

The complaint

Miss E has complained that Wakam cancelled (avoided) her motor insurance policy on the basis that she misrepresented the address she was going to be living at when the policy started.

Wakam is the underwriter of Miss E's policy, so it's her insurer. This complaint is, in part, about the actions of one of Wakam's agents. As Wakam has accepted it's accountable for the actions of its agent, any reference to Wakam in my decision includes its agent.

What happened

Miss E obtained several quotations on a comparison site and then took out a policy with Wakam that was due to start on 8 August 2023. When she did so she said she would be living at address A. Miss E called Wakam to add her partner to the policy just before it was due to start and this resulted in her having to pay an additional premium. This led to Wakam investigating which address Miss E would be living at when her policy started. Wakam then decided Miss E had misrepresented the address she would be living at, because she would have moved to address B by the time the policy started. It avoided her policy (treated it as if it had never existed) and charged her a misrepresentation cancellation fee, as well as a set-up fee. This led to Miss E owing Wakam £39.53 and having a policy cancellation (avoidance) on her record.

Miss E complained to Wakam, but it wouldn't alter its stance. So she asked us to consider her complaint. One of our investigators did this. She said Miss E's complaint should be upheld on the basis Wakam hadn't done enough to show it was entitled to avoid Miss E's policy.

Wakam does not agree with our investigator's view and has asked for an ombudsman's decision. It still thinks the evidence it has provided shows Miss E deliberately misrepresented the address she would be living at when the policy started to obtain a lower premium.

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 to uphold it for the same reason as our investigator.

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.

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.

I've considered the evidence provided by Wakam and Miss E's testimony and I do not consider what Wakam has provided shows that it is most likely Miss E was living at address B on 8 August when her policy started. I say this because she has provided a letter dated 7 August 2023 showing her tenancy at property A wasn't due to end until 4 September 2023. She has also provided a Council Tax bill from July 2023 for address A in her name. She has also explained that she had changed the address on her bank account to address B prior to moving because she wanted to make sure her mail went to this address as soon as she moved. And she and her partner were renovating the property, so she would be able to collect any mail that went there in the meantime. She has explained that her references to moving on social media were in anticipation of her move. In particular, she has explained that her reference in a social media post at the end of July 2023 to it being 'the end of an era' was a reference to the fact her son had just had his last day at his current primary school and would be moving to a new one near address B, along with her moving to address B in the near future. But this was not going to be before 8 August 2023, as the property would not be fully renovated and ready for them to move into at that stage.

I find the evidence provided by Miss E, including the above explanation for her social media posts, compelling. And this means I'm not satisfied that Wakam has demonstrated that Miss E failed to take reasonable care not to make a misrepresentation about the address she would be living at when she took out her policy. Therefore, I consider as part of the fair and reasonable outcome to Miss E's complaint Wakam should remove any record of the cancellation or avoidance from its records and any central databases it has placed it on. I also consider Wakam should refund the £65.47 Miss E paid towards her policy and remove any record of the debt it said was outstanding. It should also add interest at 8% per annum simple to the £65.47 from the date Miss E paid it to the date it refunds it. This is to compensate Miss E for being without this money.

Miss E should then be able to contact her existing insurer to let them know she doesn't have a policy cancellation recorded against her, so that it can adjust her premium accordingly.

I also consider that Wakam's approach caused Miss E unnecessary distress and inconvenience. And I agree with our investigator that Wakam should pay her £100 in compensation for this.

Putting things right

For the reasons set out above, I've decided to uphold Miss E's complaint and make Wakam do the following:

- Remove any record of the cancellation or avoidance of Miss E's from its records and any central databases it has placed it on.
- Refund the £65.47 Miss E paid for her policy and remove any record of the debt it said was outstanding.

- Add interest to the £65.47 at 8% per annum simple¹ from the date Miss E paid it to the date it refunds it.
- Pay Miss E £100 in compensation for distress and inconvenience.

My final decision

I uphold Miss E's complaint and order Wakam to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 25 March 2024.

Robert Short
Ombudsman

¹ Wakam must tell Miss E if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Miss E if asked to do so. This will allow Miss E to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.