

Determination

Case number	732566
Financial firm	Insurance Australia Limited

1 Determination overview

1.1 Complaint

The complainant purchased motor vehicle insurance with the financial firm (insurer) on 28 May 2019. He says he was advised the market value of the vehicle would be \$21,000 to \$27,000 during the policy inception call, and purchased the policy based on this advice.

The complainant was involved in an accident on 5 March 2020 and the vehicle was assessed as a total loss. He says the insurer initially advised him the market value of the vehicle was \$13,000. On disputing this amount, the insurer increased this amount to \$13,700, then \$14,470, and finally \$15,000.

The complainant rejected this offer and seeks a payment of \$20,000 to \$22,000, arguing the market value of the vehicle should not drop this much in nine months.

1.2 Issue and Finding

Did the insurer mislead the complainant about the policy cover?

I am satisfied the insurer did not mislead the complainant about the policy cover in relation to the value of the vehicle. The policy documentation was clear that the market value was assessed at the time of the incident, 5 March 2020.

Should the insurer pay the market value of the vehicle?

The insurer should pay the complainant \$16,000 as the market value of his vehicle.

Should the insurer pay compensation for non-financial loss?

The insurer has paid sufficient compensation for non-financial loss.

1.3 Determination

This determination is partially in favour of the complainant. The financial firm must pay \$16,000 to the complainant within 14 days of the complainant's acceptance of this determination.

2 Reasons for determination

2.1 Did the insurer mislead the complainant about the policy?

Policy documents make up the contract of insurance

The policy and the product disclosure statement (PDS) make up the contract of insurance. The PDS is clear in stating when and how the insurer assesses the market value of a vehicle. The assessment is at the time of the incident, not at policy inception.

The applicable wording was as follows:

Market Value

our assessment of your vehicle's value at the time of the incident you are claiming for, using local market prices and considering the age and condition of our vehicle.

It includes:

- any modifications, options or accessories that are attached to the vehicle
- GST
- registration
- Compulsory Third Party Insurance (if applicable)
- other on-road costs.

The reason the market value is assessed at the time of the incident is because that is the time in which the actual condition of the vehicle is assessed.

Complainant had a telephone conversation with the insurer's representative

The complainant had a telephone conversation with the insurer's representative about the policy's cover for market value of his vehicle, prior to policy inception. The evidence indicates the market value provided to the complainant during the policy inception call was a guide only.

There is a recording of the telephone call in which the complainant inquired as to the market value of the vehicle. After confirming the make, model, year and specifications for the vehicle, the complainant asked the consultant what the vehicle's market value was. She advised the complainant 'that one can only be assessed once you have lodged a claim, now just so we'll have an idea...', after which time the complainant asked, 'what is the current market value?'

She replied, 'this is based on the Redbook website...market value based on the current market, is between \$21,000 and up \$27,000 for this exact make and model'. The maximum agreed value was advised as \$27,820. The complainant decided to proceed with the market value policy.

2.2 Should the insurer pay the market value of the vehicle?

Market value of the complainant's vehicle at the time of the incident

The complainant contends that the insurer informed him the market value of the vehicle was \$13,000, then \$13,700, then \$14,000. The available information shows the insurer's assessed value of the vehicle at the time of the claim was initially said to be \$14,470, then \$15,000.

The insurer has provided examples of its research to determine the fair market value of the vehicle. I do note the insurer's offer of \$15,000 is \$1,700 higher than that at which the vehicle was first assessed. It is not uncommon for the market value of vehicles to be increased when disputed during negotiations. This is an option available to any insured when an offered settlement is not regarded as satisfactory.

Complainant has the onus of proving the market value

The complainant has provided little of his own research or substantiation to support the claim for a value higher than \$15,000, saying this was the responsibility of the insurer. I disagree with this argument. The onus is on the complainant to substantiate a claim for a higher settlement amount. Refusing to do so does not assist his position.

However, having considered all the evidence together with the various documents in respect to the market value and taking into account that opinions can vary on the market value of a vehicle when inspected after a total loss, I am satisfied the insurer should pay \$16,000 as a fair market value in the circumstances.

2.3 Should the insurer pay the complainant for non-financial loss?

Insurer has provided sufficient compensation for non-financial loss

I acknowledge the complainant asserts there was a delay of three months in assessing the vehicle. The available information shows the vehicle was assessed on 6 May 2020, eight weeks after the accident. Some of these delays were caused as the complainant asked for the vehicle to be towed to his repairer (not a panel repairer) and therefore it took longer for the assessment to be arranged.

The insurer has said the complaint about the handling time did not form part of its review so it will not comment on the delays, but it did offer the complainant an ex-gratia payment of \$500, which he accepted. I also note the complainant was provided with the use of a hire car from 6 March 2020 until 4 September 2020.

I am not satisfied the complainant is entitled to further compensation for non-financial loss.

3 Supporting information

I have determined this dispute according to what is fair in all of the circumstances, having regard to:

- legal principles
- good industry practice and codes of practice, and
- previous decisions of AFCA and its predecessors.

3.1 Relevant documents

- RedBook Guide
- Various valuation guides or documentation
- Policy documentation
- Complainant and insurer's submissions.