

The complaint

Miss H has complained about her car insurer Markerstudy Insurance Company Limited because it has refused her claim for her car which was damaged in an accident in 2015.

What happened

Miss H had an accident and Markerstudy was notified. But Miss H was making a claim for her losses, including her car, directly against the other driver. In 2016, following Miss H and her passengers appointing solicitors, Markerstudy decided it wanted to interview Miss H. Miss H spoke to an investigator appointed by Markerstudy but didn't arrange for an interview to take place. At this point Miss H had already signed court documents to enable her solicitor to issue proceedings – they detailed the car's pre-accident value as £4,530.00, claiming for this as a loss suffered by Miss H. Markerstudy wrote to Miss H in November 2016 and said that as she hadn't cooperated with it, it would not offer indemnity in respect of the incident.

In 2017, Markerstudy's solicitor (MS) spoke to Miss H. She offered to give a statement, but MS was also aware that Miss H had already given a statement to her solicitors. MS decided not to arrange to interview Miss H.

In 2018 Miss H's court claim was struck out. She told Markerstudy she wanted to make a claim under her policy for the car. Markerstudy subsequently wrote to Miss H stating that it was maintaining its decision from 2016 – that indemnity had been withdrawn because she had not cooperated. It said it wouldn't be reinstated.

Markerstudy later, in 2021, issued a final response to Miss H stating it wouldn't be accepting her claim, for the reasons stated in 2016. It also added two further reasons why it felt Miss H's court case, and it being struck out, had prejudiced its position. But, within further correspondence, these additional concerns were set-aside. Miss H complained to us.

Our Investigator felt Markerstudy hadn't shown that Miss H had prejudiced its position. She felt Miss H had acted reasonably when not cooperating with it. So she felt the complaint should be upheld with Markerstudy considering the claim and paying £150 compensation.

Markerstudy said its overall position had definitely been prejudiced because, with the court claim having been struck out, it was now prevented from seeking recovery from the other driver's insurer should any settlement under the policy be made. It also said Miss H had been aware of its need to obtain the statement.

The complaint came to me for an ombudsman's consideration. I also felt the complaint should be upheld. But I felt Markerstudy should be making a payment to Miss H for her car to settle things, rather than merely considering her claim for loss. And I also felt it should be paying her £500 compensation. My provisional findings were:

"I note Markerstudy's concerns about the court case. But I think it really moved away from those issues when it issued its further correspondence on this complaint to Miss H. In any event, for completeness, I don't think those concerns create a fair and reasonable reason for it to decline Miss H's claim. It knew of Miss H's court claim and was happy for it to progress

without its involvement. The court action failing and it ultimately not being able to take action of its own to recover a claim outlay, was a risk it took. The fact that risk didn't pay off and its position in respect of recovery is now prejudiced is not, in my view, Miss H's fault.

Clearly Markerstudy's main concern is that Miss H did not cooperate with it in 2016. It feels this has prejudiced its chance to validate the claim. And it is the case that, in 2016, Miss H did not cooperate with it. It is also the case that she should have done as her policy requires her to do so. I can understand why, in 2016, Markerstudy took the stance that it did. But I don't think that by the time the claim was made in 2018, following the court case being struck out, that was a fair and reasonable reason for Markerstudy to refuse indemnity.

MS became involved in late 2016, and in 2017 spoke to both Miss H and her solicitor. Markerstudy has shared content from MS's file with us and I accept that must remain confidential, meaning I can't comment too deeply on its content here. But I think it's fair to say that MS was satisfied the incident had been validated. I also think I can safely comment on the part of the notes that reflects the conversation MS had with Miss H, as Miss H was a party to that conversation. MS said Markerstudy "might" need a statement from her and asked if she'd be happy to provide one. Miss H's reply was "yes". So I think Miss H was prepared to cooperate and her reason for not having done so before was understood and accepted by MS. It was then decided though not to ask Miss H to make a statement, and whilst MS pursued other avenues, Miss H was never approached again with a view to furthering any need Markerstudy might have had for a statement.

In my view, that whole interaction in 2017 means that Markerstudy can't reasonably continue to rely on the 2016 activity and position reached. In 2017 the situation was re-set and Markerstudy had the opportunity to interview Miss H but didn't do so. In the circumstances here, I'm not persuaded that Miss H's failure to cooperate in 2016 means Markerstudy's position has ultimately been prejudiced. If any prejudice has occurred it seems to me that has most likely resulted from Markerstudy's own failures in 2017.

