

complaint

Miss T complains that Markerstudy Insurance Company Limited has held her liable for a road traffic accident and this has affected her no claims discount (NCD) and the premium for her motor insurance policy. She wants it to investigate the matter fully and not settle the third party claim.

background

Miss T was held at fault by Markerstudy for an accident which it said occurred when she changed lanes and caused a motorcycle to crash. She says that she did not notify Markerstudy at the time because there was no actual collision and she did not believe that she was at fault. Miss T says that the third party was speeding and that Markerstudy should have looked at CCTV footage to prove her case. Markerstudy, however, did not request CCTV footage because it did not consider that the footage would be able to prove the third party's speed. Miss T also complains that Markerstudy did not keep her informed, that it misinformed her about the third party's allegations and that it wasted time by instructing an engineer to inspect her car when there was no actual collision. Miss T is suspicious about the third party's personal injury claim as she saw him walking around fine after the accident.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld in part because she thought that Markerstudy should have requested a copy of the CCTV footage. Miss T told Markerstudy about it from the outset, and yet it failed to request it. She thought that whilst it may not have shown the third party's speed, it may have aided in deciding liability. Because of its failure to act, this opportunity was taken away from Miss T. She also thought that Markerstudy should have updated Miss T more regularly. She recommended that Markerstudy should allow Miss T's NCD to continue at the level it was at prior to this claim and that it should pay her £150 for the distress and inconvenience caused by this matter. Markerstudy responded that it agreed to pay the £150 compensation but declined to restore Miss T's NCD.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss T and to Markerstudy on 16 January 2015. I summarise my findings:

I understood that Miss T has found this to be a frustrating and time-consuming business. From her account, she stopped after leaving a roundabout when a third party motor cyclist came off his bike and she has been found liable for causing this. Because of this, her NCD has been affected and she says that her premium has increased by £300.

The adjudicator had already explained that it is not this service's role to decide who was responsible for causing the accident, as this is the role of the courts. Instead, our role in complaints of this nature is simply to investigate whether the insurer acted fairly and reasonably and, most importantly, in line with the terms and conditions of the policy when it made the decision to settle the claim.

Further, Markerstudy is entitled under the terms and conditions of its policy with Miss T to take over, defend, or settle a claim as it sees fit. In other words, if she wants Markerstudy to provide her with insurance, Miss T has to follow its advice in connection with the settlement of claims, whether she agrees with the outcome or not. This is a common term in motor insurance policies and I do not find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

In Miss T's case, I found that there was no dispute that Miss T changed lanes and that seconds later she heard a bang. The third party says that Miss T changing lanes caused him to take evasive action to avoid a collision and come off his bike. Markerstudy said that on this basis regardless of no collision actually taking place Miss T would be considered at fault and it therefore accepted liability and paid the third party claim as it was entitled to do.

However, our approach is that an insurer must consider *all* the available evidence *before* it makes a decision on how to settle a claim.

I found that Miss T's car did not actually collide with the third party and, as confirmed by Markerstudy's investigator's inspection, there was no physical evidence that she was involved in the incident. Miss T was adamant that she only changed lanes when it was clear to do so, and that the third party was speeding.

I found that I agree with the adjudicator and that, in such circumstances, where it is one person's word against the other's, we would normally expect a 50/50 split liability settlement to be considered. However, Miss T had said that the incident would have been caught on one of the many CCTV cameras in the area. I found from the call recordings that Miss T told Markerstudy about the CCTV footage several times, and it assured her that it would be investigated, but Markerstudy failed to request a copy of it from the local council. I found that Markerstudy should have requested a copy of the CCTV footage and reviewed it before deciding to settle the third party's claim. I found that by not doing so, it had prejudiced the claim and left Miss T with a possibly avoidable fault claim on her record.

Miss T suspected that the third party's personal injury claim may be fraudulent but I found that I was not persuaded by this as injuries can present themselves several hours or days after an accident, and the third party had expert evidence to support his claim.

Miss T was unhappy that she had to waste her own time allowing an engineer to inspect her car when it was not actually involved in any collision. I found however that it was not unreasonable for Markerstudy to confirm that Miss T's car had no signs of a recent collision and that the inspection did not overly inconvenience Miss T.

I found that I agreed with the adjudicator that Markerstudy could have kept Miss T updated more regularly on the progress of the claim. However, I noted that Markerstudy reasonably instructed the counter-fraud team to investigate her allegations about the third party. Consequently, I found that I did not require Markerstudy to compensate Miss T for its level of service.

Where I departed from the adjudicator's view was in regard to the extent of the redress that I thought that Markerstudy should make in order to put things right for Miss T. As Markerstudy's failure to request the CCTV footage has possibly prejudiced Miss T's claim, my provisional finding was that it should reasonably restore Miss T's position by removing record of the fault claim from all internal and external databases, restoring her NCD, if this has been affected, and paying her £150 compensation for her inconvenience.

Subject to any further representations by Miss T or Markerstudy, my provisional decision was that I was minded to uphold this complaint in part and I intended to require Markerstudy Insurance Company Limited to do the following:

1. Remove record of the fault claim from all external and internal databases and provide Miss T a letter to say that this was recorded in error.
2. Restore Miss T's NCD to its previous level, if this has been affected by the claim.
3. Pay Miss T £150 compensation for her upset and inconvenience.

Following my provisional decision, Miss T responded that she agreed with my decision except that she asked for a further payment of £300 to reimburse her for the extra cost of her insurance premium. Markerstudy did not make any further submission.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I understand that Miss T's premium has increased by £300, but I find that I do not require Markerstudy to refund this amount to her. The reason for this is that removing records of the fault claim and restoring her NCD will allow her to ask her insurer to review her premium and this should result in a decrease.

my final decision

For the reasons above, it is my final decision that I uphold this complaint in part and I require Markerstudy Insurance Company Limited to do the following:

1. Remove record of the fault claim from all external and internal databases and provide Miss T a letter to say that this was recorded in error.
2. Restore Miss T's NCD to its previous level, if this has been affected by the claim.
3. Pay Miss T £150 compensation for her upset and inconvenience.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss T to accept or reject my decision before 10 April 2015.

Phillip Berechree
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