

Add-on Insurance

This fact sheet outlines how AFCA deals with complaints about add-on insurance, including when a contract may be set aside for a refund of premiums.

What is add-on insurance?

Add-on insurance is a type of insurance that is offered to consumers in addition to another product, including:

- Consumer Credit Insurance (CCI)
- Guaranteed Asset Protection Insurance (GAP Insurance)
- Tyre and Rim Insurance
- Extended Warranty / Mechanical Breakdown Insurance.

Financial firms may offer add-on insurance to consumers along with car loans, novated leases, personal loans, home loans and credit / store cards.

Add-on insurance may be a stand-alone policy paid upfront, paid monthly or financed into a line of credit.

How does AFCA assess whether a complaint is lodged within time?

Some add-on insurance complaints lodged with AFCA relate to sale events that happened more than 6 years before the complaint was submitted to AFCA. Under our Rules, AFCA will generally not consider a complaint unless it was submitted within six years of the date the Complainant first became aware or should reasonably have become aware that they have suffered a loss.

Jurisdiction is assessed based on each claim within the complaint

The loss is the loss *to which the complaint (or the individual claim within a complaint) relates*. The loss may be associated with multiple claims (e.g. policy had no value or complainant was misled). A complaint can have more than one 'claim'. AFCA will consider jurisdiction for each claim individually. This can result in some aspects of a complaint falling within time and others falling outside the time limits.

Reasonable awareness of loss for add-on insurance complaints

The time limit runs from *when the complainant should reasonably have been aware of the loss*, not when a 'reasonable person' should have been aware of the loss. This means that reasonableness should be assessed against the complainant's circumstances including any impairment, isolation or other disadvantage.

A potential complainant 'should reasonably have been aware' of a loss when:

- they were on notice of facts or concerns that should have prompted them to make further enquiries, and
- those enquiries – had they made them – would have alerted them to the relevant loss

The Financial Services Royal Commission (FSRC)

AFCA considers that general awareness of concerns about the sale of add on insurance arose following the release of the FSRC Final Report on 4 February 2019 (the Final Report).

Unless the complainant was on notice of concerns earlier for other reasons, AFCA considers the period immediately after the Final Report's release is likely to be the *latest* stage the complainant should reasonably have been aware of their loss.

This is because of the widespread media coverage generated by the FSRC Final Report that covered the issues raised in claims made in these complaints.

What is AFCA's approach to add-on insurance complaints?

Issues AFCA will consider

AFCA will review the available material to determine if any of the following factors are relevant:

- Inadequate disclosure of important product terms
- Elements of misrepresentation, duress, undue influence or misleading conduct
- A lack of fair dealing or unfair selling practices.

If any of these factors are present, this may be grounds to set aside the add-on insurance contract and award in the complainant's favour – see "AFCA's approach to misleading conduct" on our website: [afca.org.au/approach](https://www.afca.org.au/approach)

How will AFCA weigh the importance of signed documents?

Often a financial firm will rely on the fact the complainant signed documents agreeing to purchase the add-on insurance, and / or acknowledged receipt of documents about the sale.

While consumers are generally bound by an agreement they have entered into (and signed), we do not consider that this is always fair in all the circumstances. We will also consider whether the policy holder(s) provided clear, informed consent to purchase the add-on insurance(s).

The FSRC and the Australian Securities and Investments Commission in various reports raised concerns about inappropriate and unfair add-on insurance sales practices. Several financial firms have implemented significant remediation programs to address poor product design and inappropriate sales practices. These reports raise questions about how informed complainants' purchasing decisions were.

Taking these matters into account, AFCA will look beyond the mere fact the complainant signed or received documents.

What information does AFCA need?

From complainants

AFCA may ask complainants to provide:

- A detailed account of the discussion at point of sale
- What was considered misleading and / or inappropriate about the sale
- A copy of the loan contract (if the add-on insurance premium was financed by a loan)
- Any documentation provided at the point of sale
- Any documentation received about the add-on insurance after the sale
- Any notes taken during the sale
- A description of the desired outcome.

