

The complaint

Miss M is complaining Markerstudy Insurance Company Limited has held her at fault for an accident she says she wasn't involved in.

What happened

In October 2018 Markerstudy was notified that Miss M had been involved in an incident with a third party riding a motorcycle. The third party claimed Miss M pulled out into their path – causing them to have to take evading action and ultimately lose control. They hold Miss M responsible for the damage to their bike. Markerstudy discussed this with Miss M who disputed being involved in the accident as she said there was no contact.

Miss M later complained to Markerstudy because she learnt it had settled the third party's claim. Markerstudy explained it had paid the total loss value of the third party's motorcycle on a without prejudice basis because the third party was incurring expensive hire charges, so it was looking to minimise the loss. But it said it hadn't admitted liability.

In February 2019 Miss M complained again that her renewal premium had increased by around £2,000 because of the incident. She also said she'd researched this matter and highlighted sections of the Highway Code which she said held the third party at fault.

Markerstudy acknowledged it hadn't kept her updated throughout the claim journey and offered her £150 in compensation for this. But it said it was defending the third party's claim. So it didn't uphold her complaint about the way it was handling the claim. It said it had to treat the claim as an open fault claim until such time as the third party withdraws the claim or it's resolved in Miss M's favour. But it explained she could be entitled to a premium refund if liability for the accident is resolved in her favour.

Miss M later complained again about the way the claim was being handled. She said she wasn't able to insure her car because of how much the insurance premium was. And she maintained she wasn't at fault for the accident.

Markerstudy said it was continuing to defend the claim. But it acknowledged it hadn't kept her updated again. So it offered her a further £100 in compensation.

I issued a provisional decision saying that I thought Markerstudy had offered fair compensation. And I said the following:

“Miss M is complaining a claim a third party made on her insurance policy is impacting her insurance premiums. I should first explain that it isn't this service's role to say who's at fault for causing an accident, as that is the responsibility of the courts. Our role is to look at whether Markerstudy has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

I appreciate Miss M is unhappy her renewal premium significantly increased as Markerstudy had recorded an open claim on her record. But a third party had made a claim on her record. Until such time as the claim is settled, it will remain open. Ultimately, the third party has

continually held Miss M liable for the incident. I can see Markerstudy has defended the claim throughout holding the third party at fault. It's set out why it doesn't think Miss M is at fault – including referring to the sections of the Highway Code Miss M has referred to. But the third party hasn't agreed with this and has instigated legal proceedings.

I acknowledged Miss M is unhappy the claim had a significant impact on her renewal premium. But this is because the third party made a claim and not because of anything Markerstudy has done wrong. Ultimately, until such time as the third party concedes liability and withdraws the claim or the court holds the third party fully at fault for the accident, Markerstudy is right to record the claim on Miss M's record. So I can't say it's treated her unfairly in this respect.

I note Miss M is unhappy Markerstudy paid the third party's claim. But it did so on a without prejudice basis to prevent the third party incurring excessive hire charges. Settling on a without prejudice basis means Markerstudy hasn't accepted liability and it doesn't impact any future court proceedings. It's common practice for insurers to look to minimise their potential exposure to high hire charges, by quickly paying a total loss settlement or to have the vehicle repaired. And it's not unreasonable it does so. So I can't say Markerstudy has acted unfairly in this respect. It's also not impacted Miss M's position either because the claim would still be on her record regardless of whether Markerstudy paid it or not for the reasons I set out above.

That said, I can see Markerstudy has failed to keep Miss M updated throughout the claim journey. I would expect it to keep her updated with what was happening – particularly in respect to any communication with the third party. There was also some delays in sending her a claim form and arranging for an engineer to inspect her car. But Markerstudy has offered Miss M £250 in compensation for the distress and inconvenience this has caused her. This is in line with what I would have awarded. So I don't think it needs to pay anything further.”

Miss M responded to say she didn't accept my provisional decision, but she didn't add anything further apart from to say she wasn't aware of the additional £100 in compensation I'd said Markerstudy had offered.

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.

As neither party has given me anything substantively new to consider I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I still think Markerstudy's compensation offer of £250 is fair in the circumstances of this complaint.

I note Miss M says she wasn't aware of Markerstudy's additional compensation offer. But this was set out in the letter it sent Miss M on 16 December 2019. So I'm satisfied it did explain this to her.

My final decision

For the reasons I've set out above, it's my final decision that I think Markerstudy Insurance Company Limited's compensation offer of £250 is fair in the circumstances of this complaint. It should pay this to her directly if it hasn't already done so. I don't intend to award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 December 2020.

Guy Mitchell
Ombudsman