

## complaint

Mr B complains that Markerstudy Insurance Company Limited (Markerstudy) refused to pay out on a claim he made on his car insurance policy and accused him of fraud. Mr B wants Markerstudy to pay his claim. He's also said that Markerstudy didn't consider the clarification he provided in response to their enquiries when he made a formal complaint.

## background

Mr B is a self-employed taxi driver. In April 2018, in the early hours of a Sunday morning, he was driving back home after taking a fare. He says he heard a loud bang and realised he'd driven over something. He pulled over to investigate and says he seems to have driven over what looked like a short fence post. He says when he returned to his vehicle, he could smell diesel and saw smoke coming from the car's engine. He says he switched off the engine and removed the key but didn't open the bonnet. He called the fire brigade. He said that a woman in a car stopped to make sure he was alright. Then the police stopped and called the fire brigade. By this time there were flames under the bonnet and in the car. Mr B says the three of them stood there for at least 30 minutes waiting for the fire brigade to arrive. The car windows exploded and the police officer radioed to ask where the fire brigade was. The fire brigade arrived and the fire was put out. Mr B said that a fire officer suggested that a nail on the post might have cut the fuel line.

Mr B claimed under his policy and has explained that he managed to cover his jobs by hiring another taxi from an acquaintance in the business.

The car was moved to a garage. Mr B said he'd bought it new in 2014. He said it was in very good condition before the fire and wasn't in need of repair. He's said he's not been able to buy another car since. Mr B told us that Markerstudy also asked for details of his car's finance arrangements. And he's said he had a disagreement with the car dealership over the terms of the finance agreement.

Markerstudy carried out interviews with Mr B in April and May 2018. They also commissioned a firm of investigators who produced an initial report on 15 May 2018. This stated that Mr B *"did perform well at interview, and we are not aware of any evidence to substantiate our concerns, we are not yet entirely convinced that this incident occurred in the matter described."* But they shared concerns that fire might have been planned and deliberately set. They went on to *"strongly suggest"* that Markerstudy apply to the fire brigade for a copy of any fire report, and also for any report from the police.

Markerstudy then commissioned a forensic investigative engineer who completed a report in June 2018. This detailed report included the following findings: the exterior and interior of the car were damaged; the engine bay was *"very lightly fire damaged"*; there was no evidence of fire damage or impact damage on the underside of the car; the fragments of the broken windows were extensively smoke-damaged; fragments of the front passenger window were melted but with no evidence of smoke damage and this was an indication that this window had broken prior to the fire taking hold; the nearside paintwork had suffered more than offside; under the bonnet the fire damage was generally undamaged towards front *"indicating the fire had not started under the bonnet"*; there was a *"clear indication that the fire had started in the front nearside passenger compartment"*; it had started at seat height and gone upwards; the fire had *"not [started] under the bonnet as reported"*; *"there was no evidence of the fire having started within the engine compartment as suggested by the owner"*; there were no fuel lines around the nearside front seat; there was no sign of damage

to the exhaust; wiring near the passenger wasn't melted completely indicating the source of fire was above the wiring.

The engineer stated *"it would appear that this fire was started deliberately by igniting the nearside front seat; this was possibly using an "accelerant" although no trace could be found as the vehicle had been stored in the open air and exposed to the elements for a period of time";* And that the *"...spread of the fire and the heat generated would tend to suggest the use of an accelerant but there was no evidence of what that may have been remaining."* *"There was no evidence of the fire having started due to either an electrical malfunction or of a flammable substance striking a heat source such as the exhaust."*

He concluded that: *"It is, therefore, my opinion that this fire had been started deliberately and this opinion is supported by the nearside window front window having been broken prior to the fire taking hold."*

The report also mentioned twelve Experian checks thought to have been made by parties considering purchasing the car. The engineer suggested Mr B had been trying to sell his car.

Markerstudy declined to meet Mr B's claim. They said the reported circumstances didn't appear to match the damage and they said the *"fire [had] been started deliberately"*. They cited what the expert had said were anomalies in Mr B's account. These included:

- that he reported driving over a wooden post with nails in it, and that this had ignited a fire, whereas fire damage appeared to be only inside the car and to have begun there;
- there was evidence that the front passenger window had been broken *"prior to incident"* and that there was nothing in Mr B's account to explain this;
- they raised his dispute over finance payments with those who'd sold him the car; and
- they said: *"...each fact is drawing the same conclusion ie. the fire was started inside the vehicle and likely with use of an accelerant"*.

