

Ford Class Action: Frequently Asked Questions

1. What is the difference between being a Group Member and a Client of Bannister Law?

A. Being a General Group Member

If you purchased an Affected Vehicle, as set out in Question 4, between **January 2011** and **11 May 2016 inclusive** (the **Relevant Period**), you are automatically included as a person who is known as a **“Group Member”** (or **Class Member**) in the class action against the Ford Motor Company of Australia Limited (ACN 004 116 223).

We are the lawyers acting on behalf of the whole class of Group Members.

As a Group Member, you are not obliged to sign an individual client agreement with Bannister Law. If you remain a Group Member, you will be informed of matters affecting the whole class from time to time, in accordance with orders made by the Federal Court of Australia, and you will eventually be bound by any final judgment that the Federal Court gives to finalise the class action.

Before the proceedings are finalised, the court will give all Class Members an option to “opt out” of the class action, and if you do that, you will not be bound by the outcome of the class action, nor will you be entitled to any benefits if the class action succeeds. Once judgment is handed down by the Federal Court, all affected car owners will be notified of the outcome in the way that the Federal Court orders, for example, the court may order that the outcome be publicised by email or in other public ways.

Please note that you are, and will, remain a Group Member in the class action proceeding before the Federal Court (unless you opt out) whether or not you agree to formally retain Bannister Law.

There are **no up-front costs** to be part of the action.

The class action is **No Win No Fee**.

B. Being an Individual Client

As above, Group Members are all persons who purchased an Affected Vehicle during the Relevant Period.

You have the option to sign as an individual client with Bannister Law. As an individual client, you will still be a Group Member.

Signing our No Win No Fee Agreement allows us to act for you on an **individual basis**.

The benefit of signing as an individual client is that we can assess your individual losses. For instance, any interest paid on a loan or finance, out of pocket expenses paid to have the transmission fixed/replaced, or any other peculiar issues you have experienced with your vehicle.

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2. Why has this Class Action commenced?

Bannister Law commenced this class action because we believe that some Ford vehicles fitted with the PowerShift transmission (as listed in Question 4 below) suffer from some or all of the following problems:

- Delayed or harsh gear shifting during acceleration;
- Sudden gear change, or skipping gears, leading to shuddering, jerking, bucking or kicking of the vehicle;
- Harsh transmission noise;
- Unsteady and/or uncontrolled movement;
- Transmission overheating and malfunction;
- Loud engine noise; and
- Sudden loss of power in ordinary driving conditions.

3. What is the Relevant Period?

To be included in this class action, you must have purchased your vehicle in the Relevant Period.

The **Relevant Period** is between **January 2011 and 11 May 2016 inclusive**.

If you purchased your vehicle outside this period, you will not be included in this class action.

4. Is my car affected?

Your vehicle will be included in the class action if it is a Ford vehicle with the six-speed dry dual clutch automatic PowerShift transmission. Only **petrol** vehicles are included.

Your vehicle will **NOT** be included in the action:

- If you have a **diesel vehicle**; or
- The specific model or year of manufacture of your vehicle is **NOT** on the list below.

The following vehicles are part of the class action:

	Model	Year of Manufacture
Focus	Titanium LW	2011 – 2012
	Sport LW	2011 – 2012
	Trend LW	2011 – 2012
	Ambiente LW	2011 – 2012
	Sport LW MKII	2012 – 2015
	Titanium LW MKII	2012 – 2015
	Ambiente LW MKII	2012 – 2015
	Trend LW MKII	2012 – 2015
Fiesta	Zetec WT	2010 – 2013
	LX WT	2010 – 2013
	CL WT	2010 – 2013

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	Sport EcoBoost WZ	2012 – 2015
	Trend WZ	2013 – 2016
	Ambiente WZ	2013 – 2016
EcoSport	Titanium BK	2013 – 2016
	Trend BK	2013 – 2016
	Ambiente BK	2013 – 2016

5. My vehicle is not on the list/ I purchased after 11 May 2016? What can I do?

Unfortunately, if you purchased after 11 May 2016, or your vehicle is not on the list, you are not included in this class action and we will not be able to act on your behalf.

If you are suffering issues with your car and feel strongly about the issues, we suggest looking into making a case at your state tribunal (i.e. NCAT, VCAT, QCAT).

