

The complaint

Mrs G complains that Markerstudy Insurance Company Limited should pay her claim on a motor insurance policy.

What happened

The subject matter of this complaint is a sports utility vehicle first registered in 2018. In mid-October 2019, Mrs G's husband acquired it on finance. He agreed to pay about £1,100.00 per month for it.

For the year from 17 October 2019, Mrs G insured the car through a broker. Markerstudy was the insurer responsible for dealing with claims. Mrs G gave her address and postcode as those of her mother's home.

Mrs G reported that someone had stolen the car on 14 October 2020 from outside a cottage in a neighbouring postcode rented by her husband and her.

In early November 2020, Markerstudy said that – when she took out the policy - Mrs G had made a careless misrepresentation by failing to disclose that she had dual addresses. It said that, under Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"), her policy was 'null and void' from the start. It returned the premium she had paid.

In mid-November 2020, Mrs G complained to Markerstudy that it should pay her claim. By a letter dated early January 2021, Markerstudy told Mrs G she had the right to bring her complaint to us. Mrs G brought her complaint to us in mid-January. In late January, Markerstudy wrote a final response turning down the complaint.

our investigators' opinions

Our first investigator recommended that the complaint should be upheld. He thought that Markerstudy had acted unfairly and unreasonably. He said Mrs G had been pregnant during this ordeal as well as having to pay £1,103.00 per calendar month since her vehicle was stolen. He recommended that Markerstudy should:

1. reverse the decision of voiding Mrs G's policy; and
2. settle the claim brought forward by Mrs G; and
3. pay Mrs G the market value of the insured vehicle as at 14 October 2020; and
4. compensate £150.00 for the trouble and upset caused to Mrs G.

Our second investigator recommended that the complaint should be upheld. He didn't think that Markerstudy treated Mrs G fairly when it null and voided her policy. He thought Markerstudy had caused Mrs G distress and inconvenience. He recommended that Markerstudy should:

1. reinstate the policy; and
2. settle Mrs G's claim in line with the policy terms and conditions; and
3. if a cash settlement is made then add 8% simple interest from the date the claim was made until it's settled; and
4. compensate Mrs G with £150.00 for distress and inconvenience.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs G and to Markerstudy on 26 October 2021. I summarise my findings:

Mrs G had changed her address and where the car was normally kept overnight.

Markerstudy would've cancelled the policy if Mrs G had told it she was living at that address, even if she still lived at her mother's address some of the time.

The policy had a "vehicle kept off road" endorsement.

Markerstudy had said it had overturned the voidance of the policy.

I didn't consider that Markerstudy treated Mrs G unfairly by declining her claim.

Subject to any further information from Mrs G or from Markerstudy, my provisional decision was that I didn't uphold this complaint. I didn't intend to direct Markerstudy Insurance Company Limited to do any more in response to this complaint.

Mrs G disagreed with the provisional decision. She says, in summary, that:

- She and her husband rented the cottage on 13 January 2020. Her name was only added to provide further financial guarantee to the landlord/estate agent that her husband and she could meet the monthly rental payments.
- Her husband uses the cottage for respite away from her home living with her mother. The landlord is aware of this.
- In January 2020, the landlord notified the council in error with both her and her husband's details, which is why the council tax and electoral details for her may have updated in May 2020 after the end of the financial year and unknown to her.
- Her credit reference agency has advised her to attach her full report generated on 8 November 2021 to provide proof that her home address is as she has stated.
- Her credit file shows that she is unregistered for electoral registration. Markerstudy is incorrect that she is on the electoral register at the rental property.
- She and her mother share the same address and are joint owners of that property.
- Her driver's licence shows her home address as her mother's.
- There was no mid-term change of her address or living arrangements.

