

The complaint

Mr K complains that Group 1 Automotive UK Limited (“GAUKL”) mis-sold him a Guaranteed Asset Protection (“GAP”) insurance policy.

What happened

Mr K bought a car on a 48-month personal contract purchase (“PCP”) finance agreement. The finance was arranged by GAUKL who also carried out a demands and needs assessment for Mr K which highlighted a list of insurance products they felt were suitable for Mr K’s needs. This included GAP insurance and SMART insurance as well as insurance cover for Mr K’s car’s tyres and keys. Mr K complained that GAUKL had mis-sold these products as they were for 36-month terms and therefore unsuitable as the duration didn’t match the term of the finance agreement.

GAUKL responded and explained Mr K decided on a 48-month PCP finance agreement, but he chose to purchase insurance policies with a 36-month term. GAUKL said Mr K signed a personal ‘Duty of Care’ document which detailed the insurance products he’d purchased following the recommendations made by them at the time Mr K ordered his car. They said this document listed each insurance product, the cover limit and that it was for a 36-month term. GAUKL said Mr K had signed the document to confirm that the features, benefits and exclusions had been fully explained to him and, on this basis, the insurance products hadn’t been mis-sold.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr K and GAUKL on 16 April 2024. In my provisional decision I said as follows:

“During the sales process, GAUKL identified that Mr K could benefit from a GAP policy which, their documents say, would protect his original investment in the event that his car might be deemed a total loss. And GAUKL recommended the GAP policy to Mr K. That means they sold the policy on what’s known as an ‘advised sale’ basis. That means they had to take reasonable care to ensure the suitability of their advice.

The GAP policy GAUKL recommended only provided cover for 36 months. But Mr K’s PCP agreement ran for 48 months. And the nature of that agreement meant that he would still owe a considerable sum on it after the 36-month term of GAP cover had expired. So a policy that only spanned part of that period wasn’t suitable for his needs. It follows that I don’t think it was reasonable for GAUKL to recommend it to Mr K, unless they’d made it clear that it wouldn’t cover the full term of his finance agreement. And they didn’t do that.

I can see GAUKL say the ‘Duty of Care’ document sets out the duration of the GAP policy as being 36 months – and I agree that’s the case. But Mr K doesn’t believe it’s sufficient for GAUKL to rely on this and it’s their responsibility to ensure the product their recommending is suitable. I can see Mr K signed a ‘Finance suitability questionnaire’ which records he’s planning on keeping his car for four years. There’s a question which asks whether Mr K plans on settling the agreement early, and this has been answered ‘no’. So, given that GAUKL were made aware here that Mr K

intended on keeping his car for at least the full term of the 48-month finance agreement, I think it was unreasonable in the circumstances for them to recommend to Mr K a GAP policy that didn't align with the finance agreement. And given that GAUKL had recommended the policy for him I think it was reasonable that he relied on their recommendation. It therefore follows that I think GAUKL mis-sold the policy as they recommended a product that wasn't suitable for Mr K's needs.

I think if GAUKL had pointed out that Mr K wouldn't have been covered for the final year of his PCP he would more likely than not have bought a different policy that covered the full term of his finance agreement. I say this because Mr K bought his car on a PCP agreement. PCP agreements typically have smaller monthly payments than other finance agreements. And the consumer only owns the car at the end of the agreement after paying a large "balloon" payment. As such those buying a car on a PCP agreement might still owe significant sums to the lender some time after the agreement begins. So, consumers who may be concerned that they will still owe money on such an agreement if their car is declared a total loss, and wish to cover any shortfall with a GAP policy, would most likely wish to choose a policy for the full term of the finance agreement. So, I'm persuaded Mr K would've most likely chosen that option.

I can see the 'Demands and Needs' document contains a declaration, which Mr K has signed, to say he understands the purchase of the insurance products is optional and isn't related to the purchase of the car and the finance. Although the GAP policy wasn't inter-related to the finance agreement, one of its benefits was to cover a shortfall under a finance agreement. But the policy GAUKL advised Mr K to buy was incapable of doing that for the final year of his agreement because cover had already ended. So I don't think GAUKL's advice was suitable in Mr K's specific circumstances.

Given that I believe the GAP policy was mis-sold, I've thought about the steps GAUKL should take to put things right. I can't see Mr K's car was declared a total loss between the period his GAP policy ended and the end of his finance agreement. So Mr K doesn't find himself in a position where he has been left with a shortfall between his motor insurer's settlement and the amount required to settle the outstanding balance on his finance agreement. But it's clear Mr K was very worried and anxious about driving his car once he found out he had no GAP cover for the final year of his finance agreement. At the point Mr K discovered this, he had around six months left before his finance agreement ended. So, given the impact on Mr K and the duration of that impact, I think GAUKL should pay Mr K compensation of £300.

