

## **The complaint**

Mrs C complains Tesco Underwriting Limited has unfairly avoided a contents insurance policy she held with it.

## **What happened**

Mrs C took out a contents insurance policy with Tesco in 2022. In late 2023 there was a burglary at the property, and she called Tesco to make them aware of it. At this point Tesco became aware that there were two subsidence claims which had been made against the property. Tesco explained that it wouldn't have offered this policy to Mrs C if it had been aware of those claims, it therefore avoided her policy and refunded all of the premiums she had paid since 2022.

Mrs C is unhappy about this, she believes she would have answered the applications questions truthfully when she purchased the policy through a comparison website. She also believes Tesco should have been aware of the claims. She thinks its unfair Tesco's have avoided the policy rather than making her aware and letting her cancel it herself, as this has now impacted her ability to get insurance.

An Investigator looked into the complaint but explained to Mrs C that he didn't think Tesco's had acted incorrectly. He said he was satisfied based on information it had provided to him that it wouldn't have offered cover had all of the circumstances been known.

Mrs C disagreed and asked for an Ombudsman's decision. She reiterated many of the points she had previously made. She also commented that in a call with her husband, after the burglary notification, she said that Tesco admitted it was aware of the circumstances of the two claims on the property. She also said she confirmed to Tesco in 2023 that she hadn't received and wasn't able to access her renewal documents, so she wasn't able to check the basis of cover and correct it. Mrs C said she is unhappy about the way this matter has been handled and the lasting and negative impact this matter will have on her ability to get insurance.

## **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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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 has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And where there is a qualifying misrepresentation the remedy available to the insurer under CIDRA depends on whether that qualifying misrepresentation was deliberate or reckless, or careless.

Tesco thinks Mrs C failed to take reasonable care not to make a misrepresentation when she did not disclose that her property had suffered from subsidence.

Mrs C said she took the policy out initially through a comparison site, so I've looked at the questions asked on there and it asks about any household claims in the last five years. I appreciate Mrs C has explained she didn't believe the subsidence claim had been confirmed, because the property had to be monitored. However, it is the case that she would have had to register a claim in order for that monitoring to have taken place. So the answer to that question should have been yes.

When selecting the Tesco policy Mrs C would have been redirected to its system where she would have been asked to confirm different statements about the property, one of which was *"There is no sign of, and it has never been damaged by subsidence, heave, landslip, or tree root damage"*. As the property had previously suffered subsidence in 2008, and Mrs C knew about that, Mrs C would not have been able to agree to this statement. Based on this, I don't think Mrs C took reasonable care when answering these questions.

I've looked at the statement of fact that was provided with the 2022 and 2023 policy documentation and I can see it contains the following statement: *"(C) free from signs of, and has never been damaged by subsidence, heave, landslip, tree root damage and neighbouring subsidence"*. The documents advise the information must be read and Tesco notified if any of it is incorrect.

Tesco had provided relevant underwriting evidence which shows that it would not have offered a policy to Mrs C had it of known of the correct information. This means I'm satisfied the misrepresentation was a qualifying one. Tesco has recognised this may have been an oversight on Mrs C's part and the questions may not have been fully read before proceeding. I take from this, they have treated the misrepresentation as careless and not, reckless or deliberate.

I'm satisfied Tesco was entitled to avoid Mrs C's policy in accordance with CIDRA and refund the premiums she paid. And, this means that – in effect – her policy never existed. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Tesco to rely on it to avoid Mrs C's policy produces the fair and reasonable outcome in this complaint.

Mrs C has said she didn't see the renewal documents before renewing her policy in 2023 and this was mentioned on the call. I accept that maybe the case, however the adviser also mentioned in the call that she would be able to view the policy documents online and they arranged for them to be sent out in the post. So, Mrs C still had an opportunity to check them for accuracy after this point but didn't. Even taking this into account, it doesn't change the current position. Tesco would not have offered the policy at all based on the correct information, so regardless of when the incorrect information was identified the only remedy under the relevant regulations is for the policy to be treated as if it never existed.

I've also listened to the call Mrs C's husband had with Tesco when it discussed the claims that had been discovered. I'm satisfied that it was Mr C that explained about the monitoring of the property, and this was not information that Tesco held.

Mrs C has also said Tesco would have had the ability to check for any claims at the start of

the policy. CIDRA sets out the rights and obligations of both parties, which means Tesco is entitled to expect Mrs C to have taken reasonable care to provide it with the right answers - it is not up to Tesco to check that is the case.

I sympathise with the problems Mrs C has explained she is now having getting insurance; However, I can't say Tesco has done anything wrong here.

### **My final decision**

My final decision is that I do not uphold Mrs C's complaint against Tesco Underwriting Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 25 April 2025.

Alison Gore  
**Ombudsman**