

The complaint

Mrs L complains that Wakam avoided her home insurance policy and declined her claim for damage to her property and stolen valuables when her home was burgled.

Reference to Wakam includes its agents or representatives.

What happened

Mrs L raised a claim with Wakam – her home insurance provider – after she suffered a burglary.

Wakam carried out checks when validating Mrs L's claim, including looking into the value of contents and valuables within her home in comparison to the figures she provided for this when taking out her policy.

Mrs L's policy had a contents insurance limit of £80k with a valuables limit of one third that amount. Wakam's appointed jewellery expert concluded Mrs L's jewellery alone was worth closer to £110k, meaning she was significantly underinsured. Because of this, Wakam decided to avoid Mrs L's policy for reckless misrepresentation, and so to refuse her claim.

An investigator here at the Financial Ombudsman Service considered Mrs L's complaint and thought it should be upheld. She said the questions Mrs L was asked at the point of sale, weren't sufficiently clear for her to understand what information she needed to provide. Neither was she given any guidance as to how she could obtain reasonably accurate estimates nor was the importance of doing so made clear. Because of this, the investigator thought Mrs L hadn't failed to take reasonable care when answering the questions put to her and so she said it was unfair for Wakam to avoid the policy.

The investigator said she was persuaded that had Wakam's questions been sufficiently clear, that Mrs L would have had the opportunity to provide more reasonable estimates. So, she felt it would be fair in all the circumstances, for Wakam to reinstate the policy and settle Mrs L's claim in full without applying the policy limits. The investigator also said Wakam should pay Mrs L £500 compensation for the impact of some avoidable delays it was responsible for.

Wakam seemingly accepted the investigator's view as to whether Ms L had made a reckless misrepresentation. But it disagreed that it would be fair for it to pay more than the policy limit selected by Mrs L.

As no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to the investigator, so I issued a provisional decision explaining why and giving the parties the opportunity to respond, before I reached a final decision. Here's what I said:

“What I’ve provisionally 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 agree with the investigator’s assessment as to whether it was fair for Wakam to avoid Mrs L’s policy. But I’m minded to reach a different decision as to how the claim should be fairly settled. I’ll explain my reasoning below, addressing each issue in turn.

Misrepresentation

In response to the investigator’s assessment, Wakam accepted that there hadn’t been a deliberate or reckless misrepresentation. But it maintains that Mrs L has made a careless misrepresentation.

The relevant law when considering complaints about misrepresentation is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). And it was this law that Wakam relied upon when deciding to avoid Mrs L’s policy.

However, I should explain here that CIDRA only applies to statements of fact, not matters of opinion. And in my view, the estimated value of contents or valuable items within a household is a matter of opinion rather than a statement of fact. I say this because valuations are a matter of the professional opinion of the valuer. And multiple valuers could reach different valuations for the same item and that wouldn’t necessarily mean any were incorrect, just that the valuers’ opinions were different. Therefore, CIDRA doesn’t strictly apply to the circumstances of this complaint because it concerns matters of opinion rather than fact. But as Wakam has introduced the obligations and requirements under CIDRA, I’ve considered them when deciding whether it has treated Mrs L fairly.

Having done so, even if CIDRA did strictly apply to the circumstances of Mrs L’s complaint, I don’t think Wakam acted fairly by determining Mrs L had made a qualifying misrepresentation. I’ll explain why.

Wakam has shown that it would not have offered a policy had Mrs L provided an estimate in line with its professional valuer. Based on this, it says Mrs L made a qualifying misrepresentation and so it was entitled to avoid her policy and refuse any claims.

I agree with Wakam that the estimated replacement values Mrs L provided have been shown to be low, based on the professional valuation provided. And Wakam has shown that had a higher estimate been provided, it wouldn’t have offered Mrs L a policy. But in my view, the test isn’t whether Mrs L came to the same figure as a professional valuer. Rather it’s whether she provided a reasonable answer to the specific question she was asked.

When selling Mrs L the policy, Wakam appears to have only asked Mrs L the following:

- *Valuable items – price in £*
- *Contents cover – insured sum in £*

In my view these questions are not sufficiently clear for Mrs L to understand that she needed to ensure the figures she provided would cover the full replacement cost of her contents and valuables at the time of loss, nor that if the estimates she provided were too low it could impact the settlement of any potential claim and/or result in her policy being voided.

