

The complaint

Mr R has complained that Aioi Nissay Dowa Insurance UK Limited (ANDI) unfairly recorded a claim as a fault claim when he reported an incident under his car insurance policy. A third party made a claim to ANDI which it settled.

What happened

Mr R called ANDI to report an incident. He said while parked on a narrow road, a passenger opened their door. Another car was driving past and as they did, there was a collision causing damage to both wing mirrors. Both parties exchanged details.

The agent asked Mr R if he wanted to make a claim. He said he wasn't sure. Mr R said it depends on whether both parties accept responsibility. The agent said he could record the incident as 'notification only' if he wished to pay privately for repairs. Or he could make a claim under the policy and pay an excess.

Mr R asked who would be more likely to be found at fault. The agent said that would only be reviewed if Mr R were to make a claim.

Two days later ANDI received a claim from the other driver. So it notified Mr R and advised it would deal with the claim as a fault claim.

Mr R didn't agree the decision was fair. But ANDI said its decision was correct based on what Mr R told it. However, ANDI accepted it had failed to explain that it would record the claim as a fault claim when Mr R first reported it. For failing to manage Mr R's expectations, it apologised and paid Mr R £50 compensation for the distress and inconvenience caused.

Mr R remained unhappy and asked us to look at his complaint. He said ANDI hadn't properly investigated the claim and didn't look to obtain further information from him.

One of our Investigators didn't recommend the complaint should be upheld. He thought ANDI had reached its decision reasonably and in line with the policy.

Mr R didn't agree. In summary he says this service has failed to consider if ANDI acted negligently in reaching its decision. So the case has been passed to me to decide.

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.

We don't decide liability. This is the role of the courts. But we can look at whether an insurer has reached its decision reasonably and in line with the policy.

ANDI says it can take over the defence and settlement of a claim in Mr R's name. This isn't an unusual term as I've seen it in most – if not all – motor insurance policies I've seen. The relevant policy wording reads:

“We will be entitled to:

- have total control to conduct, defend and settle any claim, and*
- take proceedings in your name, or in the name of any other person claiming under this policy, at our own expense, and for our own benefit to recover any payment we have made.”*

This means ANDI can make a decision that Mr R doesn't agree with, but the policy allows it. We don't disagree with this term in principle provided an insurer has shown it treated a customer fairly when applying it.

I've listened to the first notification call made by Mr R to ANDI. Mr R said while parked on a narrow road, a passenger opened their passenger door. When doing so, made impact with a car driving past causing damage to both wing mirrors. Mr R considered both parties may have been at fault. He accepted that his passenger opened the door, but thought if the other driver had been driving slower they might have been able to stop in time.

Based on the account provided, I don't think ANDI's decision to hold Mr R at fault for the incident was unreasonable. I think Mr R's account of what happened was very clear and so it was enough for ANDI to reach a decision. The responsibility is on the person operating the car (opening the car door) to check for cyclists, pedestrians and other vehicles. ANDI says it settled the third party claim on a 'without prejudice' basis which means if Mr R disagrees, he can seek alternative legal action. Mr R will need to make his own enquiries if he wishes to explore that option.

From the information ANDI received from Mr R, I don't think it acted unreasonably. I've seen nothing to suggest ANDI has acted negligently. This means I think it has correctly recorded the incident as a fault claim. So it follows that the impact on Mr R's No Claims Discount (NCD) and premium as a result of the claim stands.

ANDI accepts that it should have explained its position on liability when Mr R first called it. So it failed to manage his expectations for two days. For this ANDI apologised and paid Mr R £50 compensation for the distress and inconvenience caused. This is a fair outcome and in line with awards we give in similar circumstances. ANDI's poor service here doesn't change the outcome of its decision, which I find was reached in a reasonable way.

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 Mr R to accept or reject my decision before 22 July 2025.

Geraldine Newbold
Ombudsman