

The complaint

Ms T complains about how Markerstudy Insurance Company Limited has handled a claim under her motorhome insurance policy.

Markerstudy is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agent. As Markerstudy has accepted it is accountable for the actions of the agent, in my decision, any reference to Markerstudy includes the actions of the agent.

What happened

In August 2021, Ms T was involved in an incident with another vehicle. She says the other driver reversed into the front of her vehicle.

Ms T says there was no damage to either vehicle, so she didn't make a claim. However, shortly afterwards, Markerstudy informed her that the other driver's insurer had notified it of the incident and was alleging that Ms T was responsible for damage to their car.

Markerstudy asked Ms T to complete a report of the incident, which she did. Ms T also provided photographs she'd taken at the scene. Markerstudy thanked her for providing the images and told her it had sent her allegations to the third-party insurers.

In May 2022, Markerstudy offered to settle the other driver's claim on a 50/50 liability split basis. Ms T was unhappy with this, as she didn't believe she was responsible for the accident. So, she complained to Markerstudy.

Markerstudy said it had received allegations from the third party's insurer, stating that Ms T had gone into the rear of the other driver's vehicle. Markerstudy said that without evidence to support either version of events, the possible outcome would be to agree a 50/50 split liability. It said it couldn't use Ms T's passengers as witnesses as they weren't classed as independent.

Markerstudy apologised for the difficulties Ms T had contacting its claims team and sent her a cheque for £35 to compensate her for this.

Ms T remained unhappy, so she asked our service to consider her complaint.

I issued a provisional decision on 14 February 2023 where I explained why I intended to uphold Ms T's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I intend to uphold Ms T's complaint. I'll explain why.

I understand the claim is still open and liability is yet to be agreed between Markerstudy and the third-party insurer. To be clear, I've only considered events complained of that occurred prior to Markerstudy's final response letters of June and September 2022.

It's not my role, or the role of this service, to establish which party is responsible for an incident. What I've needed to decide is whether or not Markerstudy has acted fairly and reasonably and in line with the policy's terms and conditions.

The policy's terms and conditions say Markerstudy "shall be entitled to take over and conduct the defence or settlement of any claim or prosecute any claim in the name of any person covered by this insurance".

Similar provisions are found in most motor insurance policies, so I don't find this unusual. This means Markerstudy is entitled to decide whether to defend a claim or settle it. However, it also has an obligation to pay due regard to the interests of its customers and treat them fairly. So, I've also thought about whether its acted fairly towards Ms T.

I can see that Markerstudy sent its allegation that the third party was responsible for the accident to their insurer in August 2021. However, in April 2022, the third party's insurer said it maintained its position that Ms T was at fault for the accident. It said the third party was stopped when Ms T went into the rear of their vehicle. It asked Markerstudy if it had any evidence to support Ms T's claim that the third party had reversed into her vehicle.

In response, Markerstudy suggested to the third-party insurer that a 50/50 settlement would be appropriate "in the absence of evidence that supports either parties version of events".

Ms T says she has provided evidence to support her version of events. She's referred to the photographs she'd taken at the scene, witnesses and a comment she says the other driver made to her at the time.

Markerstudy says it can't use the witnesses as they are not classed as independent. I understand the witnesses are Ms T's son and friends that were passengers in her vehicle. So, I don't think it's unreasonable for Markerstudy to have concluded that they weren't independent.

I also don't think it was unreasonable for Markerstudy to disregard what Ms T says the other driver said to her at the scene. She says he told her he'd only had his car for a short time and wasn't used to its silence due to it being electric. I don't think finding out how long the other driver had his car would prove this is what he said or that he'd admitted being responsible for the accident.

However, Markerstudy also appears to have disregarded the photographs Ms T sent of the two vehicles at the scene of the incident. It's told us that it hasn't shared these with the third-party insurer. I can see it's noted that the images are "no help as these are just of the vehicle at the scene". It's also told us that it doesn't have any evidence of damage to the third party's vehicle.

Markerstudy says it doesn't require the third party to send repairs evidence as it's a low amount. However, Ms T strongly disputes there being any damage to either vehicle and she's provided photographs to support this. It's possible that the damage isn't visible in the photographs. But, without knowing what the alleged damage is, I don't think it's reasonable for Markerstudy to have disregarded the images as being of "no help".

I'm not persuaded that Markerstudy carried out an adequate investigation of the circumstances of the incident, before suggesting the 50/50 liability split. I think it should have properly considered the photographic evidence Ms T provided. It might have shared this with the third-party insurer in dispute of the liability. It might also have requested evidence of the

damage to the other vehicle so it could see if this was consistent with what the photographs show.

Markerstudy has recently told us that it is still waiting for the third-party insurers to reply to its offer of a 50/50 settlement. So, I think it would be fair and reasonable for it to request further information to evidence the damage to the third party's vehicle, such as an engineer's report or proof of repairs. I think it should then reconsider its position on liability in light of the new information alongside the photographic evidence Ms T has provided.

When liability for an incident is in dispute, it's not unusual for claims to take many months or, in some cases, years to resolve. However, I've reviewed the timeline of events up until Markerstudy's final response letter of September 2022. And I think it could have been a bit more proactive in chasing the third-party insurer for a response and updating Ms T.

