

## **The complaint**

Mr K is unhappy with the liability decisions made by Markerstudy Insurance Company Limited (Markerstudy) following two claims made by a third party on his car insurance policy.

## **What happened**

Mr K purchased a car insurance policy from Markerstudy. As part of the policy terms, Mr K's car was fitted with a dashcam. The dashcam footage was accessible through Markerstudy's appointed supplier only.

In October 2020 Mr K's car was involved in two incidents involving a third party (TP). The facts of the incidents are well known to both parties. So I haven't repeated them in detail here. To summarise, Mr K says the TP collided into his car, and didn't stop to discuss what had happened. Mr K followed the TP, which led to a second collision. The TP said Mr K drove into the back of its car during the second incident.

Mr K reported both incidents shortly after they'd happened. Mr K says he received no further contact from Markerstudy about any of the incidents. Markerstudy received notification of both incidents from the TP in December 2020.

In April 2022 Markerstudy contacted the TPI to propose a settlement offer of 50/50 split liability in settlement of the first incident. This was accepted by the TPI.

In April 2023 the TPI contacted Markerstudy saying it was awaiting payment for settlement of the second incident. Markerstudy attempted to contact Mr K. Mr K was no longer insured with Markerstudy and was living at a different address so didn't receive any of the postal contacts.

In May 2023 Markerstudy made successful contact with Mr K by phone. Mr K told Markerstudy he'd be happy to provide any additional information about the second incident. But he didn't hear anything further. Markerstudy settled the TPI's claim for the second incident by paying the TPI's costs.

Mr K wasn't happy he'd heard nothing about the first incident until April 2023 when he was told it had been settled on a 50/50 basis. He also wasn't happy about a second incident being claimed for by the TPI that he hadn't previously been told about until April 2023. Mr K also questioned why dashcam footage wasn't reviewed before the first incident was settled, as the dashcam had been fitted by Markerstudy when he took out the policy. Mr K complained about the handling of the claims made on his policy.

Markerstudy responded to Mr K's complaint accepting that its service had been poor. Markerstudy said it should've done more to inform Mr K about the first incident being settled on a 50/50 basis. Markerstudy also said it had failed to act promptly in setting up and dealing with the claim for the second incident, as this didn't happen until April 2023. Markerstudy also accepted it hadn't done enough to obtain the dashcam footage that had been fitted by one of its own suppliers.

Because of these failings, Markerstudy offered Mr K £350 in settlement of his complaint. Markerstudy said the incidents would remain on Mr K's policy as two separate incidents. It said the first incident had been recorded on a 50/50 split liability basis, and the second as a fault claim as the TPI's costs had been paid.

Unhappy with the response from Markerstudy, Mr K brought his complaint to this service for investigation. Mr K said he was unhappy with the way his claims had been dealt with, lack of contact from Markerstudy for both claims, costs being paid to the TPI without proper investigation of the claims, and Markerstudy's failure to obtain the dashcam footage when the claims were reported.

The Investigator found that Markerstudy hadn't acted reasonably when assessing Mr K's claims. This was because it had failed to properly investigate the claims in good time, and keep Mr K fully informed about the two incidents. The Investigator said if Markerstudy had done this, the outcome for one or both claims may have been different. The Investigator recommended Markerstudy record only one claim against Mr K's policy.

Markerstudy rejected these findings. It said in 2022 it had attempted to contact Mr K by phone but was unable to complete data protection. It said it had also tried to send an email to Mr K. Markerstudy said it had the remit to settle any claims based on the evidence it has. As the complaint couldn't be resolved, it was passed to me for decision.

I issued a provisional decision on Mr K's complaint. This is what I said about what I'd 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. When we investigate a complaint about an insurer's decision on a claim, our role is to consider whether the insurer handled the claim in a fair and reasonable manner.*

*I accept that ultimately the decision to defend, or settle a claim is with Markerstudy to make. The policy terms confirm Markerstudy is allowed to do this. However we'd expect an insurer to take reasonable steps to carry out a fair and thorough investigation, and to keep their customer updated on this. Markerstudy's service fell short of this.*

*In respect of the first incident, Markerstudy say that Mr K was provided with the opportunity to provide details about this claim, as it contacted Mr K in 2022 by phone and email. I haven't seen any evidence of these contacts. But even if I had, I'm persuaded too much time had already passed on the claim at the time of these contacts.*

*I say this because Mr K reported both incidents to Markerstudy in November 2020, only days after the incidents had happened. Markerstudy had ample opportunity to contact Mr K and discuss his claim, gather evidence, and determine liability in the months following the date of the incidents. But I can't see that it did this. This amounts to poor claim handling.*

