

complaint

Mr J complains about the way Tesco Personal Finance PLC arranged and administered his car insurance policy.

background

Mr J renewed his car insurance policy through Tesco in early September 2018. On 29 October 2018 he called Tesco about cancelling the policy because Tesco didn't provide cover for a campervan and this is what he would now be driving. He told Tesco he had declared his current car off the road.

During the call Tesco told Mr J that by cancelling he'd need to pay around £172. Tesco explained this consisted of a £40 cancellation charge, the number of days he'd already been insured for and the total cost of the additional breakdown cover. Mr J asked Tesco to provide a written breakdown of how it had calculated the total cancellation amount before he would pay it. Tesco said it would do this but only once Mr J had cancelled the policy. It asked Mr J to confirm whether he wanted to cancel the policy, but Mr J didn't respond so the call was ended.

Mr J wrote to Tesco the next day enclosing a copy of the call recording. Tesco cancelled his policy when it received the letter and call recording in early November 2018. It then wrote out to him to tell him the total amount owed and how that had been calculated.

Mr J called Tesco to complain. He said he never asked Tesco to cancel his policy. He said he had sent the call recording because there had been a miscommunication during that call. He said he expected Tesco to respond giving him the option to suspend his insurance policy. He said he never gave an instruction to cancel his policy and he never agreed to any of the cancellation charges.

Tesco said the letter Mr J sent in gave a clear instruction asking for the policy to be cancelled. It didn't think it had done anything wrong in following his instructions and the cancellation charge had been applied correctly in line with the policy.

Our investigator didn't recommend the complaint be upheld. He considered that Mr J had given a clear instruction to cancel the policy in the letter he sent to Tesco on 30 October 2018. He thought Mr J had accepted the cancellation charges.

Mr J didn't agree. In summary he said:

- He hasn't explicitly agreed to the cancellation charge. In the call on 29 October 2018, he said he understood the charge but didn't accept it.
- The letter he sent didn't give an explicit instruction to cancel the policy. Instead, it referred Tesco to listen to the call recording.
- Neither the letter nor the call recording agreed to the terms and conditions associated with cancellation.
- The ombudsman service has so far failed to respond precisely to his questions of whether Tesco had the right to charge the cancellation charge without written or verbal agreement to those charges. If they are entitled to do so then it should be made clear which legal precedent allows them to do this.

The complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When Mr J opted to take out his car insurance policy through Tesco he entered into a contract of insurance. By entering into the contract, he agreed to be bound by the terms of that contract. The contract of insurance set out – amongst other things – what would happen in the event that Mr J chose to cancel. Those terms say Tesco will *“refund your premiums for the time that was left on your policy, less its cancellation charge”*.

The cancellation charge was set out in the renewal documents sent to Mr J. It said this charge was £40. Mr J also confirmed in the call in October 2018 that he was aware the cancellation charge was £40. As this formed part of his contract of insurance, he had already accepted these terms when he chose to enter into the contract. For this reason there was no requirement on Tesco to get a separate acceptance about that charge from Mr J at the point he actually cancelled.

I've also thought about the Financial Conduct Authority's rules concerning cancellation of insurance policies. These are set out in its Insurance Conduct of Business Sourcebook (ICOBS). Having considered ICOBS 7, which covers cancellation and what Tesco can charge, I'm satisfied Tesco has fairly complied with those rules.

Tesco was required to get Mr J's consent to cancel the insurance contract. Mr J says he didn't give this consent. But I disagree. The letter Mr J sent on 30 October 2018 says:

“Please be advised of the instruction to cancel the insurance policy [policy number] on vehicle description [Registration] dated 29th October 2018 (with immediate effect). I include a recording of the call to Customer Services (dated the same).”

I don't think it would be reasonable to interpret this letter in any other way than an explicit instruction to cancel his insurance policy with immediate effect. Mr J says this letter was simply referring Tesco to the call recording and giving them the opportunity to respond to him. But even if I accept that was his intention, I don't think that is what he's asked Tesco to do.

I've listened to the call Mr J had with Tesco in October 2018. I think it's clear Mr J called with the intention to cancel his insurance. But the only reason he didn't was because he wanted a breakdown of how the total charge for cancellation had been calculated. As this couldn't be provided until after he had agreed to cancel, Tesco asked him to confirm what he wanted to do. But Mr J didn't respond so the call ended.

This means Tesco was left with one question unanswered, which was did Mr J want to cancel? I think it was reasonable to conclude that Mr J's letter gave the answer to that question, particularly as it included a copy of the call recording. So for this reason I think Mr J's letter, either on its own, or in conjunction with the call recording did give explicit consent for Tesco to cancel his insurance contract.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 August 2019.

Tero Hiltunen
ombudsman