

The complaint

Mr and Mrs C complain that Wakam unfairly avoided their home insurance policy. Any reference to Wakam in this decision includes its agents unless specified otherwise.

What happened

- Mr and Mrs C had a home insurance policy, and when they moved house, they asked Wakam to transfer the policy to their new home. A little while later Mr and Mrs C made a claim for a water leak outside the new property.
- Prior to buying their new home and transferring the policy, Mr and Mrs C had a survey carried out on the property. The survey identified several defects that needed repair, although none were deemed to be urgent.
- Wakam said the report showed that Mr and Mrs C had answered the application questions it asked about the state of repair of the property incorrectly. It considered this to be a deliberate or reckless misrepresentation, which it says entitles it to refuse the claim, avoid the policy from inception (that is treat it as if it never existed) and retain any premiums paid.
- Mr and Mrs C complained about this, but Wakam didn't change its stance. So, they asked us to review their complaint. They say they've been treated like criminals and that the consequences of Wakam's actions will have a far-reaching effect. They don't believe they deliberately or recklessly misrepresented the state of their new home.

Our investigator thought Wakam had acted fairly. Mr and Mrs C disagree so I've been asked to decide this complaint.

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'm not going to uphold this complaint. I realise this will disappoint Mr and Mrs C, but I'll explain how I've reached my conclusions.

- 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 an insurance policy like the one Mr and Mrs C bought. The standard of care is that of a reasonable customer.
- If a consumer fails to take reasonable care, then the insurer has certain remedies, providing the misrepresentation is what's called a qualifying misrepresentation. The insurer must show it would have done something different if the misrepresentation hadn't occurred. That might be different terms – or, as Wakam says here – it wouldn't have offered cover at all.
- CIDRA sets out guidelines on how to decide whether a consumer takes reasonable care, including how clear the questions are that a consumer answers when applying for the policy. It also explains how an insurer can distinguish between careless and

deliberate or reckless misrepresentations.

- Wakam says Mr and Mrs C failed to take reasonable care when answering a question about the state of the property, when they confirmed that their new home was free of defects. Wakam says Mr and Mrs C had a survey done on the property that listed several defects. It says if it had known about these it wouldn't have provided cover at all.
- Mr and Mrs C say that although they knew about the defects, these weren't listed as things that needed immediate attention, so they believe they answered the question fairly when they didn't disclose the identified defects.
- During the application process Mr and Mrs C were asked to answer "true" or "false" to a list of statements. One of these was
 - *"The home insured is currently in a good state of repair, free from damage or defect"*
- I think this is a clear question. Mr and Mrs C answered "true" to this question. That means they told Wakam there were no defects or damage.
- Whilst Mr and Mrs C may think the property overall is in good condition, the statement clearly asks whether there are any defects, and doesn't distinguish as to the severity or otherwise of any defects.
- The survey I've seen lists several defects that need repair, even if that isn't described as urgent. Mr and Mrs C's surveyor also sent a letter saying none of the identified defects would have been subject to an insurance claim as they fell into the category of maintenance. We asked Wakam to comment on this, but it said it didn't affect its conclusions. Wakam said Mr and Mrs C could have asked for further guidance when transferring the policy and shared the content of the survey. It says as they chose not to do that, they failed to take reasonable care not to misrepresent the state of the property.
- Based on what I've seen I agree that Mr and Mrs C's answer to the above statement was incorrect. It follows that I'm satisfied they failed to take reasonable care not to make a misrepresentation.
- Wakam has provided evidence that if it had known about the defects it wouldn't have offered cover at all. That means the representation was a qualifying one.
- Wakam says the misrepresentation falls into the category of deliberate or reckless as Mr and Mrs C knew there were defects in the property and didn't declare these. Whilst I don't think this was deliberate, I don't think it's unreasonable for Wakam to treat the misrepresentation as reckless given Mr and Mrs C had the survey containing details of defects when they answered the question.
- Under CIDRA, when a misrepresentation is deemed to be reckless, an insurer can avoid the insurance contract (that is treat it as if it never existed), refuse a claim and keep any premiums paid. I understand this is what Wakam has done, so it has taken the remedies available in these circumstances. I'm satisfied this is a reasonable response, so I am not upholding this complaint.
- I do appreciate that Wakam's actions may appear severe to Mr and Mrs C and I'm sorry they've been adversely affected by this. But I have to reach an impartial conclusion based upon the information provided, and I can't conclude Wakam has acted unreasonably.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 8 April 2024.

Susan Peters
Ombudsman