

The complaint

Mr H has complained about his car insurer Markerstudy Insurance Company Limited in relation to a claim he made when his classic car was stolen.

What happened

Mr H's car was stolen in 2018 and Markerstudy began considering the claim. But it had concerns, undertook various investigations and asked Mr H for various details. In 2021 the claim remained unsettled and Mr H wasn't happy. He complained to Markerstudy and it issued a final response to him on 29 March 2021 addressing his concerns at that time.

Following the 2021 letter the claim remained outstanding. By 2022 that had not changed and Mr H was still unhappy. He complained to Markerstudy again and he also complained to this service. Markerstudy, in final responses dated April and September 2022, acknowledged that some delay had occurred and offered a total of £400 compensation (£250 and £150). In the September 2022 response Markerstudy also said it would then expedite the claim settlement. To us Mr H said the service from Markerstudy had been terrible and that he had just been given excuse after excuse for the claim not progressing. He noted that the value of his car had increased markedly in the years since it was stolen. Mr H told us he was worried that any claim settlement would only focus on the car's value at the time of the loss – which would leave him with a financial loss four years on. He also felt that £400 compensation for the upset and worry caused by four years of Markerstudy's delays was insufficient. He said that he wanted Markerstudy to pay him at least £50,000 to replace his car (the value at the time of loss having been around £30,000). He confirmed later that the total he'd like to receive would be £60,000 to include compensation for his upset and legal fees.

On 21 October 2022, Markerstudy told Mr H it thought the market value for his car was £30,000, so it would pay him that in settlement of his claim less his £200 excess. Mr H said he would accept that as an interim payment only. The funds were transferred to Mr H's bank account the following day.

Our Investigator told Mr H that he couldn't consider the merits of what had happened before 29 March 2021. Subsequently, I, issued a decision confirming that this service cannot consider a complaint about what Markerstudy did and how it handled the claim in the period after the loss up until 29 March 2021.

In respect of the period that we can consider, that after 29 March 2021, our Investigator felt that Markerstudy had caused some delays. He said Markerstudy should pay a further £200 compensation.

Markerstudy said it accepted the findings. Although it subsequently also confirmed it would pay interest on the claim settlement from December 2021. It said that was the date when its enquiries had ended and it had decided to settle the claim, which it then didn't do until October 2022. It said that would equate to an additional payment to Mr H, after tax of around £1,600.

Mr H, represented by his solicitor, said the compensation award was derisory. Not least as it didn't even equate to four years' worth of interest applied to the delayed claim settlement. And he didn't think we'd properly considered the evidence about the car's likely current market value which had been provided. Mr H asked that we review the complaint and it was passed to me for an Ombudsman's consideration.

I was minded to uphold the complaint. I felt more interest was due than what Markerstudy had offered, and more compensation. But I didn't think anything should be paid regarding Mr H's contention that the car had appreciated in value, or in respect of his solicitor's fees. So I issued a provisional decision to share my views with both parties. My provisional findings were:

Settlement

Clearly, by the point Markerstudy was continuing its enquiries in the last few days of March 2021, the claim had already been going on for a very long time – the car having been stolen at the beginning of August 2018. There had also been poor communication. And Mr H was understandably frustrated by all of that. So he started this period in a disgruntled state but, from what he has said, hopeful that things would improve and soon resolve with the claim being settled.

From reviewing Markerstudy's file from the end of March 2021 onwards, I can see that it had some significant concerns about the claim. I can understand that its concerns meant that enquiries had to be on-going, and even at this point in the claim, that there were still some investigations to be undertaken. I accept that investigations aren't always compact – it is sometimes the case that one thread pulled, releases another that then has to be followed.

It is also the case that during this type of investigation there's often not much an insurer can provide to its policyholder by way of updates. That is because the nature of the investigations are not something that can usually be shared. But that doesn't mean an insurer should just not speak to its policyholder – or that it's reasonable to not call them when promised. And Markerstudy's file does show that it did not communicate well with Mr H at this time – that Mr H was promised call-backs that weren't returned and that he was really unhappy as he felt generally ignored.

Markerstudy's file also shows that its investigation team were satisfied in June 2021 that all worthwhile enquiries had been exhausted. Markerstudy's notes from that time state that it should have handled the investigations, in the early stages of the claim, better. Seemingly its enquiries being on-going after March 2021 was because of those failures in the early stages. And that as of June 2021 the available evidence Markerstudy held and could reasonably expect to be able to attain, didn't suggest this was anything other than a genuine claim. However, despite recommendations (internally) made to move the claim to settlement at that time, Markerstudy didn't do so. It's recently told us that its enquiries were only completed in December 2021. And it was, of course, then October 2022, when it finally made a settlement for the claim. But I haven't seen anything that makes me think that any delay in settlement beyond June 2021 was in any way reasonable.

