

## The complaint

Miss C complains that Automotive Compliance Ltd (“ACL”) mis-sold her a Guaranteed Asset Protection (“GAP”) insurance policy.

## What happened

Miss C bought a car on a 48-month personal contract purchase (“PCP”) finance agreement. The finance was arranged by ACL who also carried out a Demands and Needs assessment for Miss C which highlighted a list of insurance products they felt were suitable for Miss C’s needs. This included a GAP insurance policy which Miss C decided to purchase. Around 41 months later, Miss C’s car was involved in an accident following which her motor insurer declared her car a total loss. Miss C’s claim was settled by her insurer but when she contacted ACL to make a claim under her GAP policy, she was informed this only covered a term of 37 months and had expired. Miss C complained that ACL had mis-sold the GAP policy as it was for a term of 37 months and therefore unsuitable as the duration didn’t match the term of the finance agreement.

ACL responded and explained a ‘Statement of Demands and Needs’ was completed based on the information Miss C provided. ACL said this process is driven by the customer and they’re under no obligation to proceed to completion. They said the first stage was completed over the phone and involved reviewing Miss C’s needs and circumstances for finance products. They said Miss C was asked a series of compliance questions to understand her needs and for a suitable product suggestion to be made. They said based on the answers to those questions, a PCP was selected as the most suitable option to fund the transaction.

ACL said the second stage was completed face-to-face and involved a review of the insurance products. They said there were several compliance questions to verify Miss C’s eligibility for insurance products and, based on Miss C’s answers to those questions, a GAP policy was suggested – and Miss C decided to purchase this. ACL said, based on this, the correct sales process had been followed for the sale of the GAP policy.

After considering all of the evidence, I issued a provisional decision on this complaint to Miss C and ACL on 28 May 2024. In my provisional decision I said as follows:

*“The information shows a Statement of Demands and Needs document was completed which contained a series of questions to establish whether any insurance products were suitable for Miss C. The document asked how long Miss C intends to keep the car, and she answered ‘48 months’.*

*It also asked, “Would having protection from financial loss in the event of your car being stolen or written off be of benefit to you?” – and this was answered ‘Yes’. It then said, “Based on the information you have given in your Demands and Needs Statement we recommend the following optional products: We recommend that you take out...Combined Financial & Return to Invoice GAP insurance.”*

*During the sales process, ACL identified that Miss C could benefit from a GAP policy which, their documents say, would protect her original investment in the event that*

*her car might be deemed a total loss. And ACL recommended the GAP policy to Miss C. 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 ACL recommended only provided cover for 37 months. But Miss C's PCP agreement ran for 48 months. And the nature of that agreement meant that she would still owe a considerable sum on it after the 37-month term of GAP cover had expired. So a policy that only spanned part of that period wasn't suitable for her needs. It follows that I don't think it was reasonable for ACL to recommend it to Miss C, unless they'd made it clear that it wouldn't cover the full term of her finance agreement. And they didn't do that.*

*I can see ACL say the policy schedule sets out the duration of the GAP policy as being 37 months – and I agree that's the case. But Miss C doesn't believe it's sufficient for ACL to rely on this and it's their responsibility to ensure the product their recommending is suitable. The Statement of Demands and Needs asked Miss C how long she intended to keep the car, and this was answered as '48 months'.*

*So, given that ACL were made aware here that Miss C intended on keeping her 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 Miss C a GAP policy that didn't align with the finance agreement. And given that ACL had recommended the policy for her I think it was reasonable that she relied on their recommendation. It therefore follows that I think ACL mis-sold the policy as they recommended a product that wasn't suitable for Miss C's needs.*

*I think if ACL had pointed out that Miss C wouldn't have been covered for the final year of her PCP she would more likely than not have bought a different policy that covered the full term of her finance agreement. And that policy would have paid the difference between her motor insurer's settlement and either the invoice price of her car or the finance agreement settlement, after it was written off. So, Miss C has lost out on that settlement because of ACL's unreasonable recommendation.*

*In addition to this, I can see the Insurance Product Information Document ("IPID") for the GAP policy says the Return to Invoice benefit lasts for up to 25, 37 or 49 months – so this demonstrates a 49-month policy was available.*

*Given that Miss C had answered questions on the Statement of Demand and Needs to say that she wanted protection from financial loss in the event of her car being written off and that she intended to keep her car for 48 months, I'm further persuaded Miss C would likely have chosen the GAP policy with a term which covered the full period of her finance agreement.*

