

The complaint

Mr M complains that Park's of Hamilton (Holdings) Limited ("Park's") mis-sold him a Guaranteed Asset Protection ("GAP") insurance policy. In particular, he says the policy didn't offer fair value and they didn't disclose to him they would be earning commission.

Mr M's complaint has been brought by a representative on his behalf – who I'll refer to as company Y.

What happened

Park's sold Mr M a combined GAP and 'Return to Invoice' policy. The policy was for a three-year term and started in November 2022. Mr M then approached company Y who made a complaint, on his behalf, to Park's. Company Y complained that the GAP policy sold to Mr M didn't represent fair value and that the Financial Conduct Authority ("FCA") had deemed GAP to be a product which didn't represent fair value, Mr M wasn't given a two-day period between receipt of policy information and taking out the policy, and that Park's hadn't disclosed to Mr M that they would be receiving commission and the amount.

Park's responded and explained they'd completed a Statement of Demands and Needs document which was signed by Mr M. They referred to a number of questions which Mr M was asked - the answers to which led them to recommend the GAP policy. They confirmed Mr M was given at least two days before the sale was concluded and they'd made Mr M aware they would be earning commission.

Our investigator looked into things for Mr M. He thought Park's hadn't mis-sold the policy and didn't uphold the complaint. Mr M 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 M will be disappointed by this but I'll explain why I have made this decision.

Fair value

Company Y has said the GAP insurance Mr M took out didn't meet the standards expected under the Consumer Duty principle. But it's important to clarify this principle has only applied to 'open' products and services from 31 July 2023 and to 'closed' products and services from 31 July 2024. The Consumer Duty doesn't apply retrospectively to complaints about events that happened before these dates. In this case, the GAP policy was sold in 2022, so the requirements of the Consumer Duty don't apply. That said, I have considered, more broadly, whether Park's treated Mr M fairly.

I can see company Y has referred to the FCA General insurance value measures data from September 2023 and say this raised concerns about GAP insurance and that it was determined such policies didn't represent fair value. Company Y has said it too shares the FCA's concerns.

I've thought carefully about the data referred to and the contact the FCA had with GAP insurers in September 2023, and I've taken this into account. However, I've looked more specifically at Mr M's circumstances at the time the sale took place.

During the sales process, Park's recommended the GAP policy to Mr M. 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 information shows they completed a Statement of Demands and Needs which asked Mr M a series of questions.

Under a section headed 'Finance Qualification' it asked, "*Would you like the future value of your vehicle guaranteed?*" – this was answered 'Yes'. Then under a section headed 'Combined GAP' it asked, "*Will the purchase of your vehicle be funded by a finance agreement?*" and "*If your vehicle was declared a total loss would there be a financial benefit to you if you were to be given an additional cheque to limit or offset any financial loss?*" – both of these questions were answered 'Yes'.

It also asked, "*Does your current insurance policy give you the original purchase price of your vehicle if it is written off during the first 3 years of ownership?*" – this was answered 'No'. It then set out the key demands and needs for Mr M, in line with his responses to the questions and said, "*We therefore recommend that you take up [name of insurer] GAP/RTI...*"

It's clear from the answers provided by Mr M that he expressed a need to have, and would benefit from, a policy which would provide cover in the event his vehicle was deemed a total loss, and he had an outstanding balance to pay towards the finance or wanted to ensure he received the invoice price of his vehicle. Although Mr M doesn't appear to have claimed on his policy, the cover and benefits are there if he does make a claim and he knew how much the policy was going to cost and was able to shop around the market if he wasn't happy with the price being offered. Taking everything into account, I haven't seen anything that makes me think Park's treated Mr M unfairly, so I haven't upheld this part of the complaint.

Deferred opt-in

Company Y says Mr M wasn't given at least two clear days between receiving key information about the GAP policy and then taking out the policy. The rules company Y are referring to here are the Insurance Conduct of Business Sourcebook ("ICOBS"), specifically ICOBS 6A.1.4R and ICOBS 6A.1.6R. This says, before a GAP contract is concluded, a firm must draw to the customer's attention, information including the total premium of the GAP contract, the features and benefits and any unusual exclusions or limitations, the duration of the policy, and whether it's optional. And, following this, the GAP contract cannot be concluded by the firm until at least two clear days have passed since the relevant information was provided.

