

The complaint

Mr B complains about how Markerstudy Insurance Company Limited (“Markerstudy”) dealt with his claim for damage to his motorcycle. In particular Mr B is unhappy Markerstudy failed to obtain an admission of liability from the third party.

What happened

Mr B had fully comprehensive motorcycle insurance with Markerstudy.

Mr B says in September 2021 his motorcycle was hit by a trailer which was being towed by a car. The driver left the scene and then denied all knowledge of the accident. Mr B says there were no witnesses to the incident and when he confronted the third-party driver, the driver refused to accept responsibility or provide his details.

Mr B contacted Markerstudy after the incident. He says this was to get some advice on whether it was worth submitting a no-fault claim. Mr B was concerned the third party might deny the incident and if that happened he would have to pay for the repairs himself since the cost of doing so would be less than the policy excess. Mr B says he was told to submit a claim so Markerstudy could look into whether the third-party insurer was going to accept liability.

Mr B says after he made the claim he had to keep chasing Markerstudy in order to get an update on the claim but it failed to respond to him. In November 2021 Markerstudy told him third-party liability had not been disputed but it was closing the claim.

So Mr B complained to Markerstudy on a number of occasions. He was unhappy with the lack of updates, that he was asked to provide further images of the vehicle, and that his claim had been closed.

Markerstudy accepted it should have explained to Mr B precisely what images and information it required at the outset of the claim. Markerstudy explained the estimate of the cost of repair was below the sum of the policy excess and as such it would not be in Mr B’s financial interest to proceed under the policy. It said since no claim could be made on the policy it didn’t have any costs to recover, and as such it wouldn’t be able to put additional pressures on the third-party insurer. Markerstudy accepted there were delays in it sending the allegations to the third party and a lack of communication with Mr B. By way of an apology it paid Mr B £100.

Mr B remained dissatisfied with the response from Markerstudy. And so he referred his complaint to the Financial Ombudsman. The investigator looked into Mr B’s complaint. She didn’t uphold it. She said because there was no claim on Mr B’s policy Markerstudy had no basis to pursue liability against the third-party. And despite Markerstudy’s attempts to contact the third-party it didn’t receive an admission of liability. The investigator felt the compensation paid by Markerstudy was fair to reflect the delays in the claim.

Mr B wasn’t satisfied with the investigator’s outcome. He said Markerstudy told him to submit a claim but were ineffectual in dealing with the third-party insurer. He said the delays by

Markerstudy meant the third-party was less likely to admit liability. So the complaint has come to me for a 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.

Having done so I'm not upholding it. I know that this will come as a disappointment to Mr B.

To be clear I am only dealing with the initial complaint made to the Financial Ombudsman Service. I know Mr B has made a subsequent complaint to Markerstudy but this doesn't form part of my findings.

I can see this incident and its consequences have had a significant impact on Mr B. I've no doubt Mr B has done all he can to try and prove his claim and have acted in good faith when reporting the incident to his insurer. And so when the claim was closed I think this would have been both shocking and upsetting for him.

But it's not for me to decide who was responsible for the accident. It is important to explain my role here is to look at whether Markerstudy acted in a fair and reasonable manner and within the terms of the policy in its handling of the claim. I am not able to look at actions of the third-party or their insurer.

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's affected what I think is the right outcome.

Not kept up to date throughout the claims process

Mr B feels Markerstudy didn't communicate with him as he would have expected. I have reviewed the documents provided by both sides. I can see that Mr B sent a number of emails which weren't responded to and he had to chase Markerstudy on more than a few occasions.

Markerstudy have accepted it didn't communicate with Mr B as it should have and paid him £100 by way of an apology. I think this is fair in the circumstances and in line with what I would have recommended.

Contacting the third-party insurer

Mr B is unhappy Markerstudy didn't contact the third-party insurer more quickly after the incident was reported to it. He feels Markerstudy could and should have done more to speak to the third-party insurer and obtain an admission of liability for the incident.

I can see from the information provided to me by Markerstudy that it made a number of attempts to contact the third-party insurer. Markerstudy were told the third-party driver hadn't informed his insurer about the incident. And so Markerstudy sent the insurer further details in respect of the claim. Unfortunately the third party made no admission as to liability.

Markerstudy explained that since the third-party didn't accept liability for the incident it was unable to compel it to pay for the repairs to Mr B's motorcycle. It also explained that since the cost of the repair was less than the excess on Mr B's policy it wouldn't be economical for the repairs to be carried out under the policy. As a result of this it meant a claim wasn't registered on Mr B's policy. I have seen Mr B's comments that he was told to register a claim with the insurer which he did, and then the investigator said there was no claim. To be clear

the position with the insurer is that where repairs aren't carried out under the policy, and where Markerstudy have no party to recover any costs from the claim doesn't proceed. Essentially it exists as a notification as opposed to a claim. Markerstudy were only able to do this after it investigated the matter and attempted to get the third party to admit liability.

Had an admission of liability been obtained then Markerstudy would have been in a position to waive the excess on the policy and arrange for the repairs to be carried out. Unfortunately since the third-party didn't respond to Markerstudy it was unable to proceed with the claim. I can appreciate how frustrating this would have been for Mr B. Especially given he was not at fault for the incident. But the driver of the other vehicle didn't accept any responsibility at the time of the incident. So I think its unlikely he would have admitted fault regardless of whether Markerstudy wrote to him sooner than it did. I can't fairly hold Markerstudy responsible for the actions of the third-party.

Indeed Mr B was also concerned the third-party driver would deny knowledge of the incident. He says this is the reason he contacted Markerstudy in the first place – to get some advice as to how to proceed. He was told to make a claim so Markerstudy could look into the matter. And this is what it did.

I've considered the information provided to me by Mr B. I must say that I empathise with the position Mr B now finds himself in. Unfortunately I don't think this is due to Markerstudy and its handling of the matter.

Markerstudy took a view that in the absence of independent evidence to prove the car driven by the third party was involved in the collision. And the fact there is no independent witness evidence to prove the damage was the fault of the third-party driver it wouldn't be able to pursue the matter any further. I don't think Markerstudy acted unreasonably here since it looked at the evidence before it in order to come to that conclusion.

I know my answer will be disappointing for Mr B but overall I think Markerstudy has acted in line with the policy terms and conditions. And so I won't be asking it to do any more to resolve this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 January 2023.

Kiran Clair
Ombudsman