In August 2018, Markerstudy wrote to Mr B asking for his account of what had happened and seeking clarification on what they called *"evidential discrepancies"* arising from their engineer's inspection. They asked:

- how did he account for the window in the front passenger door apparently being broken prior to the fire given that its fragments had no evidence of smoke damage?
- as the engine's light damage indicated the fire hadn't started there, why did he say it had?
- how did he account for no evidence of impact or damage on the underside of the car when he said he'd run over a fence post?
- how did he account for findings indicating the fire had started inside the vehicle?
- how did he account for findings indicating the fire had started above floor level?
- how did he account for findings indicating the fire started in the passenger seat well?
- they also said the nature of the damage to wiring indicated the fire hadn't started there; and
- findings indicated that, given the absence of nearby fuel lines, "an accelerant" had been used.

Mr B replied, providing explanations and comments. In response to the engineer's "accelerant" point, he said there'd been a deodorant spray in the glove compartment. He said being a taxi driver and having other people in the vehicle meant this was normal.

In September 2018, Markerstudy confirmed they were maintaining their decision to decline Mr B's claim. They said that Mr B hadn't adequately explained the discrepancies or rebutted the findings of the engineer. They also said his account of the fire in his car was false. They said they believed his intention was to get a financial settlement he wasn't entitled to. And they told him he'd committed a criminal offence under the Fraud Act 2006.

Markerstudy also referred Mr B to section 16 of the General Conditions of his policy booklet which allowed them to decline his claim and cancel his policy for fraud. They told him his rights were all forfeited. And that they'd retain the premiums he'd paid and seek to recover their handling costs of £2,195 from him within 14 days. They said if he didn't reimburse them, they'd commence legal proceedings and asked Mr B to return his certificate of insurance to them or the insurance broker. They said his car was beyond repair and that they were legally unable to return it. They said they might also pass his file to the authorities for further investigation. They also said they'd cancel his policy within seven days. However, Mr B has told us that, instead of cancelling his policy that September, Markerstudy allowed him to transfer another vehicle onto the policy for the remainder of the term.

Mr B complained to Markerstudy in January 2018. He said his claim wasn't fraudulent and that he'd answered the questions as best he could, and fully and truthfully. He repeated that body sprays, deodorant and aftershave were kept in the glove compartment, possibly exploding and damaging the inside of the car. He said the fire brigade had been delayed and that the police had radioed asking where the fire brigade was. Markerstudy sent their final response letter, repeating their position. They said nothing had changed. So, Mr B complained to us.

Our investigator upheld Mr B's complaint on the basis that Markerstudy hadn't followed through on their letter telling him they were cancelling his policy because of his act of fraud. He recommended that the claim was re-considered and that Markerstudy should wave any fees they'd incurred.

Markerstudy didn't agree. They accept they should have cancelled the policy, but don't think the fact they didn't affects their right to reject Mr B's claim. And they asked for the complaint to be referred to an Ombudsman for a final decision.

### **my provisional decision**

In my provisional decision, I said:

#### *Not cancelling Mr B's policy*

When Markerstudy told Mr B that he'd committed fraud so they wouldn't meet his claim, they said they'd cancel the policy within seven days. But they didn't. Mr B has shown us that Markerstudy allowed him to continue to be insured instead. And they placed a different vehicle on his existing policy. This was between 5 September 2018 until the original policy expiry date of 28 December 2018.

Markerstudy said that although Mr B's claim was repudiated on 20 September, the change of vehicle had been carried out on 5 September – so before the repudiation. They said this was

because the complaint was still ongoing. Firstly, through Markerstudy's own complaints procedure and then through the Financial Ombudsman Service. Markerstudy told us they believed they had sufficient grounds to repudiate the claim. And they said they had enough evidence on the balance of probabilities that Mr B had given false testimony. They said the fact the policy remained active didn't mean they didn't believe they had enough grounds.

Markerstudy has said it didn't matter that they hadn't cancelled Mr B's policy. They said they'd asked the brokers to cancel the policy but they hadn't. They told us the actual cancellation had just been overlooked. They even said the broker had contacted them in November/December 2018 to chase the cancellation but they'd made no formal request to cancel it prior to the eventual lapse of the policy.

But even if the change of vehicle had occurred before the repudiation, and even if cancelling was initially overlooked, I think it's strange that Markerstudy didn't cancel the policy after their letter of 20 September. Allowing Mr B to remain on cover was inconsistent with telling him his policy was voided due to false testimony. And inconsistent with accusing him of fraud and telling him the policy would be cancelled within seven days.

