

The complaint

Mr F complains that Tesco Underwriting Limited (Tesco) has unfairly refused to consider a claim on his home insurance, and has cancelled the policy and recorded this on an industry database.

What happened

Mr F bought a policy for his new home in November 2022. He bought it through an intermediary, but it was Tesco's decision to void the policy. Any reference to Tesco includes the intermediary as well as Tesco Underwriting Ltd.

The main points in this complaint aren't in dispute, so I'll summarise what happened.

1. Mr F bought his policy in late November 2022. In mid-December he discovered a pipe had burst in the loft. Mr F had the leak fixed and decided not to claim for repairs as he was already intending to replace carpets etc that had been damaged. He told Tesco at the time that the leak had occurred and that his neighbour's property had also been affected by the leak.
2. Mr F carried out the repairs, and in March 2023 he contacted Tesco to say he'd received notification from his neighbour's insurer that they would be claiming about £26,000 from him – the cost of the repairs next door.
3. Tesco says it knew about the claim in March and was told Mr F was renovating the property – which Tesco didn't know about. Tesco asked Mr F for a lot of detail about the works to the property. Mr F also told Tesco the property wasn't fully occupied until early May 2023.
4. Tesco decided to void the policy – that is, treat it as if it had never existed – because the policy wasn't occupied when Mr F bought it. Tesco says it wouldn't have provided cover at all if it had known that.
5. Tesco did offer Mr F £30 to make up for the fact that it didn't respond to a letter he sent.

Mr F complained, but Tesco hasn't changed its stance. So he asked us to review his complaint.

Our investigator didn't think Tesco had done enough. He considered whether firstly, Mr F had been careless when answering questions about the property when he bought the policy and second whether those answers, if answered correctly, would have had an impact on Tesco's decision to provide cover and at what price.

Our investigator didn't think Mr F had taken reasonable care when answering all the questions, so he went on to see if the way they'd been answered meant Tesco was entitled to void the policy. He didn't think it was. The first set of questions referred to the occupancy of the property. In summary he said these asked if Mr F would occupy the property regularly at night, be out during the day and also whether he'd ever leave the property unoccupied for more than 60 days. Mr F said he'd be complying with these statements. Our investigator didn't think Mr F had answered these questions incorrectly. He concluded that at the point the pipe burst the property hadn't been empty for 60 days or more. He also thought Mr F had

intended to occupy the house permanently, even if this had later been delayed by the need to do additional repairs etc after the burst. He thought Tesco should have taken that into consideration before deciding to void the policy.

Turning to the question about building work, our investigator didn't think Mr F had taken enough care when answering this question. That's because, by the time the pipe burst (within about three weeks of taking out the policy) he'd replaced a bathroom and taken down a wall, amongst other things. But he didn't think this entitled Tesco to void the policy, as its own underwriting criteria didn't say that was appropriate action. Instead the criteria say that Tesco would have imposed a condition that excluded cover for any damage caused by the work, not that cover wouldn't have been provided at all. Mr f says the pipe burst because of cold weather, not any building work.

He recommended Tesco reinstate the policy and remove any record of voiding the policy from industry databases. Tesco should then consider the claim from the neighbours insurer and pay £350 for the distress and inconvenience it caused.

Mr F accepted this, but Tesco asked for an ombudsman to review the complaint, although it hasn't provided any further evidence.

I've been asked to decide this complaint.

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.

I'm going to uphold this complaint. I'll explain why.

When a customer buys an insurance policy, they are expected to take reasonable care to answer any questions they are asked correctly. The rules that apply are contained in the Consumer Insurance (Disclosure and Representations) Act 2012(CIDRA). These say in summary, that

- a) A question must be clear
- b) If it's clear but answered incorrectly whether that was through carelessness or deliberately.
- c) What impact the wrong answer had – that is, what would the insurer have done differently if it had had the correct information.

The answers to the above guide an insurer on what remedial action it can take.

I think both relevant questions were clear, so I'll now look at how Mr F answered them separately.

Questions about occupancy

Mr F said he intended to live in the property permanently. He'd be there overnight and absent during the day as he worked. He also confirmed he wouldn't leave the property unoccupied for more than 60 days.

Mr F says he was at the property on and off between the date he bought it and the burst pipe happening. He planned to fully occupy the house within a few weeks but was having some work done first. That's not an unusual scenario, and I see no reason why I should doubt this. Even if Mr F hadn't technically complied with occupancy as Tesco defines it, he'd only

owned the property for about three weeks – so he hadn't left it unoccupied for more than 60 days. I don't think Mr F misrepresented his occupancy of the house when he bought the policy..

I do accept that Mr F didn't then move in permanently for a few months, but as our investigator said, Tesco has ignored the impact that the leak had, as Mr F had to do more renovation than expected after the leak. I don't think Tesco can fairly void the policy in these circumstances

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Building work

Mr F was asked to confirm he wasn't doing or intending to do building work that hadn't been pre-agreed with Tesco. He said he wouldn't, but it seems he had undertaken work – such as taking down a wall – that most people would consider to be building work. And given how quickly he did this following his purchase of the house, I think it's fair to say he'd have been aware he was planning to do this when he bought the policy. Mr F says he's inexperienced in these matters as this is his first house, but that alone doesn't excuse him from taking care when answering such questions. I do think he misrepresented his situation when he bought the policy, although I don't think this was a deliberate decision to mislead Tesco.

Having made a misrepresentation, Tesco should then decide if it's a qualifying misrepresentation – so would Tesco have done something differently if it had known about the planned building work. Tesco's underwriting guidelines say it wouldn't have covered any damage that came about as a result of the work. In these circumstances that's the limit of the corrective action Tesco can take.

Making the claim

Mr F didn't hide the fact that there had been a problem at his property. I've listened to a call recording from December 2022, just after the leak occurred. Mr F rang Tesco to say it had happened and that he was going to repair the damage in his property himself, because he was already intending to replace damaged carpets and decoration anyway. Mr F also told the staff member that his neighbour's property was affected and she was talking to her insurer. He mentioned he might repair her property himself. He was told to wait and see if anything came of his neighbour's own insurance enquiries, and that in time the other insurer might claim from Mr F, and Mr F could get back in touch then.

Tesco says the first it knew of a claim was in May. But clearly it was on notice several months before that such a claim might arise. Tesco could easily have checked in December 2022 whether there were any issues with Mr F's policy and the way he'd answered questions when he bought it. It chose not to do that, and I'm persuaded that has contributed to Mr F being unfairly disadvantaged. I say that because instead Tesco applied internal criteria to Mr F's claim several months after the event – and as I said above, it hasn't applied all of those criteria in a fair way.

Putting things right

To put things right Tesco should re-instate the policy. If it has refunded any of the premium to Mr F he'll have to pay that back before Tesco takes the next step, which is to consider the claim he's made about his neighbour's costs in line with the terms and conditions outlined in the policy. I must say here that this does not automatically mean Tesco *has* to meet the claim as the circumstances haven't been fully assessed. For clarity Tesco may not apply any occupancy exclusions when assessing the claim.

Tesco should also remove any record of the policy being voided, as I've concluded this was done unfairly. And I agree with our investigator – Tesco should pay Mr F £350 compensation to make up for the way it's treated him.

My final decision

My decision is that I uphold this complaint and I require Tesco Underwriting Limited to take the actions outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 September 2024.

Susan Peters
Ombudsman