

The complaint

Mrs H complains about the manner in which Aioi Nissay Dowa Insurance UK Limited (ANDI) handled a claim on her motor insurance policy.

Mrs H's son has helped her to make her claim to ANDI and to bring her complaint. But for simplicity I'll refer to his comments as being Mrs H's.

Mrs H's policy is branded in the name of a vehicle manufacturer. But as the policy underwriter, ANDI remains responsible for deciding claims and responding to complaints.

What happened

Mrs H's car was hit by another vehicle while parked. The third party didn't stop but the incident was caught on CCTV. A witness reported the incident to the police and gave Mrs H the appropriate police reference number. Another individual also left a phone number with a neighbour. It's not clear if that was a number for the third party driver or, perhaps, another witness.

Mrs H reported the incident to ANDI, although she didn't initially claim for the damage to her own car. ANDI recorded the incident as notification only at that point. But it did request a police report. The police told ANDI that there was no record of the incident. Mrs H told ANDI she'd spoken to the police who confirmed that the case was still active.

In the meantime Mrs H told ANDI she would like it to repair her car under the terms of her policy, which it did. However, it also told her that, while it would look to deal with the claim as non-fault, it couldn't waive her excess and the claim would affect her no claims discount until the third party accepted liability.

Mrs H was dissatisfied with ANDI's response.. She emailed it and said the police had confirmed they had identified the third party vehicle.

ANDI dealt with Mrs H's email as a complaint. It also chased the police again. They eventually provided a registration number for the other vehicle involved. But they also said that the vehicle's driver remained unidentified.

ANDI traced the insurer of the third party vehicle and made a claim to it. But the third party insurer didn't reply.

On 31 July 2024 ANDI replied to Mrs H's complaint. It didn't uphold it.

Subsequently, ANDI told Mrs H that as the third party driver couldn't be traced, it was closing her claim. But, as it hadn't been able to recover its outlay, the claim would be recorded as a fault claim.

Mrs H brought her complaint to the Financial Ombudsman Service. One of our Investigators looked into it. Initially he didn't think that ANDI had done anything wrong. And whilst he eventually concluded that ANDI's decision to record the claim as 'fault' was reasonable, he felt it could have done more to progress the claim. The Investigator recommended that ANDI pay Mrs H £300 compensation and renew its efforts to trace the third party driver.

ANDI accepted our Investigator's complaint assessment. Mrs H didn't. So the complaint's 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.

I can understand that Mrs H might feel a sense of injustice that she is being held at 'fault' for an incident she had absolutely no control over. It might help if I explain that the terms *fault* or *non-fault* when applied to motor insurance claims don't necessarily reflect who was to blame for an accident. Instead the terms are a form of shorthand, so I accept they may be somewhat misleading.

A *fault* claim doesn't mean that the policyholder was to blame for the accident or claim, just that the insurer hasn't been able to recover its cost for settling it. So, when a car's been damaged by an unidentified third party, as the insurer has no-one to recover their costs from they'll refer to it as being a *fault* claim. That will usually affect a consumer's no claims discount. And it's standard for the claim to remain recorded as a 'fault' claim until the insurer recovers its outlay.

I'll add that Mrs H's policy does have a term known as the uninsured driver benefit. That means that if her car was damaged by an uninsured driver then ANDI would treat the claim as non-fault. But in order for that benefit to apply ANDI would need the driver's details to confirm they are uninsured. In this case ANDI hasn't been able to trace the driver. So it doesn't know whether the driver was insured or not. And in those circumstances the policy's uninsured driver benefit doesn't apply.

I'll explain that there's a difference between untraced and uninsured drivers. That's in part because it's the driver themselves, rather than their insurer, that is liable for the costs following an accident. Although, where they are insured, the driver's insurer will usually cover that liability. But, where a driver remains untraced the insurer for the injured party, which in this case is ANDI, does not have an individual to potentially issue proceedings against. That means that, even where the vehicle itself is insured, proceedings can't be issued against its insurer alone, as the name of the liable party (the untraced driver) is unknown.

