

The complaint

Mr G complains that Saxton 4x4 Limited ("Saxton") mis-sold him a Guaranteed Asset Protection ("GAP") insurance policy.

What happened

Mr G bought a car on finance and also took out a GAP policy. Around two years later, Mr G's car was stolen so he made a claim to his motor insurer as well as his GAP insurer. The motor insurer paid Mr G the market value of his car, but the GAP insurer declined to pay Mr G the shortfall in the invoice price on the basis Mr G's car had modifications which hadn't been declared to them and any modifications were excluded under the GAP policy. The GAP insurer did make a payout though and said they'd taken their lead from Mr G's motor insurer and based their payout on Mr G's car being a standard model and not the modified model. Mr G then complained to Saxton and said the GAP policy had been mis-sold on the basis the policy was invalid from the start.

Saxton responded and explained Mr G hadn't declared the modifications on his car to his motor insurer and, as a result, the motor insurer hadn't agreed to pay out the value of Mr G's car with modifications. They said this is the principal reason why the GAP insurer had also refused to pay out taking into account the modifications as Mr G's failure to declare this to his motor insurer would result in the GAP insurer having to pay out a greater value in a return to invoice situation. Saxton said, therefore, even if the GAP insurer was fully aware of the modifications from the outset, they would be refusing to pay the return to invoice amount where that amount had been significantly increased by Mr G's failure to declare the modifications. Saxton said the GAP insurer wasn't refusing to pay on the basis of Mr G's car being modified but are making a payout in conjunction with the decision made by Mr G's motor insurer. Saxton said, on this basis they aren't upholding the complaint in respect of the sale of the GAP policy.

After considering all of the evidence, I issued a provisional decision on this complaint to Mr G and Saxton on 20 February 2025. 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 Mr G. The document says, to enable Mr G to make an informed decision on which insurance products to purchase, Saxton are required to complete a statement of demands and needs as this, "...will help us to determine which of our insurance products are appropriate, given your individual & specific requirements. Our sales consultant will, based on your answers, provide you with a personal recommendation and their reasons for doing so, together with all relevant details about each product. All recommended products are optional."

There was a series of questions which established that, in the event of Mr G's car being declared a total loss, he didn't have any insurance which would provide cover for the difference between a total loss settlement from Mr G's motor insurer and the invoice price or outstanding finance. The document then contained a recommendation for a GAP policy and selected a particular GAP policy and provider.

Given the fact this document was completed to establish Mr G's demands and needs, and specifically referred to Saxton making a recommendation, and a particular policy and provider was recommended, I'm persuaded Saxton carried out the sale on an advised basis. I'm further persuaded that's the case as Mr G has provided evidence of communication with the GAP policy insurer and with the administrator of the policy - and the GAP insurer confirmed it was Saxton's responsibility, "...to ensure your cover is correct for your vehicle..." and the policy administrator confirmed Saxton's sold the policy on an advised basis following answers to the demands and needs questions. Given that I believe Saxton's 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 Saxton's recommended didn't provide cover for a car with modifications. It's a clear exclusion set out in the policy terms and conditions and, in correspondence with Mr G, the GAP insurer said, "As per the policy wording, modified vehicles are excluded from cover." It's clear Saxton's were aware of the modifications as they've sent our service a copy of their advert and photos of the car from the advert – and the description clearly sets out the modified exterior bodykit and wheels and the photos also show this as the manufacturer badges have been replaced with the modification company's badges.

In correspondence with our service, and based on this information, Saxton's also confirmed, "It is clear from badging and bodykit that the vehicle was modified." So a policy that excluded any car with modifications, wasn't suitable for Mr G's needs. It follows that I don't think it was reasonable for Saxton to recommend it to Mr G. And given that Saxton had recommended the policy for Mr G I think it was reasonable that he relied on their recommendation. It therefore follows that I think Saxton mis-sold the policy as they recommended a product that wasn't suitable for Mr G's needs.

It's clear from the Statement of Demands and Needs' Saxton were aware Mr G didn't have any insurance which, in the event of a total loss, would cover the difference between his motor insurer's settlement and the return to invoice price or outstanding finance – and that this would have to be met by Mr G. So I think if Saxton had pointed out that Mr G's car wouldn't be covered by the GAP insurer due to its modifications, then Mr G would more likely than not have bought a different policy that would provide cover.

I can see the GAP insurer though did make a payment. However, the GAP insurer pointed out that Mr G didn't disclose the modifications to his motor insurer, so the motor insurer settled Mr G's claim based on the valuation of the car as a standard model rather than with the modifications. The GAP insurer said they're taking their lead from Mr G's motor insurer as is their process and, as GAP policy provider, did the same with their calculation for the claim settlement – and based on the vehicle being a standard model.