So it does seem to me that the claim took far longer than it should have done to move to settlement. And whilst the policy only requires Markerstudy to pay Mr H for the market value as at the time of the loss – it can't possibly be fair, delays or not, for him to only receive that money four years later. Markerstudy was entitled to investigate the claim. But, here, its choice has impacted Mr H as it resulted in it not settling the claim for four years. I can't see any good reason why interest – generally applied on claim settlements from the date of loss – shouldn't be applied here. Currently Markerstudy's settlement is £29,800 (£30,000 less the £200 excess). I think it should add interest* to that sum from the date of loss in August 2018 until 22 October 2022 when settlement was paid.*

Compensation for distress and inconvenience

I also think that the period of March 2021 to October 2022 was particularly difficult and stressful for Mr H. He had been waiting on his claim to be settled for a very long time and that took its toll on him during this period. A further period of waiting. And during which Markerstudy continued to fail to keep in reasonable contact with him. Further, when settlement was made, Markerstudy did so without awarding any interest at all – yet even by its own account, it had unreasonably failed to settle the claim for ten months at least between December 2021 and October 2022. Taking everything into account, I think Markerstudy should pay Mr H a total of £750 compensation. It has paid £400 already so it will now need to pay a further £350.

Appreciation of value since the point of loss

Mr H has said that the car's value has appreciated so much in the years since it was stolen that it will cost in the region of £50,000 to replace. So he thinks that even a payment of interest on the market value sum from the time of loss won't enable him to replace his car. I've considered this but I don't think Mr H has sufficiently evidenced that this is most likely the case.*

Mr H's car is a classic – so the usual trade guides often held by this service to be reliable indicators of market value, can't assist here. They simply don't provide details for cars of the age of Mr H's. Whilst we often find that adverts for cars for sale aren't wholly reliable indicators of a car's value, in a situation like this, they are often all that is available to make that determination. That is the case here and I've considered the evidence Mr H has provided in this respect.

One of the difficulties with sale adverts is that they only reflect the asking price for a car. They don't reflect what it is sold for. And it is the sale price achieved which is the real indicator of what the car is worth – or what someone like Mr H might have to pay to replace their car. But when comparing adverts, the details of the cars for sale also have to be considered. Mr H's policy entitles him to the cost of replacing his car with one similar to that he had. And that remains even with the settlement having been outstanding for so long. So, even if some allowance is given against the asking price for what the car might sell for, any adverts presented can only be seen to show what the insured car might likely cost to replace if the car(s) for sale is (are) similar. Things like mileage and age of a car, especially a classic where cars built in certain years might hold a higher, or lower, prestige value for enthusiasts, can have a significant effect on the sale price set for a car. So, where adverts have been provided with a view to showing what Mr H will have to pay for a replacement car, for me to be persuaded that is the case, I'd have to be satisfied that the advertised vehicles were similar to Mr H's. And I'm not.

Mr H's car was from 1973, and at the time of loss it reportedly had around 70,000 miles on the clock. Of the adverts Mr H has provided, only one is a car from 1973. That car is advertised for sale at £41,603, only around £11,000 more than Markerstudy said Mr H's car was worth in 2018. But it was showing as only having done around 11,000 miles. It seems likely to me that a car of that age, with such little mileage, would naturally attract a higher price than a similar car that had been used much more – around 60,000 miles more. Other adverts Mr H has provided are for cars from different years, so I can't be satisfied they're reasonably similar to Mr H's 1973 car. One is a car for sale on an internet trading website. The seller is asking nearly £70,000 for their car. Which is clearly much more than Markerstudy paid Mr H, and is even more than Mr H has asked for. That might, on the face of it, suggest that Mr H's request of a sum part way between the two is reasonable. However, the car in question is, again, of a different year to Mr H's, and the advert doesn't detail the car's mileage. So I'm not persuaded that this advert does show that Mr H will likely have to pay more, much more, than £30,000 plus interest from the date of loss, to replace*

his car with one that is reasonably similar. As such, having reviewed all of the evidence provided, I'm not minded to require Markerstudy to pay more (beyond the interest I've said I'm intending to award) to Mr H to compensate him for its delayed claim settlement.

