

The complaint

Mr K complains about Red Sands Insurance Company (Europe) Limited's ("Red Sands") offer to settle his claim under his Guaranteed Asset Protection ("GAP") insurance policy.

What happened

Mr K made a claim under his motor insurance following an accident. The motor insurer declared Mr K's car a total loss and made an offer to settle the claim. Mr K then approached Red Sands to make a claim under his GAP insurance, but he complained as he felt their offer of settlement wasn't fair. Red Sands responded and explained the offer they made was in line with the policy terms and conditions.

Our investigator looked into things for Mr K. He upheld the complaint and recommended Red Sands pay an additional £3,970 as a fair claim settlement together with 8% simple interest and £200 compensation. Red Sands 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 to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My starting point is Mr K's GAP insurance policy document. This sets out the terms and conditions and describes what the policy covers, and the steps Red Sands will take when deciding how to settle a claim.

Under a section headed 'Cover provided' it says if the car is classed as a total loss then, *"We will pay the difference, up to the claim limit, between the purchase value and loss value."* It then defines 'Purchase value' as, *"The cost of the vehicle as shown on the invoice or a maximum of the Glass's Guide retail transacted value at the time of purchase, whichever is lesser..."* It then defines 'Loss value' as, *"The total loss payment under the comprehensive motor insurance policy or, if greater, the Glass's Guide retail transacted value for purchasing or replacing the vehicle..."*

The information shows Mr K's car at the time of purchase, based on the purchase invoice, was £37,490. The Glass's valuation at the time of purchase was £33,520 - so given this was the lesser amount, this is the figure Red Sands used as the purchase value.

The total loss settlement originally paid by Mr K's motor insurer was £27,820. The Glass's guide valuation at the time of loss was £29,210 - so given this was the greater amount, this is the figure Red Sands used as the loss value. The difference between these two amounts is £4,310 and, together with the excess of £500, this arrives at a figure of £4,810 – which is what Red Sands offered Mr K. While this offer is in line with the policy terms and conditions, I don't think it's fair in all the circumstances to look at this through the narrow lens of the terms and conditions alone. So, I've also considered whether, in the circumstances of this

case, there has been a fair application of the terms. And having considered all the information, I don't believe that to be the case here - I say this for a number of reasons.

The policy terms and conditions refer to the product as a 'Return to Invoice Gap Insurance' policy. The policy schedule refers to the product as a 'Return to Invoice Gap' policy and refers to the invoice value as £37,490. And when Mr K first took out the policy, I can see an email was sent to him with policy information which described the product as 'Return to invoice Gap' and the car value as £37,490. So, when taking these documents into account, I understand why this gave Mr K the impression that the invoice price of £37,490 would be the figure used as the purchase value when calculating any settlement under the GAP policy.

Given the frequent use of the term 'return to invoice' as well as the amount of £37,490, I believe the use of the Glass's valuation at the time of purchase is an unusual term – particularly in circumstances where the product is named return to invoice. So, I believe more should've been done to specifically draw Mr K's attention to the fact that a Glass's valuation would be used. Even in the definitions section of the policy, there is a definition for 'invoice' but not one for 'Glass's'. And, in the definition of 'Purchase value' the term 'invoice' is highlighted in bold, but not the term 'Glass's Guide retail transacted value'.

Red Sands would've been able to get a Glass's valuation for Mr K's car at the time of purchase, at the time Mr K took out his policy. So, at that point, Red Sands would've been aware of the Glass's valuation of £33,520 as well as the fact that this, for the purposes of any claim settlement, represented the lesser amount when compared against the invoice price. But I can't see they made Mr K aware of the Glass's figure, or the fact that this would be the figure used to settle any claim.

I'm further persuaded it would've been reasonable for Red Sands to make Mr K aware of this as Glass's is a valuation tool available to the industry. But Mr K, not being within the relevant industry, won't have had access to this to enable him to assess the value. The Insurance Conduct of Business Sourcebook ("ICOBs"), under ICOBS: 2.2.2 R requires information from a business to be clear, fair and not misleading. But I'm not satisfied that's the case here.

So, had the relevant information been provided by Red Sands, I think this would've allowed Mr K to consider his options and, in particular, whether an alternative GAP policy which only uses the invoice price when settling a claim, would've been a better option. Given that the difference between the invoice price and Glass's valuation was £3,970 - which I think is a significant amount – I'm persuaded it's more likely than not Mr K would've chosen to take out an alternative policy which would use the invoice price. So, I think it's fair in the circumstances for Red Sands to use the purchase value of £37,490.

Turning now to the 'Loss value', I can see Mr K's motor insurer originally offered £27,820 – and that's the figure Red Sands used when calculating the settlement amount. I can see our investigator then discussed the motor insurer's total loss settlement with Mr K, following which the motor insurer agreed to increase the settlement to £29,210. I think it's fair in the circumstances therefore for Red Sands to use this amount as the loss value.

So, deducting the loss value from the invoice price leaves an amount of £8,280 – which is what I think is a fair settlement under the terms of the policy. I can see an amount of £4,310 has already been paid towards the difference, which leaves an outstanding amount of £3,970. So, Red Sands should pay this amount to Mr K. Given that Mr K has been without these funds, Red Sands should add 8% simple interest per year from the date the original settlement was paid to the date they make payment.

The information shows Mr K was left frustrated at Red Sands' settlement terms and was confused at why they'd used a Glass's valuation when all the information he'd been sent referred to a return to invoice policy. Given that Red Sands haven't settled the claim fairly here, I think it's fair in the circumstances for Red Sands to pay Mr K £200 compensation.

Putting things right

I've taken the view that Red Sands haven't offered a fair settlement for Mr K's claim. So, Red Sands should pay Mr K £3,970 together with 8% simple interest per year on this amount from the date the original settlement was paid to the date they make payment. Red Sands should provide Mr K with a certificate showing any taxation deducted. Red Sands should also pay Mr K £200 compensation for the confusion and frustration caused.

My final decision

My final decision is that I uphold the complaint. Red Sands Insurance Company (Europe) 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 7 January 2025.

Paviter Dhaddy
Ombudsman