Mrs L has explained that her jewellery was inherited and so she wasn't aware of its true value. She said she gave an estimated value to the best of her knowledge, and I think this was reasonable in light of the specific questions she was asked by Wakam. So, I don't think Mrs L failed to take reasonable care to answer the specific questions she was asked.

To summarise, Wakam has relied on CIDRA when it doesn't strictly apply. And even if it did apply, Wakam hasn't correctly followed it. In these circumstances, I think it was unfair for Wakam to avoid Mrs L's policy and refuse her claim. In order to put things right, I'm minded to decide that Wakam should reinstate Mrs L's policy and deal with her claim.

Settling the claim

Wakam's primary concern with the investigator's assessment was that she recommended it should settle Mrs L's contents claim in full, with no deduction for underinsurance and without applying the policy limits of £80k for contents or £24k for valuables.

I've thought carefully about this point, and I'm minded to reach a different conclusion to the investigator. I'll explain why.

When selling Mrs L's policy, Wakam had a duty to provide Mrs L with information that was clear, fair and not misleading, so that she could understand what information she needed to provide.

In my view this includes gathering the info the insurer wanted from the consumer, as well as ensuring the consumer was reasonably aware of the information they needed to provide, together with providing a reasonable level of guidance about that. But when considering the questions Mrs L was asked, I agree with the investigator that they weren't sufficiently clear or specific. Nor did Wakam make clear the importance of this information being correct, the consequences of it being incorrect, or provide any guidance to support Mrs L to obtain and provide a more reasonable estimate.

Because Wakam's questions weren't sufficiently clear, I don't think Mrs L would have reasonably understood that she was being asked to provide a figure which would cover the full replacement cost of all her contents and valuables. But, on the other hand, I am satisfied that Mrs L would have understood that she was setting an upper limit on the cover she had for contents. I say this because the initial question was phrased:

- *Contents cover – insured sum in £*

While this doesn't make it clear that the amount provided should be sufficient to cover the full replacement cost of all Mrs L's contents and valuables, I think it is reasonably clear that the answer to this question will be the full amount Mrs L could expect to receive in the event of a claim.

In addition to the above, I've considered Mrs L's policy schedule, which I think should reasonably be read and checked as part of any policy sale or renewal. This states:

<i>Contents cover</i>	
<i>Cover</i>	<i>Amount insured for each and every incident of loss</i>

<i>Sum insured</i>	<i>£80,000</i>
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Special limits. These are included within and not in addition to the amount insured above.

<i>Cover</i>	<i>Amount insured for each and every incident of loss</i>
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<i>Single Article Limit for Unspecified items</i>	<i>£2,000</i>
<i>Cycles</i>	<i>£500</i>
<i>Valuables Limit</i>	<i>30% of sum insured (£80,000)</i>

Taking the above into account, alongside the question asked about contents cover during the sale, I don't think I can reasonably conclude that Mrs L wouldn't have understood that the maximum amount she selected to be covered for in the event of a contents claim was £80,000, nor that the maximum amount of cover she had for valuables was 30% of that amount.

In these circumstances, I don't think it would be fair or reasonable to direct Wakam to pay more than these policy limits when dealing with Mrs L's claim, regardless of how poor the questions it asked during the sale were.

However, because the questions Wakam asked during the sale were not sufficiently clear for Mrs L to understand what she needed to provide, how she could obtain a more reasonable estimate, or the potential consequences of providing an unreasonable estimate, I don't think Wakam can fairly apply any additional deduction to the claim settlement based on the fact Mrs L was underinsured. This is because I think the primary reason Mrs L ended up being underinsured was Wakam's poor questions and the lack of reasonable guidance.

So, to put things right, I'm currently minded to decide that Wakam should settle Mrs L's claim for all of her stolen contents and valuables, subject to the policy limits for contents, valuables, non-specified items and cash, but without any additional deduction for the fact she was underinsured.

Mrs L's claim also included damage to her property caused during the burglary. The circumstances of the loss don't appear to be in dispute, nor that there is sufficient cover under the buildings section of Mrs L's policy to cover the damage caused. So, I think Wakam should also settle this element of Mrs L's claim, either by reimbursing the costs she has incurred in fixing the damage caused (subject to evidence) or by arranging to have the repairs carried out if they haven't already been done.

