

The complaint

Mr P complains Tesco Underwriting Limited declined his claim on his motor insurance policy.

What happened

Mr P had a car insurance policy with Tesco and made a claim when his car was stolen. He said it was taken while he visited at his mother's home. He obtained CCTV footage of the theft. But after reviewing the footage, Tesco declined his claim because it thought it showed the car was unlocked when it was stolen.

Mr P complained because he says he locked the car when he first arrived at his mother's house. He says he went back to put items in the car and locked it again afterwards.

Our investigator thought the complaint should be upheld. They didn't think Tesco reasonably established that Mr P left his car unlocked. They said the CCTV footage didn't show the events leading up to the theft and didn't think it proved Mr P hadn't locked his car. They also said even in the event Mr P didn't lock the car, its automatic locking feature would have been engaged after 40 seconds leaving the vehicle secure.

Tesco didn't agree and asked for an ombudsman's decision. It said the claim would be declined based on the exclusion of the car not being locked. It also said there were inconsistencies in the incident circumstances and the witness statement it received. As such, it believes that the policy contract has been breached.

Our investigator still didn't think Tesco provided sufficient evidence to show the exclusion it relied on to decline the claim applied. As Tesco didn't agree with the investigator, the complaint's been passed to me to decide.

I issued my provisional decision on 7 July 2022 in which I said:

The terms of Mr P's policy with Tesco says:

*"We will pay for loss of or damage to the car caused by fire, theft or attempted theft"
It's not disputed that Mr P's car was stolen in front of his mother's house. As per the terms, this is an insured event covered by the policy. But it doesn't automatically follow that the claim should be paid. That will depend on the other terms and conditions of the policy. Mr P has shown his car was stolen, it is therefore Tesco's responsibility to show that there is an exclusion that entitled it to decline Mr P's claim.*

The policy doesn't cover loss or damage when no one is in the car, unless all its doors and windows are closed and locked. It's not disputed that the evidence suggests the car wasn't locked at the point the thief entered it, however Mr P says he locked his car. To be satisfied Tesco declined the claim fairly, it needs to show that on balance, Mr P didn't lock his car and his failure to do so was material to the loss. I don't think it has shown this, and I'll explain why.

Mr P obtained CCTV footage from a neighbour. I must agree with Tesco, the footage he

provided appears to have been edited. Though the neighbour said they sent everything to Mr P, I find this statement vague and I don't think it's enough to say Mr P edited the footage himself. Nevertheless, the footage that's available is short and doesn't show the events leading up to the theft. So, I don't think it's adequate evidence Mr P left the car open.

Tesco's notes indicate Mr P was adamant he locked his car after briefly returning to it, because he had gone to place expensive items inside of it, and I think that's a reasonable explanation. Mr P's car also had a self-locking feature which meant if he had left it unlocked it would have automatically locked itself after 40 seconds. As such, I don't think Tesco has done enough to show Mr P left the car unlocked.

Even if Mr P failed to secure his car, I'm not persuaded the failure to do so was material to the loss. Firstly, the police confirmed two other cars of the same make had been stolen within hours of each other, in the same area and without use of the keys. The police officer's comments indicate that cars such as Mr P's had been targeted by thieves in that area and they were equipped with the tools they needed to steal them.

Mr P's car is operated using a keyless system. There are tools available for purchase on the market which would enable someone to open and start the car without using its original fob. I think it's fair to say someone with the intention of stealing such cars will most likely also have the means to do so. Mr P provided Tesco with both sets of fobs for the car, so it's clear the thief had other means of starting his car to have driven away within seconds of entering it. So, I think it's likely he would also have had the necessary tools to unlock it.

In the CCTV footage the thief walks towards the car and doesn't hesitate before he opens the door. He appears confident the car is open. On balance, I think it's unlikely this was a crime of opportunity whereby the thief happened to find Mr P's car unlocked, and this led to the decision to steal it. I'm not persuaded Tesco has given me enough to safely conclude that locking the car would have deterred them from taking it, or that the car being unlocked was the reason it was stolen. Ultimately, I don't think Tesco's decision to decline the claim on the basis that Mr P didn't lock the car was fair or reasonable.