The information shows Mr G was sold a combination GAP policy, so in the event of a claim it would pay the greater amount of the difference between the motor insurer's total loss settlement, and the return to invoice price or the outstanding finance. In this case, the information shows Mr G's motor insurer's settlement was £33,149.29. The invoice price of the car was £75,000, so this left a shortfall of £41,850.71. This amount is greater than the outstanding finance after deducting the total loss settlement. The GAP insurer has paid £17,020, so this left the amount of £24,830.71. This represents the amount of the shortfall Mr G believes Saxton should be responsible to pay.

It's clear Mr G didn't disclose the modifications to his motor insurer – and this had a direct impact on how they chose to settle the claim. The responsibility for disclosing this rested with Mr G, so I don't think it's fair for Saxton to be responsible for the full amount of the shortfall in settlement from the GAP insurer. The information I've seen shows that Mr G's car with modifications was worth approximately £10,000 more two years after it was manufactured than what a standard model was worth brand new. Had Mr G disclosed the modifications to his motor insurer then, given the price differences I've seen when comparing the modified version with a standard model, I'm persuaded it's more likely than not, the total loss settlement from Mr G's motor insurer would likely have been higher.

Our service has attempted to get a valuation for Mr G's car, as a modified version, to see what his motor insurer would likely have paid as at the date of loss. And it's the difference between this amount and the return to invoice price, minus the amount paid by the GAP insurer, that would've represented Mr G's loss had his car been insured by his motor insurer with the modifications. But given Mr G's car had after-market modifications rather than manufacturer modifications, I haven't been provided with any persuasive information to demonstrate what Mr G's motor insurer would likely have paid. So, I've carefully thought about what I think would be a fair and reasonable outcome here, and one which is fair to all parties, in all the circumstances. Saxton should bear some responsibility for recommending a policy which wasn't suitable for Mr G's needs. But I think it's fair in the circumstances of this case to balance this with the fact that Mr G didn't disclose the modifications to his motor insurer and this led to them paying an amount for a standard model rather than one with modifications.

My role requires me to say how a complaint should be settled quickly and with minimal formality. Given both parties have been responsible for there being a shortfall, and the lack of persuasive and reliable information to demonstrate what Mr G's motor insurer would likely have paid had he disclosed the modifications, I've taken a pragmatic view to resolve this dispute. And I've decided it's fair for Saxton to be responsible for 50% of the shortfall of £24,830.71. So, Saxton should pay Mr G £12,415.35. Given that Mr G has been without this sum for a period of time, Saxton should add 8% simple interest per year to this amount from the date the GAP insurer agreed to pay £17,020 to the date of settlement.

The claim process continued over a period of time, and it's clear this had an impact on Mr G, particularly as Mr G has maintained his argument that Saxton mis-sold him the GAP policy. He says he wasn't initially able to buy another car, and this was upsetting for him as it meant his wife, while pregnant, had to walk with their young child to get to places. Given the impact on Mr G, I think Saxton should pay compensation of £300 for the upset and inconvenience caused."

So, subject to any further comments from Mr G or Saxton, my provisional decision was that I was minded to uphold this complaint and require Saxton to pay Mr G compensation equivalent to half of the shortfall in Mr G's GAP insurance claim settlement.

Following my provisional decision, Mr G responded and said he was paid £30,780.57 by his motor insurer, and not £33,149.29 - and he provided evidence of this. Mr G says this means the shortfall was £27,199.43 and not £24,830.71. Mr G also says, at the point of sale, he wasn't informed the car had any modifications and has also referred to a number of documents which he says made no reference to any modifications. Mr G says he didn't intentionally withhold this information from his motor insurer, and the responsibility for not

bringing this to his attention should rest with Saxton. Mr G believes he should be awarded the full shortfall of £27,199.43.

Saxton have responded and say they believe the complaint shouldn't be upheld. They say it was Mr G's responsibility to disclose all material facts – including any modifications – to his motor insurer. They say, had he done this, then both his motor insurer and the GAP insurer would've based their settlement on the true value of the car. They say, neither insurer refused to pay, rather they reduced their payout to reflect the valuation of a standard car. They say the shortfall in settlement therefore was as a direct result of Mr G's failure to disclose the modifications to his motor insurer. Saxton also refer to my provisional decision which says, "*The GAP policy Saxton's recommended didn't provide cover for a car with modifications.*" They say this isn't correct as the GAP insurer did issue a payout.

I can see Saxton maintain the GAP policy involved a non-advised sale. They say it was Mr G's father who recommended the policy and not Saxton. They say, in a non-advised sale, it's the customer who assumes greater responsibility for ensuring the product's suitability based on the information provided. Saxton say their role here was to ensure they provided clear, written information – which they say they did.

