

## **The complaint**

Mr and Mrs F are unhappy with how Wakam dealt with their insurance claim after their home was broken into.

This complaint involves the actions of agents for whom Wakam is responsible. Any reference to Wakam includes its agents.

## **What happened**

Mr and Mrs F took out a home insurance policy online in May 2022. The policy came into force in June 2022 and renewed the following year. The policy was underwritten by Wakam.

In July 2023, Mr F contacted Wakam to make a claim after his home was broken into. During its investigation, Wakam found that the property appeared to have three bathrooms, but its records showed that Mr and Mrs F had said it only had one.

Wakam thought Mr and Mrs F had failed to take reasonable care when answering the question about the number of bathrooms at the point of sale. It said it would've charged a higher premium if it had known otherwise. Wakam viewed this as a careless, qualifying misrepresentation under the law. It said it would consider the claim, but would reduce any settlement amount down to 92%, this being the proportion of premiums that had been paid. It also gave Mr and Mrs F 21 days to cancel the policy and didn't offer a refund.

Mr F complained to Wakam. He didn't think the question at the point of sale, or the guidance alongside it, was clear. He thought he'd given a reasonable answer. And he thought the price difference was insignificant and wasn't calculated correctly. He also thought it was unfair for Wakam to force him to cancel the policy, especially without a refund.

Wakam considered the complaint but didn't change its stance. So, Mr F referred the matter to the Financial Ombudsman.

Our investigator looked into things and didn't uphold the complaint. She thought Mr and Mrs F had made a careless, qualifying misrepresentation at the point of sale and again at renewal, so she thought it was fair for Wakam to settle the claim proportionately. She also thought Wakam had acted fairly by letting Mr and Mrs F cancel without a refund.

Mr F didn't agree with our investigator's view. He thought Wakam had only asked him about bathrooms and not toilet rooms, and he still thought Wakam's calculations were wrong.

Because Mr F didn't agree, the complaint has come to me for 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.

Having done so, I'm not upholding the complaint. I know this will be disappointing for Mr and Mrs F, and I'm sorry to hear about the break in at their home. But I'm satisfied Wakam has

acted fairly, in line with the relevant law, and in line with Mr and Mrs F's policy terms. I've focused my comments on what I think is relevant. If I haven't commented on a specific point, it's because I don't believe it affects what I consider to be the right outcome.

### Misrepresentation

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This law requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance contract (a policy). The standard of care is that of a reasonable consumer. If a consumer fails to take reasonable care, the insurer has certain remedies as long as the misrepresentation is – what CIDRA considers – a qualifying misrepresentation. To be qualifying, the insurer has to show that they would've offered the policy on different terms, or not at all, if it wasn't for the misrepresentation.

CIDRA sets out a number of considerations for deciding whether a consumer has failed to take reasonable care. And the specific remedy that the insurer can apply under CIDRA depends on whether the misrepresentation was deliberate or reckless, or careless.

Wakam says Mr and Mrs F failed to take reasonable care during the online sales process. It provided a screenshot of the relevant question in its response to Mr F. The question said:

“How many bathrooms or toilet rooms does the property have?”

A guidance icon was included next to the question which, when clicked, said:

“Bathrooms

Any room with a bath, shower or toilet, including ensuites and toilet rooms.”

Wakam has shown that Mr and Mrs F answered “1”.

Mr F confirmed that his property has a main bathroom, an ensuite and a downstairs toilet. So, I'm satisfied that the answer was wrong. So, I've considered the reasons Mr F gave for this. Mr F told Wakam that he used the common definition of 'bathroom' to mean a room with a bath. He also mentioned a similar definition in the Oxford dictionary. Further, he thought the supporting guidance was ambiguous and misleading.

I've considered Mr F's explanations, but I'm afraid I don't find them persuasive. I appreciate Mr F may have considered bathrooms to only include rooms with a bath, but I don't think that was a reasonable definition in the context of a home insurance application. I say that because many properties will have bathrooms that don't have a physical bath. Also, the question specifically mentioned toilet rooms, which ought to have prompted Mr and Mrs F to include more than their main bathroom.

Further, I think the supporting guidance was clear. It explained that Mr and Mrs F should include any room with a bath, shower or toilet, which would have included the three affected rooms in their property.

I also think the guidance was particularly relevant in this case because it said to include “ensuites and toilet rooms”, which were the two rooms that Mr and Mrs F did not include. So, I agree with Wakam that Mr and Mrs F failed to take reasonable care not to make a misrepresentation at that point.

