

The complaint

Mr S has complained that Wakam Insurance Company ('Wakam') declined his claim and avoided his home insurance policy.

What happened

Mr S obtained a home insurance policy from Wakam in November 2022. A few days later, a delivery driver crashed into a gate at his property and initially accepted liability. The delivery firm then handed the matter over to insurers. In January 2023, Mr S contacted Wakam to make a claim on his policy.

Wakam declined to process the claim and avoided the policy in March 2023. It said that Mr S had misrepresented how many bathrooms he had at his home when he took out his insurance policy. It said that Mr S had five bedrooms but had declared that he had three and it couldn't provide cover where there were five bathrooms. Mr S complained and said he was never advised how Wakam defined 'bathroom'. He wanted Wakam to re-instate his policy and accept his claim. However, Wakam maintained its stance and said that 'bathrooms' had been clearly explained when Mr S bought his policy. It added that reasonable care was not taken by Mr S. Mr S then referred his complaint to this service. In the meantime, Mr S subsequently took the delivery firm to court and the matter was concluded in his favour.

The relevant investigator didn't uphold Mr S's complaint. He thought that Wakam had demonstrated that Mr S didn't take reasonable care when he made his claim on the policy. Mr S was unhappy with the outcome of his complaint and the matter was therefore referred to me to make a final decision in my role as Ombudsman. In July 2023, I issued a provisional decision for this complaint and explained why I was minded to uphold Mr S's complaint as follows: *'The key question for me to determine is whether Wakam acted in a fair and reasonable manner in avoiding Mr S's policy on the basis of careless misrepresentation. On a provisional basis, I don't consider that it did act in a fair and reasonable manner in all respects and I'll explain the reasons for this provisional decision.'*

I firstly turn to Mr S's submissions in this matter. In summary he said that he'd declared the correct number of bathrooms at his property on purchase of his policy, based on the information available on the website. He didn't think that a definition of 'bathroom' was provided during the purchase process, and instead this definition was retrospectively applied by Wakam following purchase of the policy. He said that if this definition had been clear at the time of purchase, he would have declared that he had five bathrooms, as he'd done with previous insurers. He believed this to be a case of miscommunication and not misrepresentation and thought that Wakam should have more clearly defined the term 'bathroom' throughout the purchase process and within the policy documents. Mr S further explained that he'd been "careful to check the information I had given was correct and matched the Policy I have, and it did." He stated categorically that the definition of 'bathroom' had not been provided in the quote process and had not been displayed on his computer. He said that he'd given the number of bathrooms based on the view that a bathroom must have either a bath or shower in it and he considered that he had three bathrooms and two toilet rooms. He considered that stating five bathrooms would have been a case of lying or misrepresentation. At the time he took out the policy, he said that he

checked the wording “which in my mind is the contract I have defining what was offered and accepted”. He said he’d checked the section in the policy entitled ‘words with special meaning’ on inception of the policy to check he’d answered everything correctly and he found that ‘bathroom’ didn’t have a special meaning in it. Mr S considered that this supported the argument that it had “the same meaning as is commonly known, that a bath or shower must be present in a room for a room to be defined as a bathroom”.

Mr S recognised that Wakam argued that he’d been careless as he’d given answers that he had five bathrooms previously to other insurers as they told him to include toilet-only rooms, whereas Wakam had never defined their special meaning. Mr S said he’d answered honestly. He also said that video evidence he’d produced showed that Wakam made a false statement that they always present a definition. He said his evidence also showed that he’d tested the system to see if the number of bathrooms was a material factor and for each online policy, it didn’t even ask how many bathrooms were present. He felt that the link which Wakam had sent was retrospectively produced and wasn’t the same webpage as the one he completed. He said that Wakam hadn’t provided digital evidence of the question it asked and the answer he gave on the relevant date, and that use of hidden ‘pop-ups’ for critical definitions was insufficient.

In conclusion, Mr S said that he’d taken reasonable care not to make a misrepresentation. He said “this is awful for me mentally. They have convicted me of fraud without any evidence and made this fact known throughout the insurance (and maybe) wider community...” Mr S described the impact that the episode was having on his health. It also meant that costs had increased some 300% for home insurance. Mr S said that as he had won his case against the delivery firm, there was no longer any claim to pursue. However, Mr S wanted Wakam to offer to reinstate his insurance, remove the statement on his record that he had misled Wakam and to apologise to him. He felt that Wakam spent more time looking for loopholes than it took him to win his case in court.

I now turn to Wakam’s submission regarding this matter. It considered that Mr S had made a careless misrepresentation when applying for his insurance policy and that its avoidance of the policy was therefore justified. It provided a screenshot of the answer it said Mr S gave during the quotation process. Upon investigation, Wakam’s claims handlers discovered that Mr S’s property had five bathrooms.

