

The complaint

Mrs A complained that Tesco Underwriting Limited Tesco settled a third-party claim under her motor insurance policy.

What happened

Mrs A disputed a claim by another driver (the third-party) that Mrs A had damaged her car in an incident. Mrs A said that there had been no contact between her car and the third-party's car, the third-party hadn't suffered any injury, and the claim was fraudulent. So she was unhappy when Tesco accepted and paid the third-party's claim for car repairs and car hire and recorded the fault against her on insurance databases.

Mrs A was also unhappy about Tesco's service. She wanted Tesco to remove the fault claim against her and compensate her for the financial consequences she'd suffered.

Tesco apologised for what they agreed was poor service in communicating with her. But they stood by their decision to settle the third-party claim for car repairs and car hire costs. They said that they'd taken Mrs A's concerns into account but ultimately it was up to them how they decided to deal with the claim, and they had good reasons for settling it as they did. So they thought they'd acted in line with their policy.

The investigator thought that Tesco had acted reasonably as regards their decision to settle but that they should compensate Mrs A £100 for their admitted poor service. Mrs A didn't agree and so I've been asked to decide.

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 the investigator explained, we don't decide who is at fault for causing an accident, as this is a matter for the courts. Instead, we investigate whether an insurer has acted fairly and reasonably, and in line with their policy terms and conditions, when they decide who was responsible.

Mrs A's policy conditions on page 10 say that Tesco can carry out the defence or settlement of any claim under her policy. This means that Tesco have the final say on the matter and by choosing insurance with them Mrs A has agreed to this term. It isn't an unusual term and it's one that we consider to be fair. Having said this, we look at how Tesco have come to their decision. Have they considered all the evidence that has been provided to them and decided objectively?

Both Mrs A and the third-party gave different accounts as to how the incident happened, but Mrs A said their cars didn't come into contact at all. Mrs A felt that the third-party had made a fraudulent claim and she was the victim of a scam. She was unhappy that Tesco hadn't believed her. She didn't think that Tesco had considered her evidence properly and would rather pay the claim than do an effective investigation. She felt that Tesco's admission of poor service suggested that their decision making about the claim was flawed too.

Tesco accepted that their level of service didn't meet the standards normally expected from them and apologised. They said they mislabelled her file at first as the incident being Mrs A's fault. However it's clear from their file that Tesco did treat the claim as disputed and investigated it and didn't just treat it as fault. But the mislabelling meant that when, after their investigation, Tesco did decide it was Mrs A's fault, they didn't tell Mrs A that as they thought she already knew.

The investigator thought that Tesco should offer Mrs A compensation for this. He recommended £100 and Tesco agreed. Mrs A didn't think this was enough, but I think it is reasonable. It might have been good practice for Tesco to have told Mrs A beforehand that they intended to settle the claim, but under her policy Tesco can decide to settle as they think fit, without referring to Mrs A at all.

And I don't think that Tesco's mislabelling Mrs A's file means that Tesco's decision about settling her claim was flawed. I've looked at Tesco's file and I see that they considered both parties' accounts of what happened. They also explained that they would investigate the later personal injury claim that the third-party had made.

Despite their mislabelling the file as fault they did treat the claim as disputed by Mrs A and they did investigate it. They instructed an investigator to take a statement from Mrs A and inspected her car. Mrs A said there was no damage to her car and Tesco's engineer inspection confirmed that. But as Tesco explained, this didn't mean there was no collision, as it was a minor impact at slow speed.

Tesco also looked at photos from the scene showing that the third-party car had dark paint transfer marks on it, and a dent in it. Mrs A thought it was wrong of Tesco to presume that those marks came from her dark coloured car as they hadn't done a forensic paint investigation. However I don't think that level of inquiry is required of Tesco. In any event, they didn't rely on that matter alone, but on all the evidence as a whole. The third-party's insurers sent Tesco evidence of the third-party's damage claim. Tesco saw an engineer's inspection report detailing the damage, and a repair estimate. Tesco checked that the damage the third-party claimed was consistent with the account of the incident, and that the repairs were reasonable.

Tesco also looked at copies of screenshots of text messages between Mrs A and the third-party after the incident. Mrs A said the incident scene was quiet and she was alone and felt outnumbered and intimidated by the third-party and her young women passengers. So she only gave her telephone number to the third-party so she could get away, and then only replied to the third-party's texts because she felt threatened.

However Tesco looked at those messages. They noted that Mrs A didn't deny a collision or challenge the third-party's claim that Mrs A had caused the incident. The messages suggested that Mrs A was willing to pay for the damage or alternatively deal with it via her insurers. Tesco thought this implied that Mrs A accepted fault. There were no independent witnesses, and the police hadn't attended the scene to make a report. Tesco said that on all the evidence they had on the balance of probabilities, they could not successfully defend the third-party's claim in court and decided to settle it to prevent further costs. That's a commercial decision and we won't generally interfere with that. Going to court is costly and time consuming and the result uncertain, so I don't think that Tesco acted unreasonably in deciding as they did.

And so, while I can see that Mrs A is frustrated with Tesco's decision and feels that it was unfair, I think that Tesco reviewed the evidence fairly and reasonably and did what they were required to do under her policy, so I don't require them to do any more in that regard.

My final decision

For the reasons given above, my final decision is that I partly uphold the complaint.

I require Tesco Underwriting Limited Tesco to do the following:

- Pay Mrs A £100 in compensation for the distress and inconvenience they caused her

Tesco must pay the compensation within 28 days of the date on which we tell them Mrs A accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 20 October 2023.



Rosslyn Scott
Ombudsman