bought the policy. Based on this evidence, I'm satisfied that it was reasonable, in the circumstances, for Wakam to treat Mr A's misrepresentation as reckless.

I've looked at the actions Wakam can take in line with CIDRA. Wakam has shown that it wouldn't have offered a policy. That meant it could avoid the policy from the point of misrepresentation, which was when Mr A bought the policy. Wakam was entitled to keep the policy premium, and I see it told Mr A it intended to do so. Wakam was also entitled to not deal with any claims, which meant it didn't need to deal with Mr A's damaged hob claim. Therefore, I'm satisfied Wakam's actions were in line with CIDRA.

I'm aware that Mr A doesn't think it's his responsibility to provide evidence that his other claims were motor or home emergency claims. Rather, he thinks the onus lies with Wakam to prove that he made buildings and contents insurance claims. I understand the point he's making but, as explained above, I'm satisfied that Wakam has relied upon reasonable evidence to conclude that the seven claims were buildings and/or contents. So, the onus moves to Mr A to demonstrate that the information on CUE is wrong, if that's what he believes. It's within his power to ask his previous insurer(s) to provide evidence of the claims he made. And, as they're still relatively recent claims, I think it's likely that at least some evidence will be available, even for those made only by phone.

I've noted the evidence of three claims that Mr A provided, one of which was the claim he declared when he bought the policy, with the remaining two being motor claims. The claim Mr A declared shows on the CUE information and is included in the seven Wakam identified. The two motor claims are not shown on the CUE data which suggests Wakam hasn't included motor claims in the seven it identified.

Overall, I'm satisfied that Wakam fairly and reasonably relied on industry database information when it decided to treat Mr A's misrepresentation as reckless. And I'm satisfied its actions were in line with those it was entitled to take according to CIDRA. Therefore, I don't find that Wakam did anything wrong here.

My final decision

For the reasons I've given, my final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 April 2025.

Debra Vaughan
Ombudsman