

The complaint

Mr T, represented by his wife Mrs T, has complained about his property insurer Tesco Underwriting Limited. There was a fire at Mr and Mrs T's home but Tesco said Mr T should have told it about building work that he'd been having done. It said, because he had not, it was avoiding his policy and declining the claim. Mr T feels that is unfair.

Mrs T has corresponded on this complaint at times, on behalf of Mr T. For ease of reading, unless stated otherwise, I won't differentiate between her comments and his. Rather anything she has said will be taken as being, and referred to as, Mr T's own comments.

What happened

In 2021 Mr T lodged a planning application for work to be done at his home. In June 2022 the home insurance policy Mr T had with Tesco renewed. As part of the renewal Mr T was asked if there was any on-going building work at the home. Mr T said there was not. Building work at the property commenced in August 2022.

Mr T, in February 2023, was not staying at the property. He was contacted by a neighbour in the early hours of the morning advising there was a fire. Mr T attended the property, although the fire brigade would not allow access. Later that morning he made a claim to Tesco.

During that first call with Tesco Mr T said he had not been staying at the property – that he had moved out because on-going building works had progressed such that scaffolding was needed and there was a plan for the roof to be taken off. Tesco told Mr T that it would log the claim – but it would have to make enquiries, before it could accept it, to see if, in the circumstances detailed by Mr T, there was valid cover in place.

By the start of May 2023 the claim had not progressed. Tesco apologised to Mr T for delays to that point and paid £500 compensation.

Around the same time it also told Mr T that it would not be progressing the claim – that it would be avoiding the policy. Tesco said that it felt that Mr T should have disclosed the planned work to it at renewal. It acknowledged that the renewal question asked of Mr T was about 'on-going' building works, which there was not. But added that the policy itself contained a condition requiring the policyholder to tell it of "any building work". So it said, at best, Mr T should have told it when work was due to commence. If he had, it would, Tesco said, have cancelled the policy. Tesco said it was avoiding the policy to the date the work commenced.

Mr T had also told Tesco he was unhappy about the way Tesco staff had spoken about him, Mrs T and the claim circumstances. Tesco accepted that comments made had been inappropriate. It paid a further £500 compensation.

Subsequently Tesco approached Mr and Mrs T with a view to mediating a goodwill settlement. Discussions, on a without prejudice basis, in that respect progressed. However,

no satisfactory agreement between Mr and Mrs T and Tesco could be reached and Mr T complained to the Financial Ombudsman Service.

Mr T set out a detailed complaint. He explained why he felt Tesco's avoidance was unfair – why he believed it would have offered cover if it had been told about the building works. He said he felt its decision to avoid had been unfair and potentially motivated by discrimination, particularly given the way staff had spoken about them and the claim.

Our Investigator thought Mr T had answered the question at renewal correctly. But he thought the policy itself had required Mr T to tell Tesco of the works. He explained he carefully considered evidence about what decision Tesco was likely to have reached if Mr T had told it in summer 2022 as the work commenced. He said, having done so, he was satisfied by what Tesco had said – that it would likely have cancelled the cover. So he felt Tesco had acted fairly and reasonably when it had told Mr T that the policy was being avoided to the date the works commenced.

Regarding the allegation of discrimination, our Investigator said he understood why Mr and Mrs T felt that way. But he assured them that he had found the policy liability decision had been made fairly and reasonably based on Tesco's processes. He said though that the comments made by Tesco staff had been extremely unprofessional. He accepted Mr T had been upset by them. He also noted that Tesco had misled Mr T when, prior to the avoidance decision being made, its staff had told Mrs T that the claim would likely be accepted and settled. He noted though the £1,000 total compensation Tesco had already put forwards. He felt that was in-line with awards we'd make in these circumstances. So he wasn't minded to say Tesco should pay more.

Having requested to see the information relied upon – Mr T said he didn't think he'd been shown everything he felt could reasonably be shared. He didn't agree with our Investigator that some detail was confidential.

