

The complaint

Mr S is complaining Wakam declined a claim he made on his contents insurance policy after he made a claim for damage to his watch.

What happened

In July 2024 Mr S contacted Wakam to claim for damage to his watch. However, Wakam later contacted Mr S to say he hadn't disclosed two previous claims he'd made when he took out the insurance policy. It thought Mr S had done this deliberately or recklessly. So it avoided Mr S's insurance policy, retained the premium he'd paid and declined his claim.

Mr S didn't think Wakam was being fair. He said one of the claims was declined, so he didn't think it was fair that he had to disclose that. He accepted he may have made a mistake with the first claim. But he said it was wrong Wakam only checked the claims databases when he made a claim, but didn't check it when he took out the insurance policy.

Wakam said it was Mr S's responsibility to ensure he provided correct information. It said the policy was sold on a non-advised basis so there was no requirement for it to check the information provided was correct at the start of the policy. And it maintained it was entitled to avoid the policy. Mr S still thought this was unfair so he referred his complaint to this Service.

I issued a provisional decision partially upholding this complaint and I said the following:

"The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it's entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

I've thought about what happened in this complaint. Wakam says Mr S didn't disclose two claims he'd made when he took out the insurance policy.

I should first set out that Mr S took this policy out through a broker. Wakam set out in the Statement of Fact the information it needed to know. It was then the broker's responsibility to make the representation on Mr S's behalf. So it needed to ask Mr S sufficiently clear questions to ensure it had all the relevant information to ensure Mr S took reasonable care to not misrepresent given what Wakam set out it needed to know. The broker is not a party to this complaint so I've not considered whether the broker did this or not.

In the Statement of Fact, Wakam 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?"

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

Claims made on the contents or gadget portions of travel or home insurance policies, or on tenants liability insurance should also be declared."

Mr S didn't disclose two claims. He's set out that the insurer declined one claim, but the question Wakam asked required him to disclose declined claims. As I said above the reasonable care test is that of a reasonable person. So, ultimately, I need to think about whether a reasonable person would have known to disclose the two claims Mr S made. I think they would have done.

So I think Mr S failed to take reasonable care to not misrepresent by not disclosing the two claims. Wakam has provided me with confidential, business sensitive information about how it rates risk. And I'm satisfied from this that Wakam wouldn't have insured Mr S had he disclosed both claims. So it wasn't unfair for Wakam to say there was a qualifying misrepresentation.

Mr S has said he acknowledged he may have made a mistake but thinks it's unfair that Wakam didn't check the information he provided until he made a claim. And he's provided extensive submissions surrounding this. While I note his comments, the facts remain that it didn't have to. It was Mr S's responsibility to ensure the information he provided was accurate. And Wakam set out in the policy documents:

"You should check the answers that you provided are true, complete and up to date. If any of the information is inaccurate or incomplete your policy may be invalid, any claims may be rejected, and different terms may be applied to the policy."

So I can't say Wakam were unreasonable in not verifying the information Mr S provided at the policy's inception. And Wakam set out the potential implications to Mr S if he didn't provide accurate information.

However, I disagree with Wakam that this qualifying misrepresentation was deliberate or reckless. For a qualifying misrepresentation is deliberate or reckless, Wakam has to show Mr S:

"(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer."

I've not seen anything to show Mr S deliberately withheld this information from Wakam or that he didn't care whether the information he provided was untrue or misleading. It seems to me that Mr S made a simple mistake here. And CIDRA would consider this to be a careless misrepresentation.

As I said above, CIDRA says Wakam can avoid an insurance policy for careless misrepresentation where it can show it wouldn't have offered the insurance policy but for the misrepresentation. And Wakam has shown this. So it follows that I think it was entitled to avoid the insurance policy.

But, while Wakam was entitled to avoid the insurance policy, I don't think it was fair that it retained the premium Mr S paid. So I think Wakam should refund this. But I don't require it to do anything further."

Neither party accepted my provisional decision.

Wakam maintained the misrepresentation was reckless. It said the declined claim Mr S didn't disclose had been made two days before the policy started. So it said the claim would have been fresh in his mind at the time. And it highlighted the insurer would not have declined the claim by then. So it didn't agree with Mr S's reasoning about why he didn't disclose the claim.

Mr S maintained that Wakam should have checked the information provided was correct when he first took out the insurance policy – not when he made the claim. And he still thinks it's unethical that it didn't do so. He also highlighted Wakam declined a claim in the first year's policy, so he queried why it didn't validate the policy then. He said not checking the information at the start can only benefit Wakam as it can continually take the annual premium without having any liability on the policy.

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've come to the same conclusion as I did in my provisional decision and I'll explain why.

I note Mr S has reiterated again that Wakam should have checked the information he provided before the claim. But, as I said in my provisional decision, there's nothing in either the law or industry regulations that required it to do so. Mr S has said it only benefits Wakam to not check the policy information. But that doesn't detract from the fact it was Mr S's responsibility to take reasonable care to not make a misrepresentation when he took out the policy. He also received the policy information when he took out the insurance policy and again when it renewed and it was his responsibility to check the information he'd provided was correct. It's not Wakam's fault if Mr S failed to do this.

Wakam has raised a fair point that the loss date of the claim was only two days before the policy started. So I can understand it's point that it would be fresh in Mr S's mind. And I've thought hard about this. But, at the same time, I'm not aware when Mr S actually made the claim and the CUE database entry suggests it was set up on 12 October 2022 – i.e. after the first policy was inception. So it's entirely possible – and in fact seems most likely – that Mr S made this claim after he provided the information for the policy inception. Ultimately, I don't think I can reasonably say that this is enough to safely conclude that Mr S deliberately provided incorrect information to Wakam or that he didn't care whether the information he provided was untrue or misleading. So I remain of the opinion that the misrepresentation

was careless rather than deliberate or reckless.

My final decision

For the reasons I've set out above, it's my final decision that I require Wakam to refund the premium Mr S paid. It should pay 8% simple interest on this from 10 July 2024 (the date of the avoidance) until it pays the refund. If Wakam thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 April 2025.

Guy Mitchell

Ombudsman