

## **complaint**

Mr G complains that Tesco Underwriting Limited cancelled his motor insurance policy from the start (voided it), and declined his claim. It says this is because he wasn't the car's registered owner or keeper. He wants it to pay his claim.

## **background**

Mr G said that he was going through a divorce. He put his car's registration document (V5) into his sister's name to "hide" that asset from his ex-wife. He said that he told Tesco about this in a phone call. But it says that it has no record of this change of ownership. Tesco said that it had voided his policy correctly. It said that it would never have insured him on the basis that he wasn't the car's registered owner and keeper. It didn't think that he had done this deliberately and it refunded his year's premium, but it wouldn't deal with his claim. Mr G wanted a refund of premium for the three years that he'd been with Tesco.

Our adjudicator recommended that the complaint should be upheld in part. She couldn't see evidence that Mr G had told Tesco of the change in ownership. She thought that Tesco had asked Mr G a clear question about the car's ownership on its forms and that he had answered this incorrectly. But she thought that Tesco should offer Mr G a refund of his premium from the first renewal date following the change of the V5, when he produced evidence of this. This was because she thought that Tesco hadn't been on risk since the change was made.

Mr G replied that he had changed the car's ownership in 2011. He said that he had told Tesco this and its call records would show this.

## **my findings**

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

Tesco says that it cancelled Mr G's policy from the start due to his non-disclosure of who the owner and registered keeper of the car were. Where a complaint arises from non-disclosure of information important to an insurer, we look to see that it asked a clear question when the policy was taken out. We check that the information given would affect whether a policy was offered. And we check whether the informant has acted carelessly or deliberately in making the non-disclosure.

I've looked at the policy documents that Tesco sent to Mr G for 2011, 2012, and 2014 and I can see that it clearly states that he is the car's owner and registered keeper. Tesco asked Mr G in these documents to let it know if any details were incorrect. It said that if he didn't then the policy may be voided and any claim wouldn't be paid. I can't see evidence that Mr G told Tesco that the ownership and keeper details were wrong.

I've also looked at the call records that Tesco sent us. When Mr G took out his policy in 2014, the agent clearly asked Mr G if he was the car's owner and registered keeper. He answered "yes".

In the earlier calls sent to us, when Mr G either renewed or inquired about his policy, I couldn't see that a clear question about ownership and the registered keeper was asked. In 2011, Mr G called Tesco and asked about removing his wife from the policy but he didn't mention a change of ownership. I know that Mr G says that he asked Tesco if he could put the car in a family member's name and that it agreed, but I can't see any evidence of this.

I think that Tesco asked clear questions about the car's ownership and registered keeper when Mr G took out the policy in 2014. He clearly answered these incorrectly. Tesco has provided us with clear evidence that it wouldn't provide cover where the owner and registered keeper of the car isn't the policyholder or spouse/partner or civil partner. Therefore I think that Tesco hasn't made an error in cancelling the 2014 policy from the start and declining Mr G's claim.

I can see that Tesco listened to Mr G's explanation for changing the car's ownership and it thought that his non-disclosure had been careless. It therefore refunded his year's premium in full. I think this was fair and reasonable as Tesco had no insurable interest.

But Mr G says that he'd made the change of ownership years earlier. Our adjudicator thought that Tesco should refund the earlier years' premiums as well because it wasn't on risk due to Mr G's misrepresentation of the car's ownership and keeper. I think it's clear that Mr G misrepresented as shown by the responses on the policy documents.

Tesco said that for the 2014 policy, the voidance was correct, as it would never have been able to offer valid cover once Mr G was no longer the owner and registered keeper of the car. It agreed that this wasn't intentional and it refunded that year's full premium. Tesco quoted the Consumer Insurance Act 2012, Schedule 1, Part 1, Section 5:

*"If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid."*

I think the same reasoning should be applied to the two other policies that Mr G had with Tesco. I think that Tesco should refund Mr G's premiums from the renewal after he changed the car's ownership and therefore made the misrepresentation. I agree with the adjudicator that Tesco wasn't at risk from that time as it would have declined any claim Mr G made.

Mr G says he has sold his car and no longer has the V5 that would show when the car's ownership changed. But I think Tesco can check this with the DVLA.

Mr G also wanted Tesco to pay for his calls and other costs in dealing with this matter. But I don't think this is fair as the costs only arose because of his misrepresentation.

### **my final decision**

For the reasons I've discussed, it is my final decision that I uphold this complaint in part. I require Tesco Underwriting Limited to refund Mr G's premium from the first renewal date following the change of the V5 into his sister's name.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 October 2015.

Phillip Berechree  
**ombudsman**