

## The complaint

Mr G has complained about the way Markerstudy Insurance Company Limited have handled his claim under his motor insurance policy and what they've paid in settlement of it.

## What happened

Mr G's campervan was damaged in an accident on 13 September 2021. He contacted Markerstudy to make a claim for this. He was told they didn't have an approved repairer within 40 miles of where he lived and they asked him to get an estimate for the van to be repaired. Mr G sent an estimate to Markerstudy on 17 September for £4,531.20, including VAT. This was based on the repairer using second-hand parts. Markerstudy made an offer to settle Mr G's claim by paying cash-in-lieu of repairs on 30 September. The amount offered was £3,776, based on the estimate Mr G's broker had sent, less VAT and the £100 policy excess. Markerstudy said they would pay the VAT once the repairs had been carried out.

Mr G's broker then emailed Markerstudy on 5 October to say the second-hand parts included in the first estimate were no longer available. They attached a revised estimate of £6,571.20, including VAT, based on the parts needed to repair Mr G's vehicle being imported from Japan. Markerstudy wouldn't increase their offer. They said there was a term in Mr G's policy which said they wouldn't pay the additional cost to import parts that weren't available in the geographical limits set out in it. Eventually, Mr G's broker sent a further estimate of £8,131.50, although the garage concerned had said there could be an issue getting the parts and they weren't sure on the cost of these.

Markerstudy still wouldn't increase their settlement offer and paid the amount they had offered, ie £3,776. Mr G made a complaint and kept what Markerstudy had paid in his bank account. Markerstudy issued a final response on 5 December 2021 maintaining their offer was fair. However, they did acknowledge they could have provided a slightly better level of service and paid £50 in compensation for distress and inconvenience.

Mr G complained to us and one of our investigators considered his complaint. She didn't think Markerstudy's approach was fair. She said Markerstudy should establish how much it would cost to import the parts required to repair Mr G's van. And then appoint a repairer to order these and repair it and cover the costs. She also said Markerstudy didn't do enough to help Mr G and that they should pay him an additional £200 in compensation for the distress and inconvenience he experienced as a result of this.

Mr G said he'd accept the investigator's suggested outcome if Markerstudy agreed to it. But, Markerstudy didn't agree and instead asked for an ombudsman's decision.

I issued a provisional decision on 4 May 2022 and I set out what I'd provisionally decided as follows:

*I don't think Markerstudy have handled Mr G's claim very well and treated him fairly. Under the terms of his policy Markerstudy does have the right to pay cash-in-lieu of repairs. But this amount should represent the actual cost to Mr G of having his van repaired and not leave him not being able to make this happen.*

*So, I don't think Markerstudy should have made a cash-in-lieu offer excluding VAT, when it was their choice to pay cash, as opposed to Mr G refusing to use one of their approved repairers. This left Mr G in a difficult position, with less money than he needed to get his van repaired. I appreciate Markerstudy said they would pay the VAT once the repairs had been completed, but I do not think it is fair for an insurer to put a consumer in the difficult position of having to find a large sum of money towards the cost of repairs and then wait to be reimbursed for this, when it is the insurer's choice to settle the claim by paying cash.*

*As well as including VAT, the cost of repairs should also include the cost of any parts. Normally parts would be available in the UK and their cost would reflect this. This is not the case with Mr G's van and there is a specific clause in his policy that means Markerstudy don't have to pay the additional cost of importing parts that aren't available in the UK. However, if Markerstudy were only required to pay the cost of the repairs if the parts were available in the UK, Mr G then wouldn't have enough money to get his van repaired.*

*I can appreciate the reason Markerstudy have this clause in the policy, ie to minimise what they pay to repair a vehicle they are insuring and avoid what can be a significant additional cost for imported parts. However, I think it is going to be difficult to import the parts and the cost of doing this is unclear. And this may leave Mr G being unable to have his van repaired.*

*In view of this, I think the fair and reasonable outcome to Mr G's complaint is for Markerstudy to write off Mr G's van and pay him the market value, that is what it would cost to replace it in the retail market with one of a similar make, model, specification and mileage. But Markerstudy can deduct the policy excess from this amount. I say this, because to all intents and purposes Mr G's van can't be economically repaired. Therefore, it should be treated as a write-off. This will then give Mr G the option to buy a replacement. This would be on the basis that Markerstudy assumes possession of the damaged van.*

*I appreciate Mr G has said he wants to retain the van. And I agree he should have the option to do this, although I am not sure how he intends to have it properly repaired. However, if he would like to keep it Markerstudy will be entitled to deduct whatever they would get for it if they sold it as salvage. Otherwise Markerstudy will be losing out, when under normal circumstances they would get to retain the damaged van as salvage and make whatever they can on this.*

*As I've already mentioned, Markerstudy needs to pay the market value of Mr G's van, less any policy excess applicable. So, I've tried my best to establish what the market value currently is. It has been very difficult to do this, as we have only been able to find 12 similar vans advertised for sale in the UK in the previous 12 months. And these have a wide range of mileages and conditions. I appreciate he has sent us many adverts for what he has said are similar vans for sale, but there is very little detail on the vans shown in these in terms of age, mileage and specification. So, I've worked out an average for the likely cost of replacing Mr G's van based on the adverts I've seen. And I think this is £5,800. I think this is a fair market value and Markerstudy should pay this less the £100 policy excess applicable.*

