

The complaint

Mr H complains about the liability decision Tesco Underwriting Limited (“Tesco”) made on a claim on his car insurance policy.

What happened

In September 2023 Mr H was involved in a road traffic accident with another car. Shortly after this accident, Tesco were contacted by the insurers of the third party who held Mr H at fault. Around the same time, Mr H contacted Tesco to give his version of events and to explain he considered the third party at fault.

Given liability was disputed, Tesco asked Mr H to complete a written statement and diagram. Following receipt of this, and after a conversation with Mr H, Tesco decided it would accept liability for the accident. Mr H complained about this decision, but in its final response Tesco said it didn’t consider it had acted unfairly as it had taken account of all the available information before deciding to accept liability.

Our investigator reviewed the complaint and didn’t find Tesco had treated Mr H unfairly. She considered if Tesco had carried out a fair and reasonable investigation into the claim before deciding to accept liability. She said that by requesting a statement and diagram she thought Tesco had given Mr H an opportunity to provide additional information about the incident, but because Tesco had considered Mr H’s version of events and there was no further evidence to support it, she was satisfied Tesco had handled the claim in a fair and reasonable way.

Because Mr H didn’t agree, the complaint has been referred to me to provide a final 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’ve decided not to uphold the complaint. I understand Mr H will be disappointed by this but I’ll explain why I have made this decision.

I acknowledge Mr H’s strength of feeling that he wasn’t liable for the accident. But it isn’t the role of this Service to decide who is liable for a road traffic accident. That’s a matter only the courts can decide in circumstances where liability disputes aren’t resolved informally. So although I’ve reviewed Mr H’s comments about the circumstances of the accident, I wish to make clear that I make no finding on whether Mr H was liable for this accident. I have instead considered whether Tesco acted fairly and reasonably in how it investigated the claim, and in how it decided to accept liability.

My starting point is Mr H’s car insurance policy terms and conditions. The terms say:

“In dealing with any claim under the terms of this policy we may:

- *carry out the defence or settlement of any claim and choose the solicitor who will act for you in any legal action”*

Car insurance policies typically contain terms similar to this which allow insurers to decide the liability position they will take on claims involving third parties. So I find the above term to be consistent with industry standards and to have reasonably provided Tesco discretion to decide whether to accept liability on Mr H's claim.

Although the policy terms allowed Tesco to accept liability, it must exercise this right fairly and reasonably. So I've considered if Tesco handled the claim in a fair and reasonable way leading up to its decision to accept liability.

Tesco has provided copies of the correspondence it received from the third party's insurer. I can see from this the version of events provided by the third party were that Mr H tried to overtake the third party, failed to do so, and struck the rear of their car.

Tesco has also provided me a copy of the statement and diagram Mr H provided, along with its claim notes. I can see from these the version of events Mr H provided were that he was in a separate lane to the third party and, as he attempted to merge lanes the third party accelerated and pulled to the right resulting in the front near side wing of Mr H's car coming into contact with the third party's car.

Because the version of events Tesco received from the third party differed from those provided by Mr H, before deciding to accept or dispute liability I'd have expected Tesco to consider anything else which may have been available that could've helped show Mr H wasn't at fault.

Tesco were aware that although police attended the scene, they didn't take any further action, and Tesco received photos and video showing the damage to both cars. I've seen no indication anything more than what I've already mentioned was available to Tesco such as an independent witness or dashcam footage. So I don't think Tesco decided to accept liability without first considering the available evidence relating to the accident.

I understand Mr H strongly disagreed with Tesco's decision to accept liability. But since the third party held Mr H at fault, to reach a favourable outcome for Mr H Tesco would have needed to prove otherwise either by persuading the third party's insurer or convincing a court. Tesco opted instead to settle the third party's claim.

This was a decision Tesco were entitled to make under the terms of the policy, and I'm satisfied it do so following a consideration of all the evidence. I think Tesco gave Mr H a fair opportunity to explain his version of events and considered this along with the third party's version of events and the other available evidence. And I can't say it was unreasonable it came to the conclusion it did. So, it follows I don't find Tesco unfairly exercised its right to settle the third party's claim.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 November 2024.

Daniel Tinkler
Ombudsman

