

## **The complaint**

Mr M is complaining about the way Markerstudy Insurance Company Limited handled a claim he made on his car insurance policy. He's also unhappy he was held partially responsible for the accident.

## **What happened**

The facts of this complaint are well known to all parties, so I won't set them out in detail. But, in summary, in August 2020 Mr M was involved in an accident when his motorbike collided with a third party vehicle. Mr M says the third party pulled out of a side road and collided with his correctly proceeding vehicle. The third party's insurer disputed this and said the Police and witnesses said Mr M was at fault.

Mr M instructed solicitors to pursue his uninsured losses – personal injury and damage to his helmet. Before the matter proceeded to court, he says his solicitors accepted an out of court settlement. Mr M then contacted Markerstudy to ask it to reinstate his No Claims Discount (NCD) and to record the claim as non-fault.

Markerstudy contacted the third party's insurer to request it refunded the claim costs. But the third party's insurer responded to say liability had been accepted on a 50/50 split liability basis. So it only refunded 50% of Markerstudy's outlay and deducted 50% of its own outlay. Markerstudy queried this with Mr M who said that his solicitors had agreed an amount as the third party's solicitors didn't want to go to court. He disputed a split liability was agreed.

Markerstudy then wrote to Mr M to say that, as a 50/50 liability had been agreed, it couldn't pursue the matter further. And it said his NCD would remain affected. Mr M didn't agree and referred his complaint to this Service. In addition to this, he also complained that he'd been referred to a claims management company (CMC) at the start and also that he'd had to argue with Markerstudy about the hourly repair rate. He said the amount it was looking to pay per hour was very unreasonable.

Our investigator didn't uphold this complaint. He said he didn't think it was unfair Markerstudy said it couldn't pursue the claim further given Mr M's solicitors had agreed a settlement. He acknowledged Mr M had said Markerstudy didn't give Mr M's solicitor details of its outlay. But he said it had pursued the outlay directly. So he didn't think Mr M had lost out because of this. Finally, he said Mr M was directed to the CMC by Mr M's broker. So he said he would have to direct any complaint about that to the broker directly.

Mr M didn't agree with the investigator. He maintained that a split liability was never agreed. He said he just agreed an amount to settle the claim. He also maintained that Markerstudy never provided his solicitor with its outlay, which is why it never received its outlay.

As Mr M didn't agree with the investigator, the complaint's been passed to me to decide.

## **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've decided to not uphold this complaint and I'll now explain why.

I should first set out that I acknowledge I've summarised Mr M's complaint in a lot less detail than he has presented it. Mr M has raised a number of reasons about why he's unhappy with the way Markerstudy has handled this matter. I've not commented on each and every point he's raised. Instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr M, however, that I've read and considered everything he's provided.

Mr M is unhappy that Markerstudy has recorded a claim as a "fault" claim even though he maintains he wasn't at fault for the accident. I should first explain that while a term "fault" or "non-fault" is often colloquially used to describe a claim, in actual fact they're categorised as "NCD allowed" or "NCD disallowed". Whether someone is at fault for an incident isn't the deciding factor. An insurer will classify a claim as "NCD disallowed" where it pays money on a claim and doesn't get a full recovery of that outlay from another party – e.g. from an insurer of a third party who caused the damage.

In this case Markerstudy didn't recover its full outlay so it recorded Mr M's claim as NCD disallowed. Mr M says this is unfair because he says he wasn't at fault for the accident and he thinks the reason it didn't recover its outlay is because Markerstudy didn't provide details of its outlay to his solicitors. Markerstudy says Mr M's solicitors agreed to a split liability settlement with the third party's insurer – i.e. settling on the basis that Mr M was partially at fault – so it said this prevented it from recovering its outlay in full.

I should first explain that this service isn't able 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 carried out a fair investigation, reviewed all the evidence it has and come to a reasonable decision.

Mr M's policy, like all other car insurance policies, will allow Markerstudy to take over, defend or settle the claim. So it was entitled to settle the claim, on the best terms it thought fit. And it had the ultimate and final say in how to settle a claim. But it needed to exercise this right fairly and reasonably, taking into account everything both parties had provided. Markerstudy says it couldn't defend the claim further because of the settlement that Mr M's solicitors agreed.

In this case, I understand Mr M's broker initially referred him to a CMC. Following this I understand that solicitors were instructed to pursue Mr M's uninsured losses. I note Mr M says Markerstudy didn't engage with his solicitors, but I disagree. I can see there were a number of emails exchanged between them discussing whether Markerstudy wanted to add its outlay to the claim or not. Markerstudy asked the solicitors whether there would be a cost to adding its outlay to the claim. The solicitors advised that there wouldn't be, but said including Markerstudy's costs could mean that the third party's insurer could look to recover its costs if Mr M lost in Court. Given this, I can't say it was unreasonable for Markerstudy to choose to not be included in the legal claim and to decide to await the outcome of proceedings.

Mr M later advised Markerstudy that the third party had settled his personal injury claim. I can see that Markerstudy then looked to recover its full outlay from the third party's insurer. However, it was advised that liability had been agreed 50/50 so the third party's insurer only agreed to refund 50% of Markerstudy's outlay, less 50% of its own outlay. Markerstudy decided that, given Mr M's solicitors had agreed a 50/50 split liability decision, it couldn't pursue the matter further. I recognise Mr M feels strongly he wasn't at fault for the accident, but I can't say Markerstudy's decision to not pursue the claim further was unreasonable,

given the out of court settlement that was reached.

I note Mr M disagrees that he accepted a 50/50 liability and that it was his solicitors who agreed that. But he would have to raise this with his solicitors directly. Ultimately, I can't say it was unreasonable for Markerstudy to take this settlement agreement into consideration in deciding to not pursue the claim further.

As Markerstudy has incurred an outlay on the claim, it wasn't unreasonable that it recorded the claim as NCD disallowed.

I note Mr M has complained about the way the CMC handled his claim at the start and also that he was referred to the CMC in the first instance. But he was referred to the CMC by his broker. Neither the CMC nor the broker are a party to this complaint. So I'm unable to consider their actions in this decision. Mr M will need to raise his concerns with them directly.

Finally, I note Mr M has said he's unhappy with the amount Markerstudy wanted to initially pay as an hourly rate to repair his motorbike. I haven't seen anything to show he complained to Markerstudy about this before referring his complaint to this Service. So he'll need to raise this with Markerstudy directly if he wishes to pursue this further.

### **My final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 February 2024.

Guy Mitchell

**Ombudsman**