*I do appreciate Mr G thinks it will cost a lot more than £5,800 to replace his van, but the adverts I've seen do not suggest this is the case, especially taking into account the high mileage of his van. And whilst the adverts I've seen are from the last year, I think they are likely to reflect what it would have cost Mr G to replace his van at the time it was damaged. This is because the cost of second-hand vehicles has tended to go up in recent times due to the impact of the pandemic. Especially, with regards to less common ones. I also note that the policy schedule shows the value as £7,500.*

*As I've already explained, if Mr G wants to retain his van, then Markerstudy will need to*

*establish what it would get for the salvage and deduct this as well. It would be helpful if Markerstudy could let me know what this will be in response to this provisional decision, just in case it is needed. If Mr C would rather take what Markerstudy offered in cash, without the VAT being deducted, ie £4,531.20, he can do this instead. He'll then receive the balance above the amount he has already received and put in his bank account.*

*I've also considered the impact Markerstudy's poor handling of Mr G's claim has had on him. I agree with our investigator that Markerstudy seem to have said they would get one of their engineers involved. And later they said they would appoint an approved repairer. But neither of these things seems to have happened. And their unfair approach to the claim left Mr G with a van he had to patch up with gaffer tape so he could use it. And it seems in some periods, due to his situation, Mr G slept in it when it was damp due to damage caused in his accident. Therefore, although I do not fully understand the reasons why Mr G used the van to sleep in and what his other options were, he has clearly been through a very distressing time because of Markerstudy's unfair approach to his claim. Whilst it is hard to put a figure in terms of compensation on this, I think the £250 our investigator suggested is fair. This reflects the fact Mr G's van was still driveable.*

I gave both parties until 18 May to provide further comments or evidence.

Mr G has responded. He has said he thinks the market value I have suggested is 'way off', but he has no further comments to make. Markerstudy queried how I arrived at a market value of £5,800 for Mr G's vehicle and asked for evidence to support this. I sent Markerstudy the evidence I'd obtained of similar vehicles sold in the previous 12 months. It came back to say it would receive 18% of the market value under its salvage scheme if it took ownership of the damaged vehicle and that it would place a salvage category on it under the Association of British Insurer's *Salvage Code of S*. This means it would be classed as structurally damaged but repairable.

### **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 checked the market value of Mr G's campervan by reference to one of the industry guides and they've provided a list of likely selling costs for similar vehicles in the previous 12 months or so. Therefore, I'm satisfied that what I've suggested is fair.

I'm surprised by Markerstudy's suggestion that they would place a salvage marker on Mr G's van of S if it was deemed a total loss. I say this because they were quite willing to make a cash-in lieu offer with no mention of the vehicle being written-off. And the repair estimate doesn't suggest to me there is clear evidence of any structural damage. Although, I appreciate their engineer is better qualified than me to determine this.

This makes it more difficult for me to decide the fair and reasonable outcome to Mr G's complaint, as a total loss settlement based on a market value of £5,800, less his excess and an 18% deduction for salvage (£1,044) would be £4,656. This would mean Mr G could keep his vehicle, but it would have a salvage marker on it and he may well not have enough money to get it repaired. The salvage marker would also make getting it repaired and back on the road more difficult.

What is clear is that due to the difficulty getting parts it will be quite difficult to repair Mr G's vehicle. I also think the problems all started because Markerstudy offered an inappropriate cash-in-lieu settlement without VAT. And I think this has to be taken into account in determining what the fair and reasonable outcome to this complaint is.

The first two estimates Mr G provided were both for second-hand parts, although the second one allowed an amount for the cost of importing these. The final estimate Mr G provided seems to be based on new parts. But, the cost of repairs in this estimate of £8,131.01 is well above the market value of Mr G's vehicle. And the maximum payable under the policy would be the market value, less the policy excess.

I think whatever Markerstudy has to pay as a cash-in-lieu settlement needs to reflect the higher cost of new parts, but also reflect the fact that the maximum payable under Mr G's policy is the market value of his van at the time it was damaged, less his policy excess, ie £5,700. This is because an insurer – as a matter of good industry practice, would usually pay the cost of repairs based on the cost of new replacement parts, as opposed to second-hand ones.

So – having given this complaint a great deal of further consideration, I think if I make Markerstudy pay £5,700 as a cash-in-lieu settlement, ie without it being classed as a total loss, based on the final estimate Mr G provided for the repairs to his van, it would be fair and reasonable. I appreciate the final estimate provided suggests that technically Mr G's van is uneconomic to repair, but I think a settlement amount of £5,700 is fair and reasonable. This is because it reflects:

- the unusual nature of Mr G's vehicle;
- the problems he's had in this case due to Markerstudy's original approach;
- the fact Markerstudy didn't indicate there was any structural damage to his vehicle originally; and
- the fact it does seem his van can be safely repaired.

Markerstudy will also still need to pay more compensation for the distress and inconvenience caused by their poor handling, as I suggested in my provisional decision.

### **Putting things right**

In view of what I've said above, I think the fair and reasonable outcome to this complaint is for Markerstudy to pay Mr G a further £1,924 in settlement of Mr G's claim, ie £5,700 less the £3,776 they've already paid. Markerstudy must also pay Mr G a further £200 in compensation for distress and inconvenience.

### **My final decision**

For the reasons set out in my provisional decision and above, my final decision is to uphold Mr G's complaint and make Markerstudy Insurance Plc pay him what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 July 2022.

Robert Short  
**Ombudsman**