

## **The complaint**

Mrs W has complained about the way her motor insurer, Tesco Underwriting Limited ('Tesco'), is proposing to settle a claim that was made on her policy.

## **What happened**

In September 2023 Mrs W was involved in an incident with a third-party vehicle where, according to Mrs W, the third party reversed into her car as they were both stationary at a roundabout. Mrs W said that there was very minor damage to her car as a result of the collision; a dent on her licence plate, whereas the third-party car had substantial pre-existing damage to the offside rear.

Mrs W reported the incident to Tesco and said that she wasn't at fault as it was the third party who had reversed into her. She also pointed out that the third-party car had pre-existing damage.

The third party made a claim against Mrs W's policy and said that it was Mrs W that collided with the rear of their car and, therefore, that she was the at fault party.

Tesco ultimately made Mrs W aware that as there was no independent evidence such as CCTV footage, witnesses, dashcam footage etc. to support her version of events the best outcome would be a 50-50 split in liability between her and the third party as it is one party's word against the other. It said it offered to settle the third-party claim on this basis. It added that it would nevertheless continue to dispute quantum (i.e. the value of the third party claim) as it also believed that there was pre-existing damage to the third-party car. But it pointed out that whether the accident damage was major or minor, the outcome would still be the same. It added that if the claim is settled on this basis Mrs W's no claims discount (NCD) might be affected unless it is protected.

Mrs W didn't agree with Tesco's assessment of the claim and complained. She maintained that she wasn't at fault for the accident and felt that the third party had intentionally reversed into her in order to claim for their pre-existing damage from her policy.

Tesco responded to Mrs W's complaint but it didn't uphold it. It said its 50-50 liability offer was the fairest resolution bearing in mind the absence of independent evidence. But it said it would continue to dispute the extent of the damage to the third-party car and that it would make no offers to the third party unless it provided evidence to show what damage was caused by the incident.

Mrs W then brought her complaint to our organisation. She said that there was no indication as to what the impact on her NCD would be. She added that she wanted Tesco to

reconsider what she said about the third-party having pre-existing damage to their car and intentionally reversing into her in order to blame her for the damage.

While the complaint was with us Tesco said that the claim remained open and that it was still waiting to hear from the third party's insurer and solicitor regarding its offer and the concerns it raised regarding quantum. It said the solicitors had threatened to issue court proceedings. It added that it was continuing to defend the claim though it warned Mrs W that a 50-50 settlement was the best possible outcome in relation to liability.

One of our investigators reviewed the complaint but he didn't think Tesco had to take any further action. Our investigator said that, under the terms and conditions, Tesco was able to take over a claim and defend it on its insured's behalf. He also thought that its approach to the claim was fair and reasonable. In relation to her NCD, our investigator said that according to the policy documents, Mrs W's NCD was protected.

Mrs W didn't agree and asked for an ombudsman's decision. She reiterated some of her earlier points and said she was happy for her car to be inspected to show that the damage wasn't consistent with the damage the third party claims to have sustained in the incident.

The matter was then 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.

I'd like to start by saying that I was very sorry to hear about the events that led to Mrs W's claim. I understand that she feels that the other party is trying to commit fraud at her expense, and I understand that she is very frustrated by everything that happened since the incident.

As our investigator explained, our role isn't to decide who was liable for the accident. That is for Tesco to review and ultimately, if the claim isn't settled out of court, for a court to decide. Our role is to decide whether Tesco, as Mrs W's motor insurer, has acted fairly and reasonably in the circumstances. From what I have seen, I think it has and I will explain why below.

Under the terms of the policy Tesco can take over and defend a claim on its insured's behalf. This is a common term in motor insurance policies and I don't think it's unfair. It enables insurers to keep the cost of a claim under control. We think it is fair for insurers to rely on such terms, as long as they apply them fairly and reasonably.

Tesco has distinguished between liability and quantum. I think this is reasonable because they are arguably two separate tests that the third party has to overcome in order to bring a successful claim against Mrs W.

In terms of liability i.e., determining which party is responsible for the accident, Tesco said that it believes that the best outcome for Mrs W would be a 50-50 split. I think this is fair and reasonable in these specific circumstances. I say this because I agree with Tesco that it will

be difficult for it to prove that the third party reversed into Mrs W especially as there is no independent evidence to say this was the case. The third party has claimed that it was Mrs W who collided with the rear of their car, so they don't agree with Mrs W's version of events. And so, it is one party's word against the other.

From what I understand, Tesco is saying that even if the third party is successful in their claim that the accident was Mrs W's fault, fully or partly, the third party still has to show that it was Mrs W that caused all the damage they are claiming for. And if they are not able to, then Tesco will argue that it is under no obligation to pay for non-accident related damage. But as both parties agree that there was a collision, however minor that was, it will be difficult to argue that there was no accident-related damage.

So, in terms of quantum i.e., the value of the claim, Tesco said it isn't prepared to make any offers until the third party provides evidence in support of their vehicle damage claim. Mrs W has provided photographs which show that her car suffered very minor damage. The photographs of the third-party car show a large dent in its rear bumper. Tesco agrees with Mrs W that the damage to the two cars does not appear to be consistent. I think this is reasonable, looking at the photographs. And so Tesco has put the onus on the third party to provide evidence to show that the damage that they are claiming for was caused by the accident. Again, I think this is fair and reasonable as I wouldn't expect an insurer to pay for damage that wasn't, on balance, caused by its insured.

From what Tesco has told us the third party has yet to respond to its 50-50 offer or provide the evidence it requested in relation to the damage. So the claim hasn't been settled yet and liability hasn't been determined. Tesco said it is continuing to defend the claim and I think this is fair and reasonable. And I think it is also reasonable that it has tried to manage Mrs W's expectations early on by saying that it might need to concede liability in part based on the lack of independent evidence.

Mrs W has also said that Tesco didn't explain what the impact would be on her NCD. Tesco said that her NCD might be impacted unless it is protected. As our investigator said, Mrs W's NCD was protected according to her policy documents.

I appreciate Mrs W may be disappointed with my decision. As I said above, I understand that she finds herself in a very frustrating situation. But even if Tesco agrees with Mrs W, that it was the third party's fault and that they did intentionally reverse into her, this is still something Tesco needs to prove to the other side and potentially in court. And if it doesn't have any independent evidence to support what Mrs W has said, it's unlikely it will be able to do so. And so it is fair and reasonable for it to try to minimise its losses. I think the actions it has taken so far in this respect have been fair and reasonable.

### **My final decision**

For the reasons above, I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 3 February 2025.

Anastasia Serdari

**Ombudsman**