In any event, I'm also mindful that whilst Miss H's own court claim was struck out, a personal injury claim made by a passenger in Miss H's car did proceed. It was resolved without a hearing by the other driver's insurer making a settlement. And that occurred even after Miss H's claim had been struck out. So seemingly the other driver's insurer was satisfied that a genuine incident, causing loss to a passenger in Miss H's car had occurred.

Overall here I think Markerstudy has been unreasonable. Any policyholder always has the choice to utilise their insurance policy or take action themselves. Miss H shouldn't be penalised for the initial choice she made. Most policies, as this one does, requires the insurer to be notified, and Miss H did do that. She did make a mistake in 2016 – but she is not the insurance expert. I'm satisfied, given everything I've seen, that it would be unreasonable for that mistake to be held against her as a technical breach of the policy allowing Markerstudy to decline liability for the loss. Especially in light of its action in 2017 as discussed above. So I think Markerstudy should be settling the remainder of Miss H's losses for her car.

As part of the court claim an engineer's report was completed setting the pre-accident value of the vehicle at £4,530.00, with repairs estimated at £4,333.60. Markerstudy has seen a copy of this report. And £4,530.00 was the value set out in the court claim for the loss of the car. Miss H's solicitors later (following a complaint Miss H had made to the legal ombudsman) offered her settlement against this sum of £2,310.30. So that leaves her out of pocket for the loss of her car to the value of £2,219.70.

To that sum I think Markerstudy should add interest from 19 June 2018 – the date Miss H made her claim on the policy to Markerstudy. Often this service will require interest to be*

awarded back to the date of loss – but I think that would be unfair in this instance because Miss H chose to pursue an alternative route before asking Markerstudy to settle her claim. In this instance I think interest from the date of the claim to Markerstudy is fair and reasonable.

Miss H, to the point of Markerstudy's final response in 2021, had been without the outstanding settlement for her loss for two and a half years (from the point she made her claim on the policy). I've found that Markerstudy's refusal to deal with her claim when made in 2018 was unfair and unreasonable. I don't doubt Miss H suffered some distress and inconvenience following that. I think £500 compensation is fairly and reasonably due."

Markerstudy said it wanted to clarify that the Legal Ombudsman did not comment on the vehicle value or make any award in that respect. It also said it feels it should have the chance to validate the claim now, that is what it would have done if Miss H had cooperated with it – moving directly to settlement for the outstanding sum is unfair.

Miss H said she had complained to us about her losses, but we had only investigated that in relation to her car. She said she has other losses outstanding totalling £1,201.72 and she'd welcome an offer from Markerstudy to settle for these without having to raise further claims and complaints.

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 noted provisionally that Miss H had made a mistake in 2016 – that at that time she should have cooperated with Markerstudy's enquiries. But I think Markerstudy has then overlooked that I also said that she did cooperate with it in 2017 – but it failed to take advantage of that. In my view, it simply isn't fair to start this all over again now in 2022, with Markerstudy seeking to validate a six-year old incident, that it could have looked into in more detail five years ago and which it unreasonably declined a claim for, four years ago. Especially not given that MS and the other driver's insurer, as I referenced provisionally, were satisfied with the genuine nature of this loss. My view that Markerstudy should now pay the remaining vehicle value to Miss H has not changed.

I'm aware, and was when I issued my provisional decision, that the Legal Ombudsman had not made a finding about Miss H's vehicle value. But it was following her complaint to the Legal Ombudsman that her solicitors (subject of that complaint) made a settlement offer to her in respect of the vehicle's value. And it was following receipt of that offer that Miss H complained to this service about her remaining outstanding loss for the car. She did not complain about any other financial loss. I have considered and made findings about, the complaint as made to us. If Markerstudy and Miss H now wish to negotiate regarding anything else outstanding they are free to do so. And if Miss H remains unhappy with Markerstudy's replies she can make a further complaint.

Putting things right

I require Markerstudy to pay Miss H:

- £2,219.70 in settlement of her claim for her car, plus interest* from 19 June 2018 until settlement is made.
- £500 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires Markerstudy to take off tax from this interest. If asked, it must give Miss H a certificate showing how much tax it's taken off.

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 Miss H to accept or reject my decision before 3 November 2022.

Fiona Robinson

Ombudsman