



complaint

Mr and Mrs C are unhappy that Tesco Underwriting Limited declined their theft claim and voided their policy following the discovery that Mr and Mrs C were under-insured. In addition, Tesco have asked for payment for the costs it incurred in employing a loss adjuster to consider the claim and for the buildings damage it paid out for.

background

In November 2011, Mr C contacted Tesco to obtain a quotation for building and contents insurance. Later the same day Mr C rang back and accepted the quotation and the Tesco's policy was put into immediate effect.

Unfortunately, Mr and Mrs C suffered a burglary later the same month, during which a large amount of gold and jewellery was stolen. They contacted Tesco to register a claim and it appointed a loss adjuster to handle the claim.

Following the loss adjuster's investigation it was discovered that Mr and Mrs C had underinsured the contents of their home. The Tesco policy they had taken out offered a maximum of £100,000 contents. However, the loss adjuster was passed details by Mr and Mrs C giving an estimated jewellery value of well over £300,000.

As a result of this potential underinsurance, Tesco voided the policy from the start and declined the claim. It followed up a little while later requesting Mr and Mrs C repay the £435.16 it had paid out for buildings damage and the loss adjuster's fee of £2,116.80.

Mr and Mrs C complained and asked Tesco to reconsider its decision. However, it concluded it had reached the correct decision in voiding the policy as a result of Mr and Mrs C's non-disclosure. Therefore, no valid claim existed. Mr and Mrs C were unhappy with this decision and brought their complaint to this service.

Our adjudicator upheld the complaint. He concluded that whilst Mr and Mrs C had underinsured, Tesco had been supplied with sufficient information for it to have been alerted to the situation and it still accepted the application. In addition its representative failed to warn Mr and Mrs C of the consequences of being underinsured and the impact this may have on a claim. As a result it had accepted the risk and could not rely on the underinsurance clause to decline the claim and void the policy.

Our adjudicator asked Tesco to:

- Reinstate Mr and Mrs C's policy and reconsider the claim up to the policy limits; (including any buildings damage and cover for the items that had been specified on the policy - if stolen). If accepted and a cash settlement was made interest should be added at 8% simple per annum (less tax if properly deductible) from the date of claim to the date of settlement.
- Remove from insurance industry databases, its own internal records and any other external databases it uses, any reference to the policy being voided and the claim being declined.
- Refund the difference between the premiums Mr and Mrs C had been charged for home insurance over the last two years and the premium Tesco would have charged

under this policy during this time. Together with interest at 8% simple per annum (less tax if properly deductible) from the date of payment to the date of settlement.

- Pay Mr and Mrs C £500 to cover the distress and inconvenience they have suffered.

Tesco did not accept the adjudicator's findings, it maintained Mr and Mrs C failed to disclose the true value of the jewellery they had in the home when asked clear questions. It believes it was entitled to void the policy as Mr and Mrs C had acted in such a way as to be considered beyond careless. Whilst the correct remedy would normally be to reconsider the application when it discovered the full value of Mr and Mrs C's contents and jewellery, in this case it maintains no cover would have been offered as it had no policy that would allow cover up to such a high limit. Therefore, it believes it is allowed to void the policy.

Our adjudicator responded explaining again that underinsurance is not a case of information being non-disclosed, but it is a misrepresentation of risk, and the information which was inaccurate was the value of the contents and valuables. As such he stated that the action of voiding a policy for underinsurance to be an extremely harsh remedy, and one only to be used if there is an element of dishonesty, or deliberately underinsuring.

He reiterated his opinion that Mr C's questions and answers during the sales process were sufficient to alert Tesco to his underinsurance situation and it failed to draw their attention to the consequences of this. He concluded that Tesco accepted the risk knowing that there was a high probability of underinsurance, it gave no warning of the consequences and therefore, cannot rely on the underinsurance clause to decline the claim and void the policy. He recommended the same redress as already shown above.

