

The complaint

Mr H's representative complains on his behalf that Markerstudy Insurance Company Limited (Markerstudy) did not settle his claim on his motor insurance policy fairly.

References to Mr H, or his representative, will include the other.

There are several parties and representatives of Markerstudy involved throughout the complaint but for the purposes of this complaint I'm only going to refer to Markerstudy.

What happened

In April 2022 Mr H was involved in an accident whilst driving his car. He made a claim on his motor insurance policy that he held with Markerstudy.

Markerstudy appointed its repair network provider to find an approved body shop to complete the repairs. Markerstudy's repair network provider sent Mr H to one of its approved body shops. This body shop did not offer to quote for the repairs due to the modifications on the car. Mr H said he was then asked to take it to a second garage. This garage submitted a quote to Markerstudy. The cost of the repairs was £12,302.04 to include repairs to an airlift kit.

Markerstudy's own engineers reviewed the damage to the car and did not feel it needed the airlift kit repairing. In May 2022 a cash settlement of £2,600 was made for the repairs to the bodywork. This was further increased to £3,239.93 excluding VAT.

Mr H declined this offer, so Markerstudy organised for an independent engineer to inspect the car to provide an impartial decision.

This report calculated a higher settlement to cover for the repairs, so the offer was increased to £4,044.39 exclusive of VAT. This offer was sent to Mr H on 12 August 2022 and was also declined. Markerstudy told Mr H that although it would not increase its cash settlement for repairs further, it was happy to review an estimate from a body shop of his choice.

Mr H's representative asked if the repairs could be completed by the second body shop Markerstudy had sent him to because they had submitted a quote to complete the repairs. It looked into this and said because the quote had been obtained by Mr H and not itself it could not accept it because the garage was not an approved supplier. Mr H said he had not obtained the quote himself, he said it was Markerstudy who had sent him there after the first body shop said it would not quote.

Markerstudy said it could not justify why the renewal of the entire airlift kit was needed and no evidence had been received to show the replacement was warranted. It said the policy allows them to pay a settlement amount equal to the damage and as the damage it had identified did not exceed the market value of his car, it would not write it off as a total loss.

Markerstudy said due to the extent of the modifications Mr H had installed to the car none of its approved repairers were able to deal with the repairs and therefore the cash in

lieu offer was its only offer in this case.

Markerstudy accepted there had been a shortfall in the customer service it had given to Mr H and paid £175 in compensation.

As Mr H's representative was not happy with Markerstudy, she brought the complaint to our service. Mr H's representative wants Markerstudy to pay for the car to be written off or pay for the cost of the repairs including the airlift kit.

Our investigator upheld the complaint. They looked into the case and said Markerstudy should pay Mr H £12,302.04 which is the approved repairers estimate for the cost of repairs. And pay 8% simple interest from the date the estimate was received.

As Markerstudy is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I initially provisionally decided – and why

I asked both Mr H and Markerstudy for a copy of the assessment and quote completed by the specialist garage which said it could complete the repairs.

Mr H's representative was unable to submit a copy. They said Mr H had never seen it. I saw Mr H's representative asked the specialist garage for a copy, but it no longer had a copy due to the time that has passed since it was prepared. The specialist garage confirmed it was Markerstudy who had arranged for Mr H to take his car to them for a damage estimate to be obtained.

Markerstudy were able to send a copy of the assessment report and quote. It explained it located it on its internal system and the quote will have been uploaded there by the specialist garage. It said its engineers did initially state it had another estimate from an approved supplier, but later said they aren't part of its network. And it said it can't identify how they were instructed. It also said it did not know exactly when the assessment had taken place as the date of 13 April 2022 on the report was not correct and it was most likely at the end of May/start of June 2022.

Based on this information I am persuaded that it is most likely that Markerstudy's repair network provider was involved in instructing this specialist garage to give a repair quote.

Markerstudy said Mr H refused to go to an alternative garage it had suggested, but it has now said this garage would not touch the car anyway as it was modified. Markerstudy has not been able to find an alternative garage that would take on repairs to Mr H's car. It said none of its approved body shops would repair the car due to its modifications. And Mr H has also not been able to find an alternative garage either. This shows the choice of repairers for modified cars is limited.

Markerstudy have said Mr H has not provided substantiation that the repairs to the airlift kit are needed. However neither have Markerstudy substantiated the repairs are not required.

I looked at the report and quote prepared by Markerstudy's independent engineer. This did not allow for repairs to the modified parts of the car, it detailed only the bodywork repair work. I saw the independent engineer was only available to do a visual inspection of Mr H's car and within the quote there is a note stating the quote is subject to further damage found during dismantling.

This report does not confirm with any certainty the work on the airlift kit is not required.

Markerstudy has said it has not been able to get a full independent assessment carried out by any of its approved suppliers.

Markerstudy were fully aware that Mr H's car included modifications when he took out his policy. And although I agree it is within the terms and conditions of the policy that it can make a cash offer for the repairs, the cash offer needs to be fair and enable Mr H to have all the required repairs completed.

I do not think the cash offer made by Markerstudy is fair in this case.

Regardless of who requested the assessment and quotation to be prepared by the specialist garage, it is the only garage that has conducted a full inspection, and would accept repair work, to Mr H's modified car. Therefore I think this quote for repairs which included the air kit has to be accepted.

Therefore, I intend to uphold Mr H's complaint and require Markerstudy to settle Mr H's claim as per the terms of his policy with an increased cash in lieu settlement of £12,302.04 or to offer a total loss settlement.