*I also say this because Miss C bought her 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 Miss C would've most likely chosen that option.*

*I can see the product schedule has been signed by Miss C and this contained a declaration which said Miss C understands the GAP insurance is optional. Although the GAP policy wasn't inter-related to the finance agreement, the paperwork ACL provided summarising the policy's benefits said that it would pay the higher of either the difference between the comprehensive insurer's settlement and the invoice price or: "the amount by which the finance agreement settlement...exceeds the comprehensive motor insurance settlement."*

*So although the GAP policy wasn't linked to the finance agreement, one of its benefits was to cover a shortfall under a finance agreement. But the policy ACL advised Miss C to buy was incapable of doing that for the final year of her agreement because cover had already ended. So I don't think ACL's advice was suitable in Miss C's specific circumstances.*

*Taking into account the reasons I've set out above, I think ACL mis-sold the policy as they recommended a product that wasn't suitable for Miss C's needs. I'm persuaded that if they had pointed out that Miss C wouldn't have been covered for the final year of her PCP she would have bought a different policy that covered the full term of her finance agreement – particularly as the IPID makes it clear one was available.*

*In order to put things right, I think that ACL should step into the shoes of Miss C's GAP insurer and pay Miss C's claim for the difference between her motor insurer's settlement and either the invoice price of her car or the amount required to settle the outstanding balance on the finance agreement. I can see the GAP policy also provided cover for Miss C's motor insurance excess – up to £250. So ACL should also pay Miss C the excess her motor insurer charged – up to £250 - as per the terms of her policy. ACL should also add simple interest to that settlement at a rate of 8% per year from the date of Miss C's claim to the date they make payment."*

So, subject to any further comments from Miss C or ACL, my provisional decision was that I was minded to uphold this complaint and require ACL to put things right.

Following my provisional decision, Miss C hasn't responded with any further comments. ACL have responded and say, during the sales process, Miss C will have been presented with all the financial and insurance options that were available at the time of sale to allow her to make an informed decision based on her own needs. They say they found the sales process was completed fully and correctly and the options suggested were based on the information provided by Miss C. ACL also say, in this sale, Miss C was provided documentation both pre-sale and post-sale, which has been signed, clearly showing the duration of the GAP policy as 37 months. They say in their experience, they've found customers generally choose the 36-month option due to budgetary reasons and that the depreciation is greater in the first 24/36 months of ownership.

### **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 agree with ACL that Miss C was presented with information about the financial and insurance options available to her and this was also based on information provided by Miss C in response to a series of questions. I've already mentioned in my provisional decision the reasons why I think the policy was mis-sold, so I won't repeat them here. But, in

summary, I think ACL, having obtained all information from Miss C, then mis-sold the GAP policy as they recommended a product that wasn't suitable for Miss C's needs.

I do accept the GAP policy documents do set out the duration of the policy as 37 months. But, given that ACL were made aware that Miss C intended on keeping her car for at least the full term of her finance agreement, I think it was unreasonable in the circumstances for ACL to have then recommended to Miss C a GAP policy which was never going to provide cover through the full term of the finance agreement.

I acknowledge what ACL say about their customers' preference which is based on budget, but I've seen no evidence here that persuades me Miss C would likely have chosen the 37-month policy if ACL had made it clear that it wouldn't cover the full term of her finance agreement. Instead, and given that Miss C had made it clear she plans to keep her car for the full term of the 48-month finance agreement, I'm more persuaded she would have bought a different policy that covered the full term of her finance agreement – particularly as the IPID makes it clear one was available.

### **Putting things right**

I've taken the view that ACL mis-sold Miss C a GAP policy. So in order to put things right I require ACL to return Miss C to the position that she would have been in had she bought a policy that did cover her. That means ACL should step into the shoes of Miss C's GAP insurer and pay Miss C's claim for the greater of the difference between her motor insurer's settlement and:

- the invoice price of her car, or
- the amount required to settle the outstanding balance on Miss C's finance agreement.

ACL should also refund the excess Miss C's motor insurer charged – up to £250 - as per the terms of her policy, if this hasn't been recovered already from another party. ACL should add 8% simple interest per year to the above amounts from the date of Miss C's claim to the date they make payment. ACL should provide Miss C with a certificate showing any taxation deducted.

### **My final decision**

My final decision is that I uphold the complaint. Automotive Compliance Ltd 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 Miss C to accept or reject my decision before 16 July 2024.

Paviter Dhaddy  
**Ombudsman**