

The complaint

Mr F and Ms C complain about the settlement Wakam has agreed to pay following a claim they made under their home insurance policy.

This complaint has been bought by both Mr F and Ms C, but as Ms C is the lead policyholder and for ease, I've referred to her throughout.

What happened

The circumstances of this complaint will be well known to all parties and so I've summarised events.

In October 2023 Ms C's property was damaged following a fire and so she reported a claim to Wakam under her home insurance policy. Wakam accepted Ms C's claim, but said it believed Ms C should have declared a previous claim to it when she purchased her policy. It said Ms C had only paid 68% of the premium she would have done if she had declared the previous claim, and so it would only pay 68% of her claim. Although it agreed to pay for Ms C's alternative accommodation costs in full. It also said it would give Ms C 21 days to cancel her policy once the claim had been settled or it would cancel the policy itself.

Ms C didn't think this was fair and so raised a complaint. Wakam responded to Ms C's complaint but didn't change its decision on the claim. Ms C referred her complaint to this Service.

Our investigator looked into things. She said the relevant law in this case was the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). She said she thought Ms C should have declared a previous claim to Wakam when she purchased her policy. And she thought it was reasonable for Wakam to settle 68% of Ms C's claim in line with CIDRA.

Ms C didn't agree with our investigator. She said she was unaware a claim had been registered as she didn't submit a claim to her previous insurer. She also didn't think the question Wakam had asked about previous claims was a clear one.

I issued a provisional decision about this complaint and I said:

'I want to acknowledge I've summarised Ms C's complaint in less detail than she's presented it. I've not commented on every point she has raised. Instead, I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Ms C and Wakam I've read and considered everything that's been provided.

I also want to be clear about what I've considered as part of this decision. This decision will focus solely on Wakam's decision to settle Ms C's claim proportionately and the impact of this decision.

The relevant law in this case is 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 that 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 under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Wakam think Ms C failed to take reasonable care not to make a misrepresentation when she failed to tell it about a previous claim.

I've looked at the questions Ms C was asked when she purchased her home insurance policy. She was 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?'

There was an option for Ms C to click for more information. If she did this it said:

'How many claims?'

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 be declared.'

Ms C said she hadn't made any claims. Wakam said it checked the Claims Underwriting Exchange (CUE) database and it showed Ms C had a withdrawn claim in January 2022 for an escape of water. Wakam said this should have been declared to it when Ms C took out the policy. Wakam has provided evidence of a withdrawn claim showing on CUE, so I accept the answer to this question should have been, 'yes'.

So, I've considered whether I think Ms C failed to take reasonable care when she didn't declare the escape of water in January 2022. Having done so, I'm not persuaded it was reasonable for Wakam to conclude Ms C had failed to take reasonable care.

Ms C has said she did suffer an escape of water at her property in January 2022, however this was a minor issue which she paid to have rectified with negligible damage being caused. She said she checked her policy documents at the time and it was necessary for her to report this to her insurer. Her insurer decided to send a surveyor to inspect the repairs, and following this, it was agreed there was no further damage or repairs required. She said she had no indication this had been recorded as a withdrawn claim under her policy.

The question Ms C was asked specifically asked about any claims made in the last five years which could have been covered under the policy Ms C was about to purchase. It didn't ask about any previous losses, incidents or withdrawn claims. The further information provided explained declined claims should be declared, but Ms C hadn't had a claim declined so this wasn't relevant to her circumstances.

Ms C didn't claim for any repairs to her property following the escape of water in January 2022. And home insurance policies don't usually cover repairs to rectify a leak, rather they cover damage the leak subsequently causes, which Ms C has said was negligible. Ms C has also said she was under the impression the escape of water had been recorded as incident only, which I think is understandable in the circumstances. So, based on the evidence provided, I don't think a reasonable person in Ms C's position would consider the incident from January 2022 to be a claim which could have been covered on the policy she was looking to purchase. It follows that I don't think Ms C failed to take reasonable care when she answered this question.

