

## **The complaint**

Mr T complains on Mrs S's behalf that Tesco Underwriting Limited (Tesco) unfairly cancelled her motor insurance policy and declined to settle her claim after her car was stolen.

Reference to Mrs S or Mr T includes the other. Mr T is the named driver in this complaint.

## **What happened**

Mrs S and Mr T took out a motor insurance policy with Tesco through a price comparison website. Mrs S was the policy holder and Mr T, was a named driver. When the car was stolen, Mrs S tried to make a claim.

Tesco said Mrs S had answered the question it asked about the registered owner and keeper of the car incorrectly.

It said Mrs S wasn't the registered owner and keeper of the car. The named driver, who was declared on the policy not to be related, was actually the registered owner and keeper. Tesco said only the policy holder or their spouse/civil partner/common-law partner or parent can be the registered owner and keeper of the insured car. It said it wouldn't have allowed the cover as she had no financial interest in the vehicle. It issued a 7-day notice of cancellation. And didn't pay her claim.

Our investigator didn't uphold the complaint. They looked into the case and thought Tesco acted reasonably by treating the misrepresentation as deliberate or reckless. They said the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) sets out what actions an insurer can take when a deliberate or reckless qualifying misrepresentation is made. They said although Tesco could've voided the policy and retained the premiums it cancelled the policy with seven days-notice and refunded the remaining premiums. As such, Mrs S was left in a better position than she could have been in had the policy been voided.

Because Mr T was unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

## **What I provisionally said**

*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 the remedy available to the insurer under CIDRA depends on whether*

*the qualifying misrepresentation was deliberate or reckless, or careless.*

*Tesco thinks Mrs S failed to take reasonable care not to make a misrepresentation when she stated in her online application that she was the registered owner and keeper of the car.*

*I've looked at the question asked and it says, "Are you or will you be the registered keeper and legal owner?" Mrs S's response was "Yes."*

*When asked by Tesco during its claim validation checks Mrs S agreed the named driver was the registered owner and keeper of the car. She wasn't sure why she had answered that she was. Mr T explained he'd initially tried to obtain motor insurance with Tesco in his own name with Mrs S as the named driver, but due to him having a European driving licence this hadn't been possible. Mrs S said before buying the policy online in her name, Mr T had called Tesco to ask how to set it up. She said they were genuinely trying to do everything properly. Unfortunately, Tesco were unable to locate any record of this call.*

*Tesco said had it known Mrs S wasn't the registered owner and keeper of the car at inception, it wouldn't have offered cover. It provided evidence by way of its underwriting criteria that it will only accept the policy holder, their spouse/civil partner, common law partner or parent as the registered owner and keeper of the vehicle to be eligible for insurance cover with itself.*

*In this case even if the registered owner and keeper had been correctly recorded as Mr T, no quotation would have been provided by it because it had been declared he had no relationship to Mrs S when she was seeking cover. Mrs S explained that due to English not being their first language they had misunderstood.*

*I listened to a call between Mrs S and Tesco from January 2025 after she was given notice of its intention to cancel her policy. It asked a number of questions to obtain clarification about the ownership of the car and then about the relationship between her and Mr T. Tesco's agent asked her directly if Mr T was her spouse or partner and she confirmed no.*

*Since bringing the complaint to our Service, Mrs S and Mr T have said they are partners and are in a committed relationship and said they jointly owned the car. They provided evidence by way of a tenancy agreement, that showed they had been co-habiting, plus images of themselves together. They also provided proof of purchase of the car by Mr T and evidence of Mrs S selling a car prior to this of which she said the funds had paid towards the joint purchase of this car. This evidence was provided to Tesco, who said it didn't change its decision, and it believed the questions asked when taking out the policy were clear.*

*I don't think Mrs S took reasonable care not to make a misrepresentation when she took out the policy. It's the policy holders duty to ensure the information provided is true and accurate. She failed to answer both the question about the registered owner and keeper of the car, plus her relationship to the named driver, correctly. And when provided with her policy documents didn't correct the errors.*

*This means I'm satisfied Mrs S's misrepresentation was a qualifying one.*

*Tesco has said Mrs S's misrepresentation was reckless because she knew she wasn't the registered owner or keeper of the car.*

*I don't agree this should be classified as reckless. It is clear that English is not Mrs S's first language and for that reason I think her misrepresentations were careless rather than deliberate or reckless.*

*In this case Tesco didn't follow the remedy available under CIDRA. It didn't avoid the policy as CIDRA allows. Instead it sent a seven-day notice of cancellation letter and cancelled her policy. It declined her claim and charged premiums from its inception to its cancellation on 22 January 2025.*

*Cancellation of a policy for misrepresentation is not in accordance with CIDRA.*

*Tesco said it understood it could avoid the policy, but it could also cancel a policy for a valid reason by providing notice of cancellation. It said in this case the valid reason was outlined in the terms of the policy as deliberately or recklessly providing false information when taking out the policy... that would either impact the terms and condition or its ability to offer cover itself. It said Mrs S took out a policy recklessly declaring herself the registered owner and keeper of the car and she wasn't. It said CIDRA schedule 1.2 states it, may (Not must) avoid policies and need not return any premiums.*

*In this case I think Tesco should have followed CIDRA. I don't think the outcome for a cancelled policy is the same as for avoiding a policy. An avoided policy has no existence and so no cover under which to consider a claim, whereas a policy cannot be cancelled respectively and any claim pre-dating cancellation must be considered.*

