

The complaint

Mr C complains about how his insurer, Markerstudy Insurance Company Limited (Markerstudy) dealt with a claim for an accident.

References to Markerstudy in this decision include their agents.

What happened

Mr C had a motor insurance policy with Markerstudy, covering his motorcycle, taken out in August 2020. In October 2020 he was involved in an accident involving a collision with a pedestrian. Mr C was subsequently contacted by an investigator acting for the third party, asking him for a witness statement. Mr C wasn't aware (and Markerstudy hadn't told him) there was a claim from the third party. Mr C refused to provide any details to the investigator.

In June 2021 Markerstudy contacted Mr C to tell him they had appointed an investigator (Q) to obtain a witness statement and asking him to assist Q with their enquiries. But they didn't formally confirm a third party claim had been made. Mr C completed a witness statement.

When Mr C first told Markerstudy about the accident, they recorded a claim for notification only, as Mr C didn't want to make a claim for any damage to his motorcycle. Markerstudy didn't receive any claim from the third party, so closed the claim in February 2022, recording it as notification only.

Mr C said he wasn't made aware of whether there was a third party claim but declared a possible claim to other insurers when taking out subsequent policies. Which meant he had to pay higher premiums. Towards the end of 2022 or beginning of 2023 Mr C says he spoke with a Markerstudy agent who told him he didn't need to declare a claim as it had been rejected some time previously.

Markerstudy subsequently received a claim from the third party in February 2023. Mr C then received an email from Markerstudy in June 2023 referring to a police report (including a statement made by Mr C to police at the scene of the accident) about the incident and allegations from the third party they were hit by Mr C on his motorcycle while crossing a road with stationary traffic. Mr C held the third party fully at fault for the accident, but Markerstudy said the circumstances meant it was likely some element of liability would be attributed to him as he was filtering through stationary traffic when the accident happened, so they would look to settle the claim on the best possible terms.

Markerstudy were subsequently informed in July 2023 that the third party solicitor was no longer representing them but received no further communication from the third party or any representative.

Unhappy at the uncertainty and lack of transparency, Mr C complained to Markerstudy in July 2023. Markerstudy didn't respond to the complaint within the eight weeks a business has to respond to complaints, so they told Mr C of his right to refer the complaint to this Service, which he did. He'd had to pay a high premium for his policy and then to other insurers because of declaring a claim, only to be told there wasn't a claim and didn't need to

declare one. The uncertainty had been stressful, causing anxiety and depression. He wanted an apology from Markerstudy and to be told whether there was a claim against him or not. Or, if there was a claim, full details so he could make his current insurer aware. He also wanted a refund of the high premiums he'd paid and compensation.

Markerstudy issued a final response upholding the complaint in October 2023. They said when Mr C told them about the accident in October 2020, for information only, at that point they hadn't received any claim from the third party. They contacted Mr C in June 2021 to confirm their involvement in the matter and again in June 2023 to tell him they may have to settle a third party claim for personal injury. But they accepted their communication hadn't been consistent and hadn't told Mr C the claim had been initially closed and then re-opened. They apologised for not being more pro-active in updating Mr C.

Markerstudy said, as of September 2023, the third party's solicitor were no longer acting on their behalf and weren't aware of another solicitor being instructed. But the nature of the claim meant it would remain open until February 2024, at which point they could close and settle it. They said they would keep Mr C updated. Markerstudy couldn't see record of calls Mr C said he had with them at the end of 2022 or beginning of 2023, but if he had the details they would look into it. In recognition of the shortcomings in communication, Markerstudy awarded Mr C £100 compensation for poor service and inconvenience.

Our investigator upheld the complaint in part. She noted the initial recording of the accident as notification only (pending receipt of a claim from the third party) and the re-opening of the claim in February 2023. While no further contact was received after July 2023, she thought it unfair for Markerstudy to keep the claim open until February 2024, as it would mean an open claim being recorded against Mr C, which would affect his renewing insurance. She thought the claim should be closed. The investigator thought the £100 compensation awarded by Markerstudy was fair and in line with this Service's approach.

Markerstudy disagreed with the investigator's view and requested an Ombudsman review the complaint. They said the nature of the claim meant it could result in significant cost and remained within the limitation period for bringing a claim and it was possible a new solicitor could pursue the claim. It was likely some liability would be held against Mr C and so it would be recorded as a fault claim. They'd also provided an indemnity to Mr C against the potential cost of any claim. The timescale for closing the claim would be the limitation period plus four months. Any claim (proceedings) received (issued) after that point would be time-barred. So, it was appropriate the claim remained open with an appropriate reserve. The policy provided for Markerstudy to conduct and control a claim. If no claim was received within the limitation period, Mr C could ask his current insurer to recalculate his policy premium once the claim was closed.

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.

My role here is to decide whether Markerstudy have acted fairly towards Mr C.

The key issue in Mr C's complaint is what he sees as the uncertainty of having a claim recorded, only to be told there wasn't one and he didn't need to declare it. Having the claim recorded meant he'd had to pay higher premiums for insurance. He's also unhappy at the uncertainty causing him anxiety and stress. Markerstudy acknowledge they should have been more proactive in letting Mr C know what was happening, issuing £100 compensation.

