DRN-6023985

The complaint

Mr J complains that Wakam UK Limited avoided his commercial vehicle insurance policy and, as a consequence, didn't deal with his claim.

Reference to Wakam includes its agents.

Mr J has at times been represented in bringing this complaint. But, for ease of reading, I'll refer to Mr J alone throughout the body of this decision.

What happened

Mr J held a commercial vehicle insurance policy with Wakam. After the van insured on the policy was stolen, Mr J made a claim to Wakam for the loss.

Wakam said that Mr J had made a misrepresentation when he agreed to the statement: *"I understand I can only use the vehicle for social or domestic activities, leisure or commuting, or in connection with my business but only if driven by me."* when he took the policy out. It said this meant it was entitled to avoid the policy under the relevant law, which it thought was The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It said by avoiding the policy, there was no claim for it to consider – because there was no policy to claim from.

Mr J didn't think this was fair. He didn't think he'd made a misrepresentation and so didn't think it was fair Wakam avoided his policy and didn't deal with his claim.

Our Investigator didn't recommend Mr J's complaint be upheld. She thought Wakam's actions were in line with CIDRA, and thought Mr J had made a qualifying misrepresentation in line with CIDRA.

Mr J remained unhappy and asked for an Ombudsman's decision. He maintained he'd not failed to take reasonable care (and therefore didn't make a qualifying misrepresentation) because he says he wasn't given clear enough information when taking the policy out. He also didn't think Wakam's response was fair and said a proportionate settlement would be fairer.

I issued a provisional decision explain why I wasn't thinking of upholding the complaint. It said:

"…I'm not thinking of upholding it. But, I'm not persuaded that CIDRA is the relevant law in this case. Because this policy is a commercial policy, I'm satisfied that the Insurance Act (2015) is the relevant law. I understand Mr J thinks CIDRA would be fairer, given his knowledge. But I'm not persuaded that's the case. The policy was clearly taken out for business use and so the Insurance Act becomes the relevant law.

There's a key difference between CIDRA and the Insurance Act in terms of the duty of the policyholder when taking out the policy. CIDRA requires a consumer to take reasonable care not to make a misrepresentation to the insurer. Whereas The Insurance Act requires the

proposer of the policy to make a fair presentation of the risk to the insurer.

So because I'm satisfied the Insurance Act is the relevant law here, I've considered whether Mr J failed to make a fair presentation of the risk. And, I'm satisfied he did by agreeing to the statement "I understand I can only use the vehicle for social or domestic activities, leisure or commuting, or in connection with my business but only if driven by me." When this wasn't the case. The van was being used for purposes outside of this definition, namely to carry goods for another business, not his.

I've looked at the information available to Mr J at the point the policy was taken out, and I'm satisfied enough information was presented to him for him to understand that this statement didn't represent the reality of what the van was being used for. Accompanying the above statement was an information bubble which explained what business use the policy did provide cover for, and importantly, what it didn't. So, by agreeing to the statement when the statement didn't represent the intended use of the vehicle, I'm satisfied, Mr J failed to make a fair presentation of the risk.

But, even if I applied the CIDRA test of reasonable care, I'd still be satisfied Mr J failed in that duty. For broadly the same reasons. The information was clear, help was available to explain the statement. And I think a reasonable person, having read that information, and knowing the use of the van, would not have agreed to the statement. Therefore, as Wakam said, agreeing to said statement does constitute a failure to take reasonable care.

Both the Insurance Act and CIDRA follow a similar pattern from this point on, but the wording used is different. CIDRA says that for a misrepresentation to be a qualifying one, it needs to have made a difference to the insurer, i.e. the insurer needs to show it would have done something different, had the misrepresentation not been made. The Insurance Act talks about a qualifying breach of the Act. But it is essentially talking about the same thing. i.e. can the insurer show that it would have acted differently, had a fair presentation of the risk been made.

Here, Wakam has evidenced that if it knew the correct information, it wouldn't have offered Mr J this policy. I can't share that information, it's commercially sensitive. But I'm satisfied that Wakam has evidence that to be the case.

Therefore, under the Insurance Act, I'm satisfied Mr J's failure to make a fair presentation of the risk constitutes a qualifying breach of the Insurance Act. This means thee are then a number of remedies available to it, depending on how that breach is classed. Were CIDRA applied, then there would be a qualifying misrepresentation, and similarly, Wakam would have a number of remedies available to it, depending on how the misrepresentation was classed.

Here, Wakam classed the misrepresentation as careless, which is CIDRA terminology. In the Insurance Act, the relevant similar phrase is "neither deliberate nor reckless".

That classification of the breach is the most favourable to Mr J, so have no intention of looking further into that.

Under the Insurance Act, because Wakam has shown it would not have offered cover had a fair presentation been made, it's entitled to avoid the policy from the start. It's then entitled to not deal with any claims, because in essence, the policy effectively never existed. But, it must return the premium paid to Mr J. I can see it did that here.

Were CIDRA applied, the same remedy would available to Wakam.

I understand Mr J has said other remedies are available to Wakam and feels its response is disproportionate. But I disagree. Essentially Wakam has shown that were a fair presentation of the risk made it would not have offered a policy to Mr J – so it never would have been on risk for this claim. Therefore, it's entirely reasonable for it not to have to pay this claim.

Ultimately, I'm satisfied the Insurance Act is the relevant legislation here. Whilst Wakam got that wrong and applied CIDRA instead, I'm satisfied Mr j suffered no detriment. Wakam was entitled to take the actions it did."

Neither Wakam, nor Mr J responded to that 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.

Because I received no response to my provisional decision, I see no reason to depart form either its findings or reasoning. That provisional decision now becomes my final decision.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 January 2026.

Joe Thornley
Ombudsman