

The complaint

Mr G complains that Aioi Nissay Dowa Insurance UK Limited trading as Tesco Bank Box Insurance (Tesco) have handled two claims that were made against his motor insurance policy unfairly.

My references to Tesco include their agents. Mr G has a representative helping him with this complaint, but for ease of reading I'll only refer to Mr G throughout.

What happened

In October 2021, Mr G was involved in a car accident while leaving a car park. After they investigated the matter, Tesco accepted liability for the claim and settled the third party's costs.

In January 2024, Mr G was unfortunately involved in a further incident as while driving in bad weather a tree fell and hit his car. Mr G was later told his car was a total loss, and Tesco would provide him with its market value minus the excess to settle the claim. They also explained that as they couldn't recover their claim outlay it would be treated as a fault claim. Mr G then asked about cancelling the policy as it had only been running for three months. In response, he was told this was possible, but no refund of his premium would be provided due to the claim.

Mr G then made a complaint. In summary, he said he was lucky to survive the 2024 incident with his life, and it shouldn't be treated as a fault claim as he didn't do anything wrong. He also said no excess should be applied and he'd been forced to stay with Tesco as a result of the claim.

He was also concerned there is nothing in the terms and conditions that explain how Tesco will respond to claims about falling trees and said the claim from 2021 shouldn't have been recorded as a fault claim either. Lastly, he said the customer service he received from Tesco throughout his 2024 claim was a form of bullying and harassment.

Tesco responded to Mr G's complaint in two final response letters. In summary they said:

- They acted fairly by treating both incidents as fault claims, and the terms and conditions gave them the authority to do so without needing Mr G's permission.
- They didn't do anything wrong by asking Mr G to pay an excess for the 2024 claim, or deducting it from the settlement, as an excess is required as per the policy terms.
- Mr G had two years protected no claims bonus in 2024, but as a result of the incident he wouldn't earn a third. They also confirmed that he was free to cancel the policy, but he wasn't entitled to a refund of the premium due to the claim.
- The word "fault" when used in a motor insurance setting is a widely used term that refers to an insurer's ability to recover their claim outlay and it isn't associated with blame.
- They acknowledged Mr G's version of events for the 2021 claim but said based on the available evidence and the circumstances, they decided the best option was to accept liability and settle the claim.

- They couldn't recover their outlay for the 2024 incident from a third party as the damage was caused by a tree. This therefore meant the incident was treated and recorded as a fault claim. However, they didn't blame Mr G for it.
- They acknowledged the policy doesn't have any specific terms that refer to damage caused by trees. However, they explained that they can't list every eventuality in the terms, and the damage was treated as accidental.
- They also detailed the communication that took place with Mr G throughout the claim and complaint.

An investigator at this service then considered the complaint but didn't uphold it. He said he empathised with Mr G's position, but after carefully considering each complaint point, and referring to all the relevant policy terms, he didn't think Tesco had done anything wrong.

Mr G didn't accept the investigator's opinion. He repeated some of his key complaint points and said he still felt the way he'd been treated was unfair. He also shared some research and expanded on the way this matter had unfortunately impacted his health.

I issued a provisional decision last year as I felt the investigator hadn't fully addressed the 2021 claim. I've copied my findings below.

Provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I would firstly like to reassure Mr G and Tesco that although I have only summarised the background and arguments in the section above, I have read and considered everything provided about this complaint in its entirety. It's also important that I explain, that in writing this decision, I've only focussed on the points I think are central to the outcome of the complaint.

I'm sorry to hear Mr G has had such a difficult time recently. I can see the events connected with this complaint have had a significant impact on him, and I'm glad he now has a representative to help him with it.

Liability

It isn't my place to decide who is actually liable for the incidents at the heart of this complaint, that would be a matter for a court of law. What I'm deciding is whether Tesco have applied the terms and conditions of the policy reasonably and whether they have dealt with the claims fairly.

The starting point is the agreement between Tesco and Mr G - the policy terms and conditions. Under the terms of the policy, Tesco can independently decide whether to defend a claim or settle it. This might mean Tesco makes a decision that Mr G disagrees with, as has happened here. I don't find this unusual or surprising as most motor insurance policies allow insurers to consider claims in this way. That said, we expect an insurer to reasonably investigate each claim and consider all the relevant evidence before making their liability decision.