Responses to my first provisional decision

Mrs H's representative responded to say they accepted the provisional decision.

Markerstudy responded to say

- It felt further investigation work should be completed by an independent specialist that can undertake this work. And it would take on their recommendations in order to make an informed decision and provide a fair conclusion to the matter that would be fair to all parties. It said the quote that had been obtained did not include a causation report for why certain elements were required.*
- It asked if the customer had provided information on who did the original installation of the airlift kit as it may be worthwhile contacting them.*

Based on the above information I updated my provisional decision.

What I then provisionally decided

Throughout this complaint Markerstudy has been unable to obtain a full independent report. It's independent assessor only carried out a visual check and it then it identified a number of garages to undertake another assessment but none of these agreed to consider the work.

As it said it felt further assessment of the car was required I requested it provide me with the names of specialists that could carry this out. It provided the names of two specialists that it found online. However it has not made any agreement with these garages and has not contacted them. They are not local to Mr H, the nearest being 1 ½ hours from his home address.

Markerstudy have had sufficient opportunity and time to find an alternative specialist garage to assess Mr H's car throughout this complaint and have failed to do so. I don't accept the internet search is proof these garages would be able to complete the work required.

Mr H's representative provided information on the original installer of the airlift kit. They said the garage isn't a body shop and doesn't do repair work. They said as the mechanic is a family friend it agreed to fit the airlift kit for Mr H.

There is still no certainty if the airlift kit is definitely needed, and Markerstudy have still not been able to identify with any certainty an alternative specialist that could assess the damage and carry out the required work. However Mr H's representative has now confirmed they are connected with a garage that can fit airlift kits.

Mr H has already got a new car as a replacement for this damaged car, so fitting a new airlift kit is not necessary. But he should not be out of pocket for the cost he paid for it.

Therefore I intend to require Markerstudy to settle Mr H's claim with a cash in lieu settlement of £8,446.24 including VAT. This amount is the cash in lieu settlement offer of £4,853.27 (inclusive of VAT) made in August 2022, plus £3,592.97 (inclusive of VAT) which is the cost Mr H paid for the airlift kit.

Mr H will not be in a worse position than before the incident as he will be able to obtain the body work repairs identified and will be reimbursed for the cost of the airlift kit that was installed by the family friend.

If Mr H wants the work to be carried out by the specialist garage that provided the quote, I intend to require Markerstudy to settle the full quote value, which may or may not include the airlift kit, directly with the garage on completion of the work.

My intended final decision

For the reasons I intend to uphold this complaint.

Therefore I intend to require Markerstudy Insurance Company Limited to settle Mr H's claim with a cash in lieu settlement of £8,446.24 including VAT. This amount is the cash in lieu settlement offer of £4,853.27 (inclusive of VAT) made in August 2022, plus £3,592.97 (inclusive of VAT) which is the cost Mr H paid for the airlift kit.

Or if the work is to be carried out by the specialist garage that provided the only quote, I intend to require Markerstudy Insurance Company Limited to settle the full quote value, which may or may not include the airlift kit, directly with the garage on completion of the work.

Responses to my second provisional decision

Mr H's representative responded to say

- The garage who fitted the airlift kit was not a family friend but a garage that had always done the family MOT's.
- There is now evidence of mould inside the car due to the length of time it has been left on the drive and they want this to be taken into account in the settlement.
- As Markerstudy did not offer a courtesy car, Mr H had no choice but to take out a loan for a new car.
- He is not planning to fix the car.
- The higher settlement initially proposed was more appropriate

Markerstudy responded to say

- The settlement options proposed exceeds the insured market value.
- The pre-accident value of Mr H's car in the independent report was £8030 with the vehicle deemed a category N total loss.
- If Mr H is retaining the vehicle, there would also be a salvage deduction.

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 response to Mr H's representative's comments

- The mould is a new complaint point and cannot be considered as part of this complaint.
- As per the terms of Mr H's insurance policy a courtesy car is only provided for the duration of a repair by the body shop, subject to availability. If the car were written off a courtesy car would not be provided as standard.
- Markerstudy cannot be held responsible for the decisions made by Mr H regarding buying a new car.
- As Mr H is not planning to fix the damaged car, the option to take it to a specialist garage is therefore not suitable.

In response to Markerstudy's comments

- The offer of £4,853.27 was the cash in lieu offer for the bodywork repairs to Mr H's car excluding the airlift kit. This amount does not exceed the value of the car. The additional amount is to cover the cost of the airlift kit for the reasons explained above.
- Mr H's car has not been deemed a total loss. Markerstudy said in a letter to him on 28 September 2022; *"as the damage does not exceed the value, we can't write the car off. We therefore will offer a cash settlement (known as a cash-in-lieu payment) to allow you to fix the damage privately."*
- Mr H will retain the car with no deductions as it has not been deemed a total loss.

Based on the evidence I've reviewed I maintain my provisional decision. And as Mr H's representative said he does not intend to fix the car the cash in lieu settlement of £8,446.24 should be paid by Markerstudy.

My final decision

For the reasons I have given I uphold this complaint.

I require Markerstudy Insurance Company Limited to settle Mr H's claim with a cash in lieu settlement of £8,446.24, less any policy excess. This amount is the cash in lieu settlement offer of £4,853.27 made in August 2022, plus £3,592.97 which is the cost Mr H paid for the airlift kit.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 May 2023.

Sally-Ann Harding
Ombudsman