- There was no change of garaging facilities or where the car was normally kept overnight as this was kept on her drive when she was at her home.
- Markerstudy hasn't passed on to her or the broker any communication with regards to it overturning the voidance on the policy. As a result of this, she has incurred extortionate premiums and fees when obtaining new car insurance.
- The policy endorsement about off-road parking only applied when she was at home overnight.
- On 13 October 2020, she was visiting her husband at the rental accommodation when someone stole her vehicle outside the property.
- The financial burden of the decision not to uphold her claim has caused both mental and emotional distress, both during her full pregnancy term and whilst suffering post-natal depression.
- The finance company has sent her a notice to settle the balance of approx. £52,000.00 for the stolen vehicle.
- In response to our request, she has sent us the council tax bills for the cottage. These are in the names of her and her husband. This has not been changed as the landlord had informed the council and she was under the impression that this would need to remain the same as per the contact details listed on the rental agreement whilst under the rental contract.
- In response to our request, she no longer has the council tax bills for her and her mother's home. The council tax is in her mother's name and always has been since they purchased their property (over 30 years+ ago). The division of the utility bills through different members of the household should not hold any bearing on the validity of her insurance policy as her home residence is where the car was normally parked.
- She finds it decidedly inconvenient that whilst their circumstances and living set-up is not necessarily the norm, Markerstudy are trying to find a grey area not to pay out on a claim, when she has ensured that everything was in place accurately and her vehicle was with a valid insurance at time of theft.

Markerstudy hasn't responded to the provisional 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.

From the telephone recording, I find that, when she took out the policy in 2019, Markerstudy asked Mrs G her address. Markerstudy didn't ask Mrs G whether she had any other address. Mrs G gave her mother's address. And there's not enough evidence that Mrs G had any other address at that time.

So I find that the information she gave was correct. There was no misrepresentation (or careless misrepresentation or qualifying misrepresentation) about her address at the start of the policy.

Mrs G's husband was an additional driver on the policy.

The policy had a "vehicle kept off road" endorsement. I accept that the endorsement only applied to exclude a theft claim when the car was parked overnight at (or near) Mrs G's home but not off the road.

Markerstudy's policy terms included the following:

"Notification of changes

To keep your insurance up to date please notify us straight away via your insurance intermediary about changes which affect your cover.

Some examples are:

...

- A change of postal address.*
- A change of garaging facilities and/or where the insured vehicle is normally kept overnight. ...*

This is not a full list and if you are in any doubt you should advise your insurance intermediary for your own protection.

If the information provided by you is not complete or accurate:

- we may cancel your policy and refuse to pay any claim ..."*

In addition, CIDRA obliged Mrs G to take reasonable care to avoid misrepresentation not only at the start of the policy but also on any variation.

In any event, I would expect a policyholder to notify her insurer of a mid-term change of address.

Mrs G and her husband jointly took a tenancy of the cottage from 13 January 2020. I've considered Mrs G's explanation that this was as a home for her husband, to give him respite from living with Mrs G's mother.

Markerstudy has accepted that Mrs G's driving licence, bank statements and mobile phone bill all bore her mother's address. And I accept that Mrs G and her mother jointly owned her mother's home.

I accept the landlord's statement that he contacted the council. And I accept that the recent credit report shows no connection between Mrs G and the cottage.

But the tenancy was in joint names. And, from its file, Markerstudy has shown that from May 2020, both Mr and Mrs G were registered on the electoral roll at the cottage. Also, in October 2020, Mrs G and the vehicle were at the cottage on the weeknight when someone stole the vehicle.

And from January 2020, both Mr and Mrs G were being charged council tax for the cottage. And the council tax bill shows that this continued long after Mrs G discovered what she says was an error. Mrs G hasn't shown us that she was being charged council tax on her mother's home. I don't regard the council tax evidence as a matter of division of utility bills between family members. Rather I regard it as strong evidence that the cottage was Mrs G's main residence.

So I find that Mrs G had – in about January 2020 - changed the address where she lived and where the car was normally kept overnight.

I accept Markerstudy's evidence that the cottage was in a higher-risk postcode. I accept that Markerstudy would've cancelled the policy if Mrs G had told it she was living at that address,

even if she still lived at her mother's address some of the time.

Mrs G can take it from us that Markerstudy has overturned the voidance of the policy. She may show this decision to her past, present or future insurers as evidence of that.

I accept that Markerstudy's decision not to pay the claim has had serious financial and personal consequences for Mrs G. However, as she'd changed her address without telling Markerstudy, I don't consider that it treated Mrs G unfairly by declining her claim. I don't find it fair and reasonable to direct Markerstudy to pay the claim or to pay compensation to Mrs G or to do anything more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Markerstudy Insurance Company Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 3 January 2022.

Christopher Gilbert

Ombudsman