

The complaint

Mrs E complains that Wakam rejected a claim on her home insurance policy and said the policy was void.

What happened

Mrs E took out buildings and contents insurance for her home, underwritten by Wakam, in December 2021.

In March 2023 Mrs E made a subsidence claim on her policy after noticing a crack in a wall. Wakam arranged an inspection of the property but then wrote to Mrs E saying she had made a misrepresentation when she bought the policy, so it would not cover the claim and her policy was void.

Mrs E complained but Wakam didn't change its decision. It said the property was not in good condition and there were visible cracks, but Mrs E had failed to answer a question about this correctly when buying the policy.

When Mrs E referred the complaint to this Service, our investigator's view was that it wasn't reasonable for Wakam to void the policy as Wakam hadn't done enough to show Mrs E had answered the question incorrectly. He said Wakam should either reinstate the policy and deal with the claim or offer Mrs E a cash payment to settle it. Wakam disagreed.

After considering further comments from both Wakam and Mrs E, the investigator said he still thought it wasn't fair to declare the policy void. He said Wakam should reinstate the policy, assess the circumstances of the claim and carry out further investigations as appropriate. And he said if Wakam still didn't accept the claim or thought the policy should still be void, it would need to confirm this to Mrs E and she could make a new complaint if she disagreed.

Wakam accepted this recommendation but Mrs E didn't. She said:

- she has provided details of the investigation that was carried out on Wakam's behalf;
- the investigator had initially said Wakam should deal with the claim in line with her own suggestion but had now changed his recommendation; and
- it wasn't clear if this was because Wakam had provided more information about the level of detail in its investigation.

In reply, the investigator said:

- Wakam had not continued to investigate because it had concluded there had been a misrepresentation and the policy was void.
- Subsidence claims would often be subject to further validation, which hadn't been done, so it was fair to allow Wakam to continue the investigation and decide if there was a valid claim for subsidence.

- If, as a result of further investigations, Wakam decided the claim was not covered by the policy – or still felt it should void the policy – it would confirm that and she could make a fresh complaint about that decision if necessary.

Mrs E isn't happy with the proposed outcome and has requested an ombudsman's 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

Wakam said Mrs E had made a misrepresentation when she bought the policy and therefore the policy was void.

The relevant law in relation to this 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 an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out the remedies available. If there had been a misrepresentation CIDRA would allow Wakam to treat the policy as void (in other words, as if it had never existed) if it wouldn't have sold the policy had there not been a misrepresentation. It would first need to show there had been a misrepresentation.

Wakam has accepted the investigator's view that it wasn't reasonable to void the policy, as it hadn't done enough to show Mrs E had answered the question incorrectly, so it hasn't shown there was a misrepresentation. As this has been agreed, I don't need to make a finding on this point. The issue for me to decide is how the claim should now be dealt with. Wakam has accepted the investigator's recommendation but Mrs E has not.

The investigator said Wakam should continue the investigation and decide if there was a valid claim for subsidence. Mrs E is unhappy because the investigator left open the possibility that, after further investigation, Wakam might again decide there had been a misrepresentation. She says she would accept the investigator's original recommendation that Wakam either deal with the claim or offer her a cash payment to settle it.

As it stands, Wakam hasn't done enough to show there was a qualifying misrepresentation that would mean it's fair to void the policy. So it should reinstate the policy.

But that doesn't necessarily mean the claim should be settled. Because Wakam considered the policy was void, it didn't proceed with its investigation of the claim. There may be a number of factors to consider when deciding whether this is a valid claim under the policy terms. So it needs to consider the claim in line with the relevant terms and then make a decision on whether the claim should be settled (and if so, how).

On the information currently available, Wakam hasn't done enough to show there was a qualifying misrepresentation. I think it would need to have some compelling new evidence to reach that conclusion. In the absence of any such evidence, the decision Wakam needs to make is whether the claim is covered. If it is, Wakam will need to explain to Mrs E how it proposes to settle the claim.

The policy terms say that (subject to certain conditions) "*If you claim for loss or damage to the buildings, we will pay the full cost of repair...*" So that will be the starting point for settling the claim if it is covered. But Wakam will need to consider all the relevant information before making a decision. It's not for me to say how that should be dealt with. Once a decision has been made on the claim, if Mrs E is unhappy with that decision she may consider making a fresh complaint.

My final decision

I uphold the complaint and direct Wakam to:

- reinstate policy (and remove any records of the avoidance); and
- consider the claim in line with the policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 18 June 2024.

Peter Whiteley
Ombudsman