

The complaint

Miss S complains about how Markerstudy Insurance Company Limited ('Markerstudy') handled a claim made on her car insurance policy.

What happened

The events of this complaint will be well known by both parties, so I'll only summarise briefly what happened here.

In October 2019 Miss S was involved in a road traffic accident with a lorry, which she says wasn't her fault. Although Markerstudy initially held the third party at fault, this was disputed and Markerstudy ultimately decided to accept liability.

Miss S raised several complaints during the claim about how Markerstudy had been dealing with it, which Markerstudy responded to over four separate final responses.

I issued a decision setting out which parts of Miss S's complaint this Service could consider. I concluded we could consider the following:

- Markerstudy's handling of the liability aspects of the claim – including the decision it reached on liability – between the final responses it sent on 25 October 2022 and 30 June 2023.
- An alleged unauthorised sharing of Miss S's personal data.
- The level of communication Markerstudy provided to Miss S after the final response it sent dated 26 October 2020.

Markerstudy explained why it decided to accept liability in its final response of 30 June 2023. It said its attempt to hold the third party at fault was unsuccessful. So, it referred the matter to its solicitor, who on review didn't think Markerstudy would be successful were the matter to proceed to court.

Markerstudy also replied to complaint about the alleged breach of Miss S's personal data in its final response of 30 June 2023. It said it doesn't share data with accident management companies or solicitors without permission and only shares data with trusted businesses, such as its network repairers, that provided support services to policy holders who've made a claim. However, it also said there was a possibility some personal information may have been shared without authorisation, and it was working with the Information Commissioners Office ('ICO') to carry out an investigation.

With regards to the communication issues, although Markerstudy responded to earlier complaints about the level of service it had provided by agreeing to pay £100 compensation in the final response it sent on 11 January 2020, and £75 compensation in a final response dated 26 October 2020, it didn't initially respond to Miss S's complaint about ongoing communication problems after 26 October 2020.

Our investigator thought the complaint should be upheld and Markerstudy should pay Miss S £300 for distress and inconvenience it caused her. In summary, he said:

- The policy terms allowed Markerstudy to decide whether to accept or defend liability. And having reviewed the available evidence about the accident, he didn't think Markerstudy unfairly decided to accept liability.
- It was reported in the media and on the ICO's website that an employee of Markerstudy had been found guilty of stealing customer information, which possibly explained why Miss S had received unsolicited calls. So, Markerstudy should compensate Miss S for the distress and inconvenience this caused.
- Markerstudy hadn't provided evidence he asked for showing when it contacted Miss S after October 2020. And on the evidence Miss S had provided, it looked like there was a lack of updates and delayed responses from Markerstudy. So, Markerstudy should also provide Miss S some compensation for this.

Miss S didn't provide any further comments in response. However, Markerstudy replied disagreeing with the investigator's opinion. So, the complaint was referred to me to decide. I issued a provisional decision upholding the complaint in part, and I said:

"Markerstudy's handling of liability"

I should start by saying my role isn't to decide who is at fault for this accident, or to what extent. That's something only a court could decide on were liability not to be resolved informally and were litigation to be pursued. I can, however, consider if Markerstudy treated Miss S fairly in how it investigated the liability aspect of her claim, and in how it reached its decision to accept liability.

I've begun by looking at the policy terms. These say Markerstudy has the right to take over and conduct the defence or settlement of any claim or take proceedings and that Markerstudy has full discretion in the conduct of any proceedings or settlement of any claim. This isn't unusual as car insurance policies typically contain terms like these which give the insurer discretion on whether to accept or defend liability. But while the policy terms gave Markerstudy this discretion, it must have exercised it fairly. So, I've considered if it did.

Markerstudy initially attempted to hold the third party liable in November 2020 based on Miss S's version of events. But it informed Miss S if the third party didn't accept liability it intended to pursue a 50/50 settlement, and also that it couldn't use Miss S's witness since they weren't independent.

The claim was still open at the time Markerstudy sent its final response on 25 October 2022. Markerstudy said in this final response the third party hadn't offered to settle the claim on a 50/50 basis and were holding Miss S fully at fault. Markerstudy also said it had now received video of the incident, and had instructed solicitors to carry out a review which it would update Miss S with the outcome of.

However, the solicitors closed their file in November 2022 concluding it would unlikely succeed in court. So, Markerstudy decided to accept liability.

I've been provided a copy of Miss S's version of events, and the third party's allegations.

Miss S says she was approaching a roundabout and joined the left-hand lane. The third party lorry was in the right hand lane and instead of following the curve of the road proceeded straight on hitting her car. She also says there was a metal part hanging off the

side of the lorry, which she thinks may have avoided the damage to her car had this not been the case.

The third party's representative said their driver was a HGV, so they couldn't manoeuvre their position as flexibly, and the highway code says in the circumstances Miss S should have held back to allow the third party to proceed. The third party's representative also provided dashcam video to Markerstudy of the incident.

I've watched the dashcam video, and I think it shows the accident occurred as described by Miss S. But I don't think there's any dispute about the circumstances of the accident itself. I think the dispute here is whose fault it was – with Miss S believing it was the third party's because they drove straight ahead, and the third party believing it was Miss S's because she should have allowed clearance for the lorry to manoeuvre.

So, I think it was reasonable for Markerstudy to have referred the matter to a solicitor, as who was at fault was a legal matter which the solicitor would have been best placed to advise Markerstudy on.

