

The complaint

Mrs F complains about Group 1 Automotive UK Limited (“GAU”) and the mis-sale of a GAP insurance policy at the time she purchased her car.

What happened

In May 2021, Mrs F purchased a car on a finance agreement, through GAU. Alongside the purchase of her car, Mrs F paid an additional £499 for a separate GAP insurance policy.

But Mrs F feels she wasn’t made aware of the GAP policy, or its cost, by GAU. And that if she had been, she wouldn’t have chosen to take out the policy altogether. So, she complaint to GAU about this, asking that they refund the GAP policy premium she paid.

GAU responded to the complaint and didn’t uphold it. They thought they’d followed the correct process when selling the policy, which included completing a “Demands and Needs” document, as well as supplying Mrs F with the GAP policy information before agreeing to the sale. And they pointed to the “Duty of Care” document Mrs F signed on 22 May when she collected the car, which they felt confirmed Mrs F’s happiness with the GAP policy. So, they didn’t think they had mis-sold the policy and because of this, they didn’t think they needed to do anything more. Mrs F remained unhappy with this response, so she referred her complaint to us.

Our investigator requested evidence from GAU to support their position on multiple occasions. And to this date, GAU haven’t provided our service with any information relating to the complaint. So, taking this into consideration, our investigator didn’t think they were satisfied that Mrs F had been made reasonably aware of the GAP policy, and its cost, when it sold. So, they recommended GAU refund the total premium Mrs F paid of £449, plus 8% simple interest from the date she paid the premium to the date of refund.

Mrs F accepted this recommendation. But GAU didn’t respond. And as GAU didn’t respond, our service must assume they disagree. So, the complaint was passed to me for a decision.

I issued a provisional decision on 6 September 2023, where I explained my intention to uphold the complaint for different reasons to those of our investigator. In that decision I said:

“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, it’s my intention to uphold the complaint. But I intend to uphold the complaint for reasons that differ from the view of our investigator. And I’ll explain why.

GAU haven’t provided our service with any information and so, my decision is based on the information provided by Mrs F. And where applicable, in line with our service’s approach, I’ve made adverse inferences to GAU’s failure to engage with our process.

From the documentation Mrs F has sent, I can see GAU sent Mrs F a product document pack on 15 May 2021. And I’m satisfied this product pack made it reasonably clear the cost of the GAP insurance policy, its potential benefits and crucially, that “the purchase of GAP is

optional". So, I think GAU did make it clear that the policy wasn't one Mrs F was obligated to purchase. Within this pack, it also contained information about additional tyre insurance, and SMART protection.

I can then see that, on the day Mrs F collected her car and the invoice for the purchase was dated, Mrs F signed a duty of care document. And this document sets out the products Mrs F purchased, alongside her new car.

The document shows that Mrs F purchased GAP insurance, tyre insurance and key insurance. But it states that Mrs F declined to purchase SMART protection insurance. So, this suggests to me that on the day she collected her car, there was a conversation about which additional products she wished to take out.

And in the same document, directly above where Mrs F placed her electronic signature, it states that by signing, Mrs F confirmed that "the features, benefits and any significant exclusions of the products have been fully explained to me" and "that I have received the following documentation for each product... each document has been fully explained to me". It then shows, in bold, that one of these documents Mrs F confirmed she had received was "the GAP Document Pack detailing the deferred period".

I wouldn't expect Mrs F to sign this document without reading and fully understanding it. So, as she did sign it and I'm unable to speculate or evidence exactly what was said to her in person, I think it's reasonable for me to assume Mrs F was aware she was purchasing a GAP insurance policy for an additional amount. So, I don't think it would be fair for me to uphold the complaint on this basis.

But crucially, industry guidelines explain that where a GAP insurance policy is sold, a business has an obligation to undertake a suitability assessment to ensure the policy meets a customer's needs. In this situation, GAU say they did complete this in their final response letter. But they haven't provided our service with evidence of this assessment and what questions were asked.

So, without this information, I don't think I can be satisfied that GAU did complete a suitability assessment as I'd expect them to do. And because of this, based on the evidence available to me, I don't think GAU acted fairly and reasonably when selling the GAP insurance policy to Mrs F.

Putting things right

As I don't think GAU acted fairly, I've then thought about what I think they should do to put things right. And any award or direction I make is intended to place Mrs F back in the position she would've been in, had GAU acted fairly in the first instance.

Had GAU acted fairly, they would've completed an adequate suitability assessment. And, based on Mrs F's testimony that she didn't intend on taking a GAP insurance policy as it didn't provide her with cover she felt she required, without evidence of an assessment I think it's fair for me to assume Mrs F wouldn't have met the suitability criteria.

And if that was the case, then Mrs F wouldn't have purchased the GAP insurance policy, at a cost of £449. So, to place Mrs F back in this position, I think GAU should refund this amount to Mrs F, plus 8% simple interest from the date she paid the premium to the date of refund, to recognise the time she's been without access to these funds. And this is what I intend to direct GAU to do."

Responses

Mrs F responded to the provisional decision and accepted the overall outcome, although she reiterated her belief that she wasn't made aware of the GAP insurance and its costs. Mrs F also referred to additional fees she felt remained unaccounted for, that weren't stated in the Consumer Credit Agreement.

GAU didn't respond to the provisional decision and so, provided no further comments. As GAU didn't respond, I must assume they didn't accept the outcome and so, I've proceeded to issue my final 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 see no reason to change my initial conclusions.

GAU haven't responded to the provisional decision and so, I haven't seen evidence that satisfies me GAU completed a suitability assessment as I'd expect them to do. Because of this, I don't think I can say they acted fairly and reasonably when selling the GAP insurance policy to Mrs F.

I understand Mrs F has accepted the overall outcome but has maintained her belief the policy itself was mis-sold, without her awareness. While I appreciate Mrs F's comments, I think my original provisional decision set out clearly my thoughts on this. And even though I haven't upheld the complaint on this basis, I note Mrs F is happy to accept the direction I've set out below. So, I don't think it's necessary for me to comment on this point any further.

I note Mrs F has also referred to additional money she feels is unaccounted for, that she intended to be used as a deposit to clear some of the total finance cost set out within her Consumer Credit Agreement for the car itself. This isn't something I'm able to consider further under this complaint reference, as this decision focuses solely on the sale of the GAP insurance, which is the point GAU responded to in their complaint response. Should Mrs F wish to continue with a complaint about this additional unaccounted payment, she would need to raise this with GAU, and our service, separately.

Putting things right

Mrs F has accepted the direction and award I set out within my provisional decision. In the provisional decision, I explained my intention to direct GAU to refund Mrs F the total GAP insurance policy premium she paid, totalling £449. And that GAU should apply 8% simple interest from the date Mrs F paid the premium to the date of refund, to recognise the time she's been without access to these funds. GAU have provided no further information to change my initial conclusion, and so, this is what I am now directing GAU to do.

My final decision

For the reasons outlined above, I uphold Mrs F's complaint about Group 1 Automotive UK Limited and I direct them to take the following action:

- Refund Mrs F the £499 premium she paid, plus 8% simple interest from the date she paid the premium, to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 6 November 2023.

Josh Haskey
Ombudsman