I've firstly considered the claim that took place in October 2021. When asked to explain the circumstances, I can see Mr G said he was leaving a car park and turned right onto the main road. He checked both directions several times before starting the manoeuvre and his path was clear, but once he reached the middle of the road a speeding car collided with him from the left side. So, from his point of view it was the other driver's fault.

Tesco have explained there were no independent witnesses they could contact following the incident and while they did request CCTV, no footage was available that showed the collision. They've also explained that the third party didn't accept responsibility for the incident or agree they were speeding or driving dangerously. So, this meant it was one driver's word against the other. In the event the claim proceeded to court, they didn't think there was a strong chance of defending it as it was ultimately Mr G's responsibility to make sure his path was clear. They also said they couldn't prove the other driver's speed. So, to prevent incurring expensive court costs, they took the decision to accept liability and settle the third party's claim.

I know Mr G strongly disagrees with the above outcome, but under the circumstances I don't think Tesco did anything wrong. I'm satisfied they investigated the claim fairly as they considered both sides version of events, requested CCTV and thought about the likely outcome if they continued to defend it. I'm aware Mr G feels his black box data shows he is a good and careful driver - I don't doubt this. However, I also think Tesco have concluded reasonably, that they would have needed evidence which shows the other driver was speeding or driving dangerously to reach a different outcome. So, I don't think the availability of Mr G's black box data reasonably changes things here.

I've also considered the January 2024 claim. The circumstances here are very different as Mr G's car was hit by a tree while he was driving down a country lane during bad weather. I'd like to stress that I mean Mr G no discourtesy by describing the incident in such a simple way. I know it was a deeply distressing event, and I'm truly sorry he experienced it. However, I don't think Tesco did anything wrong in relation to this claim either and I'll now explain why.

Tesco have provided me with evidence of the severe weather conditions that were present at the time of the incident. They've also explained that in their opinion, this is the likely cause of the tree falling, and as a result, it's very unlikely they'd be able to recover their claim outlay from any third party responsible for the tree. I appreciate Mr G feels they could have pursued a claim on the grounds of poor maintenance or negligence but given the severe weather conditions at the time of the incident, the cost associated with pursuing such a claim, and the low chances of success, I don't think Tesco acted unreasonably by declining to do so.

Mr G feels strongly that Tesco have blamed him for the incident but having reviewed the correspondence and listened to several calls, I'm satisfied this isn't the case. I can see Tesco have informed Mr G, they'd need to treat the incident as a fault claim, but this is only because they weren't able to recover their costs from a third party - it isn't because they thought he caused the damage. This approach is followed widely throughout the motor insurance industry, and while I appreciate Mr G strongly disagrees with it, I wouldn't reasonably expect Tesco to do anything differently. This means I see no grounds for directing Tesco to change the way they categorised the claim.

Policy issues

I'm aware Mr G feels he's been disadvantaged because there is no policy term that specifically refers to damage caused by a tree. I appreciate this has upset him greatly and he doesn't think it's right this information is missing. However, there is very little I can say about this, other than confirming that insurers aren't required to list every possible eventuality in their policy documents, and it isn't my place to say what they should include. I'm also satisfied the claim was considered fairly under the accidental damage section of the policy. So, he hasn't been disadvantaged due to this issue.

Mr G also feels it's unfair a policy excess was deducted from his claim settlement as he wasn't to blame for the damage to his car. I appreciate this was upsetting news and is connected to his belief Tesco should have done more to try and recover the claim outlay. However, the policy requires an excess to be paid and Mr G agreed to comply with the terms when he took out the policy. So, I don't think Tesco did anything wrong by declining to waive the excess.

I'm also satisfied Tesco gave Mr G correct information about the way his two claims impacted his no claims discount, as on each occasion they complied with the policy terms. The only difference being that when the 2021 claim took place, Mr G didn't have protected no claims as stated in his policy schedule.

Mr G was also correctly informed that he wouldn't receive a premium refund if he decided to cancel the policy, as the terms explain this isn't offered when a claim has been settled. I appreciate Mr G had only made a few payments, but Tesco had paid out a significant amount to settle the claim. Policy terms of this nature aren't unusual, so I don't think Tesco did anything wrong by saying they intended on relying on it.