From fee paid representatives

Some complainants choose to use a fee paid representative to act on their behalf (although this is not necessary). Fee paid representatives may charge upfront fees and / or a proportion of any successful refund. Even if the complaint outcome is in the consumer's favour, AFCA will generally not require the financial firm to fund the fees charged by the paid representative.

Fee paid representatives should ensure their submissions to AFCA cover all the requirements relevant to the type of add-on insurance(s) being complained about in their AFCA lodgement, as set out in the Add on insurance EDR Response Guide. guidance.

We encourage fee paid representatives to use the guidance to help them provide a complaint submission to the financial firm, before lodging a complaint with AFCA. A detailed submission may help to achieve an early resolution, without the need to lodge a complaint with AFCA.

A submission that does not meet these requirements may mean that AFCA closes the complaint under our Rules.

From financial firms

Each add-on insurance complaint is assessed on its own individual merits. Financial firms should provide their external dispute resolution (EDR) response in line with the "Add-on insurance EDR Response Guide" on our website: afca.org.au/publications

AFCA will decide what additional material may be needed through a 7-21 day information request, if the complaint continues to a preliminary assessment.

If a financial firm does not want certain information to be exchanged or disclosed to a complainant or their representative – see "AFCA's approach to assessing special circumstances" on our website: afca.org.au/approach

What happens if a party cannot provide adequate information?

It is important that complainants and financial firms provide information and supporting documentation at lodgement or as soon as practicable. Every add-on insurance complaint is assessed on its own individual facts and circumstances.

A separate fact sheet deals with how we consider information – "How AFCA will assess the information you give us" on our website: afca.org.au/publications

What outcomes can AFCA provide?

Remedies

If we find that it is fair to set aside the add-on insurance contract, AFCA will aim to provide a remedy that we consider is fair in all the circumstances.

We will consider:

- The causal link to a claimed loss
- The financial benefits a person might have received from the sale of add-on insurance (e.g. tax benefits under a novated lease scenario); and
- A person's actions taken to reasonably mitigate their loss.

Our general approach is to return the consumer to the position they would have been in before the add-on insurance product was sold to them. We do this by requiring the financial firm to refund the premium(s), less any previous premium refund(s) and / or any claims paid. If the premium(s) were funded by a credit product (e.g. a personal loan), we may also require the firm to pay back the interest paid on the premium(s).

If the loan that financed the premiums is still under contract or has been defaulted on, we may require that any refund be offset against the loan or the debt.

Where appropriate, we may also consider adjusting the final compensation amount payable to account for inflation. If we decide to award compensation for this, the amount payable will usually be based on the change in the Australian Bureau of Statistics' consumer price index between when an inappropriate charge was incurred and when the inappropriate charge was refunded.

When will AFCA decide not to investigate?

In some circumstances AFCA may consider that it is not fair to continue an add-on insurance complaint where:

- Add-on insurance was sold online and the sales process was not unfair, and appropriate disclosures were made
- Add-on insurance was sold over seven years ago, with no misconduct identified by the complainant
- A financial firm no longer has information on record to be able to fairly respond to allegations of mis-selling or misconduct
- Add-on insurance was cancelled over seven years ago and neither party can demonstrate what premiums were charged
- The offer made by the financial firm is equal to what AFCA would award
- The complainant has previously received a remedy from financial firm and there is no additional loss.

These are some common examples where it may be unfair for AFCA to continue the add-on insurance complaint. See section A.8.3 of the AFCA Rules on our website for more information: afca.org.au/rules

Class actions

Several current and past class actions apply to the sale of add-on insurance. If the sale of the add-on insurance meets the class action criteria, we will not be able to investigate unless the policy holder has opted out of the class action by the due date. A separate fact sheet deals with class actions – “Class actions affecting AFCA complaints fact sheet” on our website: afca.org.au/publications