DRN-5813516

The complaint

Mr S complains that Sytner Group Limited ("Sytner") 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 S's complaint has been brought by a representative on his behalf – who I'll refer to as company Y.

What happened

Sytner sold Mr S a combined 'Return to Invoice' and 'Finance' GAP policy. The policy was for a three-year term and started in October 2020. Mr S then approached company Y who made a complaint, on his behalf, to Sytner. Company Y complained that the GAP policy sold to Mr S 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 S wasn't given a two-day period between receipt of policy information and taking out the policy, and that Sytner hadn't disclosed to Mr S that they would be receiving commission and the amount.

Sytner responded and explained Mr S was given all relevant information to make an informed decision. They said a Statement of Demands and Needs was completed and all key information about the policy was provided to Mr S in advance of the sale concluding. Sytner also said they'd informed Mr S they would be earning commission.

Our investigator looked into things for Mr S. He thought Sytner hadn't mis-sold the policy and didn't uphold the complaint. Mr S 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 S 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 S 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 2020, so the requirements of the Consumer Duty don't apply. That said, I have considered, more broadly, whether Sytner treated Mr S 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 S's circumstances at the time the sale took place.

During the sales process, Sytner recommended the GAP policy to Mr S. 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 S a series of questions. It asked, "*Are you aware that if your car were written off in an accident or stolen your insurer may only pay you the market value of the car and not the original invoice price?*" and "*In the event of a financial loss, would you prefer that someone else makes up the shortfall on your behalf?*" Both of these questions were answered 'Yes'. Sytner then recommended a combined GAP insurance policy for a duration of three years at a price of £729.

It's clear from the answers provided by Mr S 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 S doesn't appear to have claimed on his policy, the cover and benefits were there if he did make a claim. There was also a 'GAP insurance supplementary order' document, which has been signed by Mr S, which said, "*GAP insurance is available from other sources and is an optional insurance.*" So, Mr S 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 Sytner treated Mr S unfairly, so I haven't upheld this part of the complaint.

I can see, in response to our investigator's view, company Y say the GAP policy was for a period of three years, yet the term on the finance agreement was for a period of five years. Company Y say, on this basis, the recommendation was unsuitable. This presents a separate issue regarding the suitability of the recommendation – and one which I think it would be fair in the circumstances for Sytner to be given an opportunity to respond to before our service considers this. So, I'll leave this with company Y to consider whether it, or Mr S, wish to raise this issue with Sytner in the first instance.

Deferred opt-in

Company Y says Mr S 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 information shows a 'GAP insurance supplementary order' document was completed and signed and dated by Mr S on 26 September 2020. Aswell as the price and duration of the policy, and also confirming the policy was optional, it also said, "*GAP insurance cannot be concluded until your deferred period has expired on the fourth day from when you received your Prescribed Information.*" System notes provided by Sytner show a 'RTI GAP prescribed info' and 'RTI IPID' was sent to Mr S on 26 September 2020. I've seen the 'RTI

GAP prescribed info' document and this set out what Mr S is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. It also explained what a 'deferred opt-in' is and that the GAP policy can be purchased four days after providing Mr S with all the information set out in that document.

There is then a separate Statement of Demands and Needs document which was completed and signed and dated by Mr S on 10 October 2020. This contained a declaration which said, "*I confirm that I have received the key documentation relating to the RTI GAP Insurance i.e GAP Prescribed Information and Insurance Product Information Document (IPID) and had the key features, benefits and significant exclusions explained to me in good time*." It also said, "*I have received a copy of the GAP Prescribed Information and was recommended to take at least four days to consider the benefits and suitability before making a purchase decision*."

This document again drew Mr S's attention to important aspects of the policy and confirmed Mr S had received a copy of the 'RTI GAP prescribed info' and understood the benefits and limitations of the policy. And, given that the 'RTI GAP prescribed info' explained the sale couldn't be concluded until four days had passed from receiving this document, it's clear the need to have a deferred period was brought to Mr S's attention. A Schedule shows the policy started on 10 October 2020.

So, taking this information into account, I think Mr S 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.

I can see company Y question whether the timing and content of the disclosures made by Sytner meet the requirements set out under ICOBS. As I've mentioned, Sytner have provided evidence which shows the GAP prescribed information document was sent to Mr S on 26 September 2020, and this date is consistent with the date shown on the 'GAP insurance supplementary order' document which Mr S signed. The Statement of Demands and Needs dated 10 October 2020 contained a declaration which asked Mr S to confirm that he received the GAP prescribed information document. There's a box beside this which has been ticked to confirm Mr S agreed with this statement. I think it's important to also mention that the Statement of Demands and Needs completed on 10 October 2020, has been signed by Mr S. I haven't seen any evidence which suggests Mr S questioned or challenged the reference to him receiving the GAP prescribed information document.

So, I'm persuaded, it's more likely than not, Mr S was provided with the relevant information on 26 September 2020 – and therefore he was in receipt of all key information relating to the GAP policy. So, I'm persuaded Sytner did meet the requirements set by ICOBS 6A.1.4R and ICOBS 6A.1.6R.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Mr S. Company Y say Sytner didn't disclose the existence or amount of commission. Company Y say Mr S 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 Sytner should've communicated with Mr S in a way that was clear, fair and not misleading, and ensuring that Mr S 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 Sytner 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 S'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, Sytner. 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 a 'Status disclosure' document was issued to Mr S and, under a heading 'Insurance products', it said, "…*we may receive commission from the insurer which is a percentage of the total premium paid*."

The requirement under ICOBS 4.3 R was for Sytner to disclose to Mr S the fact they earned commission, and the 'Status disclosure' document does say they 'may' receive commission from the insurer. This doesn't confirm commission is guaranteed. Instead, it puts Mr S on notice that this is something Sytner '*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 S 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 'Status disclosure' document doesn't make reference to any arrangement fees – and Sytner confirm they don't charge a separate fee for this. 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 document to the commission, which Sytner said they 'may' receive, to reasonably be interpreted as commission they 'would' receive.

Finally, I've also considered what, if anything, would likely have been different if Sytner had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Mr S 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 supplementary order' document signed by Mr S did make him aware he could buy a policy elsewhere – but he chose not to. So, in relation to the disclosure of commission, I'm satisfied Sytner have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Mr S being treated unfairly. And, looking at the information more broadly in terms of what was contained in all the documentation provided to Mr S, and the way it was

explained, I'm persuaded Sytner provided information which was clear, fair and not misleading.

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

I acknowledge Company Y say the amount of commission was a material fact that wasn't meaningfully explained but, given the facts in this case, I'm not persuaded Mr S was treated unfairly.

The starting position is, and as I've already mentioned above, ICOBS 4.3 R didn't set a requirement for Sytner to disclose the level of commission. Beyond that, it's clear Sytner did carry out work which included assessing Mr S's needs to identify that he would benefit from a GAP policy and then recommending a suitable policy. So, I'm not persuaded the facts in this case suggest Sytner treated Mr S unfairly or him not being informed about the level of commission during the sale process prevented Mr S from making an informed decision.

I wish to reassure Mr S 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 S to accept or reject my decision before 23 October 2025.

Paviter Dhaddy
Ombudsman