

The complaint

Mr B has complained about Tesco Underwriting Limited. He isn't happy about the way it settled liability following a claim under his motor insurance policy and about the reduction in his no claims discount (NCD).

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Mr B made a claim under his motor insurance policy after he was involved in a minor accident while reversing. Tesco looked into the claim for him and held Mr B at fault for the accident which impacted his NCD.

Mr B wasn't happy about this and complained to Tesco about it. He thought that the other driver should have been aware of him and so he shouldn't be held at fault for the accident. And he said that he had over nine years NCD when he bought the policy and so couldn't understand why his NCD had been reduced to three years.

Tesco explained that as Mr B was reversing onto a road he was held responsible for the accident. And explained that its maximum level of NCD was five years and as Mr B had been involved in an accident his NCD had been stepped back to three years. As Mr B still wasn't happy he complained to this service.

Our investigator looked into things for Mr B, but she didn't uphold the complaint. She thought that Tesco had considered liability fairly in concluding that Mr B was at fault for the accident. And that Tesco fully explained how it looked at NCD before Mr B took out the policy and had acted in line with this. As Mr B didn't agree the matter has been passed to me for review.

What I've provisionally 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 presently minded to partly uphold this complaint, I'll explain why.

I think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I can understand how difficult and frustrating Mr B has found all of this. I say this as Mr B was at the scene and feels that the other driver could have done more to avoid the accident. But as our investigator has explained it isn't the role of this service to decide liability, which is

a matter for the courts. Although we do look to ensure insurers have acted in a fair and reasonable way.

Tesco, like most motor insurers, have a clause in the contract that allows them to take over the settlement of Mr B's claim. This gives it the right to decide whether to proceed to court or settle a claim. And court proceedings are uncertain and expensive, so insurers are cautious about going to court. They look to consider the costs involved and the likelihood of success in making these decisions and have significant experience in this area.

But we look to ensure that insurers act fairly in deciding whether to settle matters and make a reasonable assessment of the claim - based on a clear understanding of the evidence and circumstances surrounding the accident. With this in mind, I have carefully considered how Tesco handled Mr B's claim.

It is clear Tesco looked at all the available evidence, including the CCTV footage and considered both Mr B and the third party's account when it decided liability. But given Mr B was reversing onto a road the greater onus was on him to ensure it was safe to make the manoeuvre. And so I don't think Tesco acted unreasonably in settling liability holding Mr B at fault and I don't think it would have won at court given these circumstances – so I don't think it acted unreasonably here.

Turning to the reduction in Mr B's NCD I would expect the way Tesco deals with NCD to be explained to its customers clearly and in this instance I don't think it was. As insurers deal with NCD differently I would have expected Tesco to have explained this to Mr B before he took the policy out and I haven't seen any evidence that it did. And Mr B has provided a video showing that he couldn't access all the documentation, including the way Tesco deals with NCD, online. And unless Mr B was able to access the information about the way his NCD was being reduced overall and dealt with in the event of a fault claim I don't think he would have known, especially as the documents Mr B could access (including his statement of fact) said he had 9 years NCD.

Given that Mr B has made it clear he didn't know that his NCD would reduce from the 9 years he presented with to 3 years and would have acted differently if he was made aware. I feel the fair and reasonable thing to do, in the particular circumstances of this case, is for Tesco to put Mr B back into the position he would have been but for its system error.

So Tesco should –

- Allow Mr B to pay an increase in premium as if he had protected his NCD and allow his NCD in full if he wishes to pay this; and*
- Pay £100 compensation for stress and inconvenience all this has caused him.*

Replies and developments

Both sides responded to my provisional decision. Mr B accepted the position outlined and said he had nothing further to add. While Tesco said that the documents provided was a sample document and said its screenshot showed that Mr B had the opportunity to read his policy booklet prior to purchase of the policy to ensure it met his needs.

It said that Mr B should have done this before taking his policy out so that he knew the policy benefits, limitations, and exclusions of cover. Tesco said it asks its customers to check they are happy with everything before purchasing the policy as opposed to after. And highlights that Mr B called and spoke to Tesco twice on the day he took the policy out but says he didn't mention that he couldn't access the policy documentation. Tesco says that Mr B would have mentioned this if he wasn't able to gain access and it was Mr B's prerogative if he chose not to access his policy documents before purchasing his policy.

Furthermore, Tesco questioned whether the link didn't work as it hadn't been made aware of any issues with its systems by other policy holders. Ultimately, Tesco felt if the document could not be opened, this may have been more an issue with the customers device, than the link. But again, had Mr B mentioned this Tesco could have made an attempt to forward the policy booklet in a different format had it needed to.

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.

As both sides appear to accept that Tesco acted reasonably in relation to liability I don't propose to rehearse the arguments again. But having reconsidered everything I'm still of the view that the complaint should be partly upheld. I've seen the video footage that Mr B provided, and I find it persuasive. I think, on balance, it is clear that Mr B couldn't access all the documentation, which included the way Tesco deals with his NCD. And the documentation that he could access (including the statement of fact) suggested he had 9 years NCD, so I don't think it was unreasonable for Mr B to presume this was still the case. I say this as this was the only documentation that he could access outlining and overall, I haven't been provided with enough information to show that the NCD position was made clear before he took the policy out. And any ambiguity should be interpreted in his favour here.

Given all of this I remain of the opinion that the fair and reasonable thing to do is for this complaint to be partly upheld. And so, I'll ask Tesco to take the steps outlined in my provisional decision subject to Mr B's agreement.

My final decision

It follows, for the reasons given above, that I uphold this complaint. I require Tesco Underwriting Limited to;

- Allow Mr B to pay an increase in premium as if he had protected his NCD and allow his NCD in full if he wishes to pay this; and
- Pay £100 compensation for stress and inconvenience all this has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 May 2022.

Colin Keegan
Ombudsman