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 acknowledge the information provided by Mr G showing how much he received from his motor insurer. As Mr G received £30,780.57 from his motor insurer, it would mean, after deducting the £17,020 paid by the GAP insurer, this would leave a shortfall of £27,199.43 - so half of this would be £13,599.71. Following my provisional decision, I've written to Saxton to explain this. While the amounts are different to what I set out in my provisional decision, the principle still remains the same, in that Saxton should be responsible for 50% of the shortfall.

The documents Mr G has referred to, don't make it clear the car had modifications – so I do agree with Mr G in this respect. But the advert did make it clear, and I believe it's reasonably clear from looking at the photos of the car on the advert that there have been modifications. I agree Saxton are responsible for not recommending a suitable policy in this respect, but I don't believe they should be responsible for the full shortfall as it was Mr G's responsibility to ensure his motor insurer was aware of any modifications. Mr G has said he'd spoken with his motor insurer, and they'd confirmed that, if they'd been made aware of the modifications then they would likely have charged a higher premium. This means that modifications were an important factor for Mr G's motor insurer, and something they wanted to know. And, as I've said, that responsibility rested with Mr G.

I acknowledge the points made by Saxton and I do agree there was a responsibility on Mr G's part to disclose the modifications to his motor insurer. I also accept that the GAP insurer did make a payout. But while I acknowledge Saxton say, had Mr G disclosed the modifications to his motor insurer, then both the motor insurer and GAP insurer would've based their settlement on the true value of the car, I haven't seen any information which persuades me that would've been the case. The information shows the GAP insurer decided to take their lead from the motor insurer, and their payout was based on the standard model of Mr G's car. But I haven't seen any evidence which persuades me that, it's more likely than not, the same approach would've been taken by the GAP insurer had Mr G's motor insurer

decided to settle his total loss claim based on the modifications. I say this because the GAP insurer, while making a payout, based this on a standard model – which is what they believed Mr G's car to be. But they did, in communication with Mr G, make it clear that modified vehicles are excluded from cover.

The fact that the GAP insurer decided to make a payment based on a standard model doesn't persuade me that, on the balance of probabilities, they would also have agreed to make a payout based on the modified model particularly when there was a policy exclusion here. Also, had Saxton pointed out that Mr G's car wouldn't be covered by the GAP insurer due to its modifications and recommended a policy which did, then Mr G would more likely than not have bought a different policy that would provide cover. And any payout there would likely have taken into account the modifications even if the motor insurer paid a reduced settlement.

It might help if I explain this point by way of an example. As Mr G didn't make his motor insurer aware of the modifications, they paid a total loss settlement reflecting a standard model and not based on the higher price associated with a modified model. If Saxton recommended a GAP policy which covered modifications, then Mr G would've been covered for the £75,000 invoice price. However, it's likely any GAP insurer would've argued that Mr G was responsible for not receiving a higher total loss settlement and likely made a payout reflecting the difference between that higher amount and the return to invoice price. And it's for this reason that I believe the fair and reasonable outcome should be Saxton being responsible for 50% of the shortfall as that takes into account Mr G's own contribution towards the situation which has left him with a shortfall. This also fits within a section of the policy terms and conditions which Saxton's have referred to which says Mr G wouldn't be covered for any amount his motor insurance settlement is reduced because of his contributory negligence.

I acknowledge Saxton's points about this being a non-advised sale, but I'm not persuaded the evidence demonstrates that. As I've said in my decision, I believe the policy was sold on an advised basis – and I believe the evidence is persuasive and compelling in this respect. Firstly, there's a demands and needs document which specifically referred to Saxton making a recommendation, and a particular policy and provider was recommended. Secondly, there's evidence of communication with the GAP policy insurer and with the administrator of the policy - and this confirmed it was Saxton's responsibility to ensure the cover was correct and Saxton's sold the policy on an advised basis. I agree Mr G did, in a phone call with our investigator, explain that his father had suggested the GAP policy. But I don't believe this changes what the evidence shows – and even if Mr G's father had suggested this, the evidence still shows this was an advised sale and therefore Saxton had to take reasonable care to ensure the suitability of their advice.

Saxton have also made points about Mr G's signed declarations and the point-of-sale documents issued to Mr G. I have taken these points into account, but they don't change what I think Saxton's role and responsibilities were here and what I believe is a fair and reasonable outcome in the circumstances of this case.

I wish to reassure the parties I've read and considered everything they've 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.

Putting things right

I've taken the view that Saxton mis-sold Mr G a GAP policy. So in order to put things right, I require Saxton pay Mr G £13,599.71 together with 8% simple interest per year on this

amount from the date the GAP insurer agreed to pay Mr G a claim settlement to the date Saxton make payment. Saxton should provide Mr G with a certificate showing any taxation deducted. Saxton should also pay Mr G compensation of £300.

My final decision

My final decision is that I uphold the complaint. Saxton 4x4 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 G to accept or reject my decision before 7 April 2025.

Paviter Dhaddy
Ombudsman