

The complaint

Mr G complains that Tesco Underwriting Limited ("Tesco") has increased his premium due to undisclosed claims.

What happened

Mr G took out a car insurance policy with Tesco. When he had an accident in 2023, he tried to make a claim. Tesco looked into things and said Mr G had answered the question it asked about previous incidents incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to increase his premium to what it would've been had he answered the question correctly.

Mr G didn't agree with what Tesco had said, and let them know that he hadn't even been aware of one of the claims so couldn't have disclosed it.

So he raised a complaint. Tesco responded to his complaint, saying although Mr G wasn't aware of one of the claims, as there was no damage or pay-out for that incident, they still thought he had provided them with incorrect information as it had asked him: *"Have you or any drivers been involved in an accident, claim or loss within the last 5 years regardless of fault or if a claim was made"*.

Mr G didn't agree with Tesco's response. So he referred his complaint to this service. Our investigator thought it should be upheld. She asked Tesco for evidence of how the additional premium had been calculated but didn't receive this.

Because Tesco didn't respond in full to our investigator's enquiries, or our investigator's assessment, the complaint has now been passed to me 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Tesco thinks Mr G failed to take reasonable care not to make a misrepresentation when he didn't disclose two previous claims – one of which he says he wasn't aware of.

I've looked at the question that Mr G was asked when he took out the policy and I agree that Mr G didn't take reasonable care when answering the question. This is because the question clearly asked whether Mr G had had a previous "*accident, claim or loss*" and not just whether there had been any *claims* in the last five years. I think Mr G ought to have disclosed both the incidents even if he wasn't aware of both claims.

Because I don't think Mr G took reasonable care, I've considered whether his misrepresentation was a qualifying misrepresentation or not, ie. whether it made a difference.

In order to determine this, I've considered what Tesco would've done if it had known the correct information about Mr G's previous accidents and claims. We asked Tesco for evidence that it would've offered the policy on different terms or not at all if Mr G hadn't made the misrepresentation.

However, Tesco hasn't responded fully to our requests for evidence. This includes the breakdown of the premium calculation, as well as the underwriting guide to evidence the impact of each claim on the premium. Without this information, I can't safely say what Tesco would've done differently if it had all the correct information from Mr G.

This means I'm not satisfied Mr G's misrepresentation was a qualifying one. As Tesco hasn't been able to demonstrate it would've taken any other action had Mr G not made a misrepresentation, there is no remedy under CIDRA for Tesco to take any action against Mr G, including increasing his premium or only settling his claim proportionately. And because I can't say there has been a qualifying misrepresentation in this case, it follows that I'm upholding Mr G's complaint.

Putting things right

Tesco Underwriting Limited must now:

- Pay Mr G back his increase in premium, adding 8% simple interest per annum from the date Mr G paid the additional premium to the date of settlement.
- Settle Mr G's claim in full, in line with the terms and conditions of his policy.

My final decision

My final decision is that I uphold this complaint and I direct Tesco Underwriting Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 July 2024.

Ifrah Malik
Ombudsman