

## **complaint**

Miss A has complained that Tesco Underwriting Limited unfairly avoided her car insurance policy after she submitted a claim for the theft of her car.

## **background**

In February 2018 Miss A took possession of a car that her son had arranged for her on a personal contract hire plan. She took out a policy to cover it with Tesco. A couple of months later the car was stolen. Miss A made a claim for the theft under her policy. However, Tesco avoided her policy (treated it as if never existed) and refused her claim. Tesco pointed out that there were several inconsistencies in Miss A's original application for insurance. The main issue being that she wasn't the registered keeper of the car at the time she took out the policy. Miss A was able to satisfy Tesco that most of the inconsistencies were genuine mistakes. But there remained the issue of who the car was registered to at the time the policy was taken out.

Miss A explained that the car was initially registered to her son in error, but that she had subsequently transferred the registration to herself. Miss A chased the DVLA for the registration document (V5). On receipt of it, Miss A sent a copy to Tesco in August 2018. Tesco refused to change its stance. The avoidance remained in place and it refused to pay Miss A's claim. Miss A has said this made it too expensive for her to arrange alternative insurance, so she couldn't drive any cars that were available for her to use.

Miss A referred the matter to us. One of our investigator's enquiries revealed that the copy of the V5 received by Tesco contained only the first page and this was barely readable. The investigator arranged for Tesco to have a full copy of the V5. At the end of October 2018 Tesco accepted that Miss A was the registered keeper of the car when she took out the policy. It agreed to reinstate her policy and pay her claim.

The investigator thought that Tesco should have done more in August 2018 and requested another copy of the V5 then. He said, if it had, the matter would have been resolved months earlier. The investigator said that Tesco should pay Miss A £750 compensation for the distress and inconvenience she'd experience because of its poor investigation. He also recommended Tesco pay 8% simple interest (per annum) on the amount due on her claim from the day it received the updated V5 document.

Tesco accepted this outcome. But it accidentally paid Miss A the £750 twice. Originally, Miss A accepted the outcome as well. However, she has now explained that she isn't happy with it. She has said that the impact of this event on both her health and her finances haven't been adequately taken into consideration. Miss A says that she suffers from, and receives treatment for, post-traumatic stress disorder (PTSD). She says that this matter has had a devastating effect on her mental health and caused her to feel depressed. She says she used annual leave instead of sick leave, because she didn't want to get in trouble at work for taking time off sick. Miss A says that her ability to earn overtime was also reduced because her mental health and transport issues

Miss A says that all of this has also affected her ability to conduct her day-to-day activities. Miss A works nights and has had to use public transport, but this made her feel unsafe. She says her son had two cars she could use over a period of seven months. And, as she couldn't get insurance to drive them, they were made available to Miss A's friends and

family to drive her around. At least one of these vehicles has received parking tickets, which Miss A thinks Tesco should pay. She's said she has also used taxis when no one was able to give her a lift.

Miss A has said that if all of this had been taken into consideration, she would have been offered more compensation. With that in mind, Miss A asked for her complaint to be referred to an ombudsman for a decision.

I issued a provisional decision on 11 October. In this decision I said:

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

*All issues in respect of possible misrepresentations that Miss A made when she took out the policy have been resolved and the policy has been reinstated. And Tesco has now settled Miss A's claim. If she is concerned in any way about the amount Tesco has paid in settlement, she can make a new complaint about this.*

*This means it remains for me to decide whether Tesco was wrong to avoid Miss A's policy and maintain its decision to do this when she complained. I also need to consider the way Tesco handled any misrepresentations under the policy it says Miss A made. This is because she made it quite clear in her complaint letter to Tesco she disputed all the inaccuracies and felt they all contributed to Tesco's decision to avoid her policy. If I think Tesco got things wrong, I also need to consider what Miss A should receive for any financial losses, distress and inconvenience as a result of this. And also anything else I think it's appropriate for Tesco to do to put things right.*

*Miss A sent a copy of the first page of the V5 document to Tesco with her complaint letter in August 2018. And she'd already explained to Tesco what had happened when her son bought the car for her about registering it. But, instead of asking for a full and clear copy of the V5, so it could check that Miss A was the registered keeper when she took possession of the car, Tesco maintained its decision to avoid the policy. Bearing in mind it had by this time resolved the other issues around information provided by Miss A when she took out the policy, I think it was wrong to maintain its avoidance and it should have asked Miss A to provide a full copy of the V5. It then would have realised it needed to reinstate the policy, as the V5 did show Miss A as the registered keeper at the time she took possession of the car.*