*This poor claim handling is also reflected in Markerstudy's failure to obtain the dashcam footage from Mr K's car. I've further seen that Markerstudy accepted the TPI's version of events which said that Mr K refused to provide dashcam footage. This is incorrect. Markerstudy ought to have been aware that only its own supplier could've obtained dashcam footage. So it wasn't any failure on Mr K's part that this footage wasn't reviewed before a decision on liability was made. Markerstudy should've contacted its supplier as early as possible in the claim to review the evidence, and consider the impact on the claim.*

*It's not disputed that Mr K didn't hear about the first incident being settled on a 50/50 split liability basis until April 2023- over two years after the date of the incident in October 2020. I*

*don't think Markerstudy did enough to discuss Mr K's claim with him, understand his version of events, or obtain the dashcam footage that only it could get. I'm persuaded these failures contributed to the first incident being settled on a 50/50 split liability basis.*

*It would've come as a shock to Mr K to learn that an incident from over two years ago had been recorded against him, without him having the opportunity to defend himself. And that Markerstudy had been in a position to obtain crucial evidence, and had failed to do this before settling the claim on a 50/50 split liability basis. I have considered the impact of these failings when deciding what a fair and reasonable outcome should be for Mr K's complaint.*

*Markerstudy accept that it wasn't until April 2023 that it contacted Mr K about a claim for the second incident being made by the TPI. I've seen that before this time the TPI had sent numerous correspondence to Markerstudy, and had detailed the separate claims being made for the incidents that had happened on the same day. Despite having this information, Mr K wasn't told about the TPI's claim until years after the date of the second incident. This amounts to further poor claim handling.*

*Markerstudy says that it made several attempts to reach Mr K in 2023 to discuss the second claim, but these attempts were unsuccessful. It also says Mr K failed to engage with it about the second claim, and so this claim was settled, and is now a fault claim against Mr K's policy. I've carefully considered what Markerstudy has explained about trying to reach Mr K. But I don't think it has acted fairly or reasonably in its handling of the claim for the second incident. I'll explain why.*

*Mr K's original policy lapsed with Markerstudy, and in 2023, he was no longer insured by Markerstudy. Mr K had moved address. This meant that the correspondence sent to Mr K's last known address to Markerstudy, wasn't received by Mr K in 2023. As Mr K no longer had an insurance policy with Markerstudy, and wasn't made aware of any outstanding claims against his policy, there wasn't any need for Mr K to let Markerstudy know about his new address.*

*I think it would've come as a shock to Mr K to learn about the TPI's claim against his policy for the second incident, more than two years after the incident had happened. During a call with Mr K in May 2023, he agreed to provide any additional evidence required by Markerstudy for its investigation of the second incident. But he didn't hear anything else.*

*I think Markerstudy should've done more to proactively manage the claim after this call in May 2023- especially given the previous delays on the claim, and poor communication with Mr K. I can't see that any follow up calls were made, or emails sent, to let Mr K know what information Markerstudy needed. As the business responsible for managing the claim, Markerstudy should've done more to actively investigate the claim. I can't see that it did this at any time.*

*All things considered, with the evidence available, I think it's reasonable to reach an outcome on Mr K's complaint that reflects what's happened on the claims, and what should've happened. Mr K doesn't feel a 50/50 split liability outcome for the first incident, and a fault outcome for the second incident, reasonably reflects what happened. And having considered the evidence I don't think Markerstudy did enough to investigate Mr K's concerns before informing Mr K of the outcome of the TPI's claims.*

*It's not for this service to determine what weight may have been placed on any evidence had the claims gone to the Court. I also accept that the outcomes may still have resulted in claims being recorded against Mr K. But I think there was sufficient contradictory evidence (including Mr K's testimony and the dashcam footage) which Markerstudy should've investigated properly before settling the TPI's claims the way it did.*

*In reaching this decision I've considered Mr K's plausible and consistent testimony about Markerstudy's lack of investigation of the TPI's claims when they were first reported. During the claims handling process Markerstudy accepted the TPI's version of events without interrogating the evidence available.*

*Markerstudy had knowledge of both incidents from the TPI in December 2020. Mr K's testimony has been consistent in saying that the dashcam footage would've supported his version of events about the TP being at fault for both incidents. I have seen that the TP's own version of events suggested the impact of the initial incident was negligible, saying 'The impact was so light I did not notice and continued driving.' I can't see that Markerstudy challenged the damage claimed by the TPI given this statement about what had happened. The TP's statement also explained that Mr K's car was fitted with dashcam footage. But I can't see that Markerstudy followed this up either.*