Breach of policy contract

Tesco thinks Mr P gave false information in relation to the claim. It states Mr P told the police he was leaving his mother's home when the car was stolen, but told its agents he was sitting by the window at the time. I find this a minor difference in what he said. It also states Mr P provided the police with the witness's details and this is contrary to his statement to its investigators. However, I can see Mr P sent it an earlier email stating that a witness had come forward from a social media post. This is consistent with his statement and that of the witness. So, I'm not persuaded Tesco has shown Mr P deliberately gave false information.

While I agree there are inconsistencies in the witness' statements. I find the points Tesco made to be circumstantial. I don't think it's enough to say Mr P's claim wasn't valid. I also don't think it can reasonably hold Mr P responsible for what the witness said in his statements.

Overall, I don't think Tesco has provided sufficient evidence to show Mr P intended to commit fraud, and benefit from cover he wasn't entitled to when he made his claim. I understand Tesco may have concerns over the reliability of the witness' statement and the locksmith's expert opinion Mr P provided. However, Mr P provided this additional information to show the validity of his claim, after Tesco questioned it. Mr P wouldn't have been in this position had Tesco made a fair and reasonable decision on his claim in the first instance. Tesco also mentioned previous claims Mr P was linked to which it declined on grounds of fraud, but I don't think that shows this claim was fraudulent.

Putting things right

For the reasons I've mentioned, I'm not satisfied Tesco has sufficient evidence to support its conclusions. As I said earlier, I don't find its decision to decline the claim was fair. So, I intend to tell Tesco to settle Mr P's claim in line with the other terms of the insurance policy. It should pay 8% simple interest per annum on any settlement payment it makes directly to Mr P from the date of the loss until the payment is made. It should also remove from any internal or external databases any record that it declined the claim or any fraud markers relating to it. Tesco should provide Mr P with a letter to explain this was done in error, which he can present to his current insurers if he wishes to have his premium recalculated.

Mr P explained he has since purchased another car and has had to pay the finance for both cars. He expressed the impact the situation has had on his health. I think Tesco's decision to decline the claim put Mr P under a great deal of stress. So, I require it to pay £750 in compensation for the stress, upset and inconvenience its decision caused him.

Mr P mentioned he had also paid interest on the finance for the car. However, I think it's likely he would have entered into another finance agreement had his claim been settled on time, therefore he would still have had to pay interest. Nevertheless the 8% simple interest awarded covers the time Mr P was out of pocket because of Tesco's decision and I think that's fair."

Mr P accepted my provisional decision, but Tesco didn't. It said:

- The CCTV footage has been tampered with.
- In the clip 40 seconds do not elapse. The fact therefore remains that the only proof we have is that the car was open at the time of the theft- and of course cover would be excluded in this instance.
- There are several discrepancies in the information provided to it and that provided to the police.
- The witness is known to the customer and only came forward after the claim had been declined initially.
- Mr P called 20 times- in one day, on 5 occasions trying to pressurise claims handlers to deal with his claim. This behaviour, from its experience is typical of someone who has submitted a claim which is less than genuine and is desperate for it to be settled before any additional information can be provided.

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 neither Tesco nor Mr P provided information that I haven't already considered in my provisional decision, I see no reason to depart from it.

Tesco says the only proof is that the car was open when it was taken. As it's mentioned, the footage is 18 seconds and we can't be sure of what happen prior to the theft. But I don't think it's enough to show the car was left open by Mr P. Furthermore, considering the circumstances, I'm not persuaded that whether the car was left open or not was material to the loss. So, I don't think its decision to decline the claim was fair.

I think it was unnecessary for Mr P to have called Tesco repeatedly since my provisional decision was issued. I appreciate it will have been a source of frustration to Tesco's claims handlers. Considering the length of time this has taken to resolve and the cost to Mr P, I can understand why he might be anxious to have things put right, and I'm not persuaded it's an indication of fraud.

My final decision

For the reasons I've explained above, I uphold this complaint and require Tesco Underwriting Limited to:

- settle Mr P's claim in line with the other terms of his policy.
- If payment is made directly to Mr P, it should pay him 8% simple interest per annum on this amount from the date of the loss until payment is made*.
- Remove all records of the declined claim and any fraud markers in relation to this claim from any internal or external databases.
- Provide Mr P with a letter stating the claim was declined in error.
- It should also pay him £250 in compensation.

*If Tesco Underwriting Limited considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr P how much it's taken off. It should also give him a certificate showing this if he asks for one.

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

Oluwatobi Balogun
Ombudsman