To the total settlement amount due to Mrs L, Wakam should also add 8% simple interest, calculated from one month after the claim was made until the date she receives the settlement. This is to compensate Mrs L for being deprived of funds I think she was reasonably entitled to under her policy, but for the errors which Wakam is responsible for.

Service issues, distress and inconvenience

Having a claim declined and an insurance policy voided would be understandably distressing. Particularly with the value of the claim and the sentimental nature of some of the items stolen.

In addition to that, there have been significant delays and communication issues caused by Wakam or its agents. For example, the wrong claim number was provided to the loss adjuster which delayed the claim being properly assessed for several months. Mrs L has explained that these issues have caused her significant stress and that her health was impacted as a result.

Taking into account everything that went wrong and the impact it had on Mrs L, in addition to settling her claim as set out above, I think Wakam should pay Mrs L £500 compensation for the avoidable distress and inconvenience it caused her.”

I asked both sides to send any further evidence or arguments they wanted me to consider within two weeks.

Wakam responded to confirm it would accept my provisional findings. But it asked for clarity on my finding that it needed to reinstate Mrs L's policy. It said it would only be able to consider the original policy period as being valid at the time of the claim. It wouldn't be able to reinstate the policy in terms of it being live and in place as of today.

Mrs L responded to set out the reasons why she wasn't happy with my provisional findings. She also asked for clarity on a couple of points. In summary she said:

- She's extremely disheartened that my provisional outcome differed from the investigator's. The service received from Wakam and its agents was so poor, that she feels the investigator's suggested outcome is fairest.
- She's been unable to obtain home insurance since this happened, which has impacted her significantly as she always needs to arrange for someone to be home, for fear of something happening while she doesn't have insurance.
- It's unfair that I'm intending to allow Wakam to rely on the terms of cover, when it failed in its obligations to her. She provided information to the best of her knowledge.
- She'd like clarity as to the specific amount I'm directing Wakam to pay her, where I said it should settle her contents claim subject to the policy limits for contents, valuables, non-specified items and cash.
- She'd like to know that if her policy is reinstated, will she still need to declare that she's had a policy cancelled to future insurers.

- When Wakam voided her policy, it backdated this to June 2022, despite her having renewed her policy in June 2023. It also retained her premiums between June 2022 and October 2023 – she'd like to know why and whether this means she'll get a refund of the premiums.
- She's concerned about having her policy reinstated with Wakam.
- She'd like to know what happens if Wakam doesn't uphold its end of the settlement.
- In terms of Wakam adding interest to the settlement due, she'd like to know how she can trust that it's been calculated correctly.

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.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain the same. I'll explain why, along with providing the additional clarity both sides have asked for.

Wakam's response

Wakam explained that it is unable to reinstate Mrs L's policy as if it were live today, only to consider the original policy period as being valid at the time of the claim. And I note Mrs L has also expressed concern about the idea of her policy being fully reinstated.

I can see from the responses to my provisional decision that I should have been clearer in what I meant when I said Wakam should reinstate Mrs L's policy. To be clear, I don't expect Wakam to reinstate the policy as if it were live today. Rather, I think it needs to reverse the policy avoidance – including removing any record of this from any internal or external databases – and to deal with the claim under the terms which ought to have applied at the time, had it not unfairly avoided the policy.

Mrs L response

I can fully appreciate Mrs L's disappointment that the outcome I said I was intending to reach was different from the investigator's. But even having considered Mrs L's response, I maintain that it wouldn't be fair or reasonable to direct Wakam to pay more than the policy limits Mrs L knowingly selected.

I explained in my provisional decision that while I agreed Wakam's questions weren't sufficiently clear, I think it was sufficiently clear from the sale, and the policy schedule, that Mrs L had set a limit of cover for her contents and valuables. None of Mrs L's points in response to my provisional decision have persuaded me this wasn't the case.

In these circumstances, where Mrs L knowingly confirmed the maximum amount she wanted to be paid in the event of a claim, I don't consider it would be fair to make Wakam pay more than that amount. Particularly as the premiums Mrs L paid for her policy would most likely have reflected the fact the maximum sum insured for contents was £80k.