That said, I don't think this in itself meant Markerstudy was obliged to meet Mr B's claim. It's really just shows poor administration. So, I've now gone on to examine the evidence and consider whether allowing Markerstudy's rejection of Mr B's claim for fraud should stand.

#### *Absence of fire brigade and police incident reports*

Even though the advice of the firm of investigators to obtain both fire brigade and police reports was "*strongly recommended*" as the first course of action, Markerstudy didn't do so. And on 7 August 2018, Markerstudy's own file note reads: "*...it would have been beneficial to obtain police / fire reports but it's too late now...*".

Markerstudy have told us they can't give a clear reason why this recommendation hadn't been followed. They said that the case handler had been in training and was now no longer with the company. They said their note "*too late*" was "*slightly misleading*". Because the evidence they'd obtained from the engineer was so much stronger and more detailed than any fire report or police report, they decided these weren't necessary. On 25 October, they went on to say that: "*If we are to question the need for a fire report to hinge [in] any way on the decision made in this case then we are also by default questioning the findings of the Forensic Examination expert to which we have no reason to question.*"

When questioned further, Markerstudy also told us: "*I accept these enquiries should have been completed, but we are confident would have little bearing on the outcome of the case. The factual evidence we have presented in this case is clear and is more than sufficient in evidencing that above and beyond our civil burden (on the balance of probability) that the client has not been truthful as to the true circumstances in this case.*"

And Markerstudy are arguing that they didn't need to see the fire or police reports because they had no reason to question the findings of the engineer they'd instructed. But I think they've got this the wrong. These reports are independent and might provide useful, objective information. So I think they ought to have got hold of them in the first place, because they might support Mr B's version of events. So, I don't think Markerstudy should've dismissed their evidential value. And I don't think saying that it might have forced them to reconsider the findings of their own engineer is reasonable either. Their engineer's report

simply isn't able to provide the full picture. So, in the absence of the fire or police reports, I don't think it's fair or reasonable for Markerstudy to just rely on their engineer's report.

#### *The engineer's report*

Markerstudy wrote to Mr B asking him for his account of what had happened and to clarify various points. But they didn't accept his explanations. And they never gave a clear reason as to why Mr B's explanations of the broken window and accelerant weren't acceptable. And they didn't even show that they'd put these explanations back to the engineer for comment. They just kept referring to the engineer's report as being "enough" for them to make a decision, without really explaining any further. So, I don't think Markerstudy considered Mr B's explanations or even tried to rebut these. I've dealt with these in greater detail below.

#### *fire under the bonnet*

The engineer's report stated that because the engine bay was only lightly damaged, the fire hadn't started there. And the damage must have occurred from the interior of the car. The report stated at least three times that Mr B had said the fire had started under the car's bonnet in the engine. For example: *"there was no evidence of the fire having started within the engine compartment as suggested by the owner"*. And; *"the fire had not started underneath the bonnet as reported"*.

But Mr B never reported that the fire had started under the bonnet. What he said was: *"I could smell diesel. I went to lift the bonnet by releasing the bonnet catch. I had to walk round to the passenger side where the bonnet catch is. I released the catch, the bonnet front lifted up to the first notch. I then saw what I thought was steam in the headlights coming from the engine space. I've walked round to the front of the car to lift the bonnet. I realised it was not steam but smoke coming from the engine space. I switched the engine off, removed the car key"*. So, he didn't say the fire had started underneath the bonnet, only that he'd seen smoke coming out initially, and then a glow, which I think is different. And I don't think it's fair for the engineer to put words into Mr B's mouth and then partly base his conclusions on refuting something Mr B didn't say.

Mr B also said that as the car's headlights were flashing and the engine turning over, the fire might have been caused by some sort of electrical fault. But he never expressed any strong view of his own as to the cause of the fire.

Mr B also said that the engineer who completed the report was trained in arson damage, so used words like 'accelerant', which was weighted, rather than 'flammable'. And the engineer hadn't been given the chance to address Mr B's information that he kept a deodorant spray in the glove compartment which, on exploding, would ignite the interior and mainly the seat on the passenger side. So, I don't think it was reasonable for the engineer to draw his conclusion in the absence of all this information. And I don't think it's fair of Markerstudy to have relied on his report without putting Mr B's side of the story to the engineer.

*broken glass of passenger window*

Markerstudy asked Mr B to provide an explanation for the breaking of the front passenger window, apparently prior to the fire. Mr B said that in his rush to turn off the engine he might have lowered the electric window accidentally. So, it was possible the window was already down when the fire broke out. And the glass had fallen within the door frame so was contained within the door before the fire really took hold. And it had therefore been protected from the smoke. Markerstudy said that it was possible Mr B could have accidentally pressed an electric window buttons "*in a panic*" but this wasn't an explanation just "*offering a possibility*".

