

## The complaint

Mr S has complained that Markerstudy Insurance Company Limited (Markerstudy) declined his claim and avoided his private motor insurance policy, following the total loss of his vehicle.

## What happened

Mr S submitted a claim following the total loss of his vehicle. During the process of validating the claim, Mr S mentioned that he'd changed the wheels on his car. Markerstudy said if it had known about the modification it wouldn't have accepted him on this policy. So, it declined Mr S's claim and avoided his policy.

Mr S says this is unfair. He said he needed new tyres and the manufacturing dealership sold him a complete alloy wheel set (tyre and alloy) at a discounted price. He says they are genuine manufacturer wheels from a manufacturing dealership and not what he would consider a modification to his vehicle.

An investigator from our service looked at this complaint. The investigator thought Markerstudy had acted fairly. The investigator said that in the circumstances they didn't think Markerstudy hadn't done anything wrong.

But Mr S doesn't agree, and he's asked for an ombudsman to review the complaint.

I issued a provisional decision upholding this case on 9 December 2021. That provisional decision is below and forms part of my final decision.

### ***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 planning on upholding this complaint. I'll explain why.*

*The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.*

*And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.*

*CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*Markerstudy said Mr S failed to take reasonable care not to make a misrepresentation when he took out the policy.*

*So, I've looked at what happened. Mr S said that in 2018 he needed new tyres. The garage offered him a complete new set of alloy rims with tyres fitted at a discounted cost. Mr S originally had 19" alloy rims on his car. The new set of rims he was offered were 20" alloy rims. They were genuine rims for his vehicle with an identical design to what he already had fitted. But they were one inch bigger. Given how attractive the deal was Mr S agreed to purchase the complete 20" wheel set for £1,486.00 inclusive of VAT. In May 2020, Mr S replaced the tyres again. This time he replaced the tyres only.*

*The onus is on the Markerstudy to ensure that information it deems important is obtained through a clear question. And the onus is on the consumer to take reasonable care not to make a misrepresentation when answering that question. So, I need to consider if Mr S took reasonable care with his answer, specifically taking into consideration what a reasonable consumer would have said in the circumstances.*

*When Mr S took out the policy with Markerstudy, he took it out via telephone using a broker. I've listened to the sales call and I note when Mr S was asked "can you please describe all modifications on the car". Mr S replied "none". During the call the advisor hasn't provided any context about a modification to help Mr S answer it. Nor is there a definition in the policy terms and conditions.*

*We can only base the reasonableness test on what a normal consumer would think when answering the question Mr S was asked during the call. Mr S says he doesn't consider replacing alloy wheel rims to be a modification. He says in his mind a modification is something that would impact vehicle performance. And he says he specifically asked the garage about this at the time. He says the garage told him the new rims wouldn't improve the performance of the car. So, when Mr S was asked to describe all modifications, telling Markerstudy about the changed alloy rims didn't even cross his mind, as he didn't consider them to be a modification.*

*And I agree. In the absence of anything to define a modification during the call or in the policy terms and conditions, it's hard for Mr S to know what Markerstudy is looking for here. And the onus is on Markerstudy to make sure it's being clear about what it wants. If Mr S was actively looking to enhance the performance of his vehicle or deliberately improve the aesthetic look of his vehicle by deliberately changing the wheels, I might look at this differently. But, looking at the notes from Markerstudy it seems clear that the manufacturer had an oversupply of this particular alloy rim, and it discounted this particular rim at the time to make it more attractive to customers. Mr S didn't go in to a garage specifically looking for this alloy rim. He needed new tyres and this particular discounted offer was in place at the time. So, it made sense to replace his rims along with the tyres at such a discounted price. As such Mr S didn't think he'd modified his car. And in the absence of anything to make him think otherwise, such as an explanation during the sale, I think based on the question he was asked Mr S gave the answer that any reasonable consumer would have given in the circumstances. As such I'm not persuaded he failed to take reasonable care not to make a misrepresentation.*

### *Conclusion*

*As I'm not persuaded that in this particular case Mr S failed to take reasonable care not to make a misrepresentation, then CIDRA doesn't allow for Markerstudy to take any action.*

*So, it follows that cover needs to be provided for the claim, and the claim for the total loss needs to be paid in line with the remaining terms and conditions of the policy. The payment*

*should be made less any excess and less any premium that's been returned. Simple interest of 8% needs to be added to any amount that is paid from the date of claim to date of payment. Markerstudy should also ensure that any voidance marker is removed from all internal and external websites, and it should provide Mr S with a letter stating that the voidance was placed on his record in error and has now been removed.*

*I'm also conscious that Mr S has complained about the mental anguish and inconvenience he's suffered, and he says he been left out of pocket. As I'm planning to uphold as I've found that Markerstudy handled this claim incorrectly, Mr S should be compensated for the distress and inconvenience he's suffered because of Markerstudy's actions. So, I going to recommend that Markerstudy pays Mr S £400 compensation for any distress and inconvenience he suffered.*

### **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.

I sent my provisional decision on 9 December 2021 as set out above. Both parties have now replied.