As I don't think Ms C failed to take reasonable care, I don't think it was reasonable for Wakam to conclude Ms C had made a qualifying misrepresentation. So, its decision to proportionately settle Ms C's claim was unreasonable and not in line with CIDRA. Therefore, I require it to settle Ms C's claim in full in line with the terms and conditions of her policy. This includes Ms C's claim for contents which it has also settled proportionately.

Wakam has said due to the misrepresentation it will be cancelling Ms C's policy at the completion of the claim. It's unclear whether the policy has now been cancelled, however as I don't think there has been a qualifying misrepresentation, I don't think Wakam is entitled to cancel Ms C's policy for this reason. If the policy has now been cancelled by Wakam then I don't think it's sensible for it to be reinstated at this stage. But Wakam should ensure it removes any record of the cancellation from Ms C's file.

Ms C has said she has incurred additional costs due to Wakam's decision to proportionally settle her claim. The policy limit for alternative accommodation was reached, but Ms C has said she incurred further alternative accommodation costs until the repairs to her property were complete in September 2025.

Based on the evidence provided, I'm satisfied the repairs to Ms C's property have taken longer than they should have done due to Wakam's decision to proportionally settle the claim. The loss adjuster has said even though the loss occurred in October 2023, it was difficult to gain any momentum until the turn of the year due to the non-disclosure issue. I can also see the decision was made not to appoint a specialist surveyor given Ms C would be liable for a proportion of these costs. The loss adjuster has said the process of agreeing the scope was long and difficult which I'm satisfied is directly linked to Wakam's decision to settle the claim proportionately.

So, I think had Wakam not sought to proportionately settle Ms C's claim, the repairs to her property would likely have been completed more quickly. And, as a result, she wouldn't have incurred the additional accommodation costs she has now incurred. So, I think Wakam should reimburse Ms C the additional accommodation costs she has incurred up until September 2025 when the repairs were completed. This should include any additional costs Ms C had to pay at this alternative accommodation which she otherwise wouldn't have done, such as council tax.

I think Ms C has suffered considerable distress and inconvenience due to Wakam's decision to proportionately settle her claim. I think it was distressing for Ms C to learn she would be liable for 32% of the claim costs incurred, particularly given the extensive damage to her property. As Ms C believed she was liable for this portion of her claim, she's had to proceed with her claim whilst keeping a close eye on the overall claim costs. And as explained before, I'm satisfied the repairs to her property have taken longer than they otherwise should have done. All of this has caused her unnecessary distress and inconvenience which could have been avoided had

Wakam not limited the settlement due to Ms C.

Given the circumstances of Ms C's claim, I think she would have always suffered some distress and inconvenience, even had it not been for Wakam's error. However, I think Wakam's decision to proportionately settle Ms C's claim has caused her considerable additional distress and inconvenience over an extended period of time. And so, I think Wakam should pay Ms C £1,000 compensation to acknowledge the distress and inconvenience it caused due to its error.

I'm aware Ms C has raised a separate complaint to Wakam in relation to delays she's experienced during her claim. I want to be clear as part of this decision I've only considered the delays I consider to be as a direct result of Wakam's decision to proportionately settle Ms C's claim.

I'm also aware, aside from Wakam's decision to proportionately settle Ms C's claim, she has also raised concerns about the settlement Wakam has paid as she believes some repairs haven't been included. If Ms C is unhappy with the settlement Wakam has paid, this would need to be raised as a separate complaint.'

