

# The FOS Approach to Motor vehicle insurance claim delays

<b>1</b>	<b>At a glance</b>	<b>2</b>
1.1	Scope	2
1.2	Summary	2
<b>2</b>	<b>In detail</b>	<b>3</b>
2.1	Resolving claims in a fair and 'reasonable' time	3
2.2	Handling delays in repairs	4
2.3	Making a cash settlement	5
2.4	Reaching agreement	5
2.5	Awarding compensation	6
<b>3</b>	<b>Context</b>	<b>7</b>
3.1	Case studies	7
3.2	References	8

We have created a series of FOS Approach documents, such as this one, to help consumers and financial services providers better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and dispute types that we see at FOS. However, it is important to understand that each dispute that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no FOS Approach document can cover everything you might want to know about key issues.

# 1 At a glance

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## 1.1 Scope

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When a policyholder claims damage to insured property, a financial services provider (FSP) should progress the claim fairly, promptly and openly.

This document sets out what:

- FOS reasonably expects of the FSP when repairing damaged insured property
- the FSP could do if repairs are delayed because parts are not available
- could form a fair and reasonable cash settlement if the FSP decides to cash settle where parts are not available
- compensation FOS may award if claims are unreasonably delayed.

This approach will benefit FSPs and applicants with a dispute at FOS about the repair of insured property.

## 1.2 Summary

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FOS considers a fair and prompt resolution of an insurance claim to be part of the FSP's wider obligation to act with utmost good faith towards the policyholder.

In determining a dispute, FOS will look at:

1. whether the FSP acted fairly and promptly to resolve the claim
2. what steps the FSP took to expedite the repair and ease the applicant's burden if the FSP chose to repair the damaged property
3. whether a cash settlement, if offered, was fair and sufficient for the applicant to complete repairs that would have otherwise been authorised under the claim
4. whether the cash settlement is based on a quote for repairs provided by a licensed repairer prepared to honour the quote even if approached by the applicant outside of the claim
5. whether the FSP and the applicant tried to negotiate a fair and workable solution in the face of a genuine difficulty in sourcing replacement parts
6. whether to award compensation if we find that the FSP has unreasonably delayed resolving the applicant's insurance claim.

## 2 In detail

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### 2.1 Resolving claims in a fair and ‘reasonable’ time

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#### How should the FSP resolve claims?

The FSP has an obligation to resolve an insurance claim fairly and reasonably promptly where it decides:

- to repair damaged property
- to cash settle a claim.

There is no standard formula to assess what is a ‘reasonable’ time for the FSP to resolve a claim, but FOS looks at:

- the individual facts and circumstances of each claim
- the conduct of both parties.

#### What if parts are not available?

FOS accepts that insurance claims can sometimes be delayed by circumstances beyond the control of the parties, especially if replacement parts are not available. However, a delay caused by parts not being available alone:

- is not a valid excuse for the FSP not progressing the applicant’s insurance claim
- does not release the FSP of its obligation to resolve the claim reasonably promptly.

FOS does not consider it fair or satisfactory for an FSP not to act, purely due to the non-availability of or difficulty in sourcing a part. The FSP should make all reasonable attempts to source the required part(s), even if this required the FSP to look outside the repairer/supplier network it usually uses.

#### What if the FSP wants to use a preferred repairer?

Most insurance policies allow the FSP to appoint a preferred repairer if it chooses to repair damaged property. If the FSP exercises this right, it must ensure the preferred repairer is ready and able to complete the repair in a reasonable period.

If a delay is inevitable, the FSP should:

- be clear about this with the policyholder from the outset
- do what it reasonably can to speed up the repair.

## What is a fair repair timeframe?

Where the FSP chooses a preferred repairer to repair damaged property, we will look at whether the FSP's proposed timeframe for the repairer to complete the work is fair to the applicant.

To work out an accurate repair timeframe, the FSP could seek the following information from its preferred repairer before authorising a repair:

- whether the parts needed are immediately available, or
- a reasonable estimate for when the relevant parts will be available.

This helps to determine:

- as accurate a repair timeframe as possible
- if there will be delays as early as possible
- if there is a need to consider other options to speed up the repair.

## 2.2 Handling delays in repairs

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### What if parts are not in stock?

FOS understands that the FSP's preferred repairers will not always keep replacement parts in stock, or not order them until they are contracted to do the repair work.

However, a preferred repairer should ideally check and confirm parts availability before submitting a repair estimate to the FSP. This identifies potential delays at the outset, and allows the FSP to take action to:

- find other repair options
- alert the policyholder and people most affected by such delays.

### What if parts are no longer made?

We also accept that repairs can sometimes be delayed because a manufacturer has stopped producing the parts, such as car parts for a discontinued model. In these cases, the FSP might need to settle the insurance claim in another way.

Where the FSP is allowed to use reconditioned or second hand replacement parts for repair work, it should:

- tell the policyholder up front that the original parts are no longer available
- make reasonable attempts to source reconditioned or second hand parts from elsewhere.

FOS acknowledges that some insurers have subscribed to the Motor Vehicle Insurance and Repair Industry Code of Conduct, which imposes obligations on participating FSPs and repairers to manage repair networks, approvals and repairs. FOS believes that its approach on the issue of parts delay complements one of the code's aims, namely – the timely repair of vehicles.

## What happens if a delay is unavoidable?

We consider any attempts an FSP makes to expedite repairs. We will also consider if the FSP has proposed measures for easing the applicant's burden and whether they are reasonable.

