

# Determination

**Case number:** 620915

1 July 2019

## 1 Determination overview

### 1.1 Complaint

The complainant holds a motor vehicle insurance policy with the financial firm (the insurer). The complainant lodged a claim after her car was damaged in a collision, and the insurer accepted the claim.

The policy includes a 'choice of repairer' benefit. The complainant has provided a quote from her chosen repairer in the sum of \$5,654.40.

The insurer says the quote is excessive and unreasonable, and has obtained a quote from another repairer in the sum of \$2,430.31.

### 1.2 Issues and key findings

#### Has the insurer fulfilled its obligations under the policy?

The insurer has not fulfilled its obligations under the policy.

The insurer is liable for the reasonable costs charged by the complainant's chosen repairer. The complainant has provided a quote from her chosen repairer, and there is no evidence that the quote is unreasonable. Therefore, the insurer is required to settle the claim in accordance with the quote.

### 1.3 Determination

This determination is in favour of the complainant.

The insurer must settle the claim in accordance with the quote from the complainant's chosen repairer.

If the insurer chooses to settle the claim by paying the cost of repairs to the complainant, the insurer must pay the complainant \$5,654.40, plus interest at the rate determined under section 57 of the *Insurance Contracts Act 1984* (Cth) from 3 February 2019 until the settlement date.

## 2 Reasons for determination

### 2.1 Has the insurer fulfilled its obligations under the policy?

#### Policy provides choice of repairer

The certificate of insurance for the complainant's policy shows that the policy includes a 'choice of repairer' benefit.

The product disclosure statement describes the 'choice of repairer' benefit as follows:

Following loss or damage covered by this policy, if we decide to repair your vehicle or replace any part of it, the choice of repairer is yours.

We will pay the amount we assess to be reasonable by considering your repairer's quote with any adjustments made by our assessor. We reserve the right to determine the method of repair that your repairer uses. We may decide to replace damaged parts with new parts or used parts of a similar condition to those being replaced.

This section says the complainant can choose who repairs her vehicle, but the insurer will determine how much it pays for the repairs. This means that the insurer's liability under the policy depends on the insurer's discretion.

Where a contract includes a term that depends on one party's discretion, it is an implied term of the contract that such discretion will be exercised reasonably and in good faith.

The effect of the 'choice of repairer' benefit is that the complainant is entitled to have her car repaired by her chosen repairer, and the insurer is liable for the reasonable costs charged by that repairer.

#### No evidence complainant's quote unreasonable

The complainant has provided a repair quote in the sum of \$5,654.40 from her chosen repairer, 'EP'.

The insurer has provided a repair quote in the sum of \$2,430.31 from another repairer, 'FS'.

The insurer says its assessor found EP's quote was excessive and FS's quote was reasonable. However, the insurer has not provided an assessor's report. The insurer has not said why its assessor found one quote more reasonable than the other, or what evidence supports this conclusion.

### **Existence of two quotes does not prove higher quote is unreasonable**

The insurer notes that FS's quote is significantly lower than EP's quote. Without further evidence, this does not indicate that EP's quote is unreasonably high; it is equally possible that FS's quote is unreasonably low.

The complainant argues that FS's quote is unreasonably low, and cites evidence in support of this argument. The insurer's responses to the complainant's submissions do not provide any evidence to refute the complainant's argument, and do not comment on any of the evidence cited by the complainant.

### **Insurer has waived right to inspect vehicle**

The insurer has received photographs of the damage to the insured vehicle, but has not physically inspected the damage.

To help determine its liability under the policy, it would be reasonable for the insurer to arrange a physical inspection of the insured vehicle by a suitably qualified assessor. It would be reasonable for the insurer to require the complainant to make the vehicle available for inspection as a precondition to settling the claim.

An AFCA case analyst recommended that the complainant make the vehicle available for a "live independent assessment" arranged and paid for by the insurer. In response, the insurer offered to arrange an "independent assessment" by FS or another repairer.

The businesses named by the insurer are repairers, not assessors; it would be inappropriate and unreasonable to appoint them to provide an expert report on the reasonableness of EP's quote.

The insurer has chosen not to appoint a suitably qualified assessor to physically inspect the vehicle. Therefore, I consider that the insurer has waived its right to physically inspect the vehicle, and must settle the claim without a physical inspection.

### **Insurer must settle claim in accordance with complainant's repairer's quote**

The policy offers the complainant a choice of repairer. Therefore, the complainant is entitled to have her car repaired by EP.

The insurer is liable for the reasonable costs charged by EP. The insurer says EP's quote is excessive and unreasonable, but has provided no evidence to support this claim.

There is no evidence that EP's quote is unreasonable. Therefore, the insurer is required to settle the claim in accordance with EP's quote.

### Insurer must pay interest on any cash settlement

Under the policy, the insurer can settle the claim by repairing the vehicle or paying the cost of repairs to the complainant.

If the insurer chooses to settle the claim by paying the cost of repairs to the complainant, section 57 of the *Insurance Contracts Act 1984* (Cth) provides that it must pay interest from the time when it was unreasonable to have withheld payment. In the circumstances, I consider this to be 3 February 2019, one week after the insurer received EP's quote.