

The complaint

Mrs A and Mr A complain that Tesco Underwriting Limited ("Tesco") mishandled a claim on a motor insurance policy.

What happened

The subject matter of the insurance, the claim and the complaint is an electric car, first registered in 2023. Its price was over £80,000.00. Mr A acquired the car from new, under an agreement with a finance company.

For the period from late May 2023 to early October 2023, Mrs A had the car insured on a policy with Tesco. The policy covered her as the policyholder. The policy also covered Mr A (and no-one else) as a named driver.

On 20 August 2023, an accident seriously damaged the car and damaged property belonging to third parties. Police attended the scene.

By a letter to Mrs A dated late February 2024, Tesco declined the claim. It quoted a policy exclusion as follows:

"Deliberate damage to the car or by someone who is known to you and has access to your home or the car unless that person is reported to the police and prosecuted".

(I'm going to find that this was a slight but significant misquotation.)

Tesco said that Mrs A's son had taken the car but hadn't been prosecuted.

In late November 2024, Mr A complained, through us, to Tesco that it had mishandled the claim.

By a final response dated 31 December 2024, Tesco responded to Mrs A. It turned down the complaint. It quoted the policy exclusion in the same way as in the letter dated late February 2024. The final response also included the following:

"Upon chasing the police for details of a report, I was recently able to obtain their phone number and spoke with someone from the Safer Roads Unit on 17th December 2024. That was when I was formally told that they do not have this incident logged as a theft and only as a road traffic collision, therefore no police report has been compiled....

[your son] had access to your home, and access to your car keys. [he] has then driven car and caused damage as a result of dangerous driving whilst under the influence. Now that the police have confirmed that the incident is not reported as a theft, nor have we been advised of any prosecution against [your son], we can confirm that under the terms of your policy, we won't be dealing with your claim."

our investigator's opinions

Our investigator recommended in mid-March 2025 that the complaint should be upheld. She didn't think that it was fair and reasonable for Tesco to decline the claim relying on the exclusion Tesco had quoted. She recommended that Tesco should:

"consider this claim under the policy. I don't believe it's been fairly declined under the policy term stated above.

This doesn't mean it should be paid but I believe the claim should be considered and not declined under this exclusion.

If the claim is paid and if declared a total loss this should be the market value of his vehicle as it would have been at the time of the theft. I believe Tesco Underwriting Ltd should consider any further financial impact subject to evidence.

Tesco Underwriting Ltd should award Mr A interest at the simple rate of 8% per year (less any tax that should be paid) one month from the date the claim was made up to the date of actual payment, if its deemed a total loss. I believe this is fair as it recognises that Tesco Underwriting Ltd would have needed a reasonable period of time to consider, investigate and pay the claim after it was made."

Tesco provided further information, and the investigator changed her view. She didn't recommend in mid-April 2025 that the complaint should be upheld. She didn't think that she'd seen any evidence to suggest that Mr and Mrs A's son has been prosecuted for theft. She thought that Tesco had acted fairly and reasonably.

Mr A disagreed with the investigator's changed opinion. He asked for an ombudsman to review the complaint.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and to Tesco on 15 May 2025. I summarise my findings:

An accurate quotation of the bullet point upon which Tesco relied would be as follows:

"Deliberate damage to the car by...someone who is known to you and has access to your home or the car, or by someone who is known to any of the named drivers and has access to their home or the car, unless that person is reported to the police and prosecuted for causing the damage"

That is not an exclusion of theft (or aggravated vehicle taking) by a family member. Rather, that point is all about deliberate damage.

There is no evidence that the driver or anyone else deliberately damaged the car.

For that reason, I was minded that Tesco turned down the claim on a basis that was unfair.

Subject to any further information either from Mr A or from Tesco (and subject to a repetition of the investigator's request on about 18 December 2024 that Mr A's wife, the policyholder Mrs A should join in the complaint), my provisional decision was to uphold this complaint in part. I intended to direct Tesco Underwriting Limited to:

1. reconsider the claim in line with all the policy terms; and

2. (in the light of its reconsideration of the claim) to consider the impact on Mr A of declining the claim in February 2024 and if appropriate to offer interest and compensation for financial loss and for distress and inconvenience.

Mr A disagrees with the provisional decision. His solicitor says the following:

"I have considered very carefully with my client the provisional Decision from Mr Gilbert.

Mr [A] cannot accept the same and requests that Mr Gilbert considers the matter further before making a final decision.

