

The complaint

Miss N has complained about her car insurer Aioi Nissay Dowa Insurance UK Limited because it settled with a third-party for their costs following an accident.

What happened

In October 2024 an accident occurred between Miss N and a third-party driver. Miss N reported that the third-party had suddenly appeared in her rear-view mirror and she was unable to avoid a collision occurring. Footage from the rear facing dash-cam in Miss N's car showed the third-party car making contact with her car on the rear driver's side.

Miss N's car was significantly damaged in the incident, with Miss N also sustaining some injuries. Aioi settled with her for the market value of the car, and began considering liability for the accident. Miss N instigated a personal injury claim via the legal cover available on her policy. Aioi told Miss N that it thought the third-party driver was at fault and it initially dealt with the third-party's representative on that basis – defending Miss N, refuting all liability for the loss. However, once Aioi became aware of the injury claim, it explained it would have to take a back seat on determining liability, for fear of prejudicing the personal injury claim.

In November 2024 Aioi received witness statements from the third-party's representative and images of the third-party's car, which was undriveable with hire charges for a replacement car accruing. The third-party was placing the blame for the incident on Miss N – alleging she changed lanes. Aioi decided it would settle the third-party's claim costs. It confirmed that was a without prejudice payment – that liability was not being admitted at all. It maintained that Miss N was not at fault.

Miss N was not happy with that decision. She felt Aioi had acted unfairly given the dash-cam footage which she felt showed she was not at fault. Aioi in a final response explained that the policy allowed it to choose how to settle claims and reiterated that it had acted on a without prejudice basis. Aioi said Miss N's no claims discount would be affected and it would review its decision if/when any other evidence became available. Miss N complained to the Financial Ombudsman Service.

Our Investigator felt Aioi, in the circumstances here had acted fairly and reasonably. So she did not uphold the complaint in this respect. She did think Aioi provided some misleading advice to Miss N – so she said it should pay £150 compensation.

Aioi didn't respond to the Investigator's view.

Miss N felt that clear evidence of her acting correctly had been ignored by everyone throughout her claim and complaint. She said it was apparent that the witness statements produced by the third-party were fabricated – it wasn't fair that Aioi had relied on these statements in preference to, or whilst ignoring, the dash-cam footage. Miss N said the policy does allow Aioi to settle matters as it sees fit but, she said, that does not mean it can act unfairly. She asked for an Ombudsman's decision.

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.

Having done so I can see that this was a significant collision, which Miss N has reported as having affected her both mentally and physically. I understand that Aioi's settlement with the third-party would then have come as a disappointment and caused a source of worry. But I do think its action was fair and reasonable in the circumstances. I trust my explanation set out below will help Miss N understand why I've taken that view.

Aioi's policy, like most, does allow it to handle and settle claims as it sees fit. Miss N is absolutely right though – Aioi still has to utilise that power fairly. So I've considered whether it did that.

It's important to note here though that the Financial Ombudsman Service is not in a position to determine liability. And that is not even really the role of an insurer. Insurer's will take a view on liability, arguing on its own and its policyholder's behalf which party is most likely at fault for an accident. Sometimes agreements in that respect will be reached and put in place. But, if an agreement can't be reached, the final arbiter for liability will be a judge in a court.

So an insurer might take a view on particular evidence which is held, and might put forward its view on which party is at fault based on that evidence. But if the other insurer/party does not agree, the only way for fault to be decided is to progress the matter to court. That can be difficult in terms of costs – but it can also, where there is another claim which takes precedence, be effectively impossible for an insurer to pursue.

From the calls I've heard, Aioi thought Miss N was not at fault. And, if needed, it thought it would likely be able to defend such. But it also thought, initially, at least, that third-party would be unlikely to contest the matter. Unfortunately for Miss N, the third-party did contest liability and presented additional evidence in support of their view that Miss N was at fault.

Aioi hasn't said much about that additional evidence. It may be that it agrees with Miss N that the evidence is suspect. But whatever Aioi's view of the evidence is, it's the receipt of it that caused Aioi to think it reasonably needed to take action regarding the third-party's claim. The production of the evidence meant the third-party was definitely contesting liability for the accident and Aioi's hands were somewhat tied regarding how it could respond in respect of liability because of the personal injury claim. So Aioi couldn't really show its hand and respond to the evidence setting out its thoughts – because that might have harmed the injury claim which it was not a party too.