Mr B also suggested that this was the first window to break – which seems very likely given the established location of the fire. So, I think it would be less likely to have been covered in smoke than the other ones which were subjected to the fire for at least 30 minutes.

Markerstudy has also claimed that the evidence clearly stated the door window glass was not damaged by either smoke or fire but suggestive of being smashed inwards from the outside. And this was contrary to Mr B's account. But the engineer's report said this window glass had been partially melted. So, I don't think it's correct for Markerstudy to claim the window glass hadn't been damaged from the fire when it clearly had. Or to rely on this when dismissing Mr B's account.

And, again, I've seen no evidence to show that Mr B's comment was put back to the engineer to confirm whether this provided an adequate explanation. Markerstudy simply said that the explanation was "*not adequate*" and didn't go into any further detail.

And it's not clear to me why Markerstudy think the window being broken adds any weight to the belief that Mr B had set fire to his own car in the first place. Especially, as he still had the car keys. The investigator did put this to Markerstudy, on 21 October 2019, but they said they couldn't comment on Mr B's motives.

And if Mr B had set fire to the passenger seat and was still in possession of the keys and had himself called the fire brigade, why would the window have been broken from the outside? Markerstudy said this question couldn't be answered but there wasn't any need to. Markerstudy said these factors were not relevant.

So, the engineer has identified an anomaly and tried to blame Mr B for it but without really explaining why it was his fault, or how it's relevant to his claim. So, again, I don't think the engineer has been fair or reasonable in the way he has drawn this conclusion. And I don't think it's fair of Markerstudy to have automatically concluded it meant Mr B was guilty either.

*accelerant*

Markerstudy asked Mr B to provide explanations for the "accelerant" the engineer had suggested was present in the fire. Mr B responded by explaining that any "accelerant" was a body spray or aftershave kept in the glove compartment. Then Markerstudy said in its letter of 21 October that the "*the presence of an accelerant or not is somewhat peripheral*". They repeated that "*the fire or combustion of the fire which started inside the vehicle itself [was] contrary to Mr B's account.*"

But I don't think that Markerstudy dismissing Mr B's explanation in this way was fair. Particularly when they'd asked him to explain in the first place. And, again, I don't think Mr B

ever gave a firm opinion on the source or location of the fire. He only described what he says he saw.

Again, there's no evidence to show that Mr B's account was then put back to the engineer to consider whether Mr B's body spray or aftershave provided an adequate explanation for the nature and location of the fire. Markerstudy simply described his explanations as "*not adequate*" and didn't go into any further detail.

I also note that Markerstudy's engineer acknowledged that "*no trace of an accelerant*" had actually been found. Only that the surrounding circumstances would "*tend to suggest*" one had been used. It's also possible that the actual origin of the fire may have been lost in the fire, as the engineer seemed to accept. When challenged, Markerstudy then said the engineer's views "*are what [they] are and we did not see sufficient grounds to challenge their findings*". So, it seems to me that Markerstudy's position is largely theoretical and Mr B had provided an explanation for the "accelerant", as requested. But I think that for them to give it no apparent consideration at all was unfair.

Markerstudy referred us to Mr B's policy booklet. Under General Conditions Section 16, it states: "*If you make any claim or proposal or declaration that is in any way false or fraudulent or has any fraudulent means, devices or invalid documentation used by you or anyone acting on your behalf to obtain benefit or protection under this insurance, the policy will become invalidated. You will not be able to make a claim and all rights under the policy will be forfeited. We will retain all premiums paid and will seek to recover all costs and disbursements from you.*"

So, Markerstudy have said they are entitled to cancel any policy following fraud. But I don't think they have sufficient evidence to show that fraud has actually taken place. Because what they said was that Mr B's responses were: "*deemed insufficient and simply did not address the issues found within his statement of the alleged events*". They said that the claim was assessed on the balance of probabilities, and that Mr B's account couldn't be evidenced, and that the engineering evidence suggested that events didn't take place as he said.

But, as I've described above, because Markerstudy hadn't properly considered all the evidence - both Mr B's explanations which they asked for and the fire and police reports which they didn't - I don't think their approach was reasonable or adequate for an insurance fraud investigation. An allegation of fraud is very serious and - although the burden of proof needed to demonstrate an insurer is entitled to reject a claim for fraud is the balance of probabilities, it is well established that they have to have compelling evidence following a detailed and thorough investigation. And it is for Markerstudy to prove Mr B's claim is fraudulent, not for Mr B to prove it is genuine, beyond establishing his car was damaged as a result of an insured event, ie. fire.

