

The complaint

Miss H complains about how Markerstudy Insurance Company Limited (“Markerstudy”) has handled a claim she made following the theft of her car.

What happened

Miss H made a claim under her policy with Markerstudy after reporting her car stolen on 13 February 2016.

On 24 February Markerstudy repudiated the claim, saying it wasn’t satisfied that the theft of Miss H’s vehicle had occurred as alleged by her. It relied on a post it says Miss H wrote online, saying she had just written off her car. And it told Miss H that this had led it to believe she had been dishonest. It mentioned that she also hadn’t accounted for her second key and there was no sign of forced entry to the vehicle.

Because of this, it concluded that Miss H’s intention was to derive a favourable financial settlement she may not otherwise have been entitled to – and it considered this a criminal offence.

Miss H complained. She said she hadn’t made the comments online about her car being written off and the theft had been genuine. Miss H also complained at a later date that she was told the fraud marker would be removed in October 2022 but that it still hadn’t been removed after that date.

Markerstudy responded to her complaints, saying she’d been given incorrect information about the fraud marker and it would pay her £150 compensation by way of an apology for the upset this caused. It maintained its position regarding the repudiation of her claim.

Because Miss H didn’t agree with Markerstudy’s response, she referred her complaint to this service. Our investigator first considered whether the complaint was brought out of time. But as Miss H had written a letter to Markerstudy in October 2016 that should have been treated as a letter of complaint, our investigator said the complaint was within our jurisdiction to consider as it hadn’t been brought out of time. This was because Markerstudy hadn’t given Miss H a valid final response, outlining the correct time limits to bring her complaint to us.

Our investigator upheld Miss H’s complaint. She said Markerstudy couldn’t reasonably repudiate the claim on the basis of fraud. And that it would need to reconsider the claim. Markerstudy didn’t agree, so the complaint has now come 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.

Having done so, I’m upholding this complaint. I’ll explain why.

Markerstudy’s fraud allegation is based on a number of pieces of information, including:

- The online post it alleges Miss H wrote, about writing off her car.
- The engineer's report concluding that there was no sign of forced entry to the vehicle.
- The lack of a second key for the vehicle.
- Conflicting information about where the vehicle was found.

The online post, allegedly written by Miss H, mentions her writing her car off around the date the claim was made. So I can appreciate why this caused concern. Miss H said she didn't write it and her account had been hacked, but the evidence she's provided in support of this – namely emails showing someone trying to access her social media account – isn't from the same time as the post or the reported theft, but from months later.

However, at most, this post shows that Miss H may have been dishonest about the theft and that she was present during a collision involving her vehicle.

This isn't enough for Markerstudy to allege fraud, as the true facts of the incident (for example Miss H being involved in the accident herself) may still have led to a valid claim under her policy. So the fact Miss H may have lied during the claims process doesn't in and of itself make the claim fraudulent. For the claim to be fraudulent, Miss H must be shown to have been trying to obtain a benefit to which she would not otherwise have been entitled. If Miss H did lie about being involved in the accident, but the true facts led to a valid claim, she would've still been entitled to the same benefit. So whilst I can understand Markerstudy's concerns, I don't think it can rely on this evidence to point to a fraudulent claim.

Markerstudy has said there was no sign of forced entry, but I don't think this is an accurate statement. The reports indicate that one of the windows had been damaged which might be a sign of forced entry. And there isn't conclusive evidence that the car was stolen using a key. So I also don't think Markerstudy can say with any certainty that the theft didn't happen as alleged by Miss H, on the basis of this evidence.

In addition to this, Markerstudy's own arguments include a scenario in which the claim would still be covered. They've said that one possibility is that the car was never stolen and the insured crashed it herself. So taking this into account, it needs to have done more to show that the claim was fraudulent – and I don't therefore consider it should have repudiated the claim, cancelled Miss H's cover, asked her to cover its costs and placed a fraud marker against her, on the basis of the evidence it has relied on here.

In relation to the contradictory information regarding where the vehicle was found, I agree with our investigator that it's possible Miss H may have mistakenly given a slightly different street name to the name of the street where the car was recovered. Whilst I can appreciate Markerstudy's concerns about her testimony, this doesn't persuade me that it has acted fairly in alleging Miss H was making a fraudulent claim because of this.

So overall, for the reasons I've given, I'm not persuaded that Markerstudy can repudiate the claim on the basis that the claim was fraudulent. It will need to reconsider the claim.

Turning now to the impact of Markerstudy's actions, I'm satisfied that the allegation of fraud caused Miss H substantial humiliation and upset, as she was extremely worried about having a criminal record. The situation also caused her distress at a time when she had a newborn baby and was dealing with an abusive ex-partner, who she says also later confessed to stealing her car. The fraud marker, and the ongoing stress this has caused Miss H for 8 years, as well as the higher premiums she will have had to pay, have all had a significant impact on Miss H.

It follows that I consider Miss H has suffered distress and inconvenience due to Markerstudy's actions, over a prolonged period of time, for which she should be

compensated. Due to the seriousness of the allegations and the actions taken, and the amount of time Miss H has been worrying about the situation, I consider it fair for Markerstudy to pay Miss H £1,500. This is in addition to the £150 it has already offered her for giving the incorrect information about when the fraud marker would be removed, which I consider a fair amount of compensation for that mistake.

Miss H should note that in reconsidering her claim, Markerstudy will need to reinvestigate the claim in line with the remaining terms and conditions of her policy and come to a new decision about whether or not to accept it. If Miss H remains unhappy with Markerstudy's further decision or actions, she will need to raise a new complaint with Markerstudy.

Putting things right

Markerstudy Insurance Company Limited must now:

- Reconsider Miss H's claim in line with the remaining terms and conditions of her policy. If the claim is paid, then 8% simple interest per annum should be added to any sums due, from the date of loss to the date of settlement.
- Pay Miss H £1,500 compensation for distress and inconvenience.
- Refund any payments Miss H has made towards the cost of Markerstudy's investigation, adding 8% simple interest per annum to payments from the date Miss H paid until the date the payments are refunded.

My final decision

My final decision is that I uphold this complaint and I direct Markerstudy Insurance Company Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 15 June 2024.

Iffrah Malik
Ombudsman