

The complaint

Mr D complains that Close Brothers Limited (“CBL”) mis-sold him a Guaranteed Asset Protection (“GAP”) insurance policy.

What happened

Mr D bought a car on finance from CBL on 8 February 2023. On 21 February 2023 Mr D was involved in a road traffic accident which he reported to his motor insurer. Later that day Mr D contacted CBL and discussed some details that were showing on his finance agreement. Mr D says, during this call he mentioned the accident he’d been involved in and also discussed the option of taking out a GAP policy. Mr D says the agent informed him that the GAP policy would cover the claim arising out of the accident which occurred earlier that day. Mr D says, when he made a claim under his GAP policy, the GAP insurer declined this on the basis the policy was taken out after the accident which resulted in his car being declared a total loss. So Mr D complained the GAP policy had been mis-sold to him.

CBL responded and explained they understand Mr D is concerned that, despite being informed a number of times that he had GAP insurance, it was later identified that he didn’t have a GAP policy. CBL said their records showed Mr D entered into a Conditional Sale Agreement with CBL for the purchase of a car. They said they’d reviewed their records and couldn’t find any evidence indicating GAP insurance had been added to Mr D’s account.

Our investigator looked into things for Mr D. She thought CBL hadn’t mis-sold the policy. Mr D disagreed so the matter has come to me for a 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’ve decided not to uphold the complaint. I understand Mr D will be disappointed by this but I’ll explain why I have made this decision.

In their final response, CBL say they don’t have any record of a GAP policy being taken out by Mr D. But CBL have provided a call recording which shows Mr D did discuss taking out a GAP policy with CBL, and they’ve also provided contact notes which refer to Mr D contacting them to discuss a GAP policy.

I’ve seen Mr D’s GAP insurance policy schedule, and this shows it was taken out on 21 February 2023 – the same day of Mr D’s call. So, I’m persuaded CBL did sell Mr D a GAP policy.

The dispute here relates to what was discussed during the sales call and whether CBL informed Mr D that, in relation to the accident which had occurred earlier in the day, the GAP policy would provide cover for any shortfall between the motor insurer’s settlement and the invoice price of Mr D’s car.

I've listened to a recording of Mr D's call with CBL on the day he took out the GAP policy. Mr D said the vehicle sale agreement documents made reference to a GAP policy being available and explained his car had been involved in an accident earlier that day which he'd already reported to his motor insurer. Mr D said, *"As long as they don't write it off, afterwards I can take out GAP insurance, or shall I do that now do you think?"* Mr D said he understands he can't claim for this accident. The agent said, *"With GAP insurance, I would advise to take that out straightaway."* Mr D then said, *"...but I won't be able to use it today...if they write the car off, I still won't be able to use it will I?"* Mr D explained this was on the basis that he'd already been in an accident.

The agent then explained they weren't sure whether the GAP policy would provide cover from the date the vehicle sale agreement went live on 8 February 2023. Mr D then asked if he could take out the GAP policy now and the agent then explained they'd arranged for another agent to call Mr D back in relation to the GAP policy. At the end of the call Mr D asked what would happen if his car was written off, and whether he would be sent a bill as he wouldn't have GAP insurance. The agent explained it depends on how much Mr D's motor insurer pays out and if this covers the full settlement, then there wouldn't be a shortfall, but the GAP policy would provide cover from the date it goes live.

Mr D says he was informed by the agent who called him back that cover would start from that morning, and he would be covered for the accident which had already occurred. I can see our investigator has asked for a recording of this call, which was arranged by the first agent, but CBL confirm this call is no longer available due to the passage of time. So, I've decided this complaint based on the balance of probabilities, and what I believe, more likely than not, has happened here.

From the call with the first agent, I don't think CBL provided information here which wasn't clear, fair and not misleading – or led Mr D to believe the GAP policy would provide cover in the event his car was written off following the accident which occurred earlier that day. The agent explained they weren't sure whether the GAP policy would apply from the vehicle sale date of 8 February 2023, but they did confirm at the end of the call that it would provide cover from the date it went live.

While I can't say for certain what was discussed during the second call, the contact notes provided by CBL don't make any reference to Mr D being informed the GAP policy would provide cover for any settlement shortfall relating to the accident which had already occurred.

I think it's also important here to recognise that, during the call, Mr D was clearly aware, and understood, the GAP policy wouldn't provide cover for any shortfall regarding any settlement he receives from his motor insurer in respect of the accident which had already occurred. This demonstrates to me that Mr D was familiar with how the policy would work – and in particular, that it wouldn't provide cover for an event which had already occurred prior to the policy starting.

So, I've seen no evidence which suggests a CBL agent informed Mr D that the GAP policy would provide cover for the accident which had already occurred. And, having taken into account the information I have seen, I'm more persuaded the GAP policy wasn't mis-sold to Mr D.

I understand Mr D will be disappointed, but I've had to base my decision on what I think is more likely than not. And, for the reasons I've mentioned, I'm more persuaded the GAP policy wasn't mis-sold. I wish to reassure Mr D I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my

decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 July 2024.

Paviter Dhaddy
Ombudsman