### *Summary*

As I've already mentioned it's for a policyholder to show that the event being claimed for actually happened. Then if the insurer doesn't think it should pay the claim, it's for the insurer to demonstrate it can rely on a policy term to defeat it. And the insurer can rely on a fraud condition and is entitled to refuse an entire claim, even if some parts of the claim were genuine, if it can prove fraud.

In this case, I think Mr B showed that his car was damaged by fire. But then Markerstudy told him that he'd committed fraud and that he was trying to get something to which he wasn't entitled. And for these reasons, they said they wouldn't meet his claim.

Markerstudy said that all the evidence in their report proved, to the required threshold of the balance of probabilities, that not only did the fire in Mr B's car originate inside it, but was likely started deliberately. And they said that the evidence in their possession was so strong that they didn't need the fire or police reports. They said Mr B's explanations were "*not adequate*". They also said Mr B couldn't provide any evidence as to why the fire had started. And they said they were satisfied Mr B had deliberately omitted factors in his account to withhold the truth.

They went on to say that although they could've passed Mr B's comments back to the engineer, they "*must consider [his] response in line with all evidential concerns and their responses.*" They also said: "*...there is little to no counter evidence*". But this completely ignores the contents of the fire or police reports, which they hadn't seen. And which I think they've discounted rather casually. And Markerstudy's original letter back to Mr B was not specific and addressed the points he made only superficially. It stated: "*it is clear that the testimony that you have provided to us in relation to the fire of your vehicle is false*".

And Markerstudy didn't try to rebut any of Mr B's points. And there's a difference between gaps in an explanation and a clearly false testimony. What Mr B believed to be the origin of the fire (running over the fence post or damaged fuel lines) may not have been the cause. But he isn't an expert and he maintains he was only reporting what he assumed to be the case. And in the absence of the fire report, it's possible the fire brigade did suggest that the fence post or fuel lines were the cause, which Mr B simply repeated.

In the absence of any reports from the fire brigade and police it isn't possible to consider their perspective. And just because there were points that Mr B wasn't able to explain to Markerstudy's satisfaction doesn't mean he was lying. Yet, that is the approach Markerstudy has taken. And I really don't think Markerstudy considered Mr B's account seriously, either in relation to details or in general before they decided to refuse his claim.

The engineer's report isn't the full story either. There are gaps there, as the engineer himself accepts. And then there's the fact that he didn't seem to have an opportunity to consider Mr B's explanations, or the fire and police reports. I think Markerstudy should have taken all these things together when coming to a decision, and not just have relied on one source.

So, under all the circumstances, I don't think Markerstudy have done enough to show it was entitled to repudiate Mr B's claim for fraud. And while they concluded that Mr B's explanations of the event were inadequate, I don't think that Markerstudy's own justifications for not obtaining key information, or voiding the policy, were adequate either.

And when – in my opinion - there was an absence of any strong and conclusive evidence to show that Mr B lied or deliberately misled the investigation, I think the fair and reasonable outcome to this complaint is for Markerstudy to be required to get the reports from both the fire brigade and the police. And then they should properly reconsider Mr B's claim again in the light of these and in the light of the explanations Mr B has already provided. And they should do so by putting all this additional information back to an expert engineer for his opinion.

After they've reconsidered Mr B's claim, if Markerstudy decide to settle in accordance with the claims settlement terms in the policy, they should also cover any losses flowing from their rejection of his claim, such as the cost he incurred in hiring another vehicle to maintain his business or any loss of profits as result of not being able to carry it out.

### **the response to my provisional decision**

Markerstudy told us they had nothing further to add. Mr B replied, referring us to some of the pictures on file again, and raising a number of points that I had already considered. Now the case has been passed back to me to for a final decision.

### **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered again my provisional findings.

In view of the response to my provisional decision, I've no reason to depart from the findings I've already reached in this case. So, my decision remains the same.

### **my final decision**

For the reasons set out above, I intend to uphold Mr B's complaint and make Markerstudy get the reports from both the fire brigade and the police. And then they should properly reconsider Mr B's claim again in the light of these and in the light of the explanations Mr B has already provided. And they should do so by putting all this additional information back to an expert engineer for his opinion.

If Markerstudy settle Mr B's claim they should also cover any losses flowing from their rejection of it, such as the cost he incurred in hiring another vehicle to maintain his business or any loss of profits as result of not being able to carry it out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 July 2020.

Simon Stanley  
**Ombudsman**