*I can see why Tesco avoided the policy originally, as despite what Miss A had said; it did look like her son was the registered keeper when she took out the policy. But, that doesn't alter the fact it should have been in a position to reinstate it and consider her claim by the 14 August when it decided to maintain its avoidance. And I think Tesco should also have removed any reference of the avoidance of Miss A's policy from its records and any external databases in August 2018.*

*This means until Tesco reinstated the policy and paid her claim Miss A was without a car, despite payments for it continuing, and suffered a great deal of distress and inconvenience. And I think this was all as a result of Tesco's error in not following up on the V5 when Miss A complained in August 2018.*

*Compensation to Miss A for the loss of use of her car*

*I would have expected Miss A's claim to have been settled within two weeks of Tesco agreeing to reinstate her policy. So I think it should have reinstated her policy and paid her claim by the end of August 2018.*

*I accept Miss A was without a car she could drive due to not being able to afford insurance with an avoided policy her record. So, she had no option but to take lifts, taxis and public transport. She's sent receipts for some of the taxi's she's taken (total £186), but - understandably - not for all of them. And I wouldn't expect her to have receipts for public transport.*

*So overall, I think it's fair to allow something for the loss of use of her car. In this case, bearing in mind Miss A's situation, I think an amount per day is fair, less the taxi costs Tesco has already paid, as I don't think it's appropriate for her to have both a payment for loss of use and an amount for taxi fares. I also think that Miss A should be allowed an additional fourteen days to allow her to source, arrange finance and purchase a replacement after the settlement amount was paid to the finance company.*

*So I think Tesco should pay this compensation for loss of use from 1 September 2018 to 14 days after the date it paid the settlement to the finance company, less the £186 it has already paid for taxis. It looks like Tesco paid the finance company in early December 2018, which is just over two months later than it would have done if it had handled Miss A's case appropriately.*

*It's difficult to know the exact amount it should pay per day, bearing in mind the various ways Miss A travelled around. I note, however, Tesco has already made two payments of £750 – and one of these was in error - after our investigator said it should pay her this amount as compensation for distress and inconvenience. Loss of use is effectively an inconvenience payment and – bearing in mind the number of days Miss A was without a car as a result of Tesco's error, I think a payment of £750 is fair. So, I think Tesco should allow Miss A to keep the additional £750 it's paid her.*

#### *Parking tickets*

*At least one of the cars Miss A was able to use with the help of a driver attracted parking tickets. I can understand that Miss A wanted to park these cars as close to home as possible. She did have the option to park further away but instead took the risk of getting a parking ticket. Tesco is obliged to compensate Miss A for any losses that are a direct result of the way it's handled things – but Miss A is also expected to take reasonable steps to minimise those losses. So I don't think it would be appropriate for Tesco to cover the cost of parking tickets.*

#### *Overtime*

*Miss A has supplied bank statements and payslips for the ten months from March until November 2018. They show that some months she earned overtime and others she didn't. It is hard to know for sure that any loss of overtime was just down to what Tesco did wrong. Clearly, it would have been a distressing time for Miss A. So, I have allowed for this in my overall award for distress and inconvenience. But I don't think a separate award for the loss of overtime is appropriate.*

#### *Annual leave*

*I have seen that Miss A took a lot of annual leave days off over a period of months after the theft of her car. And I have noted what she has said about this. However, I don't think there's sufficient evidence to show that she had to take annual leave instead of taking time off sick. So, I don't think it's appropriate to award anything for this.*

*Compensation for additional finance payments made on the car (plus interest at 8%)*

*The investigator thought that eight percent simple interest (per annum) on the amount due on Miss A's claim from the day Tesco received the updated V5 document should be paid to Miss A. This was worked out to be £430.02 and has been paid by Tesco. It's very difficult to work out what Miss A has lost as a result of finance payments continuing. So - overall I'm satisfied eight percent simple on the claim payment is fair and reasonable way of compensating her for the financial consequences of the late payment of the claim. And I'm satisfied Tesco has paid an appropriate amount of interest.*