What Aioi could do was to protect its own outlay going forwards. When a party involved in an accident has a car they can't drive, they are sometimes afforded the benefit of a hire car. The cost of which becomes part of the claim. And if the claim for the insured car is not settled quickly, the hire costs continue to accrue.

So, here, Aioi was faced with the prospect of thinking Miss N was not at fault whilst not being able to robustly pursue that position and whilst knowing that the third-party's costs were accruing. Costs which, if liability was ultimately not settled as it thought it should be – ie in Miss N's favour – it would be liable for paying. So Aioi limited its potential outlay by settling the third-party's claim.

Aioi's been clear. It's said its position has always been and remains that Miss N isn't at fault. It's only made a payment to the third-party – which it's also been clear is on a without prejudice basis. It's not agreed anything with the third-party as to liability at all. All it's done is

acted to cap its outlay, should the liability issue be decided – by others, not it – in favour of the third-party. I'm satisfied that's fair and reasonable.

I note that Aioi, in its final response letter, made reference to reviewing things if further evidence should arise. It may help Miss N to know that Aioi has confirmed to our Investigator that it is seeking a police report. So it seems it is still gathering evidence relevant to the issue of liability for the accident. I'm satisfied that Aioi does not consider the liability issue as settled. After all, if its without prejudice action had been made regarding liability as well as costs, then it would be unusual for it to be actively seeking additional evidence.

Aioi said the claim record made for Miss N shows as open/unresolved. That makes sense in the circumstances here – Aioi settled with Miss N for the total loss of her car, as well as settling the third-party's claim, no costs have yet been recovered and the liability decision is outstanding. Miss N had to pay her premium and excess – those are 'uninsured' costs she is liable to pay for the cover she has with Aioi. They aren't costs I can reasonably require Aioi to refund to her.

How such an 'open/unresolved' record will affect the decision of other insurers when Miss N is looking to arrange new cover, if she does, is unclear. Miss N's policy was due to renew in March 2025. I know Miss N doesn't currently feel able to drive, so it may well be that she has not been looking for cover going forwards. However, if she does look and the costs seems more expensive due to the open/unresolved claim, that doesn't seem to be due to any fault of Aioi's. As I said above, it could do little with the personal injury claim outstanding. It probably wouldn't be fair, even given that action, for Aioi to leave the claim status as unresolved forever. But as of the date of Aioi's final response letter on the liability issue in January 2025, the injury claim was still in its infancy. I'm satisfied that the claim being unresolved, at that time, was fair and reasonable.

I note Aioi has said that Miss N's No Claims Bonus will be affected. She has had a claim, the fault for which has not yet been decided. So that doesn't seem unreasonable. However, I note that as far as the contract Miss N had with Aioi, she had chosen to protect her No Claims Bonus. So if Miss N had continued cover with Aioi that should have been priced in line with the requirements of the protection. However, as noted above, Miss N has not been driving and she's confirmed she did not renew her policy with Aioi.

Renewal was something discussed during the claim though – specifically how the claim might affect Miss N's cover going forwards. As our Investigator explained, Aioi's advisors could have been clearer about this. One said if Aioi gets its claim outlay back (so the claim is settled on the basis it wasn't Miss N's fault), the price of her cover going forward wouldn't be affected. Another said if matters aren't settled before renewal, "chances are" there'll be an uplift. What neither of those advisors said is that the fact of a claim can sometimes influence price – regardless of how liability is determined. This was clearly an important issue for Miss N and, given that Aioi subsequently settled the third-party's claim, I can see that Miss N would then have been worried about the impact of that on her future cover. Miss N has not driven since the accident – but I accept that she's been anxious and this added another nuance to all of that worry. I'm satisfied that Aioi should pay £150 compensation.

My final decision

I uphold this complaint. I require Aioi Nissay Dowa Insurance UK Limited to pay Miss N £150 compensation for upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 2 July 2025.

Fiona Robinson
Ombudsman