

## The complaint

Mrs A complains that Tesco Underwriting Limited (“Tesco”) unfairly declined a claim on her motor insurance policy.

## What happened

The subject matter of the claim and the complaint is a sports utility vehicle, first registered in 2017.

Mrs A acquired the car in April 2021 on a finance agreement. Mrs A had a comprehensive policy for the year from mid-April 2021. Tesco was the insurance company that was responsible for dealing with any claim.

From late September 2021, Mrs A made changes to the policy and paid an additional premium.

The policy covered Mrs A as policyholder. The policy also covered a brother (aged 29) as the only other named driver. Any claim for theft of the vehicle was subject to a policy excess of £450.00.

Tesco’s policy booklet (May 2019 and September 2020 editions) included the following exclusion:

*“Section C – Fire and theft*

*...*

*What is not covered*

*...*

- *Loss or damage to the car if, at the time of the incident, it was being driven or used without your permission by someone in your family or someone who is living with you.”*

The investigator referred to that as “the exclusion” and so will I.

On about 24 December 2021, Mrs A was at her parents’ home when the car was in a serious accident somewhere else. The car suffered structural damage and was no longer driveable.

On about 27 December 2021, Mrs A made a claim to Tesco. She said someone had taken the car without her permission.

On about 30 December 2021, Mrs A told Tesco that police had told her that they had arrested her brother and a friend of his at the scene of the accident. Mrs A said that that the brother was aged 25 and had no driving licence. She said no other vehicle had been involved in the accident.

In February 2022, police gave Tesco possession of the damaged car.

In May 2022, Tesco declined to pay the claim, because the person who took the car without Mrs A's permission was a member of her family.

In January 2023, Mrs A complained to Tesco that it should pay the claim and that it was responsible for delay and poor communication about the damaged car.

By a final response dated early March 2023, Tesco confirmed that it wouldn't pay the claim. But it upheld the complaint about delay and said it was sending Mrs A a cheque for £250.00.

Mrs A brought her complaint to us in mid-April 2023.

In early May 2023, Tesco offered, through us, to pay Mrs A a further £150.00, making a total of £400.00.

Our investigator recommended that the complaint should be upheld. He thought that the 2021 insurance product information document ("IPID") said Tesco wouldn't pay a claim if the car was taken without consent unless reported to the police. The investigator said that the theft had been reported to the police.

The investigator recommended that Tesco should:

1. pay Mrs A's claim; and
2. add 8% interest; and
3. pay Mrs A a further £350.00 compensation for the impact of the upset Tesco caused in declining the claim and for the delays it caused. This would bring the total compensation to £750.00.

Mrs A agreed with the investigator's opinion.

Tesco disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint. It says, in summary, that:

- The IPID included the following:  
*"This is a summary of cover and exclusions available under Tesco Bank Car Insurance. It does not include the full policy benefits, limits and exclusions. The full terms and conditions can be found in the Policy Booklet which can be found at [www.tescobank.com](http://www.tescobank.com) and will be provided at the conclusion of the contract. This should be read in conjunction with your Policy Schedule and Statement of Fact".*
- Mrs A has confirmed the car was taken without her permission and has reported it to the police as such.
- It is clear within the policy terms that cover does not apply to this claim.
- There has been some delay in arranging what is to happen with the car as the vehicle is a category B total loss and therefore cannot go back on the road.
- It paid compensation of £250.00 for delay and offers a further £150.00, taking the total to £400.00 which is fair and reasonable.

### **What I've decided – and why**

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

It is not uncommon for motor policies to exclude any claim arising from a family member taking the car without the policyholder's permission.

But in most policies, such an exclusion is subject to an exception in the event that the policyholder co-operates with the police in investigating or prosecuting the family member for taking the vehicle without consent. We consider it significant and unusual for a policy to have such an exclusion without such an exception.

Tesco's policy terms in 2021 had the exclusion (quoted above), which I accept was written in plain and intelligible language.

However, the exclusion had no exception. So I've looked to see whether the policy documents made this clear.

The 2021 IPID included the following:

*"What is not insured?*

*...*

*Car taken without consent unless reported to the police"*

That doesn't say anything about family members. So it doesn't accurately summarise the exclusion, let alone highlight the absence of an exception to the exclusion. I'm not satisfied that this was adequately highlighted as a significant and unusual restriction on cover at the point of sale.

I consider that Tesco's lack of clarity on that point prejudiced Mrs A's ability to get a policy with such an exception. On balance, I find that, if Tesco had been clear about the absence of such an exception, Mrs A would've bought a different policy or otherwise acted differently.

But Tesco's policy had no such exception. And I accept that Mrs A cooperated with the police in the investigation of a possible prosecution of her brother for taking the car without consent. I accept her statement that there was no outcome to the police investigation of the incident nearly two years later.

So I don't find that Tesco treated Mrs A fairly by relying on the exclusion to decline her claim.

(The 2022 edition of Tesco's policy terms had a different exclusion as follows:

*"Loss of or damage to the car if, at the time of the incident, it was being driven or used, without your permission, by someone who normally lives with you, or with any of the named drivers."*

As that edition was after 2021, I don't consider it relevant to the claim in 2021 or the complaint about that claim).

Also, Tesco has been responsible for delays and contradictory information about what should happen to the damaged car.

From what she has said, the unfair decision and the delays caused Mrs A to have been – since December 2021 - without a vehicle but continuing to pay the finance. Tesco also caused her months of worry that shouldn't have been necessary. That came at an already difficult time for her.

## **Putting things right**

I've thought about what to direct Tesco to do to try to put things right.

That includes thinking about directing Tesco to reconsider the claim without reference to the exclusion. However, I wouldn't find it fair and reasonable for Tesco to reject the claim on the basis that Mrs A failed to exercise reasonable care over the keys or the car.

So I consider it fair and reasonable to direct Tesco to pay the market value of the car immediately before the accident in December 2021, less the excess of £450.00. Tesco may pay any balance due to the finance company before paying any balance to Mrs A. The damaged car will become the property of Tesco (save in the unlikely event that Mrs A wishes to negotiate a price to keep the damaged car).

I've thought about directing Tesco to pay interest at the finance company's rate and/or compensation for loss of use of a vehicle. However, I haven't seen details of the finance agreement.

However, Mrs A accepted the investigator's opinion. In any event I find it fair enough to direct Tesco to pay Mrs A interest at our usual rate and – in addition to its payment of £250.00 – a further £500.00 compensation for distress and inconvenience.

## **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint. I direct Tesco Underwriting Limited to:

1. pay the market value of the car immediately before the accident in December 2021, less the excess of £450.00; and
2. pay Mrs A simple interest at a yearly rate of 8% on the amount it pays under paragraph 1 above from 27 January 2022 to the date of its payment. If Tesco considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs A how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. pay Mrs A – in addition to its payment of £250.00 – a further £500.00 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 21 November 2023.

Christopher Gilbert

**Ombudsman**