6. What is the Class Action claiming for?

The class action is making the following damages claims for the Lead Applicant and the Group Members in the Federal Court:

1. The loss and damage suffered by each Group Member is the difference between the consideration given by them to acquire an interest in the Affected Vehicle and the true value of the vehicle at the date of purchase (had the Group Members been aware of the contraventions);
2. Alternatively, had the Group Member not purchased an Affected Vehicle, they would have purchased an alternative vehicle for comparable cost made by a different manufacturer. The Group Members have suffered loss and damage because, since the date of purchase, the value of the Affected Vehicles has diminished more than the value of comparable alternative vehicles made by different manufacturers;
3. Alternatively, the failure of the respondent (Ford) to comply with the guarantee in contravention of s 271 of the ACL has caused loss to the Group Members in that the contravention has resulted in a reduction of the value of the Affected Vehicles purchased by them, and the applicant and Group Members are entitled to recover such loss pursuant to s 272 of the ACL;
4. Particulars of the loss and damage suffered by the applicant and Group Members caused by the pleaded contraventions of the ACL will be provided in evidence;
5. The relief specified in the application, namely:
 - a. Damages, including, but not limited to, diminution in value of the Affected Vehicle, any amounts paid for repairs, car hire, taxi fares, additional finance costs, and any additional expenses and costs incurred as a result of the necessity to replace the Affected Vehicle and obtain a different vehicle.

It is up to the court to decide which of these damages claims, may be allowed if the class action succeeds.

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7. How much compensation will I receive?

The compensation (or damages) awarded will depend on the Federal Courts final decision when the class action concludes.

BEING A CLIENT OF BANNISTER LAW

8. Individual Client?

If you retain Bannister Law to act on your behalf individually, Bannister Law will act for you on an **individual basis** as a client.

You are still a Group Member in the Class Action.

There are **no up-front costs** to be part of the action.

The class action is **No Win No Fee**.

9. The No Win No Fee Agreement says there is a fee – what is this fee?

The No Win No Fee Agreement outlines information about the costs of our legal services. It says that our estimate of legal costs is \$2,750.00. This is an estimate only. This estimate is made up of your individual fees incurred for the time spent by our team, and work done directly on your claim. This may include correspondence or emails with you and the assessment of your claim. We will claim this amount against Ford if the class action is successful.

10. What Bannister Law will claim for you as an individual client.

Once you sign our No Win No Fee Agreement, you will be an individual client with us.

The claim is outlined in Question 6 above.

The benefit of signing as an individual client is that we can assess your individual losses. For instance, any interest paid on a loan or finance, out of pocket expenses paid to have the transmission fixed/replaced, or any other peculiar issues you have experienced with your vehicle.

As the class action proceeds, we will obtain further information from you regarding your vehicle – i.e. purchase price, date of purchase, whether the vehicle was financed, and your experience with the defective transmission. You should keep any information relevant to your vehicle. We will contact you via email in the future to obtain this.

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WHAT IF WE LOSE?

11. What if we lose?

In the event of a loss, Group Members (being individual clients or general group members) are not required to pay adverse costs.

As above, the action is **No Win No Fee**.

WHAT IF WE WIN?

12. What are the fees?

There are **no up-front costs** to be part of the action.

The class action is **No Win No Fee**.

Group Members

General Group Members are not required to pay any out of pocket fees.

Individual Clients

In the event of a win, the estimate of \$2,750.00 (or amount accumulated on your file) will be claimed from Ford (i.e. we ask Ford to pay and it is up to the Federal Court of Australia to approve that).

If there is a short fall, (i.e. Ford do not pay all of our costs), this may be apportioned between you and the other Group Members who recover damages or compensation. However, this will depend on whether the judge makes an order for the shortfall to be paid from the settlement or paid in additional to the settlement.

In the event of a successful case, we will charge an uplift fee of 25% on the unpaid component of our fees. This uplift fee is also claimed against the Ford Motor Company of Australia Limited (ACN 004 116 223) alongside the above estimate.

Group Members who are individual clients are not required to pay any out of pocket expenses.

13. The Litigation Funder – what do they do?

We have engaged a litigation funder.

The litigation funder:

1. Pays the legal costs of the class action;
2. Indemnifies the Lead Applicant for any adverse costs orders which may be made; and
3. Provides any security for costs in the class action.

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The Funding Agreement (available upon registration) outlines information about a litigation funder's financial assistance.

Advantages of a Litigation Funder

We believe a litigation funder is a much safer option. Pursuing a class action on behalf of more than 70,000 owners of affected vehicles against the world's biggest car manufacturer is a major undertaking. It requires considerable resources and deserves the best legal team available. The use of a litigation funder allows us to dedicate the time and resources this case requires and ensures that we are prepared whether the matter reaches a swift resolution or is hard fought over many months.

