

Introduction

This is the submission by the Financial Ombudsman Service (FOS) to the inquiry by the New South Wales Parliamentary Select Committee on the Motor Vehicle Repair Industry (Inquiry).

This submission has been prepared by the office of FOS and does not necessarily represent the views of the board of FOS. It draws on the experience of FOS and its predecessors in the resolution of disputes about financial services.

Executive summary

FOS resolves disputes between consumers and financial services providers. We provide services free to consumers. Our members, which are financial services providers, fund our operations. In 2012-13, we accepted 24,100 disputes and closed 24,968 disputes.

FOS accepted 7,065 domestic insurance disputes in 2012-13. About 43% of these disputes related to motor vehicle insurance. Disputes considered by FOS include disputes between a consumer and their insurer where the insurer has authorised motor vehicle repairs to be carried out by an approved repairer.

FOS is not in a position to provide information or comments on all of the matters within the Inquiry's Terms of Reference. This submission provides information relevant to:

- smash repair work and
- consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies.

The submission:

- indicates whether FOS has identified particular trends and
- draws attention to information that could assist the Inquiry including -
 - decisions by FOS in disputes relating to smash repairs and
 - the approach FOS takes where delays result because motor vehicle parts needed for repairs are not available.

Information about FOS

Information about FOS is set out in full on its website, www.fos.org.au. This section summarises key points.

FOS is an ASIC-approved independent external dispute resolution scheme that covers disputes across the financial sector. FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds and
- pooled superannuation trusts.

FOS was formed in 2008 from the merger of three predecessor schemes organised largely along industry sector lines. The original participants were:

- the Banking and Financial Services Ombudsman
- the Financial Industry Complaints Service and
- the Insurance Ombudsman Service.

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre and
- Insurance Brokers Disputes Ltd.

FOS and its predecessor schemes have over 20 years' experience in providing dispute resolution services in the financial services sector.

FOS is a not for profit organisation that provides services free to consumers. FOS is funded by its members. A significant proportion of its funding is from case fees, and the fees paid by a member reflect the number of disputes in which it is involved and the stages to which they progress.

FOS is governed by a board with an independent chair and:

- four "industry directors" appointed based on their expertise in and knowledge of the financial services industry, independence and capacity and willingness to consult with the industry and
- four "consumer directors" appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, independence and capacity and willingness to consult with consumer organisations.

FOS operates in accordance with its Terms of Reference¹. When deciding a dispute and whether a remedy should be provided, paragraph 8.2 of the Terms of Reference requires FOS to do what is fair in all the circumstances, having regard to each of the following:

- legal principles
- applicable industry codes or guidance as to practice
- good industry practice and
- previous relevant decisions of FOS or a predecessor scheme (although FOS will not be bound by these).

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also monitors compliance with a number of industry codes of practice.

Submission

Smash repair work

FOS and its predecessor the Insurance Ombudsman Service have considered a number of disputes over the years involving claims under motor vehicle insurance policies and the resultant repair work carried out by smash repairers. FOS deals with these issues in the context of a dispute between a consumer and their insurer, where the insurer has authorised motor vehicle repair work to be carried out by one of their approved repairers.

FOS has made decisions about disputes where consumers have alleged their vehicle was:

- poorly repaired
- not completely repaired
- rendered unsafe as a result of the repair work or
- damaged while in the repairer's care.

These decisions, which are called Determinations, are published on our website www.fos.org.au under "Decisions" in "Resolving Disputes". A search of Determinations can use keywords, such as "motor vehicle repair" or "rectification", and can also be limited to more specific topics.

From our records and knowledge of disputes, we have not identified any trend, such as an increase, in disputes relating to the quality of motor vehicle repairs. We receive disputes of this type from time to time. However, the number of these disputes has remained small when viewed as a proportion of total motor vehicle claims lodged or total motor vehicle repairs carried out by the insurance industry.

¹ See Terms of Reference in "About Us" on our website, www.fos.org.au.

Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies

We publish FOS Approach documents² to explain how we deal with different types of disputes. The documents are intended to help stakeholders such as consumers and financial services providers to better understand how we make decisions.

From our dispute resolution work, we recently identified a trend. This is an increase in the number of Determinations of disputes involving delays in sourcing motor vehicle parts needed for repairs. We issued 16 of these Determinations from 1 July 2012 to 31 December 2013 whereas we issued 10 of these Determinations from 1 January 2011 to 30 June 2012.

In response to the trend, we are developing a FOS Approach document to explain how we deal with this type of dispute. When finalised, the document will be published on our website www.fos.org.au in “Resolving Disputes”. Key aspects of our approach are summarised below.

- FOS takes the view that insurers have a general obligation to resolve claims fairly and reasonably promptly.
- FOS may award compensation for non-financial loss if it is satisfied there has been an unreasonable delay in resolving a consumer’s claim.
- Where an insurer elects to undertake the repair of damaged property, FOS will consider what measures (if any) were taken to expedite the repair and ease the burden on the consumer.
- Where an insurer elects to settle a claim by paying cash, FOS will consider whether the cash settlement offered is fair in all the circumstances and sufficient to effect repairs when the relevant parts become available.
- Where there is genuine difficulty in resolving a claim due to unavailability of parts, FOS believes that consumers and their insurers should engage in open dialogue to negotiate a solution that is fair and workable for both parties.

Our dispute resolution experience suggests that good communication is crucial in cases where parts needed for motor vehicle repairs are not available. We emphasise the importance of communication in that situation.

² See “Our approach” in “Resolving Disputes” on www.fos.org.au.