

The complaint

Mr K is unhappy that Wakam avoided his home insurance policy and refused to pay his claim.

What happened

Mr K bought home insurance underwritten by Wakam through its website. He made a claim under the policy after he suffered an escape of water from his living room radiator. Wakam instructed a loss adjuster who then inspected the damage. The loss adjuster noted the following in the report:

- The escape of water was unlikely to have caused all the damage claimed for.
- Mr K was undertaking renovation work.
- Mr K reported that he'd made two claims with his previous insurer.

Wakam said Mr K answered the question it asked about the number of previous claims incorrectly. And it considered this to a deliberate or reckless misrepresentation which entitled it to avoid the policy, refuse the claim, and keep the premium he'd already paid.

Wakam also told Mr K that even if his policy had been valid, he'd failed to notify it of building work he was doing, which is a requirement of the policy. So, it would likely have declined his claim anyway.

Mr K brought his complaint to us, and our investigator thought his complaint should not be upheld. They agreed there'd been a qualifying misrepresentation, and agreed it was deliberate or reckless, and agreed Wakam was entitled to avoid Mr K's policy and retain the premium he'd paid.

Mr K didn't agree. He said the question Wakam asked about the number of claims wasn't clear, so he didn't think it'd treated him fairly by avoiding his policy. In respect of the renovations, Mr K said the more extensive elements of work had been done before policy inception, so the smaller, decorative works fell outside the policy requirement to notify Wakam. He provided evidence that his boiler was installed almost ten years earlier, and said he'd removed the fireplace, floorboards and skirtings to mitigate the damage caused by the leaking radiator.

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.

Having done so, I've decided not to uphold Mr K's complaint. In consideration of whether Wakam fairly cancelled the policy for misrepresentation, I must refer to the relevant rules. In doing so, my decision will likely repeat a lot of what our investigator said. However, I'd like to reassure Mr K that I have looked at all the evidence.

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 (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 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 thinks Mr K failed to take reasonable care not to make a misrepresentation when he bought the policy because he only disclosed one claim and he didn't tell it about renovations he was making to the house. I'll deal with each matter in turn.

Claims

I've looked at the question Mr K said he was asked, which was about the value of the claim. It gave the option to choose a claim value of less than £2,500 or more than £2,500. Mr K said it didn't give the option to say it was an information only, a declined or withdrawn claim.

I've looked at what Wakam asked before its question about the claim value. The question was, *"How many buildings insurance claims have you filed in the last three years?"*

The four options to select from were, *"No claims; 1 claim; 2 claims; 3 or more claims"*.

Mr K said he'd filed one claim because the second one was merely an information request and didn't progress to a claim. Also, Mr K said the question wasn't clear because of Wakam's use of *"filed"*.

I've thought carefully about this point, taking into consideration Mr K's explanation about the second claim and his own description of his profession. He said he contacted his previous insurer about possible storm damage to his roof when his neighbour's roofer asked if he wanted any repairs. The insurer sent a loss adjuster to inspect the roof but said there wasn't any damage.

I'm satisfied this amounts to a claim because Mr K didn't decline the insurer's inspection of his roof. And, if there'd been damage, I think it's more likely than not that Mr K would've progressed to repair or cash settlement in line with the policy. Otherwise, there would be no benefit in contacting the insurer and allowing a loss adjuster visit.

The other point Mr K makes is about the clarity of the question. He provided a definition of *"filed"*, suggesting that it only applied to paid claims. I don't find the word unusual, and I don't think Mr K is claiming he looked up the word before answering the question. Further, when the loss adjuster asked him about claims he'd made, he included both previous claims. That tells me Mr K was aware his second claim would be considered as such.

Therefore, I'm satisfied Mr K failed to take reasonable care not to make a misrepresentation when he said he'd only made one claim in the previous three years.

Wakam provided evidence of the underwriting decisions its webpage would've revealed to

Mr K during the sale if he'd correctly stated he'd made two claims. The sale would've stopped and Wakam explained that it wouldn't provide cover for anyone with two or more claims in the previous three years.

As Wakam's underwriting criteria shows that it would never have offered cover if Mr K hadn't made the misrepresentation, I'm satisfied it was a qualifying misrepresentation.

Wakam classified the misrepresentation as deliberate or reckless. I've considered the evidence to decide whether it was fair and reasonable for Wakam to do so. Mr K told Wakam's loss adjuster about his second claim, so he must've been aware of it. He also had a loss adjuster inspect his roof for storm damage in respect of the second claim, which indicates the start of the claims process. Therefore, I think it's reasonable that Wakam considered Mr K had made a deliberate or reckless misrepresentation.

In line with CIDRA, Wakam can avoid the policy and keep the premium, refuse to pay a claim, and look to recover any costs it's paid on any claim after the misrepresentation.

Wakam confirmed it avoided the policy and kept the premium, so I'm satisfied it acted in line with CIDRA.

Renovations

Wakam told Mr K that it would've refused his claim anyway because he'd failed to disclose building work he was having done to his house. Mr K said the work was decorative in nature and fell outside the policy requirements to notify Wakam.

There's dispute about how much work Mr K had done before policy inception. Mr K said the work the loss adjuster noted was mainly his attempt to mitigate the damage caused by the escape of water. Otherwise, he said the work he described was simply to show to the loss adjuster that he'd maintained his home.

I understand what Mr K is saying about describing historical renovations. However, I think it's reasonable that Wakam considered the removal of the fireplace, skirting boards and floorboards to be more than decorative. Mr K says he only removed those things to prevent damage from the water leaking from his radiator. I'd expect some reasonable effort to mitigate the impact of the escape of water in line with the policy. But in my view the removal of floorboards, skirting and a fireplace goes beyond that which might reasonably be expected. Therefore, I can't say it was unreasonable of Wakam to consider the work more than decorative and within the policy requirements for Mr K to notify it of the work.

Overall, I think Wakam has reasonably classed Mr K's misrepresentation as deliberate or reckless, avoided the policy and refused to pay the claim for the reasons given here, and in line with CIDRA. I won't be asking Wakam to do anything more in respect of Mr K's complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 September 2023.

Debra Vaughan
Ombudsman