Another major advantage of a litigation funder is that they will meet any order for security for costs. These are costs set down in advance of a hearing to make sure that if the Applicant is unsuccessful, the legal and other costs of the litigation will be available to the Defendant (in this case Ford). Individual class members and their legal representatives could not reasonably be expected to do this as the amount would be substantially more than the value of their claim.

Signing the Litigation Funding Agreement is an acknowledgement signed by you in which you accept that the Funder is entitled to a percentage of the total settlement awarded by the court, and is a separate contract that you enter into with them. See below further information regarding the funding of the matter.

Please note you are not obliged to sign the Funding Agreement.

14. What does the litigation funder do if we win?

A litigation funder accepts the risk of funding the litigation and is therefore entitled to 20-25% of the damages awarded to clients of Bannister Law in the event of a successful claim, subject to the court's approval. This is return for them taking the risk and paying all the upfront costs associated with the litigation.

Common Fund Order

Bannister Law has applied for a common fund order.

A common fund order allows the total costs of the class action and of the litigation funder (including its commission), to be apportioned across all Group Members who are entitled to compensation (damages) from the successful class action.

The terms of the common fund application provide that, in the event of a successful outcome (either by way of settlement or judgment) the settlement or judgment sum recovered be used to:

- a) For Group Members who have entered into a Funding Agreement with Martin Place Litigation Services as at 22 December 2017
 1. Provide a commission of 20% (or such percentage determined by the Court) to the litigation funder, and

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2. Reimbursement to the funder of the legal fees and expenses incurred in funding the class action;
- b) For Group Members who have **not** entered into a Funding Agreement with Martin Place Litigation Services as at 22 December 2017
1. Provide a commission of 30% (or such percentage determined by the Court) to the litigation funder, and
 2. Reimbursement to the funder of the legal fees and expenses incurred in funding the class action.

The commission is subject to Court approval.

15. Can I terminate the No Win No Fee Agreement once signed?

There is a 5 day (business days) cooling off period for the No Win No Fee Agreement. If you decide to terminate within that 5 day period, you will not be charged for fees.

After the cooling off period, if we have begun work on your file and you choose to terminate your No Win No Fee Agreement, you will be charged for work done on your individual file up to the date of termination.

16. Will Ford take my car?

If you were to receive damages, you would keep your vehicle and receive an amount of compensation.

17. I am thinking about selling my car/ trading in? Should I wait for the end of the class action? Can I still claim?

Yes, you can still claim.

We believe that the defects in these vehicles may result in a reduced resale or trade in price. See FAQ #6 above, which sets out the damages being claimed. It is up to the Federal Court to decide whether these will be successful.

We cannot give you advice on whether you should keep your car or sell it now.

If you sell/ trade-in your vehicle you can still be part of the action, and we can claim the loss you suffered that is attributable to the defective transmission in your vehicle.

18. Should I do the Ford buy-back?

We are aware that Ford is offering some people a buy-back.

As above, this is a personal decision. We cannot advise whether you should accept this offer. If you believe the offer made by Ford is reasonable, based on your vehicles age and kilometres, you should consider accepting this offer.

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We are aware that Ford is allowing at least 28 days for you to consider accepting this offer. In this time, you are able to seek independent legal advice.

We are aware that if you proceed with the Ford buy-back, you may be asked to sign a confidentiality agreement and indemnity and to release Ford Motor Company of Australia Limited (ACN 004 116 223) and its dealers from other legal action by you. If you do accept the offer given to you by Ford and sign this Agreement, then you may be unable to claim in the class action depending on the terms of the agreement – this is because the agreement may restrain you from taking any further action. You may wish to seek independent legal advice before you sign a buy-back agreement.

19. Time frame

It is too early to say at this stage. However, class actions of this nature usually take 6 months to 2 years.

20. My vehicle was purchased second hand. Is it included in the class action?

Yes. Second hand vehicles are included in the action if:

1. You purchased the vehicle in the Relevant Period;
2. Your vehicle is on the table in FAQ #4 above; and
3. Your vehicle has a six-speed dry dual-clutch PowerShift transmission.

21. I wish to have my car transmission fixed, replaced and/or software updated to fix the issue. Can I still be part of the class action?

While it is a personal decision, we advise you to accept the fix if offered.

Please note having the fix may affect the amount of compensation you receive. This will depend on whether or not the fix is successful in remedying the defective transmission.

22. My vehicle is financed. Does this matter?

No, this will not be an issue.

Once you are a signed client, we will obtain your finance/loan information when we assess your individual claim.

23. My vehicle is registered in a company name. What should I do?

If you are the manager of the company and have authority to act on behalf of the company, you are able to sign the agreement in your name. We will obtain your company information once we begin work on your individual file.

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