Even so, the burglary happened during the second policy year, after the policy had renewed. We treat a renewal as a new insurance contract. CIDRA says that a failure by the consumer to comply with the insurer's request to confirm or amend information previously given is

capable of being a misrepresentation. So, I've reviewed Mr and Mrs F's renewal documents to see what Wakam told them about this. Their documents said:

"IMPORTANT: The information displayed in this Policy Schedule and Statement of Fact should be read in conjunction with your policy wording and is based on the information disclosed to [broker] when you asked for a quote. Cover is provided to you on this basis.

You should check the answers that you provided are true, complete and up to date. If any of the information is inaccurate or incomplete your policy may be invalid, any claims may be rejected, and different terms may be applied to the policy."

I think the above made reasonably clear that Mr and Mrs F had to check their previous answers, as is common with insurance renewals.

Regarding the number of bathrooms, the statement of fact said:

"How many bathrooms/wetrooms does the property have?  
*Any rooms with a bath, shower or toilet, including enSuites and toilet rooms*  
1"

I should explain that it isn't unusual for the wording in a statement of fact to differ from the exact questions asked at the point of sale. Even so, I've had to consider whether Mr and Mrs F took reasonable care to check their statement of fact to ensure the information it contained was correct. Having done so, I don't think Mr and Mrs F took reasonable care, because I think they ought reasonably to have known that their property had three rooms that met the above definition rather than one. So, I think Mr and Mrs F failed to take reasonable care not to make a misrepresentation at renewal as well.

Wakam has provided underwriting evidence to show that it would have charged Mr and Mrs F a higher premium if it had known the correct number of bathrooms. So, I'm satisfied that the misrepresentation was qualifying. Wakam has treated the misrepresentation as careless and hasn't suggested it was deliberate or reckless, which I think was fair.

As I'm satisfied the misrepresentation was careless, I've considered the actions that Wakam was allowed to take in accordance with CIDRA. CIDRA says that if an insurer would have continued to offer a policy, but at a higher price, it can settle claims on a proportionate basis. So, I think Wakam's decision to reduce any settlement by a proportionate amount was correct, and in line with the law.

Wakam used the original policy price as the basis for its proportionate calculation. I've explained above that the misrepresentation that matters happened at the point of renewal, so I would have expected Wakam to use the renewal price as the basis for its calculation, not the price the year before. However, Wakam has provided its calculations to show that, by using the original price, it has put Mr and Mrs F in a more favourable position than if it had used the renewal price. So, even though Wakam has departed from the calculation set out in CIDRA, I don't think this has led to an unfair outcome, so I won't interfere with it.

Mr F says he checked the price in August 2023 and the difference wasn't as large as Wakam claimed. But the calculation would need to be based on Wakam's pricing model at the relevant time, and not part way through the policy year. I've reviewed Wakam's underwriting evidence and checked its calculations, and I'm satisfied they're correct – with an original price of £218.43 and a correct price of £237.57 – giving a proportionate settlement amount of 92%. I can't share the underwriting evidence that corroborates this,

because it's commercially sensitive. But I hope Mr and Mrs F can feel assured that I've carefully reviewed this as an independent third party.

I appreciate the price difference was relatively small and could have a large impact on the claim. But the difference was enough to be a qualifying misrepresentation under the law – so I don't think it was unreasonable for Wakam to apply the remedy that the law sets out. And I'm satisfied it has done so in a fair and reasonable way.

### Cancellation and refund

Mr and Mrs F don't think it was fair for Wakam to have asked them to cancel the policy. I've reviewed their policy terms, and I can see they give Wakam the right to cancel in the event of incorrect information being given carelessly. Further, if the policy was left to continue, Wakam would've been allowed to settle any claims on a proportionate basis, which would have left Mr and Mrs F underinsured. So, I think the cancellation was fair and in line with the terms.

In addition, I think Wakam acted fairly by giving Mr and Mrs F the option to cancel first, to save them from having to declare an enforced calculation to future insurers.

In terms of a pro-rata refund of premiums, the policy terms say that a refund won't be given if a claim has been made. This is common in insurance policies, so I don't find it unusual. Mr and Mrs F had made a claim, and so I think it was fair for Wakam not to have offered a refund. If the claim is later declined, Mr and Mrs F may wish to speak to Wakam further.

I know my outcome will be unwelcome news for Mr and Mrs F and I'm sorry about that. But I'm persuaded that Wakam has handled the matter fairly and reasonably. So, I won't be telling Wakam to do anything further.

### **My final decision**

For the reasons set out above, I don't uphold Mr and Mrs F's complaint about Wakam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 12 September 2024.

Chris Woolaway  
**Ombudsman**