

The complaint

Mr K complains that Tesco Underwriting Limited made unfair deductions to his home insurance claim, specifically in respect of gold jewellery.

What happened

Mr K had home insurance with Tesco and made a claim following a burglary. The claim was accepted by Tesco, but there was a disagreement over the settlement amount for the jewellery that had been stolen.

Mr K said the jewellery had been brought to the UK from abroad and when asked if import duty had been paid on it, he said it had not.

Because of that, Tesco made a significant deduction to their settlement offer. Tesco said it was fair to pay the amount the jewellery cost to buy abroad – as opposed to the replacement value at the time of loss. They said Mr K ought not reasonably be seen to profit from having not paid import duty.

Mr K didn't agree, he said he'd spoken to HMRC after the claim and they'd told him he didn't have to declare the jewellery on entry to the UK. Although he didn't have any confirmation of that.

An investigator here looked into the matter. They felt Tesco should offer Mr K the UK replacement value of the jewellery. Tesco maintained their position, so the case was passed to me to decide.

I initially wrote to Tesco, explaining the following:

Tesco reduced Mr K's settlement for jewellery bought abroad on the basis that he may have avoided paying import duty on it. I have concerns with this for a number of reasons.

First of all, Tesco is not HMRC and has not provided evidence to show that any import duty was owed at the different times the jewellery was imported. This appears to be no more than an assumption and certainly isn't grounds for such a huge reduction in settlement value. If Tesco were to perhaps have had a tax expert assess the matter and provide a persuasive argument as to how much ought to have been paid, then it could have been reasonable to have deducted that amount from the settlement.

Secondly, the concerns about tax avoidance and the legal case referred to don't seem to apply in this instance. I've seen no evidence that Mr K deliberately and knowingly avoided paying import duty. Of course, if he did – we would not condone that – but nor are we HMRC either, so that is not a matter for us to determine. If Tesco had concerns in that respect, then they could consider reporting Mr K so that the appropriate authorities could investigate if necessary.

Thirdly, the cost of the jewellery in the past isn't really relevant here. As Tesco will know, the value of items can fluctuate. The policy is one of indemnity and therefore it is the current

replacement value that ought to be provided (subject to any policy limits which may apply). The loss occurred in the UK and the policy is governed by UK law. So, replacement value should be that of the UK too.

And it seems to me that the reason the consumer may appear to be 'benefitting' from the higher settlement isn't because of any supposed failure to pay import duty, but is because the value of gold has increased very significantly over the years since it was purchased – as can be seen on The Royal Mint website.

In view of all of this, I consider it reasonable to require Tesco to settle the claim based on the value of the jewellery at the time of loss – not the original purchase price. As I say, this can be subject to policy limits and may include a deduction for any import duty (provided it can be adequately demonstrated that it was owed, and how much). But any payment should include 8% interest from the date of loss to the date of settlement. Interest need not apply to any payments which may have been made promptly after the claim.

Tesco disagreed. They said it wasn't an assumption that duty tax was not paid, rather it had been said by Mr K. Tesco feel Mr K ought to have known of his responsibilities and that it was up to him to provide them with evidence to support his claim.

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.

Respectfully, I believe Tesco has missed the points I was making in my provisional assessment, and I maintain what I set out to them previously.

I accept Mr K said import duty had not been paid, but that alone does not mean it should have been paid. I also accept that it's possible a declaration at customs on entry to the UK would have led to a requirement for duty to be paid.

However, Tesco has made a very significant deduction to the jewellery claim without adequate justification, approximately £10,000, which represents around two thirds of the claim. And while they sought legal opinion, it wasn't persuasive.

This is because in their own commentary, alongside the legal opinion, they say "*Dependent on the type of goods and which country these were purchased in, Customs will inform the person if [my emphasis] / how much tax they must pay...*". Tesco has not provided anything to demonstrate tax was due and they accept there are times when it is not.

The legal opinion also says they can see the argument both ways and suggested that "*allowing the full valuation without payment of duty would effectively allow the policyholder to profit, albeit innocently, from their illegal importation of goods.*". It does not confirm any of the consumers actions were deliberate or carried out knowingly – which again, would make a difference if it were the case. There is also the idea of "*innocent possession of uncustomed goods*" which is said to be a factor in such cases.

It is true, as previously set out, that I would not wish to be seen to be allowing a consumer to profit from intentionally avoiding payment of import duty. But, to me, that hasn't been demonstrated and isn't what is happening here. Based on Tesco's valuation experts, Mr K would appear to be benefitting from the value of gold having increased – and/or potentially the cost of replacement in the UK being greater than the cost abroad. Tesco has not disputed this, and given they employed experts to assess the replacement cost in the UK it is reasonable to say that opinion should be relied upon.

Further, I made provision within my earlier correspondence that, in the event Tesco can establish – through a tax expert or HMRC – that Mr K owes, or owed, duty on the jewellery then they may reasonably make a deduction to account for that. That means it's within Tesco's power to ensure they aren't liable for more than they ought reasonably to be, and that Mr K doesn't receive more than he ought to either.

So, overall, this is fair and reasonable to both Mr K and Tesco.

Putting things right

I require Tesco Underwriting Limited to settle Mr K's jewellery claim based on the UK replacement cost at the time of loss, i.e. they ought not be simply offering the purchase cost.

This will be subject to any policy limits or terms which may otherwise apply, but interest should be added at the rate of 8% per annum from the date of loss to the date of settlement. As previously expressed, interest need not be applied to any payments made promptly after the claim, should that have been the case.

HMRC requires Tesco Underwriting Limited to deduct tax from the interest. They should provide Mr K with a certificate showing how much has been deducted, if he asks for one.

My final decision

It is my final decision that I require Tesco Underwriting Limited to settle this matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 May 2023.

Will Weston
Ombudsman