I've considered Miss S's comments about the metal on the side of the lorry, and I've also looked at the photo she's provided of this. I'm satisfied that Markerstudy made the third party's representative aware of Miss S's comments about the metal since these comments were contained within her statement, which Markerstudy provided a copy of to the third party's representative.

But I don't think the point about the metal piece was likely to affect the outcome on liability. The third party's position was that Miss S should never have proceeded to begin with. So, if this made her at fault for the accident, I don't think the piece of metal on the side of the lorry would have changed that.

I think Markerstudy investigated the liability aspect of this claim fairly and in line with what I'd expect. It's considered Miss S's version of events, the third party's allegations and the dashcam video provided by the third party's representatives. The circumstances of the accident didn't seem to be in dispute, but who was at fault for it was. So, Markerstudy referred the matter to a solicitor, who concluded Markerstudy would unlikely be successful if the matter went to court.

Markerstudy could only have settled liability in Miss S's favour by litigating and persuading a court the third party was at fault. But its solicitor advised it was unlikely to succeed if it went to court. I don't think it was unreasonable for Markerstudy to rely on its solicitors advice, or that there wasn't a reasonable basis for it to think it would be unlikely to succeed were it to litigate. So, while I acknowledge Miss S strongly believes she wasn't at fault for the accident, I don't find Markerstudy unfairly exercised its discretion to accept liability.

The alleged breach of personal data

The policy terms say that to provide its services, Markerstudy may share the insured's information with third parties such as insurance companies, solicitors, and suppliers. The terms also provide some examples of why Markerstudy would do this, which includes to deal with a claim.

This isn't unusual or unreasonable as it's standard industry practice for car insurers to work with third parties such as repair centres, solicitors and independent engineers when dealing with claims and to do so its necessary for some personal data to be shared.

Miss S said she was contacted by a repairer who only deal with motorcycle claims. Although Markerstudy said in its final response of 11 January 2020 it couldn't find any evidence it had sent an instruction to this garage, Miss S still thinks Markerstudy breached her personal data by sharing it with this garage.

Our investigator thought it was possible Markerstudy had shared Miss S's personal data without authorisation based on a former employee of Markerstudy having been prosecuted for stealing customer data.

Markerstudy didn't dispute this had happened, or that there'd been an investigation by the ICO, but it didn't think Miss S had been affected by this incident. In summary, it said:

- The stolen data related to non-fault claims, but Miss S's claim was a fault claim.*
- An audit trail on its system shows who accessed a policy or claim record, but Miss S's records weren't accessed by the individual who was prosecuted.*
- Miss S's claim was for an incident which took place in 2019, which was before this employee worked for Markerstudy.*
- Customers who were identified at risk were notified, but Miss S wasn't one of them.*

I could only reasonably find Markerstudy had unfairly handled Miss S's personal data if I thought the evidence showed it was more likely than not Markerstudy had shared Miss S's personal data with a third party without her permission. For the following reasons, I'm not persuaded that has been shown:

- Markerstudy says it didn't instruct the motorcycle garage. I haven't seen evidence to show otherwise.*
- My understanding is Miss S was contacted by the motorcycle garage in 2019. But this was before the employee involved in the data theft worked for Markerstudy. Additionally, the lack of any audit trail to show Miss S's details were accessed by this employee further make it less likely Miss S's data was compromised by this incident.*
- Markerstudy has provided internal emails showing it enquired with its team who conducted the internal investigation into the data breach caused by the employee who was prosecuted, and this team said they don't think Miss S's data was involved in this incident.*

I acknowledge the frustration and upset Miss S was caused by being contacted by the motorcycle garage, but since I don't think there's enough evidence to show this happened because Markerstudy mishandled her personal data, I've reached a different outcome to the investigator on this point and I don't intend to uphold it.

The communication issues

I'll only be considering the events after 26 October 2020. This is because I previously found that we cannot consider Miss S's complaint about any communication issues which happened before that date.

Miss S says there has been a lack of response and updates throughout her claim. Markerstudy didn't agree there were issues with how it communicated with Miss S after 26 October 2020 and it's provided some examples of updates and responses it provided Miss S after this date.

I've reviewed the timeline of events after 26 October 2020 and correspondence between Miss S and Markerstudy. And I don't dispute there were instances where Markerstudy replied to Miss S or gave her an update.

During this time Markerstudy were investigating the liability side of the claim. This concluded with Markerstudy's solicitor closing its file in November 2022. Although there were updates Markerstudy provided to Miss S, many of these appear to be in response to chasers she had sent. And it also appears there were lengthy periods in which no updates were provided to Miss S.

So, I'm not persuaded Markerstudy has shown it kept Miss S updated to a reasonable extent on what was happening with her claim after 26 October 2020. And I think that caused Miss S some distress and inconvenience, compounded by the long running nature of her claim, and her experience of having previously complained to Markerstudy about communication issues on the same claim.

I think that warrants some compensation, and I think £150 would be a fair and reasonable amount considering the timescale involved and impact caused."

Miss S and Markerstudy didn't reply 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.

Because neither party has given me anything more to think about, I see no reason to depart from the conclusion I reached in my provisional decision. So, I've decided to uphold the complaint in part for the same reasons I set out in my provisional decision.

Putting things right

I require Markerstudy to pay Miss S £150 compensation for the distress and inconvenience caused by the poor standard of communication on the claim after 26 October 2020.

My final decision

My final decision is that I uphold this complaint in part and I require Markerstudy Insurance Company Limited to carry out what I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 10 April 2025.

Daniel Tinkler
Ombudsman