

The complaint

Mr G has complained about his car insurance being cancelled. The cancellation was put in effect by the broker that administers the policy. The policy is provided by the insurer Markerstudy Insurance Company Limited. The cancellation was done whilst the broker was trying to establish some details from Mr G in respect of the risk the insurer was offering cover for. As such this complaint has been set up, and considered, against Markerstudy, rather than the broker.

What happened

Mr G arranged cover via a broker with Markerstudy. He gave his occupation as a joiner. But part way through the policy year, in December 2020 Mr G made a claim to Markerstudy and it discovered that his job role had changed. It thought he was now working as a sales assistant. The broker later told Mr G it was asked by Markerstudy to find out more about this job such as the type of business Mr G was selling for. The broker though was unable to contact Mr G. And whilst Markerstudy advised the broker on 5 February 2021 that the policy could just be changed to reflect Mr G working as a sales assistant, on 9 February 2021 the broker cancelled the policy.

Mr G was unaware of the cancellation though. He continued to drive and at the end of March 2021 was involved in an accident. He called the broker to make a claim only to be told he had no cover. When the cancellation was explained to him, Mr G said his job involved delivery of goods, that the broker may have taken his occupation details down incorrectly during the December claim when he had likely said he was a driver's assistant. He said he thought his occupation if correctly recorded wouldn't have caused the policy to be cancelled – unlike if the record showed him as a sales assistant. He also felt that the broker had not made adequate attempts to contact him; either to validate his occupation details or communicate the cancellation.

The broker said it had needed to get in touch with Mr G. And had done all it could to do so – using the contact mobile number and email address registered on his file to send messages to. Although it acknowledged that its system hadn't properly updated a change Mr G had made to the mobile phone number to be used. Overall it noted that Mr G hadn't contacted it to advise of his change of occupation so it felt the policy had been cancelled fairly.

When Mr G complained to this service our investigator asked Markerstudy for comment. It confirmed that the occupation of 'driver's mate', which is how it would classify 'driver's assistant' is an acceptable occupation to it. In other words it wouldn't have affected Mr G's cover if he had called and updated his occupation detail. But Markerstudy also said it felt the broker had acted correctly to cancel the policy because the policy required Mr G to cooperate with investigations and he hadn't responded to its enquiries. So Markerstudy didn't think the position Mr G had found himself in, in March 2021, when he had an accident whilst uninsured, was due to any fault of its.

Mr G remained unhappy. His complaint was passed to me for consideration. I felt it should be upheld. So I issued a provisional decision to both parties explaining my views. My provisional findings were:

"Markerstudy being liable

I know that Mr G feels the broker failed him in a number of ways. But the main issue here is should the policy have been cancelled. And I understand that Markerstudy has accepted that it has ultimate liability for the cancellation the broker affected. That is even though the broker did not do this under any direct, specific instruction from it. I think that is correct. In short, Markerstudy is the insurer that bears the risk for the cover in place (which the broker administers). And if the broker is trying to gain detail about an aspect of the risk Mr G presents, so that Markerstudy can confirm or deny that is a risk which is acceptable to it – then anything done by the broker in that respect is done under the authority of Markerstudy. So if the broker acts unfairly or unreasonably in any way when carrying out that work, that failure lands at Markerstudy's door.

cancelling the cover

Markerstudy has pointed out that it never asked for the policy to be cancelled. The risk Mr G presented as either a joiner, sales assistant or driver's mate, was acceptable to it. I also see that whilst Markerstudy had asked the broker to enquire about the sales assistant role it had believed Mr G was carrying out, it had told the broker on 5 February to just amend the cover. That means that as of 5 February 2021 the broker no longer needed to establish contact with Mr G to discuss his job role. The broker then should have acted as directed by Markerstudy – but it did not do so. Rather the broker acted unreasonably by further trying to establish contact with Mr G to discuss the now moot occupation point on 8 February 2021. And, with this being unsuccessful, allowing the policy to cancel on 9 February (in line with notice given on 1 February 2021).

Now, strictly speaking, the policy does require Mr G to cooperate. And, strictly speaking, he did not do so. But I don't think I need to get into why Mr G did not respond to the contact attempts made by the broker. This service always expects insurers and their agents to use any right to cancel fairly and reasonably. I cannot reasonably say it's fair for a policy to be cancelled because contact was not made to discuss a point that was moot and had no bearing on the cover in place. Cancellation in this situation – where an established policy has undergone no material change in risk and where the initial need for further detail, which instigated the attempt to contact the policyholder in the first place, had fallen away – feels harsh. Following Markerstudy's acceptance on 5 February, it was no longer necessary for the broker to speak to Mr G. So his failure to contact it only amounted to a technicality. In the circumstances, I do not think it was fair or reasonable for Mr G's policy to be cancelled. I think it should be reinstated to the point of next renewal following the cancellation, or until Mr G found new cover (if he did), whichever is sooner. And if he found more cover, which was more expensive, and Mr G can show this, it will have to cover the extra cost too, plus interest on each increased premium payment until settlement is made.

accident whilst uninsured

I think the cancellation was reasonably communicated to Mr G. The mobile phone number aside, the broker did email Mr G. I know Mr G didn't receive those emails – although he says he has received others. But, regardless, 'but for' the broker's failure of cancelling the policy, Mr G would always have been on cover with Markerstudy when he had the accident in late March 2021. And I note that the fact of the claim from December 2020 meant that Mr G continued paying his policy premium for that policy year – he didn't receive any refund or cessation of monthly payments when the policy was cancelled. So I think it's fair and reasonable to require Markerstudy to assess Mr G's claim, along with, if relevant, any from the other drivers involved in the accident.

compensation

I think this has been a stressful time for Mr G. I appreciate that it was upsetting for Mr G to learn he had no policy in place when he called to report the March 2021 accident. I also understand he has felt worried about being liable for damage caused to the other car(s) involved. And he has also had a worry about the damage and cost of repair to his own car, which I understand is subject of a lease agreement and was unroadworthy after the accident and is believed to be damaged beyond repair. However, I think he has had access to another car and so been able to drive this car in the meantime. Having taken all that into account I think a sum of £500 is fair and reasonable compensation in the circumstances.”

