

## **The complaint**

Mr M has complained about Tesco Underwriting Limited's decision not to settle a claim as a non fault claim under his car insurance policy.

## **What happened**

Mr M reported an incident involving another vehicle to his insurer, Tesco. Tesco contacted the third party insurer (TPI) with the allegations and intended to hold the third party at fault for the incident.

But the TP gave a different version of events and so there was a dispute as to who caused the incident. There were no independent witnesses or CCTV, so Tesco told Mr M it would look to settle the claim on a shared liability basis, so 50%/50%.

One of our Investigators thought Tesco had acted fairly and in line with the policy. So he didn't recommend Mr M's complaint should be upheld.

Mr M disagrees and wants an ombudsman 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.

We don't decide liability. That is the role of the courts. But we can look at whether an insurer has acted reasonably when reaching its decision and in line with the policy.

Mr M's policy with Tesco has a term I've found in most – if not all insurance policies. This term says Tesco can take over the defence and settlement of a claim in Mr M's name. This means Tesco can make a decision Mr M may not agree with, but the policy allows Tesco to do it.

We don't disagree with this term in principle provided an insurer can show it treated a customer fairly when applying it.

In this case, both parties say the other driver drove into their vehicle while travelling on a roundabout. As the Investigator explained, it isn't about whether Tesco believes Mr M. It has no reason not to. And it isn't in Tesco's interests to settle the claim where it cannot recover all of the claim costs unless the evidence – or lack of – means it is a reasonable decision to make.

Mr M says Tesco has gone against all of the facts. But there is no independent evidence to show what happened at the time of the incident. It is one party's word over another. I understand Mr M wishes to provide video footage to us of the roundabout – and he has previously provided this footage to Tesco. But as Tesco explained, this isn't evidence of what happened, so it doesn't add weight to Mr M's version of events.

An insurer can decide it is better to settle a claim on the best terms possible rather than proceed to court action, with the risk of significant costs that incurs. This would only be appropriate where an insurer believes it has strong evidence with reasonable prospects of success.

Having considered the information available to Tesco, I don't find that its approach in wishing to settle Mr M's claim on a shared liability basis is unreasonable. At the time of Mr M's complaint, Tesco says the claim remained open.

I understand Mr M will be very disappointed with my decision. But this means I'm not asking Tesco to change the recording of the claim to a non-fault claim. There isn't sufficient evidence for Tesco to prove the other driver was 100% at fault for the incident.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 March 2025.

Geraldine Newbold  
**Ombudsman**