Mr and Mrs C were happy with the adjudicator's findings. Tesco again did not accept the adjudicator's findings. It did not raise any new points; it simply reiterated its previous arguments and asked for the complaint to be referred to an ombudsman for a final decision.

my provisional findings

My provisional decision is repeated below:

"It is helpful that in this case there is a sales call recording which I have been able to listen to. It is clear from the call that the maximum cover limit offered by the policy for contents is £100,000. It is also clear from the call that Mr and Mrs C at the time when they made the call had cover elsewhere for a limit of £150,000. Although I accept the point made by our adjudicator that no warnings were given about underinsurance it is also clear that the Tesco handler made no effort to persuade Mr and Mrs C to stop their other policy and accept this policy with less cover.

Mr C talked aloud during the call about the level of cover for a little while and eventually talked himself into taking out this policy which was automatically cutting his sum insured for all of his items (not specifically jewellery) by 50%.

A warning from Tesco would have been useful, but I see no evidence from the telephone call that gives any impression that Mr and Mrs C would not have gone ahead with purchasing the policy anyway. The question asked wanted to know how much would it cost to replace all of the contents in the home. This to me is clear and it is Mr and Mrs C who decided to go with the maximum amount allowed by the Tesco policy rather than maintain their old policy which covered them for £50,000 more contents overall.

The Tesco call handler then asks about specifying valuables above a limit of £2,000 and Mr and Mrs C refer to two watches with a total value of over £25,000 that they wanted covered away from the home. Here again a further issue arises as the policy limit is pointed out by the call handler. The limit is £20,000 so Mr and Mrs C decide only to insure one watch away from the home, Mrs C's watch. Again there is no pressure to take out the policy from the call handler although again there is no warning given about underinsurance.

Our adjudicator was willing to accept that Mr and Mrs C had no idea of the true and full value of their jewellery. However, the figures we now have show that Mr and Mrs C had a need for cover way beyond the policy limits and knew that they were taking a cover level 50% worse than they had just the previous year. It does seem most likely that in this case that Mr and Mrs C did misrepresent their position in terms of the true level of insurance cover they needed.

Tesco stated that it was just not plausible to have so much jewellery and not know it. If anything this was highlighted further by Mr and Mrs C's actions with the items that they wanted to note for cover away from the home. Mr and Mrs C made a conscious decision not to cover the second watch for the cover really needed once they were aware that the policy limit was too low for their needs.

Our adjudicator felt that Tesco should have either stopped the quote when it was clear that the levels of cover were not at the same level that Mr and Mrs C had before, or explained the consequences of being underinsured. Tesco state that had it known the true value of the contents it could not or would not have offered any policy at all and that Mr and Mrs C intentionally misrepresented the levels they needed at the start of the policy. Tesco say this is highlighted by the jewellery inventory "extremely detailed list with very accurate and quantified valuations" which was provided following the theft within the same month.

Tesco also pointed out the £5,000 limit for jewellery items away from the home, and that aside from the two watches Mr and Mrs C had another item of jewellery valued over £15,000 which would massively exceed the policy limit on its own. Tesco say the itemised report shows that Mr and Mrs C knew very well the true value of the jewellery and so it cannot consider that the mis-representation was innocent.

Within the total maximum contents sum insured of £100,000 Tesco state the jewellery limit is £30,000. It is clear that such high levels of cover as required by Mr and Mrs C would never have been given under this policy and Tesco say it was clear that Mr and Mrs C were aware.

Tesco suggest that Mr and Mrs C needed contents cover alone for £95,000 before getting on to consider the £330,000 for the jewellery. In correspondence with this service Tesco has said "such a large amount and value of jewellery in a residential house is extremely unusual".

Even if I decided in this case that Mr and Mrs C had not acted deliberately but instead suggested that they had not taken reasonable care I would have to consider Tesco taking a proportionate approach. A proportionate approach means it should do what it would have done had Mr and Mrs C taken reasonable care and provided all the correct information.

Tesco has maintained all along that it would not have offered any cover if it had been given the correct information. However, Mr and Mrs C did tell the handler about items and cover levels that showed they required cover beyond the sum insured and it still provided cover albeit at the much lower levels.