I can see Mr K has also complained about other insurance products he bought. But, I don't think those products are related to the finance agreement in the same way as the GAP policy. So, given that the duration of those policies was made clear in the documents sent to Mr K, and because I don't believe there was a need for GAUKL to point out to Mr K the duration of these policies wouldn't cover the full term of his finance agreement, I don't think these policies were mis-sold."

So, subject to any further comments from Mr K or GAUKL, my provisional decision was that I was minded to uphold this complaint and require GAUKL to pay Mr K compensation of £300.

Following my provisional decision, Mr K has responded to say he accepts the decision. GAUKL have responded and say Mr K received information on a number of occasions setting out the term of the GAP policy. They say this includes the documents they sent as well as the policy documents issued by the insurer and administrator of the policy. GAUKL

also say the insurance policies were sold on a non-advised basis which they say was clearly explained in an 'initial disclosure document' ("IDD") issued to Mr K prior to the registration of the policies. GAUKL have also provided an explanation surrounding Mr K's finance equity position. They say Mr K was in financial equity during the fourth year of his finance agreement, so that final year wouldn't have provided a finance gap benefit.

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 depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I do acknowledge the points made by GAUKL about the policy documents issued to Mr K about the GAP policy. I agree the documents GAUKL refer to do make it clear the policy term is 36 months. But the issue here is that GAUKL have recommended a product that wasn't suitable as it didn't align with the term of the finance agreement taken out by Mr K.

I've seen the IDD and this says *"We will assess your needs for the protection products listed above and identify those which are suitable in order for you to make an informed decision on purchase. We do not provide advice or recommendation."* GAUKL say suitable products were therefore identified but not recommended. GAUKL have provided a screenshot of their system showing an audit trail of their sales platform which says a document pack was emailed to Mr K. There's also an entry which says the IDD was printed. GAUKL say the IDD was provided to Mr K on both these occasions. Mr K says he doesn't recall the IDD being given to him and, having checked the email sent to him at the time of the sale, he says it didn't include this document.

I haven't been provided with the actual email which GAUKL say was sent to Mr K. But from the system screenshot I can see it notes, *"Document pack emailed"* but then beside this there's a summary which says, *"gap motorins tyre"*. Given what GAUKL say was included in this pack, it appears this summary refers to the policy documents for the insurance products taken out by Mr K. But there's no reference to it including the IDD. And while I can see there is reference to an IDD being printed three weeks later, given that Mr K says he didn't receive this, I can't be satisfied the IDD was issued to Mr K. I think it's also relevant here that GAUKL, in their complaint response, accept they made a recommendation here as they refer to the Duty of Care document and say, *"This document details the insurance products that you decided to purchase following our earlier recommendations when you ordered the vehicle."*

In any event, and even if I were to be persuaded this was a non-advised sale, I think GAUKL have still made an error. That's because the duty on the seller is to make sure the consumer is given enough information that is clear, fair and not misleading so that they can make an informed choice about whether the policy is right for them. And it's important that the seller tells the consumer about any unusual parts of the policy that the consumer might not expect to be there.

In this case, Mr K made it clear he was planning on keeping his car for four years and had no plans on settling the agreement early. So, it's reasonable that Mr K was expecting, at the very least, a GAP policy to cover the whole term of the finance agreement. And if that wasn't an option that GAUKL could offer, then I think it was fair and reasonable in the circumstances for GAUKL to make it very clear to Mr K that the GAP policy they listed as being suitable didn't cover the full term of his finance agreement to allow Mr K to make an informed choice about whether this policy was right for him.

I acknowledge the points made by GAUKL about the equity position, but I'm not persuaded this means there was no worry caused to Mr K. The facts show Mr K was sold a policy that wasn't suitable on the basis it didn't match the term of his finance agreement. At the point Mr K discovered this, there was still six months left before his finance agreement expired. Even if Mr K did have a four-year GAP policy, whether or not the equity position would've led to a finance GAP benefit in the event of a claim, it doesn't change the fact that Mr K was still worried and anxious for six months knowing no GAP cover was in place. I can see GAUKL believe the compensation is disproportionate when compared against the original GAP premium. I acknowledge the premium was £389 but the compensation isn't a reflection of the value of the GAP policy, and neither is the price directly linked to the compensation. But rather, the compensation reflects the impact on Mr K – and I think £300 is fair and reasonable in the circumstances.

Putting things right

I've taken the view that GAUKL mis-sold Mr K a GAP policy. So GAUKL should pay Mr K £300 compensation for the worry caused.

My final decision

My final decision is that I uphold the complaint. Group 1 Automotive UK Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 May 2024.

Paviter Dhaddy
Ombudsman