*I understand Miss A thought she'd get eight percent of the claim payment. But this isn't what the investigator suggested and that would only be right if Tesco had paid her claim a full year late. The idea of the interest is to compensate Miss A for being without money she should have had for the period she was without it and for any additional interest on finance payments in the period between when her claim should have been settled and when it was settled. I appreciate payments for the car continued. Although with the agreement being in her son's name, it doesn't look like Miss A was responsible for these payments. Plus, part of them was to pay off the amount borrowed for the car. And this means Miss A and her son received the benefit as a result of a lower settlement figure from the finance company when Tesco settled the claim. And if Tesco paid the right amount on her claim it will have stopped there being anything further due to the finance company. As I've already explained, Miss A will need to make a new complaint about what Tesco paid if she's unhappy about this and we can then look into this for her.*

*In summary, overall – I'm satisfied the payment made by Tesco for interest is appropriate.*

*Additional premium for the wrong value of Miss A's car at inception*

*Tesco said when Miss A took out the policy she put the value of her car at £5,000 when it should have been £50,000. And when she made her claim and it discovered this it charged her an additional premium of £795. But Tesco has now explained that if Miss A provided the correct registration number their system should have automatically worked out the value of her car. It seems she did give this over the telephone, albeit she may not have done when she first got a quote from one of the comparison sites. So, I don't understand why Tesco charged Miss A an additional premium if it already knew the correct value of her car when she took out the policy or should have done. If Tesco offered covered at a premium knowing the correct value of Miss A's car, I don't think it was fair for them to charge her an additional premium when it later worked out it had got this wrong. It entered into a contract with her knowing the value her car and agreed a premium, so it should honour that premium. So, I think Tesco should waive any extra premium it charged.*

*Tesco has queried whether this issue was part of Miss A's complaint. But, as I've already said, she complained to Tesco by letter about all the discrepancies it identified. And she sent us a copy of this letter when she asked us to consider her complaint. This means I think we did need to investigate this issue and I need to consider it.*

*Tesco not wanting to provide a quote for a new policy to Miss A.*

*When it reinstated Miss A's policy Tesco said it wasn't willing to provide another policy for her. But it's now said it will if I think it was wrong to avoid her policy. As I've explained, I think its original decision to avoid was reasonable in the circumstances, but its decision not to reverse this when it dealt with her complaint was unreasonable. So, bearing in mind Miss A has now shown she was always meant to be the registered keeper of the car her son bought for her, I would expect Tesco to provide her with a policy moving forward if she wants it to, subject to its normal underwriting criteria. Again I think this is part of the general concern she's raised about the way Tesco treated her after it avoided her policy, so I do need to consider it.*

*Compensation for distress and inconvenience*

*I can see that the avoidance of her policy by Tesco and then turning down her claim has been a protracted process. Miss A has told us that she suffers from PTSD and I have seen documentation to confirm that in August 2018 she was starting a course of treatment to help with this. Miss A said that this issue has had a devastating effect on her mental health. She has also told us that she has been feeling depressed and guilty. Miss A also says she felt there was a stigma attached to her because she had lost her independence and needed to rely on friends and family. Also, Miss A has said the fact she had to use public transport had a very negative impact on her. This was not only inconvenient, but left her feeling unsafe and vulnerable.*

*I accept that Tesco's inappropriate decision to maintain its avoidance of Miss A's policy, as a result of an inadequate investigation, has had a very negative effect on her and her ability to function as she had done before it happened. And, taking all this into consideration, I think it has had a much more significant impact on Miss A because of her mental health issues. Therefore, I think Tesco should pay her a substantial amount of compensation. And I agree with our investigator that £750 is appropriate based on the individual circumstances of Miss A's case and the substantial impact Tesco's refusal to reinstate the policy until December 2018 had on her. I'm aware that Tesco have already paid £750 twice and I've already explained that one of these amounts can now be used to cover loss of use. So Tesco won't need to pay Miss A any further compensation.*

### ***my provisional decision***

*For the reasons set out above, I've provisionally decided to uphold Miss A's complaint and require Tesco Underwriting Limited to do the following:*

- Remove any record of the avoidance of Miss A's policy from internal and external databases if it's not done so already.*
- Waive the additional premium it charged Miss A for having the wrong value for her car when she took out her policy and refund anything she's paid towards this.*
- It has already paid her an additional £750 in error, so she should be allowed to keep this amount as the payment for loss of use.*
- Provide Miss A with a new insurance policy if she would like this, subject to its normal underwriting criteria.*

*I am satisfied the £750 and £186 payments Tesco Underwriting Limited has already paid for distress and inconvenience and taxi fares are fair and reasonable. And I'm also satisfied*

