

The complaint

Mr C and Ms D are unhappy that Tesco Underwriting Limited ("Tesco") unfairly cancelled their home insurance policy due to them also owning a property they rented out on short term lets.

What happened

Mr C and Ms D owned two properties, one that they lived in and the other they used for renting out as a holiday let.

Due to the history of the properties, there was a disagreement between Mr C and Ms D and Tesco to how they should be insured.

Mr C and Ms D explained the history of the properties before they bought them. They said planning permission was approved for a second dwelling (a granny flat) and it was given its own council tax assessment. The usage of this property was later re-classified with the council to a holiday let.

Mr C and Ms D explained they bought these properties at the same time. They said the properties had different addresses, and each had its own council tax banding / billing account. Mr C and Ms D had to pay stamp duty separately for each property. Mr C and Ms D arranged home insurance for one property, then took out a separate specialist holiday let insurance policy for the other property.

Tesco recognised the properties were registered as two separate properties with the council. However, as both properties were registered under the same title at the Land Registry, it thought both properties should be treated as one for insurance purposes. Given part of the property was a holiday let, and Tesco didn't provide this kind of cover, it cancelled the policy.

Tesco renewed Mr C and Ms D's policy before the cancellation, which it said was an error in its processes. It didn't intend to renew the policy. So, it offered £20 compensation for the distress and inconvenience subsequently caused.

Mr C and Ms D are worried the cancellation will show up on their insurance record and they think the compensation should be higher. They have since arranged insurance with another provider.

Our investigator decided to uphold the complaint. She didn't think Mr C and Ms D had made a careless representation when taking out the policy. She didn't ask Tesco to reinstate the policy but did ask it to increase the compensation offered by £150. Tesco disagreed, so the case has been referred to an ombudsman.

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.

Tesco cancelled the policy due to what it thinks was a “careless” misrepresentation by Mr C and Ms D when they took out the policy. In other words, it doesn’t think Mr C and Ms D took enough care when they provided their specific insurance requirements to Tesco when they took out cover. So, I have considered the merits of this complaint from this perspective.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would’ve offered the policy on different terms or not at all if the consumer hadn’t made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

So, I’ve considered Mr C and Ms D’s circumstances in respect to CIDRA.

Was there a misrepresentation?

Tesco has explained that its policy defines that any outbuildings are part of the property that is insured, in this case it has said the holiday let is an outbuilding (of the main property). It has said it can’t remove structures from its cover.

Tesco explained the policy was cancelled because the risk is not something it can cover.

Whilst I can see Tesco may think there was a representation, I can equally see why Mr C and Ms D doesn’t think there was a misrepresentation. Both parties have provided legal reasoning and evidence to support their arguments. In some ways, both arguments are plausible.

Did the consumer take reasonable care?

I’ve also considered the questions that were asked of Mr C and Ms D when they entered into the insurance contract and the information they relied upon to provide their answers.

I appreciate Tesco has argued that during the sales journey Mr C and Ms D were able to review the Insurance Product Information Document (IPID) to ensure they were answering any questions asked of them in the correct context.

However, I think given the evidence Mr C and Ms D have provided during this process, it is clear they thought the properties were separate. So much so, that they took out separate cover for the property that was classified as a holiday let. Therefore, I can’t possibly say they didn’t take reasonable care.

Even if Mr C and Ms D had read the IPID document, I don’t think there is any specific reference to whether a land registry definition of ownership takes precedence over council records. I think based on what Mr C and Ms D knew or could be expected to know, they took reasonable care.

So, as I think Mr C and Ms D have shown reasonable care, I uphold this complaint.

In all pragmatic terms, this won't have a huge impact as Mr C and Ms D have already taken out cover with a different provider. So, I don't need to ask for cover to be reinstated.

Mr C and Ms D were concerned about their insurance history, but Tesco has confirmed these events haven't been recorded as a cancellation on their record, so Mr C and Ms D don't need to declare this to future insurers.

However, as Tesco did renew the policy and then decided to cancel it, I think it has been unfair. It shouldn't have renewed. Therefore, I award a further £150 compensation for the distress and inconvenience this has caused Mr C and Ms D in seeking out new cover.

Although, I don't think it was the main part of Mr C and Ms D's complaint, I will comment on one further point. Tesco recorded information about both enquiries made by Mr C and Ms D and claims during the period of cover. This is normal practice in the industry and reasonable. It's important insurers are able to keep accurate records in relation to what happens with their policyholders whilst under cover.

My final decision

My final decision is that I uphold this complaint. I require Tesco Underwriting Limited to:

- Pay Mr C and Ms D - £150 compensation for distress and inconvenience (Tesco should also pay the £20 already offered if it hasn't already).
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms D to accept or reject my decision before 16 April 2025.

Pete Averill
Ombudsman