

The complaint

Mrs M complains that Tesco Underwriting Limited, who she holds car insurance with, unfairly recorded a fault claim against her

What happened

Mrs M insures a car with Tesco. A claim was made following a collision between her and a third party who I'll refer to as TP1 and, after obtaining information, Tesco recorded this as a fault claim against her.

Mrs M was unhappy and complained to Tesco. She didn't think it had taken reasonable steps to establish who was at fault for the collision and that a third party (who I'll refer to as TP2) had been responsible. When Tesco rejected her complaint, she referred it to our service.

Our investigator thought Tesco had made reasonable enquiries and made a fair decision. Mrs M didn't agree and asked for an ombudsman's 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.

My role here isn't determine who was at fault for the collision. What I need to do is consider whether, on balance, Tesco's decision to record a fault claim against Mrs M was reasonable based on the information it had and what was available.

Mrs M's account is that she'd parked her car in a marked bay, and while she was away, TP2's vehicle made contact with her car, causing her to roll forward and collide with TP1's vehicle. She said she believed CCTV footage would show this was what had happened and would indicate TP2 was at fault.

Tesco's determination that this should be recorded as a fault claim appears to turn on whether the reason Mrs M collided with TP1 was because of the actions of TP2. If Tesco couldn't, on balance, show that TP2 had collided with Mrs M's car, then it's fair to say that a fault claim would have to be recorded against Mrs M. It isn't disputed that her car collided with TP1's stationary vehicle.

I'm aware that Mrs M believes Tesco should have made further enquiries to establish whether the person who parked TP1's vehicle prior to the collision was insured to drive it. I'm satisfied that isn't a relevant consideration here. The vehicle was properly insured at the time and parked at the time of the collision so the insurance status of the driver who parked it there isn't something I think Tesco needed to ascertain.

It isn't disputed that Mrs M provided Tesco with details of where the incident occurred and who to contact to obtain the potentially relevant CCTV footage. However, it's similarly accepted that Tesco did make contact with the owner of the camera to request a copy of the

footage but it was told the footage didn't show the collision or anything relevant to the incident.

Mrs M has said Tesco should have advised her to request the footage sooner but all the evidence I have is that Tesco did make a request to the owner of the camera and was told that, the recording having been checked, there was no footage of the incident. I'm not sure what more it could have done. Mrs M appears to believe the delay in asking her to request a copy of the footage resulted in it being lost. I'm not satisfied that is the case – the footage was checked and nothing of relevance was seen.

I'm also aware that Tesco contacted TP2's insurer to make it aware of Mrs M's account of what had happened on three occasions. As it didn't hear anything in response, it closed its file. I've considered what, if anything, Tesco could have done after TP2's insurer didn't respond. The only apparent option would have been to start legal proceedings against the other insurer.

In order for Tesco to start legal proceedings, those proceedings would need to have a reasonable prospect of success – that is to say that there was a greater than 50% chance of Tesco being successful. It's also important to note that such proceedings would possibly take a significant period of time to be concluded, and that whilst the proceedings were ongoing it would be reasonable for Tesco to record a fault claim against Mrs M, and change it to a non-fault claim if the proceedings were successful. Mrs M would be obliged to declare the claim as such to insurers until it was changed.

Tesco told us it didn't pursue legal proceedings against TP2's insurer because of the lack of evidence available to support the involvement of TP2. There was no CCTV footage or witness available to it to confirm what had happened, and Mrs M hadn't been present when the incident occurred so can't say what she saw. It said that while there was damage to the rear of Mrs M's car, it didn't think this was sufficient to show that a collision from TP2 had caused her car to collide with TP1's vehicle.

I know how strongly Mrs M feels about what happened and why she feels it's unfair for a fault claim to be recorded against her. However, I do agree with Tesco that it took reasonable steps to establish what had happened, and whether TP2 was at fault. It sought to have TP2's insurer admit liability but had no response and unsuccessfully attempted to obtain CCTV footage.

Given the lack of evidence to support that TP2 was at fault I think Tesco reasonably concluded that any legal proceedings would be unsuccessful. On that basis, it made a reasonable decision when it recorded a fault claim against Mrs M.

My final decision

I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 April 2024.

Ben Williams
Ombudsman