Legal costs incurred

I know Mr H has also incurred solicitor's costs during this claim and complaint. I also know he thinks that Markerstudy should reimburse his outlay in this respect – he feels that its delays and poor claim handling left him with no choice but to appoint a solicitor. However, when Mr H appointed his solicitor, he had already made the complaint to this service. And as a free, impartial dispute resolution service, set up as an alternative to the courts, we don't expect or ask complainants, using our service, to be represented by solicitors. As such, this service doesn't usually make awards to cover solicitor's costs incurred by the complainant.

I know the claim was still on-going at the point Mr H came to us and, as I've said above, I understand that Mr H was frustrated with everything. I also accept he likely felt that he wasn't getting anywhere – that in early 2022 he was in the same position he had been a year before. But his option then, if he hadn't wanted to incur costs, was to let us deal with his complaint. Instead though he appointed a solicitor and it was the solicitor that then brought the complaint back to us a few months later – around six months after Mr H had initially contacted us and four months from Markerstudy's April 2022 final response letter. In the circumstances here, I haven't seen any good reason to make me think that an exception to our general approach of not awarding legal costs should fairly and reasonably be made."

Markerstudy said it accepted my findings.

Mr H, via his solicitor said it seemed likely he would not be able to persuade me to change my view. He feels our claims process is biased towards insurers.

Mr H said that, regarding the vehicle's value, at least he has made some effort to evidence this. Whereas Markerstudy hasn't produced any evidence to counter his submission. He feels that is because it knows the Ombudsman will find in its favour.

Mr H said it is still a concern for him that I could not look at what had happened before March 2021. But he is pleased that compensation for the period after that has been found to be due.

Regarding his solicitor's fees, Mr H said that regardless of his complaint to us, the claim with Markerstudy was not progressing. And did not do so until after he appointed his solicitor. He believes that can't just be coincidence – the claim settlement offer came within a few months of the appointment and would not have happened otherwise.

Mr H queried the tax requirement mentioned in my provisional award. He said there is no deduction in court proceedings for tax.

In respect of my provisional awards, Mr H asked that I set a time period of 21 days for Markerstudy to pay them, and direct that interest is paid if the payments are not made within that period. He is worried that Markerstudy will continue to delay matters and he wants to put this behind him.

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 understand Mr H's concerns but can assure him that if I saw evidence that gave me cause to change my view, I would do so. As Mr H will note from my provisional decision, I have been critical with Markerstudy where I have felt such is warranted, also making awards against it.

I appreciate that Markerstudy didn't provide evidence to counter Mr H's submissions on the appreciated value of his car. But that didn't mean I could just accept what Mr H was saying the appreciated value was, not without assessing the evidence provided to see if it supported that contention. And my provisional findings show my detailed assessment of that evidence, and explain why I did not find it was persuasive evidence of the value put forward.

My decision about the period I can consider the complaint about remains. I note Mr H is pleased with the compensation I have awarded for the period subject of this decision.

The complaint Mr H made to us was about the delayed claim. I appreciate that Mr H feels that the appointment of his solicitor was crucial in achieving resolution of the claim. But, that appointment, which naturally entailed a cost, was a choice Mr H made. He could have continued his complaint via the Financial Ombudsman Service without entailing a cost. I've not seen anything which makes me think it would be fair and reasonable for me to award Mr H reimbursement of his solicitor's costs.

My note on tax in the award section of my provisional decision should have read that HMRC may require tax to be paid. I've amended that paragraph before including it below in this final decision.

I can understand why Mr H is worried that Markerstudy might cause a further delay. I don't think it will at this stage. But it is the case that this service does sometimes apply a caveat to awards regarding when they should be paid and what should happen, including the application of interest, if payment is delayed. I think it's fair for me to add that here, not least as a period of 21 days – from the date Markerstudy knows it must pay the sums – is a reasonable length of time for the payments stipulated to be calculated and paid.

Putting things right

I require Markerstudy to pay Mr H:

- An amount equivalent to interest* on the sum of £29,800, applied from the date of loss in August 2018 until 22 October 2022 when settlement was made**.
- A further £350 compensation for upset, where total compensation is £750 but £400 of that has already been paid**.

*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 may require Markerstudy to take off tax from this interest. If asked, it must give Mr H a certificate showing how much tax it's taken off.

**I require Markerstudy to pay these awards within 21 days of the date on which we tell it that Mr H has accepted my final decision. If it pays later than this, it must also pay interest* on the sums due from the date of my final decision to the date of payment.

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 H to accept or reject my decision before 17 April 2023.

Fiona Robinson
Ombudsman