The Statement of Demands and Needs document contains a declaration signed by Mr M on 21 November 2022 which says, "*I confirm that I have received a copy of the Insurance Product Information Document (IPID) in sufficient time to make an informed decision. I understand the benefits and limitations of the products I have chosen to purchase and have received a copy of this document.*" The Insurance Product Information Document ("IPID") sets out what Mr M is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. Park's say these documents were printed off and issued to Mr M on

21 November 2022. I'm persuaded that was the case as there is a time stamp on the GAP policy documents showing they were printed off on that date and have also been signed and dated by Mr M.

There is then another Statement of Demands and Needs document which was printed off on 26 November 2022, and which sets out the same questions as the document dated 21 November 2022. On this document though it asked whether Mr M wished to purchase the combined GAP policy and this was answered 'Yes'. The document contained the same declaration confirming Mr M had received a copy of the IPID and understood the benefits and limitations of the policy. The declaration section on this document was signed by Mr M on 26 November 2022, and a Schedule shows the policy started on 27 November 2022.

So, taking this information into account, I think Mr M was, in line with the relevant rules under ICOBS, given at least two clear days between being presented with the relevant information relating to the GAP policy and the sale concluding.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Mr M. Company Y say Park's didn't disclose the existence or amount of commission. Company Y say Mr M wasn't therefore in a position to make an informed decision about the GAP policy. Company Y refer to Principle 7 of the FCA Principles for Business and say Park's should've communicated with Mr M in a way that was clear, fair and not misleading, and ensuring that Mr M was provided with all information to enable him to make an informed decision.

Turning now to the specific issue in relation to the commission charged. I've started by considering whether there was a requirement for Park's to disclose the details of their commission. ICOBS 4.3 R covers commission disclosure for customers and sets out the remuneration disclosure rule and says:

"In good time before the conclusion of the initial contract of insurance...an insurance intermediary must provide the customer with information:

- (1) on the nature of the remuneration received in relation to the contract of insurance:*
- (2) about whether in relation to the contract it works on the basis of:
(b) a commission of any kind, that is the remuneration included in the premium"*

I've seen that company Y has said that the requirements in ICOBS should be read in accordance with section 140A of the Consumer Credit Act 1974 ("s140A CCA"). It has referred to a number of cases which it says supports its position. I've considered its arguments. The law relating to unfair relationships is described in section 140A and it says a court may make an order under s140 should it determine that the relationship between the creditor and the debtor is unfair.

However, Mr M's complaint isn't against the creditor (the creditor here is a completely separate firm that hasn't been complained about). The complaint before me is against the insurance broker and seller of the policy, Park's. I'm therefore satisfied that s140A CCA is not a relevant consideration in this complaint. The relevant rules which apply to this complaint are ICOBS, so that is what I've taken into account.

The information shows Mr M signed a document headed 'Statement of Price', relating to the GAP policy, on 26 November 2022, and this contained a declaration signed by Mr M which

said, *“I hereby...confirm that I have received the Initial Disclosure Document (IDD)...”* The Initial Disclosure Document (“IDD”) says, under a heading ‘Insurance Commission Disclosure’, *“We offer and distribute insurance products from one provider...We earn commission from the provider as a proportion of the premium paid.”*

The requirement under ICOBS 4.3 R was for Park’s to disclose to Mr M the fact they earned commission, and the IDD clearly sets out that commission will be charged. This is in line with the regulatory requirements in place at the time and, looking at the information more broadly in terms of what was contained in both the IPID and IDD and the way it was explained, I’m persuaded Park’s provided information which was clear, fair and not misleading.

I can see company Y also argue that the lack of key information meant Mr M wasn’t in a position to make a fully informed decision. As I’ve already mentioned, the Statement of Demands and Needs indicated that Mr M would benefit from a GAP policy, and the IPID contained key information about the GAP policy, together with the benefits and limitations. So I’m persuaded Mr M was given sufficient information to enable him to make an informed decision about whether to purchase the GAP policy.

I wish to reassure Mr M and company Y I’ve read and considered everything they’ve sent in, so 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 M to accept or reject my decision before 13 October 2025.

Paviter Dhaddy
Ombudsman