Mr T was unhappy with the outcome. He noted that our Investigator had referenced an example from Tesco where it had denied cover. He felt the scenario of that example was dissimilar to his own situation. And the decline had taken place after the fire at his home had occurred. So he didn't think it was fair for that example to have been relied upon to determine what Tesco would have done had he told it of the building work at his property. Mr T said that the works they had planned seemed more like an example Tesco had given of building work it was prepared to accept. He said it wasn't clear what checks had been done to ensure Tesco had not just cherry picked a few scenarios. Mr T said he felt Tesco had made its decision about his work because of the value of the damage claim it was facing.

In providing a response to our Investigator's view, Mr T also said:

- Tesco's file notes showed that most staff felt the building work would likely be accepted.
- Tesco, when told of the building works did not cancel the policy, it just added endorsements.
- A key policy document does not warn of the possible consequences of not telling Tesco about the building work – so that's not fair.
- In the span of a year, Tesco had 891 referrals for building work, and accepted 752 – which shows a strong risk appetite for accepting building work.
- But it's not relevant to think about what Tesco would have done, because that is an argument which applies to misrepresentation, and there was no misrepresentation here.
- Industry guidance says an insurer must not unreasonably decline a claim or avoid cover. Specifically that rejection on the grounds of a breach of condition is unfair unless the circumstances of the claim are connected to the breach. In his case, Mr T said, the

building work has not been shown to have caused the fire – so Tesco's avoidance is unreasonable.

- A decision on their building works did not have to be made by Tesco's most senior staff – because the cost of their work, less VAT fell below the senior referral threshold.
- The senior staff member that made the decision likely had a conflict of interest.
- A number of relevant factors seem to have been overlooked by the senior staff member - which wasn't fair given the conflict he likely had.
- That decision should be carefully scrutinised, especially given it seems likely, once the building works were completed, Tesco would happily have continued cover for the home.
- Tesco did seek to negotiate a cash settlement with them before unfairly withdrawing from that process.
- They'd relied on Tesco's actions and lost money as a result.

Mr T's response was shared with Tesco. Tesco said it was inappropriate that the post-avoidance negotiations the parties had entered into had been referred to by Mr T. It said those discussions had been entered into on a without prejudice and confidential basis.

The complaint was referred to me for an Ombudsman's decision. I noted that Mr T had raised new points after our Investigator had issued his view. So I issued a provisional decision so those points could be taken into account. I've reproduced most of my provisional findings in the section immediately below. But – given the thrust of Mr T's reply to what I said, I've removed my comments entitled "Policy Condition". Those comments relate directly to Mr T's reply. So I've reproduced my "Policy Condition" provisional findings further on within "What I've decided and why".

What I decided provisionally

"Whilst my background is not brief, Mr T in particular may feel I have not set out all of the detailed arguments he has made. I mean no discourtesy by this and can assure both parties that I have read and understood all of the points they've made. However ours is an informal Service and, as Ombudsman, it is my duty to focus on the details key to the heart of the complaint and my outcome. That is what I have done here.

Natural justice

I've reviewed what the Investigator said and the documents which were shared with Mr T. I've also seen the documents/detail which weren't shared. I'm satisfied that we've shared what we could given the duty we have to ensuring confidentiality – confidentiality both in respect of commercially sensitive data and data directly linked to individuals.

Underwriting detail Tesco has shared

Our Investigator, during his assessment of the complaint, asked Tesco for various detail and Tesco provided certain information in reply. Including the data that has been shared, in part, to Mr T. We do not have powers to undertake a forensic style analysis of all of Tesco's databases such as to ensure it has been honest and transparent in what it has supplied. Rather we trust that both parties, entering into a complaint, will deal with us openly and honestly. Of course, if in assessing any complaint detail we had cause to think that had not happened, we could ask for more detail and/or weight anything we do have in-line with any reasonable concerns we might have. That is all part and parcel of a normal assessment and investigation process. I'm satisfied by what I've seen here, and I've not seen anything which makes me think Tesco has tried to 'stack the deck' so to speak.

