

The complaint

Mr M has complained about Markerstudy Insurance Company Limited. He isn't happy about the way it settled liability following a claim under his motor insurance policy.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows -

Mr M was involved in an accident which he believed wasn't his fault. And as the damage to his vehicle was minor he didn't make a claim under his motor insurance policy.

However, the third-party advanced a claim and when Markerstudy looked into the circumstances surrounding the claim it didn't think it could defend Mr M and he was held at fault for the accident. Mr M said the third-party rolled back and collided with the front of his car while the other driver said that Mr M drove into the back of him. When Mr M was eventually made aware that the claim had been settled, holding him at fault, he complained to Markerstudy about this.

Markerstudy explained that when it looked into the circumstances surrounding the claim it felt it didn't have sufficient evidence to defend Mr M. Having looked at the circumstances surrounding the case, including the third-party's account and the moderate level of damage caused to their vehicle, it concluded that it couldn't fully defend Mr M. It explained that it had written out to Mr M, at the address it held for him, explaining its position and ultimately it thought there wasn't evidence to say the third-party rolled into his car. As Mr M remained unhappy he complained to this Service.

Our Investigator looked into things for Mr M and upheld his complaint. He thought that Markerstudy could've done more to defend his position, including inspecting his car, and this may have prejudiced Mr M. So, he thought it should mark the claim as non-fault and look to refund Mr M any additional costs incurred by this. And pay him £100 compensation for the stress and inconvenience caused.

As Markerstudy didn't agree the matter has been passed to me for review.

What I've provisionally 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.

Having done so I'm not intending to fully uphold this complaint. I know this will come as a disappointment to Mr M, but I'll explain why.

I can understand Mr M's frustration here as he was at the scene and believes the other driver rolled back into his car on a slight incline. But it isn't the role of this Service to decide liability, which is a matter for the courts. Although we do look to ensure insurers have acted in a fair and reasonable way.

Under the policy terms, Markerstudy has the right to take over the settlement of the claim. This gives it the right to decide whether to take a third party to court or settle a claim. Legal proceedings are time-consuming, expensive and the outcome can be uncertain. As such, it will not always be commercially sensible to take legal action against a third party.

However, this Service's general approach is that insurers should act fairly and reasonably in deciding whether to settle or pursue a third party. We expect insurers to make a reasonable assessment, based on a clear understanding of the evidence and the circumstances surrounding the accident.

With this in mind I've carefully considered how Markerstudy has handled this claim. And although it could've undertaken additional enquiries, especially in relation to the actual damage sustained to Mr M's car, I'm satisfied it looked into the majority of the available evidence in concluding its position that it wouldn't be able to fully defend Mr M if the matter proceeded to court. So, although I do agree that it could've looked to inspect Mr M's car but the evidence from the third-party, including their engineer, suggested that there was a rearend shunt.

I know Mr M disputes this and says that the other driver rolled back into him. But the level of damage sustained by the other vehicle was moderate and that doesn't sit with a slight roll back by the third party. I've seen the incident location and although it is possible for a car to roll back, the incline is slight, and I wouldn't expect moderate damage to be sustained by a slight roll. And if it was more than this then I would've expected Mr M to have said this when he provided his account.

Given all of this, I consider it would be very difficult for Markerstudy to fully defend Mr M in court if it looked to dispute the claim. Markerstudy has a great deal of experience in looking at disputed liability cases like this and felt that Mr M had most likely hit the third-party. So, although I know Mr M feels that the other driver was at fault I don't feel there is sufficient evidence to fully support him. There clearly was damage to his car as well as the third party's but I think the best outcome Mr M could have achieved would have been to settle on a split liability (50/50) basis given the dispute about how the incident happened. However, this would still have left Mr M with a fault claim against him, and he would be in the same position.

However, I agree that Markerstudy should have ensured that Mr M was fully up to speed about the claim, looked to inspect his vehicle and looked into the claim more. I can't be sure if this would have had an effect here, but I agree that if the claim had been handled more promptly then this would have reduced the additional stress and pressure on Mr M. So I agree that he should be paid £100 compensation for the poor service here.

Replies

Mr M replied to say how upset he was and that he didn't agree with the provisional decision. He said this incident had impacted his ability to get insurance especially as he didn't tell his next insurer about the incident as he wasn't aware it had been marked as a fault claim. And that this had an impact on his health. He said the other driver's car had a lot of damage before this incident and the other driver pleaded for Mr M not to make a claim through his insurance policy. And he said again that Markerstudy didn't inspect his car and suggested this was a scam.

While Markerstudy felt the provisional decision was comprehensive and demonstrated a full consideration of the case but wanted to highlight a number of points. It wanted to emphasise that Mr M was sent correspondence to his address, so he knew its stance about fault early on in the claim process given the evidence against him. And this was sent to the address it held and previously used for Mr M which he had responded to and so Markerstudy questioned why Mr M only made contact around the time of renewal.

Markerstudy also outlined that given the evidence from the other driver it felt the other side's evidence outweighed Mr M's if the matter was to proceed to court. It did acknowledge that a 50/50 split may have come into consideration but felt its claim team and engineers considered the other sides evidence fully in deciding liability.

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.

Having done so I remain of the view that the fair and reasonable thing to do, in the particular circumstances of this case, is for Mr M's complaint to be partly upheld. And Markerstudy should pay Mr M £100 compensation.

I know Mr M has faced a difficult time and this claim has affected his ability to get insurance especially as he didn't tell his new insurer about the claim. But even if he didn't know it was marked as a fault claim he should still have told his new insurer about the incident he was involved in any event. And I know he disputes the level of damage and whether the other driver was genuine, but he has outlined that there clearly was an incident and a coming together and so Markerstudy was obliged under his policy to look into the claim.

I also note Markerstudy's further representations, but I've already considered these issues in forming my provisional decision. I understand that it contacted Mr M in the way it had previously but for some reason the letters didn't get through to Mr M. But it is accepted that Markerstudy didn't physically inspect Mr M's vehicle and it is possible that this could have affected the claim - although Mr M, on balance, would still have been left with a fault claim given the best outcome he could have achieved was a 50/50 split. And I do think it could have done more here to ensure he was fully up to speed about the claim including contacting him by other means, so I remain of the view that £100 compensation feels fair.

My final decision

It follows, for the reasons given above, that I'm partly upholding this complaint and I require Markerstudy Insurance Company Limited to pay Mr M £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 December 2024.

Colin Keegan
Ombudsman