I had hoped that the comprehensive bulletin points contained in my previous email would have been sufficient not only to persuade Mr Gilbert to make the following findings:

A. That Tesco were wrong to repudiate the claim "ab initio" on the basis that one of the exclusions to the policy applied. This is in accordance with the Ombudsman's provisional decision

B. That, since the claim therefore has to be considered on its merits, the conclusion reached in [investigator's] original recommendation in her conclusion should stand. The present "half way house" provisional decision is totally unacceptable giving , as it does, Tesco the opportunity further to delay meeting their obligations under the Policy.

I therefore repeat the compelling bulletin points made in my previous email.

I make the following additional points.

1. Tesco are seeing to avoid liability relaying what was clearly a half-hearted and incompetent investigation by the Police.

2. There is not a shred of evidence in support of Tesco's claim that my client's son ever admitted to the Police that he had been driving the car at the time of the accident

3. It is inconceivable that no action would have been taken against the son if such an admission been made.

4. For Tesco to rely on the Police closing the file by calling the incident a RTC is an insult to common sense and should not be permitted

5. My client cooperated with and encouraged the police investigation at all stages regularly "chasing" the police - including a very senior Officer, demanding that progress be made.

6. Had there been a proper police investigation, the facts show conclusively that there could only have been one outcome namely

"Theft/ Unauthorised Taking of the vehicle by person or persons unknown who have not been apprehended"

7. The history of the case reveals a clear determination by Tesco to repudiate a lawful and genuine claim by any means whatsoever including misrepresenting the facts to the Ombudsman service.

8. To allow such conduct by asking Tesco to reconsider the claim, is to rely on the integrity of the Insurers such integrity having been sadly lacking to date.

Finally, I have reminded my client of the need for his wife to join in the complaint. I do not know if Mrs [A] is in possession of the necessary form. If not can one please be sent to her.

Mr Gilbert's provisional decision should be reviewed as a priority."

Mrs A also disagrees with the provisional decision. She says the following:

"I can confirm we received the provisional decision and it is in the hands of our solicitor as we do not agree with Tesco's decision.

As you are aware our son has been named as the driver, as to which he denies, however if that was the case Tesco originally asked if we would still prosecute as to which we agreed yes we would.

They have come up with every excuse to not pay out.

They say it was an RTA. However, Firstly the car was stolen before it crashed.

I don't see why we are not being paid out for the car, it is not our fault if the police haven't prosecuted anyone."

Mrs A joined in the complaint.

Tesco accepts the provisional decision. It says the following:

"We accept the OMB provisional decision that wording in our FRL could have been better, but we stand by the fact that we have declined to deal with the claim due to their being no cover under the policy.

I would refer you to the police log within the file of papers dated 15.11.23, and you will see in there that [Mr and Mrs A's son] was apprehended at the scene and was arrested for driving under the influence.

He could not be taken into the custody suite due to the fact that all airbags in the car had deployed, and whilst he had been cleared by the paramedics at the scene, the protocol of the custody suite would not allow him to be taken in and he was taken to hospital.

I note that you are relying on the wording from the solicitor, and we are not disputing the fact that the police do not appear to have been proactive in progressing the case against the driver, [Mr and Mrs A's son]. We have no jurisdiction over this, nor can we comment on their reasons for not doing so.

There is however evidence in the police log that this was recorded as an RTA and not a theft (although Mr [A] reported it to us, his insurer as such) There is evidence in the log that [Mr and Mrs A's son] admitted to driving the car. There is also evidence in the reports on file that [Mr and Mrs A's son] likely lived at the PH address (see photo of him outside of the home). The police validated at the scene that DUI had occurred. Why this was not pursued is something we cannot comment on. The police log clearly shows that it was [Mr and Mrs A's son] who was driving the car. There is no suggestion of aggravated taking as the solicitor appears to suggest.

Whilst we note your comments regarding lack of police action, as the insurer, our responsibility is to validate the claim from the information provided. The logs shows [Mr and Mrs A's son] to have been driving the car; he is not named on the policy and so is not insured to drive and was not driving with the policyholder (Mrs [A]'s) permission. If he was, why was the car reported as stolen?

We maintain that whilst we may not have correctly worded the FRL, we have correctly declined the claim under the T & C's of the policy wording."

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.

From what I've seen the policy had exclusions including as follows:

'Section C – Fire and theft...

What is not covered...

- *Loss of or damage to the car if, at the time of the incident, it was being driven or used, without your permission, by someone who normally lives with you, or with any of the named drivers.*

- *Deliberate damage to the car by anyone insured under your policy, or by anyone who normally lives with you, or by any of the named drivers, or by someone who is known to you and has access to your home or the car, or by someone who is known to any of the named drivers and has access to their home or the car, unless that person is reported to the police and prosecuted for causing the damage.”*

Tesco hasn't quoted or relied on the earlier of those bullet points.