Negotiations

I know Mr T thinks that these negotiations cast doubt on Tesco stating it would not have offered cover. It may well be that Mr T incurred costs as a result. However, when these negotiations took place, they were confidential and on a without prejudice basis and came at a time when Tesco had issued its final response on the complaint about avoidance. So it's not appropriate for me, in respect of a complaint about Tesco's actions as an insurer to avoid the policy, to take those details into account.

[Removed – Policy Condition findings]

What would Tesco have done?

It isn't unusual for this Service to think about what would most likely have happened. We apply this approach in a number of complaint scenarios. It is important that, when we do so, we consider the situation as existed at that time. But sometimes it is necessary and reasonable to take additional data into account as well.

Here Tesco has shown that planned building works, valued in excess of £500,000, will often be declined outright. But if they are considered, there are only two staff members who have authority to authorise them. That is particularly relevant here because there were a number of staff which seemed to think the works would be authorised – but they did not have the relevant authority to determine that.

Tesco's guide, when referencing the value of building work, does not specify whether that is inclusive or exclusive of VAT. I'm mindful that the documents Mr T presented to Tesco for the work he was having done gave a value of £520,000 and did not specify VAT. So I'm satisfied it's fair to say the likely value of the works Mr T was having done was in excess of £500,000.

Tesco then, once it was advised of the work, post-fire, considered what it would have done if it had been told about this before. Part of that consideration was to refer the matter to one of the two staff members who could have authorised such work. I can see from Tesco's file that certain details were presented to that staff member as part of that review. At that time details of 138 referrals for building work had been gathered from the previous year, with the value of those accepted in that period being around £200,000. It was reported that, at that time, the only accepted referral in excess of that value was for work valued at £350,000. There was reference to one referral, where work was valued at £800,000, being declined.

I've no reason to doubt what was reported and put before the staff member for consideration. And I'm mindful that the details Tesco later presented to support the decision the staff member came to, seems broadly in line with that reported content. In short Tesco showed an example where work valued at £1,000,000 was declined. It also declined one at £500,000, whilst accepting one at £400,000. The first two do post-date the referral for Mr T's work to be considered, with the third, accepted example, dating from around the time of that referral. Tesco also showed detail of referrals received between July 2021 and March 2023, a much longer period than had been reported to for the staff member's consideration of Mr T's building work. Of the 891 cases, the third example of work valued at £400,000 was the most Tesco had agreed to.

I appreciate that Mr T doesn't think the work valued at £500,000 was like that that he was undertaking, and that the work valued at £400,000 was more similar. But from what I have seen from Tesco's detail it is the value of the work that was most important to it. I accept that the underwriting guide does caution about declining based on value where business might want to be kept. However, I'm also mindful that the guide applies to all levels of consideration – with only senior staff members able to authorise works valued in excess of

£500,000. From everything I have seen Tesco associates a greater degree of risk with increased values of building work. I think only a senior staff member could reasonably consider such risks, balancing them against any value which might be gained by retaining the policyholder's business. I'm satisfied, based on all of the detail I've seen that Tesco's decision about Mr T's works was based on value, was in line with other decisions it had made and was reasonable.

I'd add that whilst the example for works valued at £500,000 related to a property being demolished and rebuilt, I think it presented some broad risk issues that reasonably also applied to Mr T's work. So there was scaffolding up and major roof work was planned, with Mr T having moved out to facilitate the building work. I think that move was likely planned all along. I think that is all detail he would have shared with Tesco had he told it of the building work before it began. And I think that type of work, broadly speaking, brings with it the same kind of risks as a property which is vacated in order to be demolished.

It's also important to recognise that, equally as broadly, the work for the £400,000 example seems analogous with the work being carried out at Mr T's home. In that example, an extension was being added and the roof was being worked on. But I think this serves to emphasise that the value of the work was most important to Tesco. I'm not persuaded the detail of the work in this example alone is enough to make me think Tesco's senior member of staff made an erroneous, unsound decision regarding what Tesco would likely have done had it been told about Mr T's building work.