Ms C accepted my provisional decision. Wakam said it didn't think the matter had been considered entirely fairly. It provided a detailed response but in summary it said:

- It disagreed Ms C took reasonable care. It said it thought it was much more likely a surveyor was sent by the previous insurer because Ms C had logged a claim intending to pursue it, and at this point Ms C may have decided to withdraw it. This would count as having made a claim and it believes a reasonable consumer would know this.
- In the circumstances it believed it would have been reasonable for Ms C to call her previous insurer to see how the previous claim was logged, or to have called Wakam to check it would consider this to be a claim.
- The compensation penalty is overly harsh. It was relying on the industry standard database and the classification of the claim was the responsibility of the previous insurer.
- It hasn't seen any evidence to say the information recorded by the previous insurer was incorrect.

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 reached the same outcome to the one I did previously for much the same reasons as before.

If Wakam intend to rely on CIDRA to proportionally settle Ms C's claim, the onus is on it to demonstrate Ms C failed to take reasonable care when she answered the question about previous claims. And based on the evidence provided I'm not persuaded Wakam has fairly concluded Ms C failed to take reasonable care.

I acknowledge Wakam has relied on the information on the CUE database which shows Ms C has had a withdrawn claim. And as I've explained, I think this means there has been a misrepresentation. However, just because there has been a misrepresentation, doesn't

mean Ms C has failed to take reasonable care.

The question Ms C was asked was:

'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?'

So, Ms C is being asked whether she has made any previous claims which could have been covered under the policy she is about to purchase. And whilst it's acknowledged Ms C did have an escape of water in January 2022, she has said there was negligible damage, and no claim was made for repairs. So, I think a reasonable consumer in these circumstances could conclude they hadn't made any claims which could have been covered under the policy she was about to purchase even if this had been reported to their insurer.

I accept it's entirely possible Ms C only decided not to proceed with a claim following her previous insurer sending a surveyor to her property. But I've not seen evidence this is what happened here. Given the onus is on Wakam to demonstrate Ms C failed to take reasonable care, I think there is more it could have done to gather information about what had happened to allow it to make an informed decision about whether Ms C had failed to take reasonable care. For example, it could have contacted Ms C's previous insurer.

So, for the reasons I've outlined above and in my provisional decision, I don't think it was reasonable for Wakam to conclude Ms C had failed to take reasonable care. Therefore, I don't think it was reasonable for it to conclude there had been a qualifying misrepresentation and settle Ms C's claim proportionately. And whilst I acknowledge Wakam don't consider it has made an error, as I think it has unfairly applied the terms of CIDRA, I'm satisfied it's reasonable to consider this to be an error.

Wakam has said it believes the compensation penalty is overly harsh. I should explain that the compensation awarded is in no way a penalty or a fine. It's a compensation award for the distress and inconvenience caused to Ms C and Mr F due to Wakam's decision to settle their claim proportionately. And for the reasons I set out in my provisional decision, I think Ms C and Mr F have been caused considerable distress and inconvenience over an extended period of time. So, I think £1,000 compensation is reasonable to acknowledge the distress and inconvenience caused to Ms C and Mr F.

I appreciate how strongly Wakam feel it hasn't made an error here. However, for the reasons I've set out above and in my provisional decision, I uphold this complaint.

My final decision

For the reasons I've set out above, I uphold Mr F and Ms C's complaint about Wakam. I require it to:

- Settle Mr F and Ms C's claim in full subject to the terms of their policy.
- *Pay 8% per year simple interest on any additional settlement due, calculated from the date it originally paid the settlement, to the date the additional settlement is paid.
- On receipt of evidence they have been incurred, reimburse Mr F and Ms C the alternative accommodation costs they have incurred up until the end of September 2025.
- *Pay 8% per year simple interest on any additional accommodation costs due, calculated from the date Mr F and Ms C incurred these costs to the date this

settlement is paid.

- Pay Mr F and Ms C £1,000 compensation.
- If Mr F and Ms C's policy is still active, Wakam should allow it to continue until the end of the policy period. If the policy has since been cancelled, Wakam should remove any record of the cancellation from Mr F and Ms C's records.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Ms C to accept or reject my decision before 12 December 2025.

Andrew Clarke
Ombudsman