Mr S has raised two points. The first one concerns the salvage of his vehicle. The second one concerns the higher premiums he's now paying because of the voidance on his driving record.

Markerstudy has also responded with a number of points. It says that Mr S initially searched for a quotation online, and the inception call provided was just a follow up call which took place afterwards. Markerstudy has provided a screenshot of what Mr S would've seen whilst taking out the policy online on an aggregator site and it says modifications is defined online. Markerstudy has also provided a note from an engineer stating that the wheels Mr S put on his vehicle were not an optional extra for this specific model. Markerstudy says the definition is clear, and Mr S didn't take reasonable care.

So, let's deal with the salvage issue first. When we issued our view on this case in August 2021, Mr S asked why his salvage hadn't been returned. Markerstudy advised that the salvage had been sold and proceeds used to offset the third-party claim. Markerstudy suggested if Mr S was unhappy, he could make a further complaint.

When I issued my provisional decision Mr S replied again. He said this vehicle had specific sentimental value as it had been paid for by his grandmother. He said Markerstudy had called him and apologised for "salvaging" the vehicle and said it owed him the salvage value.

It's good to see that Markerstudy has been in contact with Mr S about this issue. But as explained to Mr S in August, this part of the complaint was raised after the issue came to our service. So, I can't deal with it in this final decision. If Mr S remains unhappy with how Markerstudy has dealt with this part of his complaint, he needs to raise a further separate complaint.

I'm going to move to Markerstudy now, and its reply. In my provisional decision I said Mr S didn't specifically go looking to "modify" his vehicle. He needed to replace his tyres and he was sold a full alloy wheel set at a discounted price. Under CIDRA the test is what a reasonable consumer would disclose after he changed his wheels.

If Mr S purposefully set out to upgrade his wheels I can see where the argument could be made for a misrepresentation. But in this specific circumstance I believe Mr S just bought a

new set of alloy wheels with tyres as they were offered to him at a discounted price. He says it wouldn't even have crossed his mind to declare this as a modification. And in my provisional decision I said that Markerstudy didn't define modification in either the call or its terms and conditions. So, Mr S wouldn't have known what to declare.

But Markerstudy now say that Mr S obtained a quote online first, and that there was a definition set out online. The online definition says *"a vehicle is considered modified if it has changed in any way since it was first supplied by the vehicle manufacturer. This would include changes to body work, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you are unsure of whether changes are classed as a modification, please check with your chosen provider before purchasing"*

I note that alloy wheels are not mentioned in this definition. So, while Mr S had changed his wheels, I'm not satisfied that this explanation was clear enough to let him know Markerstudy wanted to know specifically about wheels. It follows that it's not persuaded me Mr S failed to take reasonable care not to make a misrepresentation.

The test in this instance is what a reasonable consumer would do. And I think, in this specific circumstance, where a consumer was offered manufacturer branded wheels, from a genuine dealership, that were identical to what he already had in every way bar size, that consumer would not deem that a modification, and therefore would not declare it to his/her insurer. I appreciate what Markerstudy has said the alloys are not an optional extra for this particular model. But Mr S wasn't to know this. He was offered an alloy wheel set that was similar in almost every single way to what he already had on his vehicle. In his eyes he was just replacing the wheels on his car with a new set.

And looking at what Markerstudy has provided, it's clear it's not the wheels specifically that are the problem, but the cost. If the wheels had cost a little less than they did, it's highly likely they would've been acceptable to Markerstudy and its likely that Mr S would've been on cover at the time of the claim even with the new set of alloy wheels.

So I'm satisfied, in this specific instance that Mr S presents under CIDRA as a reasonable consumer and acted accordingly. As such, nothing further has been provided that has changed my mind on this, so the fair and reasonable decision is to uphold the complaint as set out above in my provisional decision.

Finally, Mr S has expressed a concern over additional premiums he's paid since this voidance has been placed on his driving record. As set out in my provisional decision I'm asking Markerstudy to remove any voidance marker from all internal and external websites, and it should provide Mr S with a letter stating that the voidance was placed on his record in error and has now been removed. Mr S can then use this letter to show his current insurer and any previous insurers that there was an error and they can deal with this appropriately.

### **My final decision**

My final decision is that I uphold this complaint. I require Markerstudy Insurance Company Limited to:

- Pay the claim less any excess and premium owed plus 8% simple interest on the amount owing from date of claim to date of settlement.
- Pay £400 in compensation for the distress and inconvenience Mr S has suffered.
- Remove any voidance recorded against Mr S's record from any internal and external websites.
- Provide a letter to Mr S explaining this voidance was placed on his record in error

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 January 2022.

Derek Dunne  
**Ombudsman**