*Because I think Tesco should have avoided Mrs S's policy in accordance with CIDRA and treated it as a careless misrepresentation, I've looked at the actions it should've taken.*

*Because it would not have offered cover it can;*

- *Avoid the policy from the point of misrepresentation. Which in this case is the start.*
- *Return any unused premiums the consumer paid.*
- *Treat the policy as though it never existed from the point of avoidance and not deal with any claims.*

*Therefore, I intend to uphold Mrs S's complaint and I intend to require Tesco to avoid her policy from its start in accordance with CIDRA. I intend to require it to refund the policy premiums for the term of cover. I acknowledge it has already refunded the premiums paid for cover after 22 January 2025 and this amount should be deducted from the full refund due. It must add 8% simple interest to the refund amount due, from the date the original refund was made, until the date it is paid. And, as this means that – in effect – her policy never existed, Tesco does not have to deal with her claim following the theft of her car.*

*I realise this matter has caused Mrs S a great deal of distress, but as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Tesco to rely on it to avoid her policy produces the fair and reasonable outcome in this complaint.*

### ***Responses to my provisional decision***

Tesco responded and said it didn't have any final points to make. However it said if the final decision is to ask it to avoid the policy, refund the premiums paid, and treat the policy as if it had never existed, it would also need to report the avoidance on its internal and the external databases accordingly. This means that Mrs S and Mr T would need to declare this avoidance when taking out any other insurance related policy in future.

Mrs S and Mr T responded as follows;

- They again made reference to a call Mr T recalls in which he said he was told to change the policy holder from himself to Mrs S.
- They provided a bank account statement to show the premiums had been paid from Mr T's bank account. And letter which Mr T said showed that insurance account was originally in his name. And said the policy was *reissued* in Mrs S's name.

- They said
  - they had not provided incorrect information regarding the registered owner and keeper, and a Tesco employee had seen the V5 document with his name on it. And Tesco had time to clarify the details provided for a policy in Mrs S's name because it had increased the cost of the premiums quoted.
  - When asked by Tesco if they were family; they had responded yes.
  - They had no motive to provide false information.

### **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.

#### ***In response to Tesco's comments***

Mrs S will have to declare a policy avoidance when taking out any other insurance related policy in future, in the same way as she would have to declare a policy cancellation if it were recorded as a cancellation. Because the correct procedure under CIDRA is to avoid a policy for a qualifying misrepresentation, I think it is appropriate for the policy to be avoided, and the premiums refunded.

#### ***In response to Mrs S and Mr Ts comments***

- No evidence has been provided of a phone call between Mr T and Tesco, despite Mr T being given the opportunity to provide this on a number of occasions. Tesco confirmed it checked its records but found no record of this call. The policy was taken out via an online price comparison site and after considering Mr T's evidence I think it is possible the conversation he recalls could have been with a representative from the price comparison site.
- The evidence provided in which Mr T says shows the insurance account was in his name originally, is a policy in Mrs S's name; not in his name. Mrs S's policy started on 4 May 2024 after an online application was made. I have not seen any evidence of a policy in Mr T's name prior to the inception of the policy in Mrs S's name. I saw Mrs S's policy was updated on 30 May 2024, and a further fee was charged, after Tesco's validation checks found she didn't have nine years no claims bonus which had been recorded on the policy that started on 4 May 2024.
- Although I recognise payment for the policy came from Mr T's bank account, this doesn't prove the policy was in his name. I've not seen any evidence of a policy being reissued from Mr T's name to Mrs S's name.
- Alongside the statements in the policy documentation "*You/your husband or wife/civil partner owns the car*" and "*You/your husband or wife/civil partner/partner is the registered keeper of the car*" it is recorded as "yes" to both. When the car was stolen and the claim was being validated Mr T was found to be the registered owner and keeper, however he had been declared as no relationship to Mrs S. And if Tesco had been aware of this it wouldn't have offered a policy.
- Conflicting and inconsistent information was provided about the relationship between Mrs S and Mr T when they were asked about it. I listened to the call between Mrs S and Tesco in which she was asked if Mr T was her spouse or partner and she confirmed "*no*". Mrs S also said he was her sister's brother. I didn't see any evidence in which Tesco asked if they were family and they answered yes.
- I consider this misrepresentation to be careless. This means I don't think there was a motive to provide false information.

Based on the evidence/responses I've reviewed; I maintain my provisional decision and I uphold Mr P's complaint.

### **Putting things right**

I require Tesco to avoid Mrs S's policy from the start in accordance with CIDRA. I require it to refund her policy premiums for the term of cover. Because it has already refunded the premiums paid for cover after 22 January 2025 this amount should be deducted from the full refund due. It must add 8% simple interest to the refund amount due, from the date the original refund was made, until the date it is paid.

### **My final decision**

For the reasons I have given I uphold this complaint.

I require Tesco Underwriting Limited to avoid Mrs S's policy from the start. I require it to refund her policy premiums for the term of cover. Because it has already refunded the premiums paid for cover after 22 January 2025 this amount should be deducted from the full refund due. It must add 8% simple interest to the refund amount due, from the date the original refund was made, until the date it is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr T to accept or reject my decision before 7 January 2026.

Sally-Ann Harding  
**Ombudsman**