

## **The complaint**

Mr S complains that Markerstudy Insurance Company Limited ("Markerstudy") wrongly settled a claim a third party brought against Mr S's motor insurance policy with Markerstudy following a collision for which Mr S says he wasn't responsible.

## **What happened**

Mr S had a motor insurance policy with Markerstudy. A third party ("TP") notified Markerstudy that in April 2019 a car insured on Mr S's policy had driven into their car, and then driven off without stopping or supplying any details. An independent witness had seen what happened and supplied a statement to TP. This confirmed that the damage to TP's car was caused by a car of the same make, description, and registration number as Mr S's car.

When Markerstudy contacted Mr S about the incident he acknowledged that the car did operate around the location of the incident. He said he had spoken to the driver, who said he hadn't been involved in any incident.

Markerstudy obtained an engineer's report on the damage to TP's car. It also obtained video evidence from Mr S of his car, which showed some damage on the rear driver's side. Mr S said this was pre-existing damage which had been present when he bought the car.

On the basis of:

- the statement from the independent witness,
- the evidence of damage to TP's car, and
- the damage to Mr S's car which Markerstudy was unable to prove was pre-existing,

Markerstudy thought that if the claim proceeded to court it was likely to be judged in favour of TP.

So it settled TP's claim on the best terms it could, but on a "without prejudice" basis. This meant that Mr S was free to bring proceedings against TP at his own expense if he wished to do so. The claim was treated as a "fault" claim for the purposes of Mr S's insurance record and no claims discount.

Mr S complained to Markerstudy. He said there wasn't any damage to his car consistent with the accident, and the way the witness described the accident wasn't credible. He thought a false claim had been made, and his car might have been cloned, with its registration number being applied to another car. Markerstudy didn't accept his complaint, so he complained to us. He said the damage on his car wasn't consistent with the damage to TP's car.

Our investigator didn't recommend that this complaint should be upheld. He thought that based on the evidence provided to Markerstudy it was reasonable for it to accept TP's claim. Mr S responded to say, in summary, that:

- from the video and photos he had supplied of the accident site, he thought it was difficult to see how the witness could have seen the accident as described, and recorded the particulars of Mr S's car as it drove off without stopping;
- from the description of the accident his car would have to have suffered front nearside corner damage, but the photos he had supplied of his car showed there was no such damage; and
- he strongly believed the registration of his car had been cloned, as they had recently received speeding tickets for it while the car was in their possession.

### **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.

It isn't our role to decide definitively what happened in this incident – only the courts can do that – but whether in reaching its conclusions Markerstudy acted fairly and reasonably, and in accordance with the policy terms.

Mr S's policy contained the following term in its general conditions:

*"E We are entitled to take full control of any claim and we must be given whatever information and help we need. ....*

*We can prosecute or defend any claim in your name."*

We don't consider that such a term is inherently unfair. However, we will look to see that an insurer exercises it fairly and reasonably.

When Mr S disputed that his car was involved in the incident, Markerstudy did take steps to investigate. From the damage to the two cars it thought they could have collided. And it was satisfied that the witness was independent and acceptable. So it thought it would be unable to defend the claim in court.

Mrs S has sought to cast doubt on the incident as described by the witness; but I've seen nothing to suggest the witness wasn't independent and impartial.

He has also suggested that a cloned car may have been responsible. But if a cloned car was responsible, I would have expected Mr S to produce evidence of the actual whereabouts of his car at the time the incident occurred; no such evidence has been offered.

All in all, I don't think Markerstudy acted unreasonably in coming to the conclusion that, on the evidence available, it wouldn't be able to defend the claim in court. I note it settled the claim "without prejudice" which left it open to Mr S to institute his own proceedings against TP if he wishes to do so.

### **My final decision**

My decision is that I don't uphold this complaint, and make no order against Markerstudy Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 November 2020.

Lennox Towers  
**Ombudsman**