

The complaint

Mr D complains that Markerstudy Insurance Company Limited failed to deal with his claim in a reasonable time frame which resulted in a fault claim being recorded against him.

What happened

Mr D's car was hit by another vehicle on 19 October 2018 whilst it was parked outside his house. A member of the public said he witnessed the accident and provided the number plate of the vehicle which had hit Mr D's car as well as their contact details. Mr D wasn't home, so the witness left this note with Mr D's neighbour.

Mr D told Markerstudy he wanted to make a claim for the damage to his vehicle in October 2018. The claim was originally dealt with by a claims handling company who I'll call C.

C wrote to the witness on 22 January 2019 to ask for him to complete a witness statement. He returned this a week later. The third-party driver denied involvement. On 17 May 2019 C referred the matter to Markerstudy to deal with.

Markerstudy received a copy of the witness' statement from C on 22 May 2019. It forwarded this to the insurers of the vehicle which the witness had said struck Mr D's car. The third-party's insurers responded on 12 September 2019 saying the owner of the vehicle denied he had struck another vehicle and his vehicle showed evidence of no damage.

On 8 October 2019 Mr D complained to Markerstudy about the lack of progress on his claim. On 15 October 2019, Markerstudy's solicitors said they wouldn't take on trying to establish if the third party was responsible for the damage to Mr D's vehicle due to lack of detail in the witness statement. At this point, Markerstudy contacted C to ask it to get back in touch with the witness. No further action was taken by Markerstudy.

Mr D referred a complaint (separate to this one) to our service in late 2020 saying that evidence had been overlooked and there had been delays. The claim had been settled and Mr D's car repaired, but it had been recorded as a fault claim against him. Our investigator agreed there had been delays and recommended compensation for this and Markerstudy agreed to look at the claim again.

Markerstudy contacted its solicitors again on 24 December 2020. This time it provided a copy of the note the witness had left with Mr D's neighbour. It asked if the solicitors would reconsider taking on the case. The solicitors said they would try to contact the witness to confirm if they would attend court. The solicitors were unable to contact the witness so advised that they would abandon any attempt at recovering Markerstudy's outlay meaning it would remain recorded as a fault claim against Mr D.

On 13 July 2021, Markerstudy wrote to Mr D saying it had been unable to contact the witness for further information. Because of this, its solicitors didn't think that they would be able to reclaim its costs. This meant that it was recorded as a 'fault' claim against the policy. Mr D was unhappy with this and referred a new complaint to us.

One of our Investigator's looked into this new complaint. She thought the complaint should be upheld. She thought Mr D's claim had been prejudiced by Markerstudy not contacting the witness sooner. She said it was fair for Markerstudy to change the claim to be recorded as Mr D not being at fault. She also said Markerstudy should refund the additional premiums Mr D had been charged as a result of having a fault claim recorded against him, and that Markerstudy should pay Mr D £200 compensation for the distress and inconvenience this matter had caused.

Mr D accepted this, but Markerstudy did not. It asked for an Ombudsman to review the complaint. So it's been passed to me to make a final 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.

Having done so, I agree with our investigator that Mr D's complaint should be upheld for the same reasons. I'll explain why.

Following the vehicle hitting Mr D's car, a member of the public had provided his details to Mr D's neighbour saying he saw the incident. To me, this indicates a willingness to assist.

C sent a questionnaire to the witness and this was promptly returned. I've looked at the witness questionnaire. Markerstudy has said it doesn't think any claim would have been successful because of the lack of detail regarding the driver. I accept the witness statement may not have been strong at this stage. But the questionnaire was completed and all of the questions were answered. Given that the witness had offered his details to the Mr D following the accident and then said he'd be willing to help further and go as far as attending court, it would seem to me that the sensible thing here, if Markerstudy felt that the evidence or information was lacking detail, would have been to contact the witness for further details.

Markerstudy received the witness statement in May 2019. It was referred to Markerstudy's solicitors who said they wouldn't take on recovery due to lack of detail in the witness statement. At this point, rather than the solicitors or Markerstudy trying to contact the witness, Markerstudy contacted C to ask it to get back in touch with the witness.

We have no evidence that C did try to contact the witness at this time. Based on this, I think it's fair to assume that C didn't try to contact the witness straight away in October 2019 when asked to do so. I also think it's likely that if this had been done promptly the witness would have responded, given his previous willingness to assist. However, I can't see that the solicitors took any action to contact the witness until around January 2021 - 20 months later.

I understand that at this point the witness didn't respond further and that Markerstudy is no longer able to get a response from the witness, but this is hardly surprising given that it's been over three years since the accident occurred. Had Markerstudy not caused such significant delays and if it had contacted the witness itself, rather than asking C to and not following up on it, I think it's likely it would have been able to gain further information. I say this given the willingness the witness had previously shown to help.

The key dispute in this case is what might have been the outcome to Markerstudy's attempt to recover its outlay on Mr D's claim had it contacted the witness sooner. Of course, I can't know what the outcome would have been for certain. So I have to make my decision based on the balance of probabilities – that is what I think would more likely than not have happened had Markerstudy contacted the witness sooner.

It's up to Markerstudy to provide evidence that their decision to ask C to contact the Witness and not follow this up, when they had no real incentive or reason to be further involved, didn't prejudice the chance of recovery. And I don't think it has done so here.

I'd also note that I don't agree with Markerstudy's assertion that the witness statement is particularly lacking in detail. It gives descriptions of what happened and a diagram which, in my opinion, shows the witness would have had a good view of the incident. And, as I've said, the completion of this shows a willingness to help. Taken with the note he'd left for Mr D and him indicating his willingness to go to court, I think this could have been very useful in trying to pursue recovery of Markerstudy's outlay.

In summary, I think it is more likely than not likely that Markerstudy has prejudiced Mr D's position, as I think the witness would have been likely to have been cooperative nearer the time of the incident, rather than years later when Markerstudy's solicitors did finally try to contact him.

Based on the above, had Markerstudy taken action sooner, I think it would have been able to take further action to establish what had occurred and, based on what the witness said in his statement, would have been able to establish that the other driver was at fault. This would then have likely enabled it to recover its outlay on Mr D's claim and mark the claim on his claims and policy records as 'non-fault' or 'bonus-allowed'.

Putting things right

In view of what I've said above, I think Markerstudy should mark the claim on Mr D's record and on any external databases it reports to as non-fault or bonus-allowed. It should also refund any excess Mr D was charged as a result of this claim.

Mr D should then contact his insurance broker regarding any policies he has or has had where the claim being marked as a fault claim could have affected the premium he was charged and see whether it will provide him, or arrange for the insurer to provide him, with an appropriate refund of an extra premium paid across the policies as a result of this. The broker has indicated to us it will do this. However, if the insurers refuse to provide a refund for the additional amounts Mr D has been charged, Mr D should provide evidence of the additional premium he's paid on all of his car insurance policies because of the claim being marked as fault to Markerstudy. Markerstudy should then pay this amount to Mr D.

Markerstudy should also pay Mr D £200 compensation for the distress and inconvenience this matter has caused him.

My final decision

I uphold this complaint and direct Markerstudy Insurance Company Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 August 2022.

Rob Deadman
Ombudsman