I know Tesco's initial response, when told of the works was to add endorsements to the policy. But I'm satisfied that it was clear with Mr T at that time that it needed to investigate the liability situation. It would have been unfair, I think, if Tesco had instead told Mr T it was cancelling the policy at that point, even if some notice had been given. Rather Mr T had breached a policy condition and it needed time to investigate whether that was material or not. It wasn't unreasonable for it to add endorsements in the meantime whilst that position was investigated – and doing that did not mean, in the circumstances, it had waived its right to then act regarding liability once investigations were complete. Nor do I think that Tesco, having added the endorsements here, means that is most likely what it would have done if a timely update from Mr T had been provided. From everything I've seen, I think Tesco, if told in summer 2022 of the building work starting, would have sought to cancel the policy.

I'm satisfied that Tesco acted fairly, following the fire and notice of building work being given to it, to think about what would most likely have happened if it had been told of the works before. It did that by making a referral to the senior staff member. I'm mindful that the role of that staff member is to assess risks – as the chief underwriter, he was best placed to make a fair decision about what would likely have happened if Mr T had told it of the works in summer 2022. I'm satisfied that a senior person in that type of role would act fairly – I've certainly seen nothing that makes me think he made a decision subject to or compromised by bias or conflict.

Having considered everything, I'm satisfied that Mr T breached a policy condition and that Tesco reached a fair decision about what it would most likely have done 'but for' that breach. As such, I'm not minded to make Tesco revise its potion.

Comments by staff

I've seen the comments made. I won't reproduce them here – that would only add to the upset they've already caused. To see comments like this from Tesco staff when considering this awful incident suffered by its policyholders is disappointing to say the least. But I've not seen anything that makes me think that this lack of professionalism and respect for Mr and Mrs T was likely racially motivated. What was said was certainly not fair and I totally understand how upsetting it was for Mr T to know that, in the background of everything, comments like this were being made.

I also bear in mind that Mr T was misled by Tesco staff about what would likely happen once the senior staff member had completed their review – that they would likely find in his favour. I understand why then Mr T became so frustrated when a different and unfavourable answer was reached. That upset could and should have been avoided by Tesco.

I appreciate that this has been a difficult time for Mr T. I understand Mr T had a major loss and it was disappointing to hear, during that first notification with Tesco, that there might be a bar to his claim under the policy being accepted. I also understand that it took time for Tesco to investigate matters. With Mr T then being misled and then finding out how staff had been speaking about them. In light of everything I think Mr T was caused upset which could have been avoided. I bear in mind though that Tesco paid £1,000 compensation in total, I think that is fair and reasonable in the circumstances."

Responses to my provisional decision

Tesco said it accepted my findings.

Mr T said he disagreed with most of what I'd said. But, he said, there were two main areas of contention which he wished to focus on in his reply – the cause of the fire and the industry guidance (code of practice).

Regarding the fire, Mr T notes Tesco is "reserving its position". Mr T feels that doesn't make any sense given the time which has passed and all of the investigations already undertaken, none of which could determine a cause. Mr T emphasised that "the fire was not in any way connected to a notification requirement in the Policy document".

Turning to the industry guidance (ICOBS – Insurance Conduct of Business Sourcebook), Mr T said:

- A fundamental principle of this Service is to protect consumer rights.
- This Service follows the rules in the Financial Conduct Authority's (FCA) handbook.
- That handbook contains ICOBS.
- The purpose of ICOBS, in place for more than a decade, was to introduce "carefully targeted rules to help ensure consumers receive a fair deal."
- ICOBS protects consumer rights and is "enforceable law", not guidance.
- The provisional decision does not go into specific detail about ICOBS but, in its current form, breaches it.
- The circumstances of the claim aren't connected to his breach to tell Tesco about the building work – whereas ICOBS says that for a claim to be declined due to a breach, there *must* be a causal link (between the breach and the claim).
- Whatever caused the fire, it was not his failure to notify Tesco of the work.
- Tesco, as such, withdrawing the policy as it did, on the basis of a breach of condition, acted "against the law", in breach of ICOBS.
- A breach of ICOBS gives him the right to take enforcement action and sue Tesco.

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.

