



# MOTOR CLAIM GURU

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**Insurer 's increasing excess for choosing their own repairer.**

A query often raised is that of insurer's increasing excess on a consumer choice of repairer.

This is a guide for both repairer and consumer on how to challenge any additional increased excess being applied.

**Can I choose my own repairer?**

**Your right to choose the repairer of your choice.**

The customer's entitled to choose who's repairs their vehicle, This is covered under the following acts and laws. Consumer rights directive 1993 where the Office of fair trade,

The A.B.I. and what was the Financial Service authority now the FCA agreed in the consumer's right of choice. It is now covered in the Consumer Rights Act 2015.

Consumer Protection for Unfair Trading Act 2008 Application part 8 of the Enterprise Act for Unfair Trading Regulations 2008 Motor Vehicle Block Exemption Regulations EC1400/2002 Competition Act 1998.

2015 Insurance Act also stipulates prior to a contract occurring the insurer has to make the insured aware that the contract fulfills the demands and needs of the consumer, and any adverse term or condition is brought to the attention of the consumer. This should have no material detriment to the consumer. To advise before the contract has been made any restriction's in the consumer's choice, or advise that you seek to reduce your contractual liabilities is a breach of the act.

### **Can you complain about the increased excess?**

Under consumer law, barrier's and restrictions cannot be put in place to limit your entitlement to claim from a contract.

These are called

### **Unfair terms and conditions in a contract.**

The unfair terms in consumer contracts regulations in 1999 laid out what was deemed to be unfair in a contract, it states.

#### **“Unfair Terms**

**5.—(1)** A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

**(2)** A term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance

of the term.

(3) Notwithstanding that a specific term or certain aspects of it in a contract has been individually negotiated, these Regulations shall apply to the rest of a contract if an overall assessment of it indicates that it is a pre-formulated standard contract.

(4) It shall be for any seller or supplier who claims that a term was individually negotiated to show that it was.

(5) Schedule 2 to these Regulations contains an indicative and non-exhaustive list of the terms which may be regarded as unfair.

### **Effect of unfair term**

**8.—**(1) An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.

(2) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term.

### **What does that mean to me?**

As a customer , when an insurer advise's that an increase excess is applicable if you choose your own repairer, it may be this breaches the above statutory law,which is also part of the Financial Conduct Authority Regulations by which they must abide.

**The insurer will argue it is part of the contract, so it does apply!  
And you had 14 days to cancel the contract.**

It makes no difference that you could have cancelled the contract, the term or condition would still be unfair and the above act applies.

The same also applies if the insurer advise's " we will only pay what it would have cost to repair your car at our repairer".

There is also a section under the FCA regulations on "treating customers fairly".

## The six TCF outcomes

Our six consumer outcomes explain what we want TCF to achieve for consumers. These were outlined in our July 2006 publication, Treating customers fairly – towards fair outcomes for consumers. These remain core to what we expect of firms. We will continue to use them as an important factor in guiding regulatory decisions and actions.

- **Outcome 1:** Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- **Outcome 2:** Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- **Outcome 3:** Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- **Outcome 4:** Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- **Outcome 5:** Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- **Outcome 6:** Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

There is also another section under the FCA regulations called

## **The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)**

The Principles apply to all authorised firms. This Guide looks particularly to the following

Principles (Note (3)):

☐ Principle 2 ('A firm must conduct its business with due skill, care and diligence');

☐ Principle 3 ('A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems');

☒ Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly');

and

☒ Principle 7 ('A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading').

### **This is all well and good, but how do I use the above and not pay the additional excess?**

There is no guarantee the additional excess will be waived but here are a number of approaches to take.

1. Complain to the insurer
2. Ask For a "cash in lieu settlement at the full evidence cost of repair.

This is the starting point

### **How to complain effectively**

Every time you complain to the Financial Ombudsman Service (FOS) The financial institution will be contacted by the FOS and will be asked to provide them all the information around the complaint.

The insurer (should it not resolve the complaint) gets charged £500 by the FOS to review the complaint.

This is great leverage. **Phone** the FOS up, log a complaint with them, they will then give you a reference number. You then use this in correspondence later by email.

Immediately after doing this **Phone** the insurer and advise them you wish to raise a “**chief executive complaint**” and that you are expressing dissatisfaction.

When asked what your complaint is respond:

I wish to raise a complaint about the inclusion of an increased excess on my policy should I wish to use my own repairer. I understand this to be a breach of the “Unfair term in a consumer contract regulations 1999 which is now Part 2 of the Consumer Rights Act (the Act) 2015 will replace UCTA (to the extent that it relates to business to consumer contracts) and the UTCCR’s (in their entirety) respectively.

This being that these terms of an increased excess and restrictions to the amount you pay for repair are ;

3. In a predrafted contract
4. The contract has not been individually negotiated
5. Has a significant imbalance that will cause financial detriment
6. Breaches section 8 of the Enterprise act 2000
7. Breaches UNFCOG of the Financial Service and Markets act 2000

I also believe this to be a restrictive practice under “The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) implement the EU **Unfair Commercial Practices Directive**. They introduce a general prohibition against unfair commercial practices, specific prohibitions against misleading and aggressive practices and a blacklist of 31 practices that will be deemed unfair in all circumstances.”

The contract I have entered into, I believed would not breach my consumer rights of choice of repairer, would not put restrictions or barriers in place that would prevent me from doing so and would indemnify my Full financial loss.

Do the above , and you may well find the insurer waive ‘s the excess as a gesture of good will and on a “one of basis”.

## **2 Asking for Cash In Lieu settlement.**

Insurer’s advise that they have three ways of fulfilling their contract.

- The authorise repairs
- They deal with a claim on a total loss basis
- Provide a cash in lieu of repairs.

These are the only ways an insurer can oblige it's contract.

Should a insurer not authorise repairs are your choice of repairer, they will try and palm you off with a lower settlement than that to which you are entitled to.

Before asking for a CASH IN LIEU settlement, you need to evidence what it WILL cost to repair your car. To do this, your repairer working for you will need to carry out a "BLUEPRINT OF REPAIR", i.e., a fully detailed proforma identifying the cost to put the vehicle to its pre-accident state.

I would then also suggest having the car inspected by a "qualified independent engineer" they should not negotiate on your behalf, but should check the methodology of repair.

This now makes it very hard for an insurer to short change you,

As they are now providing a Cash In Lieu settlement, they cannot charge the additional excess, as they are not authorising your repairer directly, but paying you the cost of repair.

This is beneficial on higher value vehicles with high excess that may get doubled.

### **3 Keep complaining!**

Keep complaining,

Raise the first complaint above, then raise a second complaint advising that it has been mis-sold and does not fulfil your "demands and needs"

"Demands and needs" are what you require from the contract, as of 2015 with the insurance act, it is the insurer's responsibility to ensure that the contract you have purchased, fulfils what you require of it.

le, if you wanted to use your own repairer without being penalised ,then unless these “unfair terms” Were brought to your attention prior to purchasing, it could well have been mis-sold.

The insurer under threat of being billed by the FOS may soon change their mind if everyone does this.