DRN-5823127

The complaint

Mr S complains that W.R.Davies (Motors) Limited ("WRD") 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

WRD sold Mr S a combined 'Return to Invoice' and 'Finance' GAP policy. The policy was for a four-year term and started in October 2020. Mr S then approached company Y who made a complaint, on his behalf, to WRD. 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 WRD hadn't disclosed to Mr S that they would be receiving commission and the amount.

WRD responded and explained, while there might've been a pause on the sale of GAP policies, WRD's products hadn't been singled out as not meeting any standard. WRD said they had informed Mr S they would be earning commission, and all key information relating to the GAP policy was issued to Mr S in advance of the sale concluding.

Our investigator looked into things for Mr S. He thought WRD 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 WRD 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, WRD 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 WRD issued Mr S with a sales pack on 11 September 2020. This included a Statement of Demands and Needs which was completed and asked Mr S a series of questions.

Under a section headed 'GAP' it asked, "*If your vehicle is classified as a total loss by your road risk insurer, will it be you that makes up any difference to the original invoice price or the outstanding finance?*" This was answered 'Yes'. It then asked, "*Do you have insurance to cover this difference?*" This was answered 'No'. WRD then recommended a GAP policy for a four-year term at a price of £399.

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. The sales pack also included an 'Insurance Customer Declaration' which said, "*I understand that the recommended products are optional*" and "*I understand that GAP insurance is available and sold by other distributors and I can purchase policies elsewhere*." 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 WRD treated Mr S unfairly, so I haven't upheld this part of the complaint.

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.

WRD have provided the sale pack sent to Mr S during the sales process. This contains a declaration which says, "*I have been provided with Insurance Product Information Documents (IPIDs)* ("IPID") *for all products I have chosen to purchase. The terms and conditions have been explained to me…I understand that the recommended products are optional*."
I've seen the IPID, and this sets out what Mr S is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. WRD have provided an audit trail from their system which shows the sale pack was sent to Mr S on 11 September 2020.

There is then another sale pack dated 3 October 2020, which contains the same documents sent to Mr S on 11 September 2020. The Statement of Demands and Needs noted Mr S had decided to purchase the GAP policy. The sale pack contained the same declaration

confirming Mr S had received the IPID and that the terms and conditions had been explained to him, and that he understood the recommended products were optional. The declaration also confirmed Mr S had been provided with the full cost of the GAP insurance and IPID, "…*at least 4 days before making any final decision to purchase GAP insurance.*" So, it's clear the need to have a deferred period was brought to Mr S's attention. This sale pack, and the declaration, was signed by Mr S and dated 3 October 2020. The certificate of insurance shows the policy started on 3 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.

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 WRD 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 WRD 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 WRD 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, WRD. 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 declaration in both sale packs sent to Mr S on 11 September and 3 October 2020 says, "*I have been provided with an Initial Disclosure Document* ("IDD")." The IDD says, under a heading 'What will you have to pay us for our services?', "*We earn a commission from the insurance provider for introducing you to them.*"

The requirement under ICOBS 4.3 R was for WRD to disclose to Mr S 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 WRD 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 IPID 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.

Company Y has said the complaint relating to commission disclosure shouldn't just be looked at under the lens of ICOBS 4.3 R, but under the broader context of Principle 6 (treating customers fairly) and Principle 7 of the FCA Principles for Business. As I've mentioned above, it's not unreasonable for WRD to have followed the requirements set out in ICOBS 4.3 R when disclosing the nature of their remuneration, and I've already explained why I believe Mr S wasn't treated unfairly and why the information provided was clear, fair and not misleading.

I can see company Y believe this was a "*commission-led sale*", but I'm not persuaded that was the case. Firstly, it's clear from answers given by Mr S to questions set out in the Statement of Demands and Needs, he'd indicated that he may benefit from a GAP policy – and it was on the basis of the answers given, that WRD recommended a GAP policy. It was made clear the policy was optional, and Mr S could shop around for a policy himself – but Mr S chose to purchase the policy recommended by WRD. So, I'm satisfied the recommendation was based on Mr S's demands and needs, and I haven't seen any evidence which persuades me the recommendation was unsuitable. Secondly, the IDD made it clear WRD only offer products from a single insurer. There isn't therefore any evidence here that suggests WRD recommended this policy simply because it offered higher levels of commission than other similar products offered by them through different insurers.

Company Y has also referred to the amount of commission and say this was a material fact and should therefore have been brought to Mr S's attention to allow him to make a fully informed decision on whether to purchase the policy. I acknowledge the point made by company Y about the impact the level of commission might have on a customer's decision to take out a policy 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 WRD to disclose the level of commission. Beyond that, the information shows the level of commission earned by WRD was approximately 42.5% - and it's clear WRD 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 commission was at a level which suggests WRD 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 17 October 2025.

Paviter Dhaddy
Ombudsman