

## **The complaint**

Mr K complains that Markerstudy Insurance Company Limited (“Markerstudy”) didn’t settle a claim he made on his motor insurance policy fairly. He also complains he was unable to retain his vehicle.

Markerstudy are the underwriters of this policy, i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As Markerstudy have accepted it is accountable for the actions of the intermediary, in my decision any reference to Markerstudy includes the actions of the intermediary.

## **What happened**

Mr K has a comprehensive insurance policy for his motorbike with Markerstudy. The policy started in April 2022.

In October 2022 Mr K and his wife were involved in an accident. He says his bike was travelling at about 4mph when the third-party, who was travelling at 30mph, hit him on the rear left side.

The third-party insurer accepted liability and made an offer of approximately £3,100 for the bike and offered to allow him to buy the bike back for £700. Markerstudy told Mr K the settlement was too low so Mr K would be better off going through them to settle the claim.

Markerstudy offered Mr K the same level of settlement as the third-party insurer but said his bike would be classed as a category B. Mr K says he doesn’t understand why it’s been categorised this way since the only damage was to parts of the bike that can be replaced.

Mr K said the engineering report was incorrect. He says the report referenced front end impact but it was hit at the rear – all the evidence including photographs and the police report refer to rear end impact. Because Mr K wasn’t happy he complained to Markerstudy.

Markerstudy accepted there were issues with the service Mr K received in that there were delays to get through to anyone on the phone and, when he did get through, the line dropped. It also accepted there was a delay in sending the engineer’s report to Mr K. And so Markerstudy awarded Mr K £125 to reflect the distress and inconvenience caused. Markerstudy didn’t accept it had handled the claim incorrectly and so didn’t uphold this part of the complaint. Mr K wasn’t happy with the response from Markerstudy so he referred his complaint to the Financial Ombudsman Service.

One of our investigators looked into things for him. He said he thought the motorbike needed to be assessed with the correct information about the accident circumstances so a fair determination could be made. He said he could see Mr K had raised these concerns with Markerstudy previously but it didn’t provide him with a substantive response. He also recommended increasing the compensation from £125 to £200.

Markerstudy agreed to the increase in compensation. It said the images in the report dated 23 November 2022 suggest the front wheel has extended back into the bodywork, therefore

possibly damaging the frame. It said the only way to be sure of this would be to have the bike measured on an alignment jig which wasn't economical to do; and this is why the category B was applied, due to possible frame distortion. Markerstudy said it wouldn't be able to change the category and wasn't willing to allow a potentially unsafe bike back onto the road.

And so the investigator looked at things again. He said given Markerstudy reassessed the write off and based its opinion on expert opinion, he thought Markerstudy made a reasonable decision based on the evidence. Mr K didn't agree. And so the complaint has 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.

I can see this incident and its consequences have had a significant impact on Mr K. And I empathise with the position he finds himself in.

My role here is to look at whether Markerstudy acted in a fair and reasonable manner, and within the terms and conditions of the policy in the handling of the claim.

### **Retaining the bike**

Our approach is that when a vehicle is 'written off' and deemed a total loss under a motor insurance policy, as Mr K's bike was, the insurer becomes the owner of the salvage after the consumer accepts payment of the bike's full market value.

Mr K's bike clearly means a lot to him. So when the third-party insurer intimated he might be able to retain the vehicle I know that would have appealed to Mr K. But Mr K didn't accept that offer, I know he said he followed Markerstudy's advice here. So I think the third-party insurer raised Mr K's expectations of a possible outcome. There is also no evidence that had Mr K accepted the insurer's offer, that he would have been able to retain the bike.

I have looked at the section of the policy wording which says;

*"if the insured vehicle is deemed to be beyond economical repair the damaged vehicle becomes our property once a claim is met under the policy."*

This is in line with many other policies in the market and it seems to be that it allowed Markerstudy to take the vehicle salvage and dispose of it how it wishes. It will do this to help it recover its costs from the claim.

The policy wording doesn't say the value of the salvage is passed back to the insured customer, and I can't see the policy would do this. Markerstudy made a settlement offer to Mr K which he accepted.

Markerstudy settled for the bike and in return ownership of the bike transferred to itself. So I think Markerstudy's actions here have been fair and in line with my expectations.

### **Category B**

I can see from the file Mr K said the scratches and damage to the front of the bike were from wear and tear. And that the bike hadn't had any front-end impact since he had owned it. But I don't think whether there was damage to the front makes a difference to the outcome.

Markerstudy's engineer said the motorbike was uneconomical to repair so it wrote-off the bike as a category B, which means it can't be put back on the road, but parts from it can be used. Having read Markerstudy's evidence, I can see the reason this category was used was due to potential damage to the frame. A Markerstudy engineer has made that assessment after inspecting the bike and I think it's reasonable for me to accept that it's valid. I also haven't seen any evidence to suggest the engineer's evidence is incorrect.

Mr K isn't happy that Markerstudy disposed of the bike without his permission. He wanted to have his own engineer assess the bike's salvage category. But he wasn't able to since he had already accepted settlement and the bike had already been disposed of by the time he expressed that he wanted to do this. So I can't say Markerstudy did anything wrong in disposing of the bike when it did.

I think it was fair for Markerstudy to rely on its engineer to help inform its decision. I can see why Mr K was so concerned about the claim, especially since the third-party insurer had given the impression he was able to keep the car. But I don't think it was wrong for Markerstudy to categorise the car in the way it did. It based its view on expert evidence. So I think it has acted in a reasonable way here.

### **The engineer's report**

An insurance policy provides cover in certain circumstances. For example in a road traffic accident the insurer will cover any damage to the vehicle that is caused by the accident. If there was damage that wasn't related to the accident then usually an insurer won't cover the costs of repairing that.

I have carefully considered all the evidence here, including the engineer's report. And while it doesn't detail how the accident circumstances caused the damage it describes; I haven't seen anything to suggest the report is incorrect. Mr K says he drove the bike back from the scene without any incident. And all the independent evidence confirms a rear impact, with the bike not touching the ground.

When Mr K raised these queries with Markerstudy it didn't provide him with an explanation. So I can understand why he's unhappy – especially given the bike means so much to him. I know Mr K feels it is unfair that he wasn't able to have his bike back. But the insurer is entitled to rely on the professional opinion of its expert. And Mr K had the option of saying no to the settlement and telling the insurer he wanted to have the bike inspected. Unfortunately by the time he did so, it was too late.

I think Markerstudy made a fair decision to declare the bike a write off and is entitled to rely on the information provided to it by its authorised repairer. So I can't say Markerstudy acted unreasonably here.

Markerstudy agreed to pay Mr K £200 for the distress and inconvenience. And I think this is fair and reasonable for the trouble and upset caused by Markerstudy's poor communication.

### **My final decision**

My final decision is that I direct Markerstudy Insurance Company Limited to pay Mr K £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 January 2024.

Kiran Clair  
**Ombudsman**