



Financial Rights

LEGAL CENTRE

FACT SHEET



CALL THE
INSURANCE
LAW SERVICE
ON
1300 663 464

Financial Rights Legal Centre Inc.
ABN 40 506 635 273

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DISPUTE RESOLUTION (INSURANCE)

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

CASE STUDY

Dan was very frustrated with his insurance company. After an accident at a roundabout 8 months ago he had put in a claim on his comprehensive car insurance policy. Since then the insurer had asked him for information every few weeks but his car is still not fixed. Dan started getting upset about the delay around 4 months ago but despite this he still does not have a decision from the insurer on his claim.

Dan rings the Insurance Law Service who explains that when he complained about the delay 4 months ago he had already raised a dispute. He can either escalate his complaint to the insurer or lodge a dispute in the Financial Ombudsman Service.

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This fact sheet will outline the process involved in raising a dispute with your insurance company.

This fact sheet also covers the limited circumstance in which you are an uninsured driver, involved in a car accident where you are not at fault, and the other party has insurance and your claim for damage is less than \$5,000.

LODGING A DISPUTE WITH FINANCIAL OMBUDSMAN SERVICE (FOS)

FOS Financial Ombudsman Service Australia
www.fos.org.au; Phone : 1800 367 287

The Financial Ombudsman Service (FOS) is an External Dispute Resolution (EDR) provider which can be used to resolve disputes between consumers and their insurers. FOS is funded by its members, which includes insurance companies and brokers.

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FOS is the main way to resolve an insurance related dispute and is much better than going to Court because:

1. It is free for consumers;
2. It is independent (despite being funded by industry);
3. A decision will (usually) be made by FOS if the parties cannot negotiate a solution. The decision is binding on the insurer if you accept the decision. If you don't accept the decision, you may still go to Court (subject to any time limits).

FOS have jurisdiction to hear disputes with insurance companies which fall within the following:

- Involves an insurance dispute (i.e. Motor Vehicle, Home and Contents Insurance, Life Insurance, Travel Insurance); AND
- Involves a policy which you are a policyholder or a beneficiary.

There is an exception to this where you are

1. Uninsured, **AND**
2. Involved in a car accident with an insured driver who is at fault; **AND**
3. A valid claim has been lodged by the insured driver, or the insured driver has passed away or cannot be found; **AND**
4. The amount you are seeking is under \$5000

If you are unsure of whether your dispute falls within FOS Terms of Reference, you can:

- Ring FOS on 1800 367 287; and
- Search their Terms of Reference on the website

I'VE GOT A DISPUTE, WHAT DO I DO NOW?

Before contacting the insurer, it's often a good idea to read the Product Disclosure Statement so you can understand what the insurer has contracted to perform.

You should first raise your dispute with the insurer. This does not have to be in writing, you may want to telephone and say:

1. That you are lodging a formal dispute;
2. What the problem is; and
3. What you want the insurer to do to fix the problem.

You do not need to speak to a particular section of the insurer it can be anybody working at the insurer. Contact details for your insurer's complaints department can be found through a search here: [Member Search](#)

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Don't worry about exactly what you say. It does not have to be perfect, but rather make it clear that you have a problem. Common problems include:

1. Delay;
2. not happy with the amount of the amount of a settlement or extent of repair; or
3. not happy with the quality of repairs.

You do not have to accept the resolution offered if it does not resolve the problem. You should always consider fair compromises. If you are not sure what to do, say you will get advice and telephone back.

In most cases, the insurance company have up to 45 days to respond to your complaint.

I have raised a dispute but my problem is still not fixed.

WHAT DO I DO NOW?

If you are not satisfied with the outcome from the insurer, OR 45 days passes without a response, you can lodge a dispute with FOS.

You need to lodge a dispute with FOS. The easiest way to do this is via the internet using the FOS website at www.fos.org.au, though you can also complete a hard copy application. If you lodge the dispute online, it will be received straightaway.

