

The complaint

Mr B complains about Tesco Underwriting Limited's decision to void his buildings insurance policy.

All references to Tesco also include its appointed agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- At application stage Mr B filled out a questionnaire and answered 'yes' to the following statement:

"It's my main residence and it's permanently occupied by me and my family only."

- Mr B lives abroad for significant parts of the year, in various locations. Tesco have voided Mr B's policy as it feels the property is not his main residence.
- Therefore, Tesco says Mr B has not made a fair presentation of the risk and had it known this, it wouldn't have provided cover.
- Residence isn't defined in the policy. But in general, it means the place where someone lives.
- It's not in dispute Mr B stays regularly in places abroad – or the time he spends away over a year is greater than the time spent at his property. But I've not seen anything that persuades me there is another primary or permanent address where he resides.
- Tesco said the time Mr B spends away from the home means the property cannot be defined as his main residence. But the policy doesn't specify a duration of time Mr B needed to occupy the property for.
- Tesco highlighted the question sets out whether the property is *permanently occupied*. It's set out the general definition of permanent, which is 'lasting for a long time or forever'. And due to the short periods Mr B is at the property, it says this wasn't long lasting, meaning he wasn't permanently occupying the property.
- But in full, this asks if the property is permanently occupied by the customer and their family *only*. So, I think this question was intended to assess whether anyone else was living at the property – for example if the property was being rented out, or a lodger was living at the property. But I've not seen anything to persuade me the property is rented or occupied by anyone else while Mr B is away.

- I also note Mr B has owned and lived at the property for over 30 years. A considerably long period of time – or long lasting.
- Tesco have referenced Mr B's qualifications and vocation, and this meant he would have more understanding than a normal consumer. However, I've not seen anything to support this statement, or evidence Mr B would've been an expert in this particular area of the industry. So, I'm not persuaded by this.
- So, considering what I've set out above, I'm persuaded the insured property is Mr B's main residence.
- Tesco has pointed our investigator to previous decisions made by other ombudsman in cases involving similar facts. But, as Tesco will be aware, we aren't bound by our previous decisions and we consider each case on its own individual facts, taking into account what we think is fair and reasonable in the circumstances.
- The relevant law, which in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) says a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy.
- When looking at the question asked at application, there were no definitions of key words or options to view explanatory documentation. Considering Tesco's comments of how it intended to ask the question, and my interpretation set out above, I think the question isn't clear or specific and is open to interpretation. So, I don't think Mr B acted unreasonably in answering 'yes' to the above question.
- Under CIDRA, when the question asked isn't clear and the consumer took reasonable care not to make a misrepresentation, there'll be no "qualifying misrepresentation" – in which case an insurer can't take any action even if they were provided incorrect information. So, I don't think Tesco acted fairly in this case in taking the action it did to avoid the policy.

Unoccupancy statement – "It's not currently unoccupied and will not be left unoccupied for more than 60 consecutive days"

- Tesco have said the above statement isn't relevant to it voiding the policy and it has previously repeatedly advised this service that it would not be relying on it to further void the policy. However, it says it further supports its position that Mr B's property wasn't his main residence.
- I've addressed above the aspect of main residence, so I don't agree with Tesco about this statement further supporting its position. As Tesco has repeatedly confirmed to this service it is not relying on this term to avoid the policy, on a fair and reasonable basis, it can now not do so.

So, for these reasons, I uphold this complaint.

Putting things right

Mr B's property has remained damaged and uninhabitable since the date of the incident. And the property has suffered further damage since due to the claim not being dealt with.

Mr B has spoken of the stress and inconvenience he has been caused from not being able to live at the property. Since the claim decision was made, he also had to arrange alternative accommodation when in the UK. Had the claim been dealt with, the policy would have provided cover for the cost of alternative accommodation in the circumstances.

So, I think it's reasonable Tesco pay Mr B £500 compensation, as this fairly reflects the inconvenience its actions has caused him.

To put things right Tesco should:

- Reinststate the policy. Tesco has refunded premiums to Mr B, so its reasonable for it to ask him to repay these if required.
- Assess and meet the claim for fire damage to the building.
- Assess and meet the claim for contents damage.
- Tesco should also meet the claim for additional damage caused to the buildings and contents under the terms of the policy.
- Tesco should reimburse any outstanding costs Mr B has incurred for alternative accommodation since the claim decision was communicated. Tesco can ask for sufficient proof such as invoices should it require it.
- Tesco should reimburse the costs plus 8% simple interest. This should be calculated from the date Mr B incurred the cost, to the date Tesco reimburses him.
- Pay Mr B £500 compensation for the distress and inconvenience its actions have caused.

My final decision

My final decision is that I uphold Mr B's complaint.

To put things right I direct Tesco Underwriting Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 August 2023.

Michael Baronti
Ombudsman