Tesco has relied on the later of those bullet points. I consider that Tesco is responsible for a slight misquotation of it (as set out above). That is significant because the misquotation suggests that it excludes damage either caused deliberately or by someone known to the policyholder or named driver.

I consider that an accurate quotation (with the acceptable omission of words not relevant in this case) would be as follows:

“Deliberate damage to the car by...someone who is known to you and has access to your home or the car, or by someone who is known to any of the named drivers and has access to their home or the car, unless that person is reported to the police and prosecuted for causing the damage”

I find that the later bullet point is not an exclusion of theft (or aggravated vehicle taking) by a family member. Rather, that bullet point is all about deliberate damage.

From photographs of the damaged car, I find that it fair to say that it had been damaged in a road traffic collision. I would expect the driver to be injured or at least shocked. There is no evidence that the driver or anyone else deliberately damaged the car.

For that reason, I conclude that Tesco turned down the claim on a basis that was unfair. So I uphold the complaint.

Putting things right

I've thought about what it's fair to direct Tesco to do to try to put things right. In particular I've thought about directing Tesco to meet the claim and to pay the pre-accident value of the car.

However, I'm minded that the fairest redress is to direct Tesco to reconsider the claim in line with all the policy terms. That's what we often direct in cases where an insurer has turned down a claim on an unfair basis and not considered other issues that may be relevant.

It would not be fair for me to pre-judge the outcome of Tesco's reconsideration, or any complaint about that. Nevertheless, I make the following points:

- Tesco's claim notes include a note of a conversation with police in mid-November 2023. That records that police said that they had a recording from a body-worn camera of the son admitting that he had been driving the car at the time of the accident.
- In an email in March 2024, police told Mr A the following:

“Currently, you are supportive of a prosecution and have made a statement of complaint, in addition police have video footage obtained by the officers

attending which contain details of who was identified as the driver at the time, namely your son [first name] who was at the time suspected only of drink driving as you were unaware of the RTC. [your son] will be interviewed in relation to the offence in due course once my operational demand allows for a voluntary interview to take place for the offence. To confirm, as per your statement, the vehicle is being treated as being stolen at the time."

- *After the letter dated late February 2024, Mr A knew that Tesco's reason for declining the claim was that his son had taken the car but not been prosecuted. Yet, when he brought the complaint to us, Mr A's complaint form didn't attempt to answer Tesco's reason. Rather, Mr A described his son's involvement as follows:*

"My son, who was local, attended the scene and confirmed that it was my vehicle."

- Mr A's solicitor has said the following:

"6. Neither then nor now has my client any information which might assist in identifying the offender(s)"

- So after the email in March 2024, Mr A denied that he had information that his son had been involved in the taking of the car.

Those points will need to be addressed in Tesco's reconsideration of the claim and any complaint about the outcome of that.

So it wouldn't be fair for me to try at this stage to assess the impact (financial and otherwise) on Mr and Mrs A of Tesco turning down the claim on a basis that I've found unfair. That impact will depend on the outcome of Tesco's reconsideration of the claim and of any complaint about that.

So I find it fair and reasonable to direct Tesco (in the light of its reconsideration of the claim) to consider the impact on Mr and Mrs A of declining the claim in February 2024 and if appropriate to offer interest and compensation for financial loss and for distress and inconvenience.

Responses to the provisional decision

Mr and Mrs A and their solicitor dispute that their son was driving the car at the time of the accident. Tesco says that there is evidence to that effect.

Tesco also says that there is evidence that the son likely lived at Mrs A's address. I consider that this is a reference to the first of the two bullet points from the exclusion quoted above. It will be an important (and yet to be fully investigated) point whether the son was "*someone who normally lives with [the policyholder], or with any of the named drivers*".

To my mind, these points confirm that it is fair and reasonable to direct Tesco to reconsider the claim (that's in line with our usual direction in such circumstances, and with the investigator's initial recommendation and with the provisional decision).

For the avoidance of doubt, I do not consider that Tesco's response to the provisional decision amounts to such a reconsideration.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Tesco Underwriting Limited to:

1. reconsider the claim in line with all the policy terms; and
2. (in the light of its reconsideration of the claim) to consider the impact on Mr and Mrs A of declining the claim in February 2024 and if appropriate to offer interest and compensation for financial loss and for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 29 July 2025.

Christopher Gilbert
Ombudsman