These could include:

- authorising repairs to the applicant's nominated repairer (if available) or to repairers who can obtain the parts, even if this costs more than using a preferred repairer
- checking if other repairers can do the work faster than the preferred repairer
- checking if other spare parts suppliers have the parts needed
- doing a temporary repair using a second hand or recycled part (where possible) if the unavailable part is not critical to operation or safety, and agreeing to complete the repair once the part is available
- offering a courtesy car during the delay.

## 2.3 Making a cash settlement

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### What makes a fair cash settlement?

If the FSP offers the applicant a cash settlement when parts are not available, it must be fair in the circumstances. The applicant must be able to effect repairs with the settlement amount when the parts become available.

Factors we consider in determining if the FSP's cash settlement offer is fair include whether:

- the FSP made reasonable attempts to source the unavailable parts or merely relied on the advice of preferred repairers before deciding to cash settle
- the offer reflects possible price rises when the replacement parts become available, or the FSP agreed to adjust the offer to cater for possible price rises
- the applicant can reasonably have the repair completed by a nominated repairer in a timely manner based on the amount offered.

## 2.4 Reaching agreement

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### Have negotiations been open and fair?

FOS recognises that a delay in the FSP reinstating damaged property can be a major burden on the applicant.

However, the applicant should also recognise the genuine difficulties that the FSP faces when it cannot complete repairs without significant delay, for example, where parts are not readily available.

FOS encourages the parties to openly discuss and try to agree on a fair and workable solution in such circumstances.

For example, open discussions between insurers and policyholders led to only a few disputes being lodged at FOS after the Perth and Melbourne hailstorms of March 2010. This was despite large delays in FSPs completing repairs due to a high number of claims and a lack of qualified repairers. This open communication that took place reinforces our approach to this issue.

## **2.5 Awarding compensation**

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### **When do we consider giving compensation?**

Where we determine there are unreasonable delays in the way the FSP handles a claim repair, FOS can consider awarding compensation to the applicant under paragraph 9.3 of our Terms of Reference. FOS may award compensation of up to \$3,000 per claim for non-financial loss and up to \$3,300 for consequential financial loss.

### **What is the difference between consequential financial and non-financial loss?**

We may consider compensation for consequential financial loss if a claimant can show that the FSP's handling of a claim has caused the claimant extra financial loss.

Compensation for non-financial loss is awarded where we determine the FSP has caused an unusual degree of inconvenience or loss of enjoyment to a claimant, such as when the FSP fails to resolve a claim in a reasonable time.

Our capacity to award compensation is strictly discretionary. We will not award compensation if we do not consider it fair in all the circumstances to do so.

## 3 Context

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### 3.1 Case studies

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#### Case 1: FSP did not unreasonably delay repair

The applicant claimed for damage to her motorcycle, which the FSP accepted and authorised its repairer to repair. However, the repairer could not complete the repair for more than a year because:

- some parts were unavailable locally and had to be ordered from overseas
- there were delays in the delivery of the parts.

FOS did not consider it appropriate to award compensation in this case because the evidence showed:

- the FSP did not unreasonably delay the repair
- the FSP was experiencing a genuine difficulty in sourcing the parts locally
- the motorcycle was an imported model and its parts were not readily available locally
- the repairer ordered the required parts from overseas early in the claims process and, in the meantime, painted most of the parts it had
- the applicant was told that there would be a delay early in the claims process as parts had to be ordered from overseas.

#### Case 2: Applicant received compensation after unreasonable delay by FSP

The applicant claimed for damage to her car, which the FSP accepted and authorised its repairer to repair. However, the repairer did not complete the repair for some 9 months because of:

- the lack of a wiring harness that had to be ordered from overseas
- there was a delay in the delivery of the part.

FOS considered it appropriate to award compensation in this case because the evidence showed:

- the FSP had unreasonably delayed the repair
- the FSP authorised the repair to its preferred repairer without finding out if the applicant's preferred repairer or other repairers were able to complete the repair more quickly
- the FSP did not try to source the unavailable part elsewhere
- the FSP did not make any reasonable attempts to speed up the repair
- the FSP gave the applicant several estimated completion dates, although it had no idea when the part would arrive from overseas or the repair would be completed
- the applicant was overwhelmingly left on her own to pursue the claim

## Financial Ombudsman Service

- the FSP asked the applicant to chase the manufacturer for the part, although it undertook the obligation to repair
- the vehicle was poorly repaired.

The applicant was awarded:

- compensation for consequential financial losses arising from the FSP's delay, such as storage cost, subject to her supplying evidence of the loss
- \$3,000 for being subjected to unusual inconvenience, delays and interference with her enjoyment of her car.

## 3.2 References

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### Definitions

Term	Definition
applicant	individual or small business that has lodged a dispute with FOS
FSP	financial services provider, a business that has chosen FOS as its external dispute resolution scheme and provides a financial service
preferred repairer	repairer the FSP routinely uses for property insurance claim repairs

### Useful links

Document	Link
<a href="#">Terms of Reference</a>	<a href="http://www.fos.org.au/tor">www.fos.org.au/tor</a>
<a href="#">Determination 252880</a>	<a href="https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/252880.pdf">https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/252880.pdf</a>
<a href="#">Determination 244914</a>	<a href="https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/244914.pdf">https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/244914.pdf</a>