In its letter notifying of policy avoidance in March 2023, Wakam stated that ‘bathrooms’ were defined in the quote process as ‘Any room with a bath, shower or toilet, including en-suites and toilet rooms’ and it provided a copy of the ‘popup’ which it said would have been displayed at the relevant time. It said that when asked why Mr S didn’t declare five bathrooms in the quote process, he advised that the property had five bathrooms, of which a couple were toilets. It said that insurers expect all information which could materially affect the risk that is being proposed “is presented correctly and all questions are answered truthfully”. It considered that Mr S made a careless misrepresentation, although it said that use of the term ‘careless’ in these circumstances was not to make any moral judgements but was simply the technical language of the relevant legislation. Wakam confirmed that had Mr provided the correct information during the quotation process, it wouldn’t have offered cover.

Wakam said that its guidance was provided in an information box beside the question ‘How many bathrooms or toilet rooms does the property have?’ and that this guidance had been on the website since before the policy purchase date. It considered that Mr S could have reasonably declared five bedrooms. It said that it didn’t offer an advised sales service ‘and therefore we rely on the information given to us by customers during the quote process.’ Wakam felt that it was Mr S’s responsibility to check the information that he gave was correct and that he was fully aware of the terms of the policy. It said that it only checked the information given when a customer submitted a claim. It said it was unable to uphold Mr S’s

complaint and so the policy would remain void due to misrepresentation, however the premium would be refunded. As to the recording sent by Mr S of the quotation process, it said that this related to a contents-only policy and that this wasn't the same quotation process as a building and contents policy.

I've carefully considered all of the above evidence and submissions. The starting point in matters of this nature is the wording of relevant policy documents and connected information. The relevant law regarding misrepresentation is found in the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). It says that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. If a consumer fails to take care in giving or confirming information, the insurer then has certain remedies where there is a 'qualifying misrepresentation'. For it to be a qualifying misrepresentation, the insurer must show it would have offered the policy on different terms or indeed not at all if the consumer hadn't made the misrepresentation. The remedy available to the insurer under CIDRA depends on whether any qualifying misrepresentation was deliberate, reckless, or careless. If the misrepresentation was careless, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all if it wasn't for the misrepresentation.

I'm satisfied on the available evidence that Wakam wouldn't have offered a policy at all if it had known that Mr S's property had five bathrooms to include rooms with toilets. The key issue however is that Wakam has been unable to show on the balance of probabilities that it had sufficiently drawn Mr S's attention to its apparent definition of a bathroom when the policy was sold to him and when the question was asked as to how many bathrooms there were in his property. Mr S said that he'd been careful to check the information he'd given was correct and matched the policy. I've found Mr S's evidence to be persuasive in this respect and his submissions have been candid and consistent throughout.

Wakam said that a 'pop-up' definition screen would have appeared at the relevant time when Mr S completed his online application. Mr S was adamant however that he hadn't seen it. Whilst, in the absence of specific evidence, I make no formal finding as to whether a 'pop-up' actually appeared in this instance, I provisionally conclude on the balance of probabilities that Mr S didn't see any definition of 'bathroom' which may have been available to view. Vital information which determines whether cover is available needs to be clearly and specifically highlighted to the customer, rather than the customer having to search for it. Reliance upon any 'pop-up' which may or may be viewed and retained by the customer, is insufficient on its own without something else which draws the customer's attention to the definition, such as the policy documents.

The policy document does define certain special terms but doesn't define what it means by a 'bathroom'. I accept that it would have been reasonable, without sight of special terms, for Mr S to have concluded that a dictionary definition of bathroom applied. He noted that this was a room which included a bath or shower and not just a toilet. Wakam queried the fact that Mr S has, when taking out insurance in the past, referred to five bathrooms. Mr S said that this was because previous insurers specifically highlighted what information they required. In the circumstances, it's perhaps surprising that Mr S hadn't queried what Wakam meant by 'bathrooms' at the relevant time, even if he hadn't appreciated that this could lead to avoidance of his policy. Therefore, this provisional decision is a finely balanced judgment. Nevertheless, my provisional conclusion is that I can't say that Mr S carelessly misrepresented the facts or that it was unreasonable for him to have concluded that a bathroom didn't include a room with a toilet, for the reasons given above.

In the circumstances, my provisional conclusion is that there was no qualifying misrepresentation in this case. It follows that I don't consider that Wakam acted fairly and reasonably in avoiding Mr S's policy with the consequences that Mr S has faced, both in

terms of more expensive insurance and also, in terms of the distress and inconvenience he's experienced. I'm therefore minded to require Wakam to formally record on its systems that the avoidance of this policy was due to its own error and not that of the customer. It should also provide a letter to Mr S confirming this point. This will enable Mr S to present this to his current insurers in order to seek a reduction in premiums and also to future insurers if necessary. Whilst Mr S no longer needs to pursue his claim as his court action has been concluded in his favour, I nevertheless consider that Wakam should pay Mr S a modest sum in compensation of £250 for the distress and inconvenience caused.'