*In respect of the second incident, the TP said that Mr K had 'deliberately drove their vehicle into' their car following the first incident. Mr K has consistently denied this version of events, saying that the dashcam footage would support his position about the TP being at fault. Whilst it's not the role of this Service to say what evidence an insurer ought to deem more persuasive, in this case Markerstudy's failure to discuss the second incident with Mr K in good time, and obtain the dashcam footage, amounts to poor claim handling.*

*Having received notification of both incidents from the TPI in December 2020, Markerstudy didn't contact Mr K until April 2023. And at this time it had already settled the TPI's claim for the first incident, and told Mr K about the TPI's claim for the second incident.*

*Markerstudy should've done more to understand Mr K's version of events. It also should've obtained the dashcam footage, and reviewed this evidence, before settling the TPI's claims. Had Markerstudy taken these steps to properly investigate the TPI's claims, I think there's a reasonable chance that the outcome of the claims may have been different. I don't think it's fair for Mr K to have two fault claims recorded against him, when it's evident Markerstudy's poor claims handling is responsible for the decisions on these claims.*

*I think a fair outcome for this complaint should reflect the fact that Markerstudy should've undertaken a more in-depth investigation before settling the TPI's claims. I'm minded to direct Markerstudy to record both claims as a non-fault incident, and reinstate Mr K's no claims bonus to the position it would be in had the claims been recorded as non-fault. Markerstudy offered Mr K £350 for its poor claim handling.*

*Having considered our award bands and what's happened on this claim, I'm satisfied this amount is fair and reasonable and in line with what we would recommend in the circumstances. This amount reflects the upset and inconvenience caused to Mr K because of Markerstudy's failure to deal with his claim in good time, and review crucial evidence before settling the TPI's claims. I'm minded to ask Markerstudy to pay £350 to Mr K if it hasn't already done so.*

### **putting things right**

*With these considerations in mind, I'm minded to direct Markerstudy to:*

- 1. Record both claims as a non-fault incident and provide Mr K a letter to confirm this;*
- 2. Reinstate Mr K's no claims bonus to the position it would be in had the claims been recorded as non-fault;*
- 3. Pay £350 for distress and inconvenience (if not already paid).*

## **my provisional decision**

*For the reasons explained above I'm minded to uphold Mr K's complaint, and ask Markerstudy to follow my directions for putting things right as set out above.*

## **The responses to my provisional decision**

I invited both Mr K and Markerstudy to respond to my provisional decision. Mr K broadly accepted my provisional decision but said the compensation amount should be higher. Markerstudy didn't respond to my provisional decision.

## **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 my provisional decision Mr K explained '*I could win this case if they recovered the CCTV...it could be in my favour if they did their job properly*'. I've carefully considered the points raised by Mr K. I've focused my comments on what I think is relevant. If I haven't commented on any specific point it's because I don't believe it has affected what I think is the right outcome.

Mr K says he is happy with the provisional decision however doesn't feel the compensation amount of £350 reflects the poor service in handling his claim, and impact on him. Mr K says the outcome of the TPI's claims might've been different if Markerstudy had recovered the CCTV from his car in good time. Mr K also says he didn't make a claim for damage to his car at the time, and the compensation offered doesn't reflect this.

The provisional decision addressed Markerstudy's lack of proactive management of the claims, including its failure to obtain CCTV footage early in the claims process. The provisional decision also recognised the possibility of the claims being determined differently if Markerstudy had taken these actions. I recognise the upset caused to Mr K in not knowing how his claims might've been decided. But I think my overall direction for putting things right recognises Markerstudy's poor service, and the impact on Mr K.

I accept Mr K didn't make a claim for any damage to his car. But I haven't seen any evidence to say that this option wasn't available to him. Although Markerstudy's could've done more to investigate the TPI's claims, this didn't prevent Mr K from making a claim for damage to his car, if he felt this was needed. I don't think it would be fair or reasonable to penalise Markerstudy for its failure to consider, and pay for, damage to Mr K's car, when this hadn't been made known to it at the time.

I've carefully considered Mr K's submissions. But I don't think these comments materially change the outcome of Mr K's complaint, or my direction for putting things right. So I'll be directing Markerstudy to put things right as set out in my provisional decision.

## **Putting things right**

Markerstudy is directed to:

1. Record both claims as a non-fault incident and provide Mr K a letter to confirm this;
2. Reinstate Mr K's no claims bonus to the position it would be in had the claims been recorded as non-fault; and
3. Pay £350 for distress and inconvenience (if not already paid).

**My final decision**

For the reasons provided I uphold this complaint.

Markerstudy Insurance Company Limited is directed to follow my directions for putting things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 April 2025.

Neeta Karelia  
**Ombudsman**