Mr G said he accepted my findings. Markerstudy said it disagreed with them. In summary it said:

- It's been acknowledged that Mr G failed to contact the broker – so he was in breach of his agreement. As such it was entitled to cancel the policy to protect itself from an unknown risk remaining on cover.
- That is the correct legal position and my rationale for departing from that seems flawed.
- Its contact to the broker on 5 February did not discharge the broker from any need to contact Mr G – it was merely a chaser for the broker to update things once the broker had spoken to Mr G.
- That was necessary even for the job of sales assistant because Mr G had previously said he delivered goods and the car it covers couldn't be used for that purpose.
- In any event the letter is academic as it refers to Mr G's job as sales assistant, when he is/was actually a driver's assistant.
- It said it hadn't previously told this service that “*driver's mate/driver's assistant*” was an acceptable occupation to it.
- The occupation of “*driver's assistant*” is generally acceptable to it but not across all industries.
- It isn't known which industry Mr G was working in, so the broker, without speaking to Mr G, could only have entered “*unknown*” which would have been rejected.
- As it is acknowledged that Mr G was properly notified of the cancellation, he should have stopped using his car.
- It can't agree that compensation is appropriate here as it was Mr G's failure to contact the broker which caused the problems he faced.
- Regarding my suggested award for any increased premium Mr G has had to pay – it would like to know if this will only apply if Mr G took out replacement cover before the policy with it had been due to renew on 26 May 2021. And that it will only be liable for increased costs incurred to that date.

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've acknowledged that Mr G, technically, was in breach of his obligation to cooperate with the broker. That is not to say he knowingly failed to contact it. It is most likely, I think, that whilst the broker made reasonable attempts to contact Mr G, Mr G did not know it was doing so. And, as I've said, this service expects an insurer to use its right to cancel fairly and reasonably. I still don't think Markerstudy did that here.

The letter Markerstudy sent the broker directed the broker to update the policy and within a few days. That was it. I can't say that letter can reasonably be read as a chaser for the broker to contact Mr G and then update the policy if all other checks are ok. Whether or not

Markerstudy had concerns that as a sales assistant Mr G might be delivering goods – it told the broker very clearly to update the policy with the occupation change.

The only query in place that had caused the need for Mr G to be contacted – the occupation change to sales assistant – was, in my view, dismissed with that direction from Markerstudy. It doesn't matter that the title of sales assistant was actually incorrect anyway. Because Markerstudy didn't know it was incorrect. The reason for the broker to need to contact Mr G had fallen away – so his failure to respond to it was no more than a technicality because the contact was no longer needed. I remain of the view that the cancellation, based on such a technicality, was unfair and unreasonable.

Confirmation was given to this service that the role of “*driver's mate/driver's assistant*” was acceptable to Markerstudy. And Markerstudy has now shared some detail from its acceptance criteria which shows that is indeed the case. In my view, the detail shared does not support its assertion that the role of “*driver's mate*” is sometimes unacceptable to it. Nor that before the role can be considered, the industry in which work is undertaken has to be 'known' and acceptable to it. And I bear in mind that Markerstudy directed the broker to update the change to “*sales assistant*” without requiring the “*industry*” to be checked. Which brings me back to the key issue at the heart of this complaint – the need for contacting Mr G that had existed, had fallen away, so was it fair to cancel his policy when he still didn't make contact, even though that contact was no longer needed? As I've said, my view on that hasn't changed, I don't think it was.

As I've also said, I don't think Mr G knowingly used his car whilst being uninsured. If I felt he had acted recklessly by knowingly driving whilst uninsured then my view might be different. But I've seen nothing to make me think that is the case. Markerstudy failed Mr G and so it must, as closely as possible, put him back to where he would have been without that failure. That is being insured and at the price he had paid for cover. As is this service's approach it must also compensate him for the distress and inconvenience its failure caused him.

When commenting provisionally on the extra premium Mr G may have had to pay, I did not set a timeframe. Either for when he had to have arranged that cover by or until when Markerstudy should pay until. The net result of Markerstudy's failure will have meant that, as well as being more expensive, replacement cover will have been harder to find. So, regardless of when Mr G found that cover (assuming he did) and for how long it ran after the policy with Markerstudy had been due for renewal, if that policy cost him more, that extra cost stemmed from Markerstudy's failure. I think it's reasonable to say it should reimburse him any extra costs incurred for that cover (as I said, assuming cover was found).

Putting things right

I require Markerstudy to:

- Reinstate Mr G's policy to the point of next renewal following the unfair cancellation, or until Mr G found new cover (if he did), whichever is sooner.
- If new, more expensive cover was found, and Mr G can show this, reimburse his extra outlay, plus interest* on each increased premium payment until settlement is made.
- Consider his claim, and any claim from other drivers, for the accident in March 2021.
- Pay Mr G £500 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr G for HMRC purposes.

My final decision

I uphold this complaint. I require Markerstudy Insurance Company Limited to provide the redress set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 28 July 2022.

Fiona Robinson

Ombudsman