Cost of Insurance

Mr G has suggested he was prevented from taking out insurance with a different insurer because of his claim's history and the very high cost of the quotes he received. It's not my place to comment on any quotes Mr G may have received from other insurers as they aren't party to this complaint. However, generally speaking, I don't find it surprising the quotes Mr G obtained following the 2024 claim may have unfortunately increased. This is because its standard practice for insurers to take a customer's claims history into consideration when determining risk, and Mr G had a recent claim.

I'm aware Mr G decided to stay with Tesco following the claim as they had the most competitive quote, but he is free to change insurer should he prefer. He also has the option of making a pricing complaint to Tesco if he feels the cost of his policy with them is unfair. However, this wouldn't extend to asking them to reconsider the way the 2024 claim has been categorised as I've addressed that issue here.

Customer service

I was sorry to hear Mr G felt Tesco's advisers bullied and harassed him in relation to the 2024 claim. I know this was a very distressing and confusing time for him, however, having carefully listened to all the calls that have been provided, I don't think the evidence supports this conclusion. I identified one call where the adviser spoke to Mr G in a direct way. I appreciate this may not have been his preference, but I do think she was trying to help. I also don't think the amount of calls were excessive given the circumstances.

I appreciate Mr G didn't wish to progress the claim until he'd received a response to his complaint, however, I don't think Tesco did anything wrong by encouraging him to do so, as they were concerned about storage costs. I also note that they said they'd carry out any action decided by the complaint handler, if the complaint was upheld such as refunding the excess or changing the way the claim had been recorded. So, they did what I'd reasonably expect to try and reassure Mr G he wouldn't be disadvantaged by progressing the claim.

This means, while I acknowledge Mr G's strength of feeling about this issue, and I don't doubt the distress he felt throughout the claim and the unfortunate impact on his health – I don't agree the customer service fell below the standard I'd reasonably expect.

Responses to my provisional decision

Tesco accepted my provisional decision and didn't wish to add any further comments.

Mr G provided detailed submissions and in brief summary said:

- Tesco didn't act fairly in relation to the 2021 claim as the third-party driver was apologetic at the scene and caused the incident by speeding and using their phone. The driver also told him their brother was a mechanic, so he's worried this relationship may have impacted the claim. Overall, he feels Tesco could have done more to investigate his concerns and find supporting CCTV.
- He was harassed by Tesco's agents in 2024, and it was a call with a male adviser that was particularly upsetting. On several occasions he was warned he could be held responsible for storage fees, and this wasn't fair.
- It was unreasonable for Tesco to decline him a courtesy car and deduct an excess from the claim settlement due to classifying the incident as his fault. These issues combined with the significant increase in the cost of his motor insurance have caused him financial turmoil.
- According to the evidence he provided, the trees, land, and foliage in the area where the incident took place were in a poor condition and subject to fungal infections. The specific tree that fell on his car was identified as a falling risk and was due to be felled by the council before the accident took place. So, Tesco could have made a successful negligence claim and recovered their claim costs.
- The tree didn't fall due to a storm as the conditions were good at the time of the incident. To support his position, he provided a weather report and dashcam footage from his car showing the incident taking place. He also feels the incident can't be classified as his fault as motorists don't have any control over the condition of roadside trees.
- It's unreasonable to suggest it would have been too expensive for Tesco to pursue a claim to recover their costs. The justification that future insurance premiums would go up also doesn't make any sense, as Tesco would have recovered their costs, and the claim wouldn't be recorded as his fault.
- This matter has continued to impact his mental and physical health.

As Mr G provided significant evidence in response to my findings about the 2024 claim, I thought it was appropriate to share this information with Tesco and invite their comments. In response, they said their position remained the same, as any negligence claim made against the council would have been disputed due to the storm conditions.

I also asked Mr G to clarify why he felt the report he'd provided showed the specific tree that fell on his car was infected and due to be felled. In response, he said the report shows a tree previously fell on the lane where the incident took place due to a fungal infection, and it's widely known that such infections spread quickly to the surrounding land and trees. This means, it's likely all the trees on the lane were infected and the council were therefore negligent by not taking precautions to protect the public either by felling the trees or closing the lane.

