

The complaint

Mr C complains that Tesco Underwriting Limited mishandled his claim on his motor insurance policy.

Where I refer to “Tesco”, I refer to Tesco Underwriting Limited and I include claims-handlers and others insofar as I hold that company responsible for their acts or omissions.

What happened

The subject matter of the claim and the complaint is a luxury car, first registered in about 2005.

From at least July 2019, Mr C had the car insured on a comprehensive policy with Tesco. For the year from July 2020, he renewed the policy. Mr C was the policyholder and there were no other named drivers.

On 1 March 2021, Mr C reported that someone had stolen the car from outside his home.

On 2 March 2021, the car was found damaged after a collision with other vehicles. Mr C later realised that his son had taken the vehicle without his consent. One of Mr C's son's acquaintances had been driving at the time of the collision.

Tesco declined to pay Mr C's claim. Mr C complained to Tesco about that. By a final response dated 7 July 2021, Tesco turned down that complaint. It quoted a policy term as follows:

‘What is not covered...

Loss of or damage to the car, if at the time of the incident, it was being driven or used without your permission by someone in your family or someone who is living with you.’

Mr C brought his complaint to us in early September 2021.

Our investigator recommended that the complaint should be upheld in part. The investigator didn't think that Tesco treated Mr C fairly by its decision to turn down his claim. The investigator said that, although the exclusion was set out in the policy documents, there was nothing to highlight its presence there. The investigator recommended that Tesco should:

1. settle Mr C's claim in line with the terms of the policy but without reliance on the exclusion quoted above; and
2. pay the claim in accordance with the remaining terms and conditions of the policy along with simple interest of 8% from the date the claim was made until the date of settlement.

Tesco disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- On the renewal, it would've issued a document pointing out to Mr C the changes in the policy wording.
- It has sent us the police report relating to the theft.
- Mr C told the claims handler that prosecutors had charged his son with the same offences as the person who was driving at the time of the accident. This suggests the son was complicit all along.
- Mr C was aware of this and had tried to conceal it. Mr C has never 'volunteered' any information about his son and has only responded when asked questions.
- The Financial Ombudsman Service had said we would be supportive of the decision to repudiate because Mr C wouldn't support the prosecution.

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.

Section A of the policy covered damage to the vehicle. But that excluded loss or damage caused by theft or attempted theft.

Section C of the policy covered fire and theft. That included loss or damage caused by theft or attempted theft.

Tesco made some changes to its policy terms. The document summarising the changes said that there had been an old term excluding damage where the car was taken without consent but the policyholder didn't report it to police. I will call that "the old exclusion".

The old exclusion was replaced by a new exclusion in both section A and section C as follows:

'What is not covered...

Loss of or damage to the car, if at the time of the incident, it was being driven or used without your permission by someone in your family or someone who is living with you.'

The criminal offence of theft includes a number of elements. One of these is an intention permanently to deprive the owner. There is a separate criminal offence of taking a vehicle without the owner's consent ("TWOC"). TWOC is an offence under the Theft Act.

In the context of an insurance claim, I find it fair and reasonable that "theft" should include TWOC. So Mr C's claim for "theft" doesn't depend on showing that his son intended permanently to deprive Mr C of the car.

Many motor insurance policies have an exclusion like the new exclusion in Tesco's policy. But most policies make that exclusion subject to an exception if the policyholder co-operates with the police in investigating or prosecuting the family member ("the usual exception").

Tesco's policy doesn't make the new exclusion subject to the usual exception. So I consider that the new exclusion was unusual and significant. So I wouldn't find it fair for Tesco to rely

on the new exclusion unless it had done enough to highlight the new exclusion to Mr C when he took out or renewed the policy.

The Insurance Product Information Document ("IPID") should be a summary of significant terms in the policy document. Tesco sent us the renewal documents with an IPID that includes the following:

*'What is not insured
-car taken without consent unless reported to the police'*

That's a summary of the old exclusion. The IPID didn't highlight the new exclusion.

The document summarising the changes to the policy terms said that there had been a change from the old exclusion to the new exclusion. But the IPID contradicted that.

So I'm not satisfied that Tesco did enough to highlight the new exclusion. I'm satisfied that Mr C reported the theft to the police, initially believing that someone had entered the house and taken the car key.

I accept that Mr C's son had taken the car without his consent and that was the cause of the damage to the car. So the son was responsible for the damage.

I can see that Mr C was conflicted in how to deal with his son and with his insurer. Whilst he later said he didn't want a prosecution of his son, Mr C did make a statement that his son had taken the car without his consent. So I'm satisfied that he co-operated with the police. I find it fair and reasonable that Mr C's claim would've fallen within the usual exception to the new exclusion.

Therefore I find that Tesco treated Mr C unfairly by declining his claim.

Putting things right

I find it fair and reasonable to direct Tesco to meet his claim in line with the policy terms save the new exclusion.

As Mr C will have been out of pocket for some time, I will direct Tesco to add interest at our usual rate.

I've thought about the extra distress and inconvenience Tesco caused Mr C by unfairly declining his claim at an already difficult time. But much of this is to do with being kept out of pocket, for which interest is compensation. So I don't find it fair and reasonable to direct Tesco to pay compensation for distress and inconvenience in addition.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct Tesco Underwriting Limited to:

1. meet Mr C's claim in line with the policy terms save for the new exclusion; and
2. pay Mr C simple interest at a yearly rate of 8% on any sum it pays in settlement of his claim from the date of his claim to the date of settlement. If Tesco considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr C how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if

appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 April 2022.

Christopher Gilbert

Ombudsman