There are two detailed parts of the dispute/complaint form to complete:

DISPUTE/COMPLAINT DETAILS:

Write a simple description of how your problem arose. For example:

I had a car accident in which I was at fault. My insurer will not begin fixing my car until I have paid the excess upfront. I am currently unemployed and cannot afford to pay the excess in one lump sum.

FAIR AND REASONABLE RESOLUTION OF THE DISPUTE REQUESTED

Write how you want the dispute resolved. For example:

1. For the insurer to immediately commence repairs on my car;
2. For me to enter into an affordable repayment arrangement, because I can not afford to pay the excess outright

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Hints for lodging a dispute with FOS

- Keep the information in your dispute simple to start with as you can add further information later;
- Keep a copy of your dispute form;
- FOS may take some months to finalise your dispute. In the meantime, you should take reasonable steps to minimise loss in relation to your dispute (i.e. for example, start saving the excess whilst your dispute is progressing).
- FOS can only award claims up to a maximum of \$309,000. Get advice if your claim exceeds this amount.
- FOS also has limited capacity to provide compensation. FOS can award up to \$3300 for consequential financial loss and \$3000 for non – financial loss (i.e. an excessive amount of stress and inconvenience caused). You are not automatically entitled to these amounts, and if you have questions, you should get legal advice.

WHAT TO EXPECT IN FOS

1. Initial review by FOS

FOS will initially try and resolve the dispute by mutual agreement. They may use alternatives such as conciliation conferences or negotiations between the parties, if appropriate.

You can continue to make settlement offers throughout the FOS process.

2. Investigation

If a dispute cannot be resolved by mutual agreement, FOS will conduct a detailed investigation and may request additional information from either party to gain a holistic understanding of the problem.

It is up to you to provide sufficient evidence to establish your dispute. For example:

- If you disagree with the insurer's expert reports or opinions (e.g. about how repairs should be carried out, or how damage occurred), you should consider obtaining your own comprehensive expert evidence to establish your case, and point out any flaws in the insurer's evidence. FOS can be heavily reliant on expert reports
- If your dispute relies on your memory or word of mouth, you should consider preparing a statutory declaration from yourself and any other witnesses, in as much detail as possible and preferably in chronological form
- If you are arguing about fault in a car accident and whether you should be liable for an excess, you should provide diagrams of



how the accident happened, copies of relevant road rules, police reports, any CCTV footage etc.

- The insurer may have evidence that could assist your claim. You can request the insurer provide copies of any relevant evidence – expert reports, policy documents, phone recordings/transcripts, interview transcripts, underwriting guidelines etc.

If you are not sure what evidence you need, get legal advice

FOS may prepare a recommendation giving the parties their assessment of the merits of the complaint, if it is likely to assist the parties to reach a resolution. If both parties accept the recommendation, it becomes a binding agreement. If any party rejects it, FOS will accept further submissions and evidence before making a determination.

TIP: Always respond by the due date set with any information and documents requested by FOS. If you need more time to get the information seek an extension from FOS on time to respond.

3. Determination

If the complaint remains unresolved, they will issue a Determination. This is FOS's final decision, and cannot be appealed.

If FOS finds in your favour and you choose to accept the determination, the insurance company will be bound by the decision. If you disagree with FOS' decision, you do not have to accept it and can take your matter to court. It is strongly advised that you get legal advice before doing so.

CASE STUDY

Tanya was involved in a car accident with Paul, and Paul acknowledges he is at fault. Tanya does not have insurance and Paul has insurance with BIG INSURER. Paul has lodged a claim with BIG INSURER, who assessed Tanya's car and offered \$1500 for the repairs. Tanya has had an independent smash repairer assess her car and they quoted \$2700 for the repairs. Tanya and BIG INSURER cannot agree, so Tanya lodges with FOS. Whilst in FOS, Tanya and BIG INSURER are able to enter a negotiated settlement about the cost of repairs to Tanya's car. Tanya accepts \$24,00 after she has obtained a second opinion.

NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources.

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