In my provisional decision, I asked both Mr S and Wakam if they had any further comments or evidence which they would like me to consider before I made a final 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.

Mr S indicated that he was happy with the provisional outcome, however Wakam disagreed with the outcome. Wakam made further submissions regarding three aspects of the provisional decision as follows.

Firstly, regarding the definition of 'bathroom', Wakam supplied a further copy of a screenshot, stating that; *'This is the exact question that Mr [S] answered before selecting this policy.'* It said it didn't require 'pop-ups' to be viewed as *'the full text was visible on the main page, and before Mr [S] selected his answer'*. Nevertheless, Wakam had originally supplied two screenshots, one of which related to the price comparison site which *'the customer clicked from'*, and one of which related to its own website'. In its final response letter of March 2023, Wakam specifically referred to the pop-up box which appeared in its own quote process and which it said was on its website before Mr S purchased the policy.

In any event, Wakam's argument is now that the process used by Mr S specifically asked him to *'include any room containing a toilet'*. The screenshot used by Wakam is a generic screenshot however, which isn't a screenshot of Mr S's search of the comparison site and is undated. As Wakam has been unable to produce evidence of the exact page viewed by Mr S on the relevant date, it's not clear that this was the wording viewed by Mr S. Even if this was the wording viewed by Mr S, I consider that there is a lack of clarity as to whether it intended to reference a bathroom containing a toilet, as opposed to any room containing a toilet, as the wording appears under the heading *'bathroom'*. The provisional decision explains that it would be reasonable to assume that a bathroom would include a bath or a shower. I therefore remain of the view that Mr S didn't see any clear definition of *'bathroom'*. I also remain of the view that *'Vital information which determines whether cover is available needs to be clearly and specifically highlighted to the customer, rather than the customer having to search for it.'*

Secondly, Wakam didn't think that the provisional decision gave sufficient weight or fair consideration to the fact that Mr S chose to give a different answer this year, to answers he had previously given in respect of the number of bathrooms at his home. I agree with Wakam that evidence wasn't supplied by Mr S that the previous insurers provided *'any extra definitions or further information on answering questions about bathrooms that are included in this policy.'* In this respect the provisional decision made it clear that it was a finely balanced provisional judgment. I have therefore carefully considered Wakam's further submissions in this respect. On the balance of probabilities however, I'm persuaded by Mr S's written evidence that previous insurers had specifically highlighted what information they required whilst Wakam hadn't. In my provisional decision, I stated that *'it's perhaps surprising that Mr S hadn't queried what Wakam meant by 'bathrooms' at the relevant time,*

even if he hadn't appreciated that this could lead to avoidance of his policy.' Having said that, I'm mindful that customers often don't remember responses provided to specific questions given in previous years regarding various insurance policies. They are expected to look at the relevant insurer's guidance each time they take out insurance. On balance, I remain of the view that the guidance wasn't sufficiently clear in this case. I'm satisfied in all the circumstances that it would be unfair to make a finding that Mr S failed to take reasonable care not to make a misrepresentation.

Thirdly, Wakam disagreed that Mr S's submissions had been candid and consistent throughout. It referred to the fact that Mr S submitted a video which he maintained was evidence that Wakam hadn't asked about the number of bathrooms. It said that the evidence related to a different type of policy, being a contents-only policy, when his policy was a combined buildings and contents policy. It said that this would have had a different question-set. Wakam thought that this was an '*obvious case of misrepresentation*'. It was surprised that the service would let this go unchallenged, however the service did indeed challenge Mr S on this point. I'm satisfied however that Mr S gave the investigator a credible response as to his confusion on this point, and that he thought that the offer in the video related to home insurance and that the words '*contents insurance*' weren't displayed.

In all the circumstances, whilst I appreciate Wakam's strength of opinion on this matter, I'm satisfied on the balance of probabilities, that Mr S didn't make a qualifying misrepresentation in this matter. I'm also satisfied that the provisional decision provided a fair and reasonable outcome.

My final decision

For the reasons given above, I uphold Mr S's complaint and require Wakam Insurance Company to do the following in response to his complaint: -

- Formally record upon its systems that the avoidance of Mr S's policy was due to its own error and not that of the customer. It should also provide a letter to Mr S confirming this point.
- Pay compensation in the sum of £250 to Mr S for the distress and inconvenience he's experienced, within 28 days of his acceptance of the final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 September 2023.

Claire Jones
Ombudsman