

The complaint

Mr C complains Wakam unfairly declined his claim and avoided his motor insurance policy from the start date.

I understand Mr C raised another complaint about the time taken for Wakam to settle his claim but this decision is about the above complaint only.

All references to Wakam include its agents.

What happened

Mr C took out a short-term motor insurance policy on 21 April 2024 to cover his car for around 12 hours. He took the policy out online. On the same day, he was involved in a road traffic accident with a third party. His insurer, Wakam, was notified of the incident a few days later.

Around May 2024, Mr C was interviewed as part of the claim investigation. During the interview, he informed Wakam he had a conviction from before he took out the policy. Both parties now accept the conviction was unspent and still needed to be declared at the time Mr C took out the policy.

Upon this information, Wakam declined Mr C's claim and avoided his policy as it thought he'd made a qualifying misrepresentation that was deliberate. It pointed to the statements (which it's given us a copy of) Mr C was asked to confirm by selecting "Yes" during the application process. The relevant statement shown was:

"I have no unspent criminal convictions or prosecutions pending (excluding motoring offences)"

It also highlighted the additional information provided to applicants next to the statements. This explained it was Mr C's responsibility to check the status of any previous or pending conviction and failing to tell Wakam about any convictions risks the policy becoming invalid in the event of a claim.

Mr C didn't agree he'd made a misrepresentation at the time he took out the policy so he made a complaint. He explained to Wakam he'd selected "Yes" in error. Wakam maintained its decision to decline Mr C's claim and void the policy. It said he'd taken out a number of short-term insurance policies and had seen this declaration every time. So it considered he'd have been aware of the requirement to disclose unspent non-motoring convictions but instead had selected "No" when asked each time.

As the complaint wasn't resolved, Mr C asked our Service to look into things. After some back and forth, our Investigator didn't uphold the complaint. He thought the information Wakam presented and asked for at the time of the application was clear and Wakam had acted fairly. As Mr C didn't accept our Investigator's opinion, the complaint was 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.

Based on everything I've seen, I don't uphold this complaint for the reasons given below. I know Mr C will be very disappointed as I understand the impact of what's happened has been serious and has made things very difficult for him.

The key issue in this case is whether Wakam fairly avoided Mr C's policy from the date of inception due to him not disclosing his unspent conviction during the application process. 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.

If the 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 must 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 says Mr C failed to take reasonable care not to make a misrepresentation when he answered a statement about whether he had any unspent convictions during the application process. It's highlighted that it explained to Mr C at the time it was his responsibility to check the status of his previous convictions.

I'm satisfied Wakam's position here is both fair and reasonable. I say this because both Mr C and Wakam agree he was asked about his previous convictions and both parties accept the conviction in question was unspent at the time of the application. Mr C's says he didn't realise he had to declare his conviction as he misunderstood the law and he made an honest mistake. But he also previously said he selected "Yes" accidentally and it wasn't intentional.

I can see the additional information provided next to the statements says how important it is to check the status of any previous convictions and that failing to disclose convictions on your record risks the policy becoming invalid. And I understand Mr C has taken out 13 different policies with Wakam which it's said all required him to agree to the statement. So I think he would've been aware of how important this question was to the insurance application.

Based on what I've seen, I think it's more likely Mr C gave inaccurate information about his circumstances to be able to take out the policy so he failed to take reasonable care not to make a misrepresentation.

Wakam can only take action if it can show the misrepresentation Mr C made was a qualifying one. Wakam has provided evidence to show it wouldn't have offered Mr C an insurance policy if he'd provided accurate information about his circumstances. I'm therefore satisfied that, as it wouldn't have entered into the contract with Mr C, the misrepresentation was a qualifying misrepresentation.

Wakam considers Mr C's misrepresentation was deliberate. Our Investigator also considered whether it was a reckless misrepresentation. As the remedies Wakam can take for a deliberate or reckless misrepresentation are the same, I don't think it makes a difference in this case whether it was deliberate or reckless. And in light of the information set out above, I'm satisfied Mr C did make a qualifying misrepresentation that was deliberate or reckless.

I've looked at the actions Wakam can take in accordance with CIDRA for a deliberate or reckless misrepresentation. The remedies available to insurers under CIDRA, on a qualifying misrepresentation include avoiding the policy, refusing all claims and retaining the premiums paid. I understand Wakam avoided the policy from the start date. This means it's treated things as though Mr C's policy never existed so it doesn't have to deal with his claim following the car accident. And I'm satisfied it's entitled to do so in this case. Wakam is also entitled to keep the premiums Mr C paid for the policy.

Overall, based on everything I've seen in this case, I'm satisfied Mr C did make a qualifying misrepresentation to Wakam. And Wakam hasn't done anything wrong by avoiding his policy and declining his claim.

My final decision

It's my decision that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 October 2025.

Nadya Neve
Ombudsman