This Service was set up by government as an informal dispute resolution service to resolve complaints between financial businesses and their customers. As such we are independent of either party and neither champion businesses nor consumers. At our heart is resolving complaints fairly and reasonably.

Whenever we consider a complaint, we always have regard to our rules – the Dispute Resolution Rules. These are set out in the FCA handbook. We are not bound to the handbook as a whole, some parts of it are industry focussed, with us being the independent dispute resolution service for the industry, and the FCA being the regulator.

We are an informal service. As I said we look to resolve disputes fairly and reasonably. That means that whilst we'll always have regard to relevant law when considering a complaint, we won't always reference it directly. Nor will we necessarily decide a complaint based on a strict reading of what the legislation says. We would usually say that, if a complainant wants a legal finding to be made – that certain legislation has been breached – they should look to a court for that.

I appreciate that Mr T would have liked, in my provisional decision, for my findings to have dealt more specifically with ICOBS. But the key point Mr T had made about ICOBS – that it meant Tesco had acted unfairly – was addressed by me in the following provisional findings (specially the second paragraph):

"Policy condition

There is a policy condition which requires the policyholder to notify Tesco of any changes. A list of examples are given, one of which is "any building work". The policy wording explains there may be consequences if a change like this is not advised. It doesn't surprise me that that same level of detail is not included in the document Mr T has referred to. Not everything can be detailed in every document, The policy documents are meant to be read as a whole. In any event, it isn't the case here that Mr T did not tell Tesco of the changes because he had only read the one policy document he has referred to and so was aware of the condition but not the potential consequences of non-compliance. Rather Mr T had not read the documents at all and had been unaware of the entire condition – only becoming aware of it when he spoke to Tesco on the morning of the fire.

Mr T has also said that his breach of the condition isn't linked to the claim circumstances because he thinks the work has not been shown to have caused the fire. I'm aware that Tesco thinks the cause of the fire hasn't yet been determined – so it is reserving judgement on whether or not it was caused by the building work. But for me the cause of the fire itself doesn't reasonably preclude Tesco from relying on the condition. That's because the breach of condition is material to the loss in a broader sense – if Tesco would have done something differently if the breach had not occurred, then that is where materiality comes in. In this sort of circumstance it's fair and reasonable for the insurer's risk position to be taken into account. So it is important in this scenario, even though misrepresentation at renewal is not being discussed, to think about what would have happened."

The part of ICOBS Mr T has highlighted, regarding policy conditions, specifically considers that an insurer, declining a claim based on a technical breach of a policy condition, would be unreasonable. Essentially (borrowing an example Mr T has used himself), if a policy says there must be security measures in place on windows, but there isn't and a thief breaks in,

and leaves, via the front door, the insurer could not rely on the breach to decline the claim. But that is not the same type of situation as Mr T has found himself in.

I'd draw Mr T back to what I said provisionally. I explained that this breach was material to the policy as a whole. This was not a situation where Tesco, considering just the fire claim, declined the fire claim because Mr T had not told it about building work. Rather, because Mr T did not tell it about building work, and Tesco was satisfied that breach materially affected its position on cover, part way through the policy year, Tesco cancelled the policy to the point it felt it should have been told about the work. If Tesco had been able to cancel the policy at that time, rather than retrospectively, it would have ceased providing cover to Mr T several months before the fire occurred. Which reasonably means that Tesco, but for Mr T's breach, would never have been providing cover at the point the loss occurred. So the claim falls away because of the decision Tesco made to avoid the policy to the date work began. Given everything I've seen I'm satisfied it was fair for Tesco, in the circumstances, to have made the decision it did to avoid the policy to the date building work commenced.

I absolutely appreciate that this is an awful situation for Mr T to be in. I totally understand the worry and upset this has caused. It is not a surprise to me that Mr T feels Tesco's decision and the outcome I've reached are unfair. But, having considered everything, including Mr T's response to my provisional findings, my view on the complaint has not changed. As such, I can confirm that my provisional findings, along with those made here, are now the findings of this, my final decision.

My final decision

For the reasons set out above, I don't make any award against Tesco Underwriting Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 April 2025.

Fiona Robinson
Ombudsman