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 know this will come as a significant disappointment to Mr G, but my findings remain the same, and I don't uphold this complaint.

I appreciate Mr G's strong feelings about the 2021 claim. However, as detailed in my provisional decision, Tesco were free to decide how to progress the claim and they didn't need Mr G's consent to accept liability. I've no reason to doubt Mr G's comments about the actions of the third party, or the discussion he had with them at the scene. However, Tesco were required to reach a liability decision based on the available evidence, and despite their requests they didn't find any relevant CCTV footage. I've also seen no evidence which suggests the claim was impacted due to the third party's relationship with a mechanic.

Mr G has said it was a conversation with a male adviser that was particularly upsetting in 2024. Tesco have now provided that specific call recording, so I've listened to it to see if it changes my findings. While I appreciate Mr G's upset with some of the adviser's choice of words, I don't think he purposely tried to upset him or make things more difficult. Throughout the call, Tesco's adviser explained Mr G's options, detailed how insurance claims are categorised and reassured him that progressing the claim wouldn't impact his on-going complaint. Mr G also made it clear he was happy with the settlement offer he'd received for his car. So, I don't think the adviser did anything wrong by encouraging him to move the claim forward despite Mr G's reluctance.

I also appreciate Mr G's upset that he was told he could be held personally responsible for any unnecessary storage costs. However, as Tesco have an obligation to keep claim costs low and explained to him that his complaint wouldn't be negatively impacted by progressing the claim, I don't think this was unreasonable. Overall, while I understand the reasons Mr G found the claim process upsetting, I'm satisfied Tesco's advisers treated him fairly and tried to help.

I also think Tesco acted reasonably by declining to provide Mr G with a courtesy car, as the policy terms say, "*Temporary replacement cars are not available if your car has been stolen and has not been recovered, or is not repairable*" and Mr G's car was unfortunately written off. Mr G would also have been required to pay an excess regardless of the fault categorisation as an excess is considered an uninsured loss and required in every claim. I appreciate both of these issues impacted Mr G financially, but under the circumstances, I'm satisfied Tesco didn't do anything wrong. There is also nothing further I can meaningfully add in relation to the cost of his insurance.

I've carefully considered the information Mr G has provided about the country lane where the incident took place, and the general condition of the local area. I don't dispute the fact the report indicates a tree fell due to a fungal infection, and I'm also aware such infections can spread. However, I've not seen anything which shows the specific tree that fell on Mr G's car was infected, or that the council acted negligently by failing to close the lane or fell the tree before the incident took place. So, I don't think Tesco concluded unfairly that this information doesn't change their position.

I've also considered Mr G's comments about the weather on the day of the incident. He's said the conditions were stable, and there were no signs of a storm. I respectfully disagree with this as the Met Office declared a named storm on the day of the incident, and its strong winds throughout the day caused significant damage across the county. I've also reviewed the dashcam footage Mr G provided from the time of the incident, and it shows trees moving in the wind on both sides of the lane. So, under the circumstances, I don't think Tesco acted unreasonably by concluding the tree may have fallen due to the storm, and any attempt to recover their claim costs was therefore likely to be defended for this reason.

I acknowledge there are a wide variety of factors which could have caused the tree to fall. It's unlikely we'll ever know for certain what happened and it's not my place to determine this. What I've considered is Tesco's handling of the claim, and they concluded they wouldn't be able to recover their costs after carefully considering all the circumstances, and the prospects of success. I'm aware Mr G strongly disagrees with their decision, but it was Tesco's to make, and everything considered I don't think it was unreasonable. This also means I see no grounds for directing Tesco to do anything more in relation to this claim.

I'm aware Mr G has found this matter very challenging, and I'm sorry to hear it continues to significantly impact his health. He believes Tesco have blamed him for the unfortunate incident, and I can only stress this isn't the case. I'm satisfied Tesco considered his claim fairly, and it was categorised in the same way as every other claim where an insurer doesn't recover their costs. I know this isn't the final decision Mr G wanted, nevertheless, I hope it gives him some form of closure, and he can now try and put this upsetting matter behind him.

My final decision

For the reasons I've explained, both here and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 March 2025.

Claire Greene
Ombudsman