

## **complaint**

Mr D and Mrs V complain about the decision made by Tesco Underwriting Limited to hold Mrs V at fault for an accident after she made a claim on their motor insurance policy.

## **background**

On 23 September 2017 Mrs V says she was driving her car normally when a car drove towards her at speed from the opposite direction. She says it entered her side of the road and collided with her car, which was later written-off. Mrs V says she sustained serious back and neck injuries. Mr D and Mrs V gave Tesco the first name and mobile phone number the driver gave her, plus the car's registration number.

Tesco was told by the other insurer that it hadn't been contacted by the other driver. It asked for more details of the accident. In January 2018, the other insurer said the motor trader who owned the car and was insured by it had sold it prior to the accident. It said it had no details of the sale and didn't know who the driver that caused the accident was. Later on, it said the car wasn't sold until *after* the accident. It said the details Tesco had given it didn't match any details on the policy. It said Tesco needed to identify the driver. Tesco tried the phone number the other driver had given Mrs V without success.

Tesco told us it took legal advice before informing Mr D and Mrs V that - as it couldn't identify the other driver - the other insurer wasn't obliged to settle the claim. Tesco couldn't issue proceedings to recoup the sum it had paid out for repairs. So Mrs V has a fault claim on her record. Tesco says there was no legal cover on the policy, but it referred Mr D and Mrs V to a legal firm for advice. It thought she was unlikely to be able to pursue a personal injury claim, as there's no known party to set a claim against.

Later on, Mr D queried why Tesco couldn't identify the other driver when he'd told it the other driver was a regular visitor to the area and had relatives living there. He said there was also a witness to the accident who saw the other driver.

Our investigator thought Tesco had done all it could to progress the claim. She said Mr D hadn't told Tesco there was a witness to the accident. In her view the problem was that Tesco couldn't show who was driving the car at the time of the accident. Mr D said there was legal cover on the policy, but the investigator checked with Tesco and it confirmed that there wasn't. She thought Tesco had caused delays in dealing with the claim, and said it should pay Mr D and Mrs V £150 compensation. Mr D and Mrs V didn't accept the investigator's view, so the complaint was passed to me for review.

## **my findings**

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

As the car was owned by a motor trader, a number of people may have driven it without being named on the policy. The motor trader should know who was driving the car - as it wasn't stolen before the incident. But the other insurer insisted that it had no details of the other driver - and said Tesco must provide those details before it could take the matter any further. The details Tesco got from Mrs V and Mr D didn't help to identify the driver. From what Mr D has said, the witness arrived *after* hearing a bang, so didn't see the incident. It

seems the witness may have recognised the other driver, but didn't know his name. So I don't think it would have helped even if Tesco had known these details from the start.

Tesco initially threatened to issue proceedings, but it has shown us that its solicitors were consulted later and said that couldn't be done unless Tesco had the name of the other driver. We asked if Tesco had considered seeking an order for disclosure against the other insurer. Tesco said it didn't think that would have helped. It said the other insurer may have agreed to the order - but would simply have said it had nothing to disclose, as it didn't know who the other driver was. Or it could have objected to the order. In that case Tesco would have had to pay the other insurer's costs as well as the cost of the application. Tesco said it had paid out more than £3,000 on the claim. It said if it could have done anything else to recover that sum from another party it would have done so. That seems reasonable to me.

Mrs V sustained serious injuries. We've advised her and Mr D that the Motor Insurers Bureau ("MIB") may be able to assist with that and might be able to trace the other driver.

Under the policy, Tesco has the right to settle any claim as it sees fit, as long as it acts reasonably in doing so. I can see why Mr D and Mrs V thought it hadn't done enough, but I think Tesco's shown it made a reasonable attempt to deal with the claim before deciding it couldn't pursue it any further.

I think Tesco could have reached a conclusion much earlier than it did had it not caused delays. In particular, it didn't give full details of the accident to the other insurer for several months – and I think it should have taken legal advice earlier than it did. I don't think the delays made a difference to the claim's outcome, although they would have added to Mr D and Mrs V's frustration. I have great sympathy for the situation Mr D and Mrs V have had to deal with, but taking everything into account, I think £150 compensation for the distress and inconvenience caused by Tesco's delays is adequate.

### **my final decision**

My final decision is that I uphold this complaint in part. I require Tesco Underwriting Limited to pay Mr D and Mrs V £150 compensation for the distress and inconvenience they faced as a result of its delays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs V to accept or reject my decision before 13 July 2019.

Susan Ewins  
**ombudsman**