

## The complaint

Ms C complains that after she made a claim on her motor insurance policy, Tesco Underwriting Limited didn't adhere to the total loss settlement terms it had set out.

## What happened

Ms C's policy covered the car she had on a lease arrangement - under which she paid to use the car but was to hand it back to the legal owner (the lease firm) at the end of the lease. In August 2023, the car was stolen. Tesco paid the lease firm the sum it required as a total loss settlement, told Ms C the claim was closed.

Ms C had expected to be paid the difference between the sum Tesco paid the lease firm and the car's market value (around £5,000). Tesco told her that wasn't its approach, but Ms C produced a copy of the policy wording that confirmed her understanding. She said she'd also been told in a call with Tesco that she'd be paid the relevant sum, but that when she asked for a copy of the call recording, that part of the call was missing.

One of our investigators reviewed Ms C's complaint and upheld it. He said that normally, she wouldn't be entitled to a payment under a lease arrangement. But he thought it was fair for her to rely on the policy terms. Tesco then provided a copy of the policy renewal documents it issued to Ms C in June 2023. Tesco said the relevant policy terms meant Ms C wasn't entitled to any payment following the total loss of her car, due to the lease arrangement. The investigator then issued a second view, not upholding Ms C's complaint, as she was unable to provide any further evidence to us in support of her case.

Ms C asked for a review of her complaint by an ombudsman, and it was passed to me. I issued a provisional decision in which I said the following:

*It's usually the case that if a car is on a lease arrangement and is to be returned to the lease firm (its owner), then if a total loss situation occurs, a consumer won't be paid anything as part of the claim's settlement. That's because the consumer has only paid to hire the car, in effect. They haven't been paying to build up equity in the car (as would be the case under a hire purchase agreement). Consequently, the insurer deals directly with the legal owner and it's for the lease firm to say how much it wants to be paid for the car. The sum required by lease firms is often less than the car's market value (as set out in the national trade guides). But we only expect insurers to abide by those guides in non-lease situations.*

*Motor policies usually make it clear that a consumer won't be paid anything if there's a difference between the settlement sum paid to the lease firm and the car's market value. The wording of the policy Tesco has provided to us is clear about the issue. Ms C has shown that she checked the portal on the day the renewal documents were issued. She insists that the extract she's provided to us is from the policy booklet in the portal. We haven't seen the portal, so we can't confirm whether that's the case, and Tesco insists that Ms C is mistaken. The relevant telephone recording may have been helpful, and Ms C thinks the crucial part of it was 'wiped' by Tesco. I can see why Ms C is suspicious, but sometimes there are genuine*

*technical problems with call recordings. Although Ms C doesn't think that's the case here, she can't show that Tesco tampered with the call.*

*Ms C's account has been consistent from the outset, and the wording provided to us by her proves that Tesco used to pay consumers the difference between the settlement sum it paid to lease firms and the car's market value. Tesco said recently that its approach changed - and that the policy wording was amended – at some point before Ms C first bought a policy from it in June 2021. Yet she's insistent that she only saw the new wording for the first time after Tesco rejected her 2023 claim.*

*We asked Tesco to provide evidence of the date it changed its approach / altered the policy booklet's wording, but it didn't do so. Nor did it provide an explanation for why that's not possible. I can't see why Tesco isn't able to provide evidence of the relevant dates. In the absence of such evidence, I can't be sure when the changes happened, so I'm minded to say that Ms C should be given the benefit of the doubt.*

*If Ms C was sent the policy booklet containing the wording she supplied to us, I'm minded to say that she's entitled to rely on it. So Tesco should pay her the difference between the sum it paid the lease firm and the car's market value, plus interest. It should also pay Ms C £150 compensation for distress and inconvenience, given the upset caused to her by this dispute. In order to manage Ms C's expectations, I must point out that my findings are provisional and subject to any further evidence submitted by her or by Tesco, so they may change.*

In response, Tesco provided its policy booklets from 2019 to 2022 and pointed out codes on the booklets showing the issue dates. That showed Tesco had changed its approach by the policy booklet issue date in September 2020, before Ms C bought a policy from it.

I issued a second provisional decision in which I said the reference codes are in very small print and it isn't obvious what they refer to, so I didn't note them when I first reviewed Ms C's complaint. I said I thought Tesco had now shown that it changed its stance on paying consumers the difference between the sum paid to a lease firm and the car's market value by September 2020. I said the new approach was set out in Tesco's policy booklets from then on and is in line with the approach taken by many insurers. The booklet Ms C provided showed a 2015 issue date. We weren't able to check the document in her portal, as we didn't have permission to access to it. But I said I thought the evidence Tesco had provided was persuasive, so I was now minded not to uphold her complaint.

In Ms C's reply, she said if Tesco hadn't provided the relevant document to her, she wouldn't have had it. She said Tesco could change documents at any time, and that it had never referred to the codes previously. She repeated that the part of the call she'd had with the Tesco advisor who confirmed she was entitled to a payment was missing when she got it. Ms C said again that she thought Tesco had wiped it. And she said to keep having her complaint upheld and then not upheld was causing her more distress.

### **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.

I can only base my decision on the evidence available at the time, and so could the Investigator when he issued his views. In my opinion, Tesco has now shown that it changed its stance on payments where a car is leased well before Ms C made a claim on the policy.

Ms C has been adamant from the start about the wording in the booklet she received, but it doesn't square with the evidence provided by Tesco. I appreciate that she believes Tesco wiped the relevant part of a telephone call, and that it changed the information on its policy booklets and the details in the portal. But I've seen no evidence to support her belief.

Had Tesco provided the evidence of its change of approach earlier than it did, I would not have issued a decision provisionally upholding Ms C's complaint. I can understand her frustration, and I'm very sorry that the change in my opinion has caused her further distress. But I can't ignore the evidence, even if it's provided late. In this case, that means I can't uphold Ms C's complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 25 October 2024.

Susan Ewins

**Ombudsman**