

The complaint

Mr P complains that John Clark (Aberdeen) Limited (“JCAL”) 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 P’s complaint has been brought by a representative on his behalf – who I’ll refer to as company Y.

What happened

JCAL sold Mr P a combined ‘Return to Invoice’ and ‘Finance’ GAP policy. The policy was for a four-year term and started in November 2019. Mr P then approached company Y who made a complaint, on his behalf, to JCAL. Company Y complained that the GAP policy sold to Mr P 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 P wasn’t given a two-day period between receipt of policy information and taking out the policy, and that JCAL hadn’t disclosed to Mr P that they would be receiving commission and the amount.

JCAL responded and explained Mr P was given all relevant information to make an informed decision. They said a Statement of Demands and Needs was completed and a quote was provided to Mr P, together with key information about the policy, in advance of the sale concluding.

Our investigator looked into things for Mr P. He thought JCAL hadn’t mis-sold the policy and didn’t uphold the complaint. Mr P 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 P 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 P 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 2019, so the requirements of the Consumer Duty don’t apply. That said, I have considered, more broadly, whether JCAL treated Mr P 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 P's circumstances at the time the sale took place.

During the sales process, Mr P signed a declaration which said, "*I have not been given any advice or recommendation by [JCAL] in relation to any...Insurance Products.*" This document also said JCAL were making Mr P aware of products he may wish to buy. The sales documentation provided by JCAL also doesn't suggest they provided a recommendation. That means they didn't sell the policy on what's known as an 'advised sale' basis. That said, they did still need to ensure they provided sufficient information to Mr P to enable him to make an informed decision on the suitability of the GAP policy.

The information shows a Statement of Demands and Needs document was completed in which Mr P indicated he would be buying his car on finance. This asked a series of questions about Mr P's circumstances, including, "*Will your policy pay you back the full amount you paid for the vehicle including any finance settlement shortfall?*" Mr P indicated his comprehensive motor insurance policy wouldn't pay this by entering a 'x' in the relevant response box beside this question. Under a section headed 'Customer Declaration' it said, "*I confirm that I have had the cost, features and benefits of all insurance products explained to me*" and "*I have been made aware of any significant exclusions or limitations and been given an Insurance Product Information Document (IPID) ('IPID') for each insurance product.*" This declaration was signed by Mr P on 16 November 2019.

It's clear from the answer provided by Mr P that he didn't have a policy in place 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. JCAL say Mr P never claimed on this policy, but I'm satisfied the cover and benefits were there if he did make a claim. There's also a document headed 'GAP Insurance Quotation' which was signed by Mr P on 16 November 2019. This document set out the price of the GAP policy and there's a declaration which said, "*This GAP Insurance cover is optional and similar cover may be purchased elsewhere.*" So, Mr P 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.

The 'GAP Insurance Quotation' also contained a declaration which said, "*This Insurance Cover is subject to the General Terms and Conditions set out in the Key Facts Policy Summary which I have received and read.*" I've seen the 'Key Facts Policy Summary' document and this sets out what Mr P is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy.

So, I think Mr P was given sufficient information about the policy to enable him to make an informed decision on the suitability of the GAP policy. Taking everything into account, I haven't seen anything that makes me think JCAL treated Mr P unfairly, so I haven't upheld this part of the complaint.

Deferred opt-in

Company Y says Mr P 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.

As I've mentioned above, the 'GAP Insurance Quotation' document was signed by Mr P on 16 November 2019, and this set out the price of the policy and the term. It also contained a declaration which confirmed Mr P received, and read, a 'Key Facts Policy Summary' document – and as I've mentioned above, this set out what Mr P is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. The 'GAP Insurance Quotation' also contained a declaration which said, *"The sale of this GAP insurance is subject to a 4 day Deferred Period."* So, it's clear the need to have a deferred period was brought to Mr P's attention. The Schedule of Insurance for Mr P's GAP policy shows cover started on 25 November 2019.

So, taking this information into account, I think Mr P 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 P. Company Y say JCAL didn't disclose the existence or amount of commission. Company Y say Mr P 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 JCAL should've communicated with Mr P in a way that was clear, fair and not misleading, and ensuring that Mr P 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 JCAL 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 P'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, JCAL. 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 P signed the 'GAP Insurance Quotation' document and this contained a declaration which said, "*I have been provided with an Initial Disclosure Document...*" I've seen the Initial Disclosure Document ("IDD") and this said, under the heading 'What will you have to pay for these services?', "*We do not charge any fees for our...insurance services, but we may receive some payment from the provider if you decide to enter into an agreement with them.*"

The requirement under ICOBS 4.3 R was for JCAL to disclose to Mr P the fact they earned commission, and the IDD does say they 'may' receive a payment from the insurer. This doesn't confirm commission is guaranteed. Instead, it puts Mr P on notice that this is something JCAL 'may' receive. So, I've thought about the term 'may' being used here in this context. And, for a number of reasons, I'm not persuaded Mr P has been treated unfairly.

Firstly, it's standard practice within the insurance industry for a broker to charge commission for their services. The expected source of income for insurance brokers generally is the commission earned when selling/arranging/administering the insurance policy. And I think it's a fair starting position to expect that the insurance broker is paid for their service. Secondly, the IDD did say JCAL don't charge any fees. So given what I've said about it being standard practice for brokers to charge commission, I think it was reasonable therefore to expect the reference in the IDD to the payment, which JCAL said they 'may' receive, related to commission.

Finally, I've also considered what, if anything, would likely have been different if JCAL had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Mr P finding an alternative broker. As I've mentioned, it's standard practice for brokers to earn commission, so that likely would've applied to any alternative brokers. And the 'GAP Insurance Quotation' document signed by Mr P contained a declaration which said Mr P could buy a policy elsewhere – but he chose not to. So, in relation to the disclosure of commission, I'm satisfied JCAL have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Mr P being treated unfairly. And, looking at the information more broadly in terms of what was contained in the IPID, IDD and Key Facts Policy Summary, and the way it was explained, I'm persuaded JCAL provided information which was clear, fair and not misleading.

I can see company Y also argue that the lack of key information meant Mr P 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 P would benefit from a GAP policy, and the 'Key Facts Policy Summary' document contained key information about the GAP policy, together with the benefits and limitations. So I'm persuaded Mr P was given sufficient information to enable him to make an informed decision about whether to purchase the GAP policy.

I wish to reassure Mr P 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 P to accept or reject my decision before 13 October 2025.

Paviter Dhaddy
Ombudsman