

The complaint

Miss G complains Vauxhall Finance Plc (Vauxhall) wrongly charged her £748 for GAP insurance and other warranty products. She noticed the charge when she settled her finance agreement but says she declined these products at the point of sale and has the paperwork to prove this.

What happened

The details of this complaint are well known to both parties and were set out in detail in the investigator's view of 12 May 2022, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I have reached the same conclusion as our investigator. I'll explain why.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Firstly, as Vauxhall directed Miss G to raise her complaint with the dealership, it's important to say why this service can look into the complaint, as our investigator detailed in his view. Miss G entered into a conditional sale agreement and, such agreements, are regulated by the Consumer Credit Act 1974 (CCA 1974). Section 56 of the CCA 1974 says that a finance provider is responsible for any antecedent negotiations carried out by the credit broker. In this case, the dealership acted as Vauxhall's agent in respect of this agreement. So, Vauxhall are responsible for anything the dealership said, did, or didn't do about the contract it was brokering before it was entered into. It is for this reason I agree with our investigator that this service can consider the complaint against Vauxhall.

I have considered the agreement and can see under Section 4, as has been previously mentioned, Gap and warranty insurance were included at a cost of £811.22 and Miss G signed this agreement on 3 August 2017.

But Miss G has also provided this service with a document entitled *"Duty of Care Document"* this was signed by both Miss G and the dealership representative on 2 August 2017. This document says:

"Following our discussions, you have decided to purchase:

- *Minor Damage Repair Cover"*

And then goes on:

"Following our discussions, you have declined or are unable at the moment, to purchase:

- *Asset Protection Insurance*
- *Tyre/Alloy Wheel Damage Cover*
- *Warranty/Guarantee"*

The dispute here is that Miss G says she declined this cover at the point of sale as indicated on the duty of care document and Vauxhall doesn't accept this is evidence that she declined Gap Insurance or cosmetic warranty cover.

The invoice for the sale details *"Asset Protection Insurance"* and *"SMART insurance"* has been included at a cost of £349 and £399 respectively. This is consistent with the products included in Miss G's agreements.

So, where there are inconsistencies or in this case where the wording is unclear, I have to reach a decision based upon a balance of probabilities. That is to say what I think is more likely the case.

I'm persuaded the duty of care document show Miss G accepted minor repair cover but in declining the asset protection insurance. So, she accepted the *"SMART Insurance"* but declined the Asset Protection or Gap Insurance and so I'm going to uphold this complaint.

My final decision

For the reasons I have given, I'm upholding this complaint and I direct Vauxhall Finance Plc to:

- Refund Miss G for the amount she's paid towards the GAP insurance which is £378.35, inclusive of interest.
- Pay Miss G 8% simple interest on all refunded amounts from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 25 July 2022.

Wendy Steele
Ombudsman