In this case the police confirmed that they'd been unable to trace the identity of the driver concerned. So ANDI was unable to issue proceedings against the third party insurer as leverage for it to respond to the claim. And in those circumstances it recorded the claim as fault. As ANDI followed a generally accepted process, I don't find it unfair.

I'll add that ANDI correctly advised Mrs H that she may be able to pursue her claim for her uninsured losses through the Motor Insurers Bureau (MIB) which deals with claims from innocent parties against uninsured or untraced drivers. I think that was appropriate in the circumstances.

That said, I do think ANDI could have done more to progress the claim in a timely manner. For example, from reading the file it's apparent that it was Mrs H who was constantly chasing ANDI for updates and details of progress. And it was Mrs H's contact that often sparked ANDI into action, such as chasing the police for replies or in fact challenging the police when some of their replies didn't appear accurate. For example, when ANDI initially asked the police for details of the incident in 2024, it gave the police their reference number. But the police then replied to say that they had no record of an incident. That clearly didn't make sense as they had provided a police reference number. But ANDI didn't challenge this until Mrs H told it that she'd contacted the police herself and confirmed that the case was still active.

Also, Mrs H had provided some CCTV footage with a helpful narrative of how the events of the accident and the events shortly afterwards had unfolded. And she asked ANDI to pass these on to the police. But as far as I'm aware it didn't ever do so. I'll say that ANDI's role is

not to influence or steer a police investigation. So it wasn't required to pass the CCTV footage on, but it would have been helpful if it had explained that to Mrs H so she could have given the CCTV footage to the police herself at an early stage.

Further, I think that there were potentially other avenues ANDI could have pursued in order to trace the third party driver. I'm aware that the police had been unsuccessful in its own attempts to do so. But I would have expected ANDI to at least chase a response from the third party insurer.

Also I think ANDI should have attempted to contact the driver/witness via the phone number that was initially given to a neighbour. Further it could have attempted to trace the third party vehicle's owner/registered keeper through the DVLA and put its allegations directly to that individual, which might potentially have produced a response. I think it should take those actions now.

I'm aware that Mrs H is concerned that, given the passage of time, ANDI will be unlikely to trace the third party driver now. And that might prove to be the case. But it's also possible that even if ANDI had done everything it should have done promptly and efficiently from the outset that would have been the outcome. As I've said above the police themselves have not been able to successfully trace the driver. And they generally have greater investigative powers than ANDI. So tracing the driver clearly wasn't and isn't a simple task.

Mrs H has also commented that she feels ANDI had from the outset treated the matter as if they would be unable to trace the driver. While I can understand her position, I don't think that's right. That's because it's not in ANDI's interests to pay a claim where, potentially, it could recover its outlay from the third party insurer or driver. Clearly, it's not to ANDI's advantage to pay out to have a car repaired and the ancillary costs that go with dealing with such a claim, when there is another party who could and should bear those costs. So I don't think ANDI is likely to give up on pursuing a claim recovery in favour of treating the driver as untraced when it has a reasonable prospect of identifying the driver.

But, I do agree that ANDI hasn't done everything it could have done to try to bring the claim to a successful resolution. And I can understand that's been a source of frustration and annoyance for Mrs H that has required effort on her part to try to correct. So, in order to address that I think it should take the actions set out below.

Putting things right

Aioi Nissay Dowa Insurance UK Limited must:

- Pay Mrs H £300 compensation is fair and reasonable compensation to reflect her distress and inconvenience, as described above, arising from the shortfalls in ANDI's handling of this claim. That sum (£300) is in line with our guidance on making such awards. It is also comparable to awards we make in other cases of similar seriousness.
- Make further efforts to chase the details of the third party. Once those opportunities are exhausted, it should explain that to Mrs H and direct her to the MIB.

My final decision

For the reasons described above I require Aioi Nissay Dowa Insurance UK Limited to take the steps set out under the heading "putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 September 2025.

Joe Scott
Ombudsman