Mrs L has explained in further detail the distress and inconvenience she suffered as a result of having her policy avoided. I'm sorry to hear about the impact Wakam's decision has had on her. But taking into account everything that happened, I think the outcome I set out in my provisional decision is sufficient to fairly resolve this complaint, including compensating Mrs L for the avoidable distress and inconvenience she has suffered. By reversing the avoidance, settling the claim for both buildings and contents, including interest, and paying £500 additional compensation, I'm satisfied Wakam will have fairly put things right.

In terms of Mrs L's specific questions, I should explain that the complaint I'm considering and deciding here is whether it was fair and reasonable for Wakam to avoid her policy and decline her claim – which I've decided it wasn't. But I'm not going to be reviewing each of the items claimed for, and setting out the amount Wakam needs to pay because that isn't my role.

My decision is that Wakam needs to consider and settle the claim subject to the applicable policy limits. Should a further dispute arise over the amount Wakam eventually offers in settlement of the claim, Mrs L is free to raise a new complaint about this – with Wakam in the first instance. And should she remain unhappy with Wakam's final response to this hypothetical future complaint, she can refer her concerns to the Financial Ombudsman Service, subject to our normal rules and timescales.

As explained in the above subsection, I think Wakam needs to reverse the policy avoidance and remove all records of it from both internal and external databases. Wakam should also provide Mrs L with a letter explaining that it's done this, so that she can provide this to future insurers should the need arise.

I can't advise Mrs L as to what information she should provide to future insurers as that will always depend upon the question she is being asked. But unless Mrs L has had any other policies cancelled or avoided by insurers, once Wakam amends the records of this claim, there should be no record anywhere to say that she has. Mrs L will also have the letter from Wakam as outlined above, and a copy of this final decision which she'd be able to provide to future insurers if needed.

When Wakam, unfairly in my view, avoided Mrs L's policy for reckless misrepresentation, it followed the remedies outlined in CIDRA. This states that where a customer makes a qualifying, reckless, misrepresentation and, but for that misrepresentation, it would not have offered cover on any terms, the insurer can avoid the contract, refuse all claims and retain the premiums it received. While Mrs L may have renewed her policy in June 2023, the claim she made was made in the previous policy year. This is why Wakam backdated the avoidance to June 2022.

As explained, I don't think it was fair for Wakam to avoid Mrs L's policy and I'm directing it to reverse that decision and to deal with the claim. So, because Mrs L will end up benefitting from the cover provided under the policy, I don't think it would be fair or reasonable for Wakam to have to refund the premiums it retained.

Mrs L queried what she'll be able to do if Wakam doesn't uphold its end of the settlement. As explained above, Wakam has confirmed it's prepared to accept the outcome I outlined in my provisional decision, and to settle the claim in the manner I outlined. Further, I think it's helpful to explain that an ombudsman's final decision becomes legally binding on a business when it's accepted by the consumer. So, if Mrs L confirms that she accepts this final decision, Wakam will be obligated to fulfil the settlement. Hopefully both of these points provide the reassurance Mrs L is seeking.

Mrs L's final question/concern is how she'll be able to be confident that Wakam has correctly calculated the 8% simple interest I said it should add to the claim settlement she is due.

I set out in my provisional decision that the interest should be paid, on the settlement amount which ends up due to Mrs L, from one month after the date of claim until the date of settlement, so that it's clear to all parties the period of time Wakam needs to pay interest for. Knowing this, and the rate at which Wakam needs to pay interest (8% simple) should enable Mrs L to satisfy herself that the amount paid by Wakam is correct. But should Mrs L request it, I think it would be reasonable for Wakam to share with her the method it used to calculate the interest due, so she can be satisfied it has been calculated fairly.

My final decision

For the reasons set out above, and in my provisional decision, I uphold Mrs L's complaint in part.

Wakam must:

- Reverse the policy avoidance and remove any record it from any internal and external databases. Wakam must also provide Mrs L with a letter confirming it has done so.
- Settle Mrs L's claim for the damage to her building caused during the burglary.
- Settle Mrs L's claim for stolen contents and valuables, subject to the policy limits for contents, valuables, non-specified items and cash.
- To the settlement amount due, add 8% simple interest* calculated from one month after the claim was made until the date of settlement.
- Pay Mrs L £500 compensation for the avoidable distress and inconvenience it has caused her.

**If Wakam considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs L how much it's taken off. It should also give Mrs L 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 Mrs L to accept or reject my decision before 28 February 2025.

Adam Golding
Ombudsman