On balance I find it difficult to accept that Mr and Mrs C were truly unaware of the need to take a higher limit of cover. The report from the loss adjuster after the claim confirms that Mr and Mrs C had three safes in the house. This in itself is not common and not the actions of people who have items of little value. It is a sign of having items of great value. Therefore, it seems to me that Mr and Mrs C made a choice when asked the question about how much it would cost to replace their home contents. In answering the question Mr and Mrs C say "we can accept £100,000". This suggests a level of understanding just like when Mr and Mrs C still choose to take the items away from the home cover even though they could only cover one of their expensive watches. It appears despite having much higher levels of cover previously Mr and Mrs C had chosen to accept these much lower levels of cover despite there clearly being a need to cover a much higher level.

In this case I suggest our adjudicator had a point that a warning about potential underinsurance issues should have been given, but on balance it seems Mr and Mrs C had made a choice to insure with Tesco for lower levels of cover than they previously had elsewhere. Mr and Mrs C have not explained why they answered in the way that they did and without understanding this I am unable to accept that it was with valid reason or a lack of understanding. As the proportionate settlement in this case would be for Tesco to do what it would have done had it been aware, I do not consider Tesco's actions in voiding the policy and declining the claim to be unreasonable. I do not require Tesco to reinstate the policy or deal with the claim.

Other issues I have to consider are the costs associated with appointing the loss adjuster and the damage caused by the thieves gaining entry to the building. Firstly, regarding the building costs I consider it is reasonable for Tesco to request the amount paid out of £435.16. However, I am unaware of what happened regarding the refunding of premiums paid by Mr and Mrs C. Tesco should have already repaid the policy premium following the voidance of the policy. If it has not done so it could possibly link this with the charges for the building works.

Although I understand why Tesco is requesting the amount for the investigation by the loss adjuster, that to me is purely an administration cost and it seems reasonable that Tesco would have to pay these costs without any payment from Mr and Mrs C. These costs were reasonable to further the claim investigation.

Mr and Mrs C have confirmed in correspondence that if their case with this service was unsuccessful they would take Tesco to court. I can confirm that this decision in no way affects Mr and Mrs C's legal rights. They are perfectly entitled to take such action."

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Tesco accepted my provisional decision.

Mr and Mrs C raised further points. I have highlighted certain factors they have raised that I think sum up their position:

- they requested 50% more cover than Tesco could provide;

- the presence of the very heavy safe should have raised another flag with the call handler;
- Tesco have several other pieces of financial information about Mr and Mrs C that although not conclusive would suggest a £100,000 limit would be inconsistent;
- there was no financial motive to underinsure;
- the final jewellery valuation took a lot of time and effort to devise. Mr and Mrs C had never been asked previously to compile a detailed list of items;
- Mr and Mrs C were wholly honest and upfront about their losses;
- there was no logical reason why Mr and Mrs C would deliberately understate their assets;
- Mr and Mrs C strongly disagree that they would have purchased the policy if they had been aware of the true value and underinsurance – they never would have taken it out;
- they understand that home insurance is the most important product any person will ever purchase.

Mr and Mrs C told Tesco their previous policy had 50% more cover. It was Mr and Mrs C that chose to take the maximum level of cover Tesco could offer. The telephone call confirms that no pressure was put on Mr C he chose to take the lower level. On some cases I struggle to accept insurer's arguments that a customer physically chose to take a lower level of cover. However, in this case the call recording confirms that this was Mr and Mrs C's choice.

I have no reason to dispute many of the points made by Mr and Mrs C. I can understand the points they are making. However, it does not provide me with any evidence that suggests I should change my provisional decision.

my final decision

I uphold this complaint in part.

I require Tesco Personal Finance Plc to:

- refund any premiums charged for the voided policy;
- pay the charges for the use of the loss adjuster.

I make no other award against Tesco Personal Finance Plc.

John Quinlan
ombudsman