In considering this case, the first point to note is that the timing of it being passed to me for review means Markerstudy have now closed the claim, as they've received no further contact from the third party, representative or solicitor. From what Markerstudy have said, any claim is from the third party is now time-barred.

Looking at the sequence of events, when Mr C first told Markerstudy about the accident, they recorded the claim as notification only, as Mr C didn't want to claim for the damage to his motorcycle. But it wouldn't – and didn't – preclude the third party making a claim. While Mr C held the third party fully at fault for the accident, given the circumstances of the accident, I think it reasonable for Markerstudy to record the claim as notification only at that stage, but allowing for the possibility of a claim from the third party.

I've also considered Markerstudy's subsequent actions in appointing Q in June 2021 and then closing the claim in February 2022.

In appointing Q (in May 2021) to take a witness statement from Mr C, I don't think it unreasonable, given the possibility of a third party claim, to which Markerstudy would need to respond. The statement (dated June 2021) is in legal form, which is consistent with it potentially being needed for Markerstudy to respond to a third party claim. Q's report (July 2021) also concludes the circumstances of the accident would mean some potential liability attaching to Mr C, irrespective of his view the third party was fully at fault. That being the case, I think it was reasonable to keep the claim open, as notification only.

I can also see Mr C, when contacted by Q to request an interview, asked for Markerstudy to confirm Q's involvement. There's a letter from Markerstudy to Mr C in June 2021 confirming the appointment of Q and asking him to cooperate in providing a witness statement. While the letter doesn't provide details of why Q had been appointed and a witness statement requested, the letter includes contact details, should Mr C wish to raise any queries.

As no third party claim was subsequently received, Markerstudy closed the claim in February 2022. At which point it would have remained recorded as notification only, possibly with any costs associated to that date – such as the costs of Q's report. It was an accurate reflection of the position reached. But, from what Markerstudy acknowledge in their final response, it appears Mr C wasn't told the claim had been closed.

Mr C says towards the end of 2022 or beginning of 2023 he spoke with a Markerstudy agent who told him he didn't need to declare a claim as it had been rejected some time previously. Markerstudy say they have no record of any such call, nor have I been provided with any other evidence to support it. However, as Markerstudy had closed the claim in February 2022, and I can't see exactly what Mr C says he was told, the claim being closed wouldn't be inconsistent with what he says he was told. And any insurer would have access to the record of the claim, so could see what the position was.

Moving on, a claim was received from a representative (solicitor) acting for the third party in February 2023. While this was some 28 months after the accident, I think it reasonable for Markerstudy to respond to it, including the police report of the accident.

Markerstudy wrote to Mr C in June 2023, setting out the position with respect to his being held liable, to some degree, for the accident and why Markerstudy believe that's the case. This includes a summary of the third party's case against Mr C. I think it reasonable for Markerstudy to conclude they might have to settle any claim on the best possible terms. Again, there are contact details should Mr C have wished to discuss the matter.

Markerstudy were then told by the third party's solicitor they were no longer representing the third party (Markerstudy's case notes record this as September 2023). The case notes

record the claim needing to remain open until February 2024,. At that point, with no further communication from the third party (or representative or solicitor) they closed the claim.

Taking all these points into account, I don't think Markerstudy's actions in recording the claim, initially closing it, then re-opening it when a claim was received, were unreasonable. While our investigator thought Markerstudy could have closed the claim a second time sooner than they have now done, it's now past the point of asking them to close the claim. Mr C says he's had to pay higher premiums as a consequence of the claim being recorded, but the claim is recorded as notification only (and closed between February 2022 and February 2023). As I think it reasonable for Markerstudy to have first closed, then re-opened the claim, I can't reasonably hold them responsible for any consequent impact on Mr C's premiums during that period.

Markerstudy say Mr C could - if no claim was received within the limitation period - ask his current insurer to recalculate his policy premium once the claim was closed. As the claim has now been closed, I think this is reasonable. And it's for his current insurer to consider the circumstances and, should they decide to do so, adjust his premium.

But Markerstudy acknowledge in their final response their communication hasn't been consistent. Specifically, they didn't tell Mr C the claim was initially closed (February 2022) or that it was then re-opened (February 2023). I agree they should have communicated with Mr C at both points, given the uncertainty that having a potential claim against him would have had on him. I can't hold Markerstudy responsible for the actions of the third party in making a claim, nor the time that elapsed in their doing so from the date of the accident.

As I think Markerstudy should have communicated more pro-actively with Mr C, I've thought about what they should do to put things right. I think he would have suffered some distress and inconvenience. Considering all the circumstances of the case, I think £100 is fair and reasonable compensation for the distress and inconvenience he's suffered. Markerstudy say they have already issued the compensation to Mr C. That being the case, I don't think they need to do anything further to settle the complaint.

My final decision

For the reasons set out above, my final decision is that I don't think Markerstudy Insurance Company Limited needs to do anything further to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 March 2024.

Paul King
Ombudsman