

## **complaint**

Mr S complains that Aioi Nissay Dowa Insurance Company of Europe Limited (Aioi) has unfairly held him liable for an accident involving Mr M, a named driver on his motor insurance policy. Mr S said this caused the loss of his No Claims Discount (NCD) and his premium to rise and his car hasn't been repaired.

## **background**

Mr M reported an accident to Aioi he said he had with a motorcyclist in November 2017 whilst driving Mr S's car. Mr M said the other party was to blame. The other party also claimed for damage to his motorcycle and said Mr M was to blame.

Aioi said Mr M provided limited information when he reported the accident and it made many attempts over the next four months to get more details, including calls and letters to Mr S, in November 2017, January and March 2018. In its letters, Aioi said it understood that Mr M had pulled from a side road into the main road and that the other party had right of way. Aioi told Mr S it was minded to accept liability for the accident on his behalf.

Aioi said Mr S first made contact when he called in March 2018 to complain about the increased cost of renewing his policy and that it had recorded a fault claim against him without discussion. Mr S said Aioi's decision was wrong as the other party was speeding.

Aioi told Mr S there were no independent witnesses to the accident and the police didn't attend. It said if there had been any CCTV footage, by the time he'd given more details at the end of March 2018, it would have been deleted. It said that based on its previous experience it anticipated that it would have great difficulty in defending any claim and so had accepted liability. Aioi said it had recorded this as a fault claim, and disallowed Mr S's NCD.

Aioi said Mr S's policy carried a claims excess of £850 for when Mr M was driving. It said his car was assessed as a total loss and as the pre-accident value was about equal to the excess, there was no claim for his car that he could make against his policy.

The adjudicator didn't recommend the complaint be upheld. He said Mr S's policy allowed Aioi to settle a claim as it chose. He said it was reasonable for Aioi to accept liability from the descriptions of the accident and particularly as there was no contact from Mr S. The adjudicator said Aioi's decision to write Mr S's car off and value it at around the policy excess, was reasonable based on the valuation guide for the car.

Mr M said he *had* contacted Aioi about the accident and he forwarded an email about the accident sent by Mr S in April 2018. Mr M requested an ombudsman review the complaint.

## **my findings**

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've decided not to uphold Mr S's complaint. I know this will disappoint him, but I hope the reasons I'm about to give will help him to understand why I've reached this conclusion.

Mr S complained that Aioi accepted full liability for the claim on his behalf. It's not my role to decide who was actually at fault for an accident. Instead, I must look at whether, in reaching its decision to accept liability, Aioi acted fairly and reasonably.

My starting point is Mr S's motor insurance policy. It says:

*'In dealing with your claim, under the terms of this policy we may*

*a) defend or settle any claim and choose the solicitor who will act for you in any legal action, and*

*b) take any legal action in your name or the name of any other person covered by this policy We can do any of these in your name or in the name of any person claiming under this policy Anyone who makes a claim under this policy must give us any reasonable information we ask for'*

This means, under the policy terms, Aioi can decide how it will settle a claim on Mr S's car insurance, even if he doesn't agree with it. And this is a standard term found in most car insurance policies. We think insurers can rely on this term as long as it's fair and reasonable to do so in the circumstances.

I've gone on to look at the facts and evidence in this case to see if, in making its decision, Aioi acted fairly and reasonably. Mr S and Mr M said that Aioi decided the cause of the accident without consulting them. From the records Aioi has provided I can see that after Mr M first notified the accident in November 2017, there was no contact from him or Mr S until Mr S complained about the increased premium in March 2018. During this time, it would appear that Aioi texted Mr S twice and left voice mails and wrote to him four times asking him for his version of the accident. I think Aioi made reasonable attempts to speak to Mr S.

Aioi said it had very limited information about the accident from Mr M's call in November 2017, and detailed allegations from the other party. It said the police didn't attend and there was no independent evidence. Aioi said it understood that Mr M had driven from a side road into a main road and went to turn into another side road on the right immediately afterwards. Aioi said a lorry was reversing out of the side road which Mr M was exiting and so his view would have been partially obstructed. It said the other party was already established on the main road and would have had right of way, and Mr M should have given way. Aioi said there was no evidence to confirm Mr S's allegation that the motorcyclist was speeding and, in any event, that wasn't necessarily an act of negligence.

Aioi said the description and diagram of the accident Mr S provided in March 2018 indicated that he had been driving, whereas it understood from Mr M and the other party that Mr M had been driving. Mr S told our investigator he was driving and that's what he said in his email to Aioi on 18 April 2018. But Mr M reported the accident to Aioi and said he was driving and the other party took Mr M's details at the scene of the accident, so I think that's what happened. I can see that Mr S and Mr M have provided conflicting information about who was driving, and I understand why Aioi said the confusion didn't support Mr S's complaint that Aioi shouldn't have accepted liability for the claim.

Aioi said based on its previous experience it anticipated that it would have great difficulty in defending any claim and it accepted liability for the accident on a without prejudice basis. I haven't seen a legal opinion in support of this position, but Mr S and Mr M haven't provided any compelling evidence that challenges Aioi's view about the accident. I have seen that Aioi considered both versions of the accident, diagrams and road positions. I've also seen the report prepared by the third party's engineer which describes the impact of the accident as significant and puts the motorcycle beyond economic repair. I think it was fair and reasonable for Aioi to accept liability from the information available about the accident and the lack of response from Mr S and Mr M.

Mr S complained that his car hasn't been repaired. Aioi said from the valuation guides Mr S's car had a pre-accident value around £850. Aioi has confirmed that it didn't assess the damage to Mr S's car when it decided the value of his car made it beyond economic repair. I have seen the professional valuation guides and these show that Mr S's car was worth around £850 which is equal to the policy excess for when Mr M was driving. The policy said the most Aioi would pay was the market value of the car and so we wouldn't expect the insurer to pay more. As the market value of Mr S's car was about equal to the policy excess, I think it was fair for Aioi to decide that it didn't have to pay towards the repair of Mr S's car. Aioi said Mr S hasn't made any reference to its valuation of his car.

Although I understand this is hard for Mr S, I think Aioi's decision to accept liability for the accident was in line with the policy terms and took into account the available evidence. And I think it was reasonable for it to decide to settle the complaint based on previous claims' experience. I also think Aioi has treated Mr S fairly in not repairing his car given the pre-accident value of his car and the policy excess, and that's why I don't uphold Mr S's complaint.

As a result of this claim, Mr S said his premium has increased. Aioi has said it will address the complaint about the premium separately and I haven't considered this here.

#### **my final decision**

For the reasons I have given above it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 January 2020.

Andrew Fraser  
**ombudsman**