

The complaint

Mr H has complained about Markerstudy Insurance Company Limited. He isn't happy about the way it dealt with his claim under his motor insurance policy.

A representative has supported Mr H in bringing this complaint, but for simplicity I've mainly referred to him in this decision.

What happened

Mr H made a claim under his motor insurance policy and the matter eventually proceeded to court and the matter was settled on a non-fault basis in Mr H's favour. Unfortunately, Mr H's excess wasn't entered as part of his costs by his solicitor, so he complained to Markerstudy about this.

Markerstudy explained to Mr H that he needed to tell his solicitor about any uninsured losses so they could be requested from the other side as part of settlement. Once Mr H made Markerstudy aware that they hadn't been considered as part of the settlement it did try to recover the costs from the third-party insurer on his behalf, but the third-party refused. As Mr H wasn't happy about this and the fact that Markerstudy wouldn't refund the excess or offer any compensation he complained to this Service.

Our investigator looked into things for Mr H but didn't uphold his complaint. He looked at the circumstances surrounding the complaint, but he didn't feel it was fair to hold Markerstudy responsible for Mr H not telling the solicitor to include his excess in any uninsured losses as part of the claim. He was satisfied that Markerstudy wrote out to Mr H about this in order to ensure any uninsured losses were advanced within the claim.

As Mr H didn't agree the matter has been passed to me for review.

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 don't think it would be fair to ask Markerstudy to pay Mr H his policy excess as a matter of good will. I know this will come as a disappointment to Mr H, but I'll explain why.

I also think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I can understand Mr H's frustration here as it seems he presumed his policy excess would be recovered automatically as part of the court proceedings. But he ought to already have been aware that his excess was due under the policy as is ordinarily the case in any motor insurance claim. And so, he needed to tell the solicitor about any uninsured costs he wished to claim when the solicitor wrote out about this but unfortunately he didn't.

I understand that Mr H would like his excess back, but he should have ensured this was advanced as part of his uninsured losses through his solicitor and I can't hold Markerstudy responsible for this. I know Mr H's representative has suggested that Mr H attended court as a witness to support Markerstudy's claim but he was duty bound to cooperate with the insurer. And as our investigator explained, Mr H has had the benefit of having a 'non-fault' claim as opposed to a 'fault' claim marked against him so he should be able to have the benefit of cheaper insurance going forward.

Overall, although I have a fair degree of sympathy for Mr H I don't think Markerstudy has done anything wrong. It acted fairly in trying to see if the third-party insurer would honour the uninsured loss (the policy excess) when it was made aware that this hadn't been included in the court proceedings which was fair. It is unfortunate the other side wouldn't honour this, but I can't hold Markerstudy responsible. And ultimately Mr H should have made the solicitor aware of any uninsured costs, such as his policy excess, so that they could have been recovered as part of the claim.

My final decision

It follows, for the reasons given above, that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 October 2023.

Colin Keegan
Ombudsman