*that its agreement to reinstate Miss A's policy and settle her claim, plus interest at eight percent simple on the claim settlement amount is fair and reasonable.*

I gave both parties until 25 October to respond to my provisional decision. Tesco hasn't responded. Mrs A has responded and made the following points:

- When she took out the policy she was asked if she intended to be the registered keeper of the vehicle she was insuring. And she answered this question correctly, as she did intend to be the registered keeper. And she wasn't asked to provide a copy of the V5 document at this time. So, she doesn't think Tesco should have avoided her policy in the first place. She's suggested this means – as a result of Tesco's error – she was without a car for around 10 months.
- Her policy was 'voided' as opposed to avoided and she has described how this caused her problems when she was trying to obtain insurance for other cars.
- What I've suggested as compensation for the additional finance payments her son made doesn't reflect the financial loss. And she's queried why she has to make a separate complaint about this. She also thinks she should get eight percent of the claim payment as it took Tesco around a year to settle her claim.
- She's unhappy with my finding on the outstanding parking fines and feels she had little option but to park the cars near her home for safety's sake, because of the high crime rates in the area.
- I have not awarded a separate amount for the overtime she lost and I haven't taken into account all the time she had to spend as a result of Tesco's allegations.
- The amount I've awarded doesn't reflect her financial losses or the level of distress and inconvenience she experienced.

### **my findings**

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

I've noted Mrs A's comments about what she was asked when she took out the policy. And I can see why she said she intended to be the registered keeper of the vehicle. But, my point is that this wasn't what was on the V5 when she made her claim. And – I still think – in view of this – Tesco's original decision to avoid her policy was understandable. So my view remains that Tesco's decision to avoid the policy originally was justified, but it did not act appropriately when Mrs A provided the revised V5 and – had it done so – it would have reinstated the policy at this point.

Tesco followed the relevant legislation when it avoided Mrs A's policy and this refers to avoiding a policy, as opposed to voiding it. Tesco may have used the words voided or void, but to all intents and purposes it means the same thing to an insurance company. So whether her policy was referred to as voided or avoided, it made no difference to how Mrs A was treated or viewed by other insurers or insurance brokers.

I remain satisfied that the interest Tesco has already paid is appropriate as compensation for any losses as a result of continuing finance payments. My reference to Mrs A making a

separate complaint is only if she's unhappy with the way that Tesco settle her claim. That is what it pays and/or how it pays it. It has nothing to do with the extra finance payments her son has made. I've dealt with that as part of this complaint and I think what Tesco has paid in interest is fair and reasonable to cover any losses she has suffered.

I don't agree with Mrs A that Tesco is responsible for parking fine. And the reason she and those helping her parked cars in a controlled zone without the right permit doesn't change my view on this.

I don't think it's appropriate for me to make a separate award for the overtime Mrs A has said she lost as a result of the issues flowing from Tesco's errors. I have allowed a significant amount in compensation for distress and inconvenience and this takes into account the frustration Mrs A experienced in not being able to do as much as she would have liked. But, I don't think it is fair to make Tesco pay anything specifically for loss of overtime, as I don't think it can be clearly shown to be directly linked to the errors it made.

I remain satisfied what I've allowed in compensation for distress, inconvenience and any financial losses Mrs A has suffered is fair and reasonable for the reasons I set out in my provisional decision. And, while I've noted what Mrs A has said, my view on this remains the same.

### **my final decision**

For the reasons set out above and in my provisional decision, I uphold Miss A's complaint and require Tesco Underwriting Limited do the following:

- Remove any record of the avoidance of Miss A's policy from internal and external databases, if it has not done so already.
- Waive the additional premium it charged Miss A for having the wrong value for her car when she took out her policy and refund anything she's paid towards this. This means it will need to refund this if she's paid either as lump sum or in instalments.
- Allow Miss A to keep the additional £750 paid in error as compensation for loss of use.
- Provide Miss A with a new insurance policy if she would like this, subject to its normal underwriting criteria.

Just to clarify, I am satisfied the £750 and £186 payments Tesco Underwriting Limited has already paid for distress and inconvenience and taxi fares are fair and reasonable. And I'm also satisfied that its agreement to reinstate Miss A's policy and settle her claim, plus interest at eight percent simple on the claim settlement amount is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 8 December 2019.

Robert Short  
**ombudsman**