While the photographic evidence Ms T provided might not make a difference to the overall outcome of the claim, I think Markerstudy's decision to disregard it caused her to experience some unnecessary distress and inconvenience. So, I intend to award Ms T £250 compensation for the impact Markerstudy's actions have had on her. This is in addition to the £35 Markerstudy has already paid."

I set out what I intended to direct Markerstudy to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Markerstudy said it had reviewed the file again and had obtained comments from one of its senior engineers. The engineer had advised that a close up inspection of the images Ms T had provided showed some damage to both Ms T's car and the third-party vehicle.

Markerstudy said the images don't add any value to the consideration of liability, they simply support that an incident occurred. By asking for proof of repairs from the third party there would only be a discussion around the costs as it can't be determined who would be at fault. It said the case is still ongoing, and the outcome is always subject to change. It was still awaiting a response from the third party who previously maintained Ms T was at fault.

I let both parties know that in light of this new information, I no longer intended to direct Markerstudy to see further information regarding damage to the third-party vehicle and reconsider its position on liability. However, I still intended to award Ms T £250 for distress and inconvenience because I didn't think Markerstudy had communicated with her as clearly as it should have done. I also remained of the opinion that Markerstudy should have been more proactive in chasing the third-party insurer for a response and keeping Ms T up to date. I gave both parties the opportunity to provide further comments or information before I reached a final decision.

Ms T provided images of her vehicle which she said were taken before the accident to show that the damage Markerstudy had referred to was already there. We shared these with Markerstudy who said it would refer them to its engineer, but these didn't show the date the photographs were taken. We passed on some further screenshots Ms T provided, along with her explanation as to how the damage had occurred to her vehicle a year before she bought it.

Markerstudy said the screenshots didn't add any value for it to defend liability. Without independent witness or video evidence, it had no alternative but to continue to defend the case as much as possible.

Markerstudy also commented that it felt £250 for distress and inconvenience was excessive. It said Ms T wasn't claiming for damage and Markerstudy's involvement was simply to defend the third party allegations and avoid going to court and incurring the associated costs. It said the team that reviewed the images Ms T had sent in September 2021 found no evidence of a defence using the pictures so had commented that they added no value. It said it had sent several chasers to the third-party insurer through the correct channels. It couldn't threaten to take court action itself as it wasn't claiming for any damage, so it was awaiting the third-party insurer's response and next steps. It said it had explained to Ms T that as it stands there are allegations Markerstudy aims to defend, but the most likely outcome is 50/50.

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.

In my provisional decision, I said I intended to direct Markerstudy to seek further information regarding damage to the third-party vehicle and reconsider its position on liability in light of the photographic evidence Ms T has provided.

Further to this, Markerstudy obtained its engineer's comments on the photographs Ms T provided in September 2021. Ms T says the damage on her vehicle was already present at the time of the accident. However, Markerstudy has also pointed to damage to the other vehicle, which it says supports an incident having occurred. In light of this, I don't think it's necessary for Markerstudy to seek further information regarding damage to the third-party vehicle at this stage.

Whilst I've accepted this additional information from Markerstudy, I'm not persuaded to change my position regarding an award for distress and inconvenience.

I acknowledge what Markerstudy has said about being limited in what it's able to do to move things forward, given that the claim for damages is from the third party, rather than Ms T. But the timeline it's provided suggests there was a four month gap between November 2021 and March 2022, with no chasing or updates to Ms T. So, I think it could have done more here.

The terms of the policy allow Markerstudy to decide how to handle the claim. But it also needs to treat Ms T fairly. It's not disputed that there was contact between the two vehicles and I appreciate the difficulties of determining who was at fault.

Ms T is adamant that the third party was responsible for the accident and his claim that she caused damage to his vehicle was dishonest. She'd written "*his car no damage*" and "*my car no damage*" beneath the photographs to try to demonstrate this.

Markerstudy has pointed to a small mark on the rear bumper of the third party's vehicle, in its response to my provisional decision. But it hadn't referred to this previously and its notes suggest this wasn't observed when Ms T provided the photographs.

I think it was upsetting for Ms T, when Markerstudy didn't acknowledge her concerns that the other driver might be claiming for damage that wasn't caused by the accident. If Markerstudy had explained to Ms T that there was visible damage to the third-party vehicle, it might have helped her understand why it had offered to settle the claim on a 50/50 liability split. So, I don't think it's communicated with Ms T as clearly as it should have done.

As I said in my provisional decision, it's not unusual for claims to take a long time to resolve when liability for an incident is in dispute. And I do appreciate that Markerstudy isn't able to move things forward by threatening court action, given that Ms T isn't claiming damage to her own vehicle. However, I think the customer service Ms T received from Markerstudy could have been better at times. So, I think it would be fair for it to pay her £250 for the distress and inconvenience it's caused her.

Putting things right

Markerstudy should:

- Pay Ms T £250 for distress and inconvenience.

My final decision

For the reasons I've explained, I uphold Ms T's complaint and direct Markerstudy Insurance Company Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 20 April 2023.

Anne Muscroft
Ombudsman