

The complaint

Ms F complains that Ford Retail Limited trading as TrustFord ("Ford Retail") mis-sold her a Guaranteed Asset Protection ("GAP") insurance policy. In particular, she says the policy didn't offer fair value and they didn't disclose to her they would be earning commission.

Ms F's complaint has been brought by a representative on her behalf – who I'll refer to as company Y.

What happened

Ford Retail sold Ms F a combined 'Return to Invoice' and 'Finance' GAP policy. The policy was for a four-year term and started in January 2022. Ms F then approached company Y who made a complaint, on her behalf, to Ford Retail. Company Y complained that the GAP policy sold to Ms F 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, Ms F wasn't given a two-day period between receipt of policy information and taking out the policy, and that Ford Retail hadn't disclosed to Ms F that they would be receiving commission and the amount.

Ford Retail responded and said they'd allowed Ms F more than two days between providing her with information relating to the GAP policy and then concluding the sale, and that they'd informed Ms F they would be earning commission.

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

Fair value

Company Y has said the GAP insurance Ms F 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 Ford Retail treated Ms F 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 Ms F's circumstances at the time the sale took place.

During the sales process, Ford Retail recommended the GAP policy to Ms F. 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 Ms F a series of questions. It asked, *"If your vehicle were to be written off by your motor insurer, would they give you back either: a sum equivalent to what you originally paid for your vehicle or, if higher a sufficient amount to pay off any outstanding motor finance..."* and *"Do you have any existing insurance that would provide a payment to top up your motor insurance settlement figure to the invoice price of your vehicle or finance settlement figure?"* Both of these questions were answered 'No'. Ford Retail then recommended a combined GAP insurance policy for a duration of four years at a price of £525.

It's clear from the answers provided by Ms F that she expressed a need to have, and would benefit from, a policy which would provide cover in the event her vehicle was deemed a total loss, and she had an outstanding balance to pay towards the finance or wanted to ensure she received the invoice price of her vehicle. Although Ms F doesn't appear to have claimed on her policy, the cover and benefits are there if she does make a claim. There was also a statement in the Statement of Demands and Needs document which said, *"The purchase of GAP insurance is optional. GAP contracts are sold by other distributors..."* So, Ms F knew how much the policy was going to cost and was able to shop around the market if she wasn't happy with the price being offered. Taking everything into account, I haven't seen anything that makes me think Ford Retail treated Ms F unfairly, so I haven't upheld this part of the complaint.

Deferred opt-in

Company Y says Ms F 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 the initial Statement of Demands and Needs was completed on 19 January 2022. Directly below the GAP recommendation on this document, there was a section headed, 'Important aspects of your GAP Insurance policy which you should read' and this said, *"You have received the Insurance Product Information Document/s (IPIDs) showing the key features benefits and exclusions to any GAP policies made available to you. It is important that you read this information to ensure that you can and will continue to meet any eligibility criteria before deciding to purchase. The purchase of GAP insurance is optional. GAP contracts are sold by other distributors...Should you decide to purchase [GAP policy] we will not be able to conclude the contract until the 22nd January 2022..."*

There was also a customer declaration which said, *"You confirm that you understand that all of our insurance policies are optional..."* and *"That you have had the opportunity to read,*

review and ask any questions around any insurance policy terms and conditions for products we have recommended and that you have received our Initial Disclosure Document and relevant Insurance Product Information Documents.”

I've seen the Insurance Product Information Document (“IPID”) for the GAP policy, and this set out what Ms F was insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. Ms F was also made aware of the price and duration of the policy, and that the purchase of the GAP policy was optional.

There is then another Statement of Demands and Needs document which was completed on 27 January 2022, and which set out the same questions as the document dated 19 January 2022. On this document though it confirmed which products Ms F had decided to purchase, and this included the GAP policy. The document again drew Ms F's attention to important aspects of the policy and confirmed Ms F had received a copy of the IPID and understood the benefits and limitations of the policy. And, given that the Statement of Demands and Needs completed on 19 January 2022 explained the sale couldn't be concluded until 22 January 2022, it's clear the need to have a deferred period was brought to Ms F's attention. A Schedule shows the policy started on 27 January 2022.

So, taking this information into account, I think Ms F 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 Ford Retail meet the requirements set out under ICOBS. The initial Statement of Demands and Needs shows this was completed on 19 January 2022, and the one completed on 27 January 2022 has a section which says, *“Please confirm that the Initial Disclosure Document has been provided to the customer”*. Beside this, it confirms this was sent on 19 January 2022 – which is consistent with the date the information shows the initial Statement of Demands and Needs was completed. I haven't seen any evidence which suggests Ms F questioned or challenged the reference to her receiving the IDD on 19 January 2022, or Ms F raising questions about the customer declaration confirming she'd received the IPID. So, I'm persuaded, it's more likely than not, Ms F was provided with the relevant information on 19 January 2022 – and therefore she was in receipt of all key information relating to the GAP policy. So, I'm persuaded Ford Retail 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 Ms F. Company Y say Ford Retail didn't disclose the existence or amount of commission. Company Y say Ms F 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 Ford Retail should've communicated with Ms F in a way that was clear, fair and not misleading, and ensuring that Ms F was provided with all information to enable her 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 Ford Retail 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, Ms F'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, Ford Retail. 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 the customer declaration section of the Statement of Demands and Needs confirmed Ms F had received a copy of the IDD. I've seen the IDD and under a heading, 'Insurance' it said, "*We do not charge fees for arranging insurance, we may however receive an economic benefit or retain a part of any premium by way of remuneration.*"

The requirement under ICOBS 4.3 R was for Ford Retail to disclose to Ms F the fact they earned commission, and the IDD does say they 'may' retain a part of any premium. This doesn't confirm commission is guaranteed. Instead, it puts Ms F on notice that this is something Ford Retail '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 Ms F 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 Ford Retail don't charge any arrangement 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 Ford Retail said they 'may' receive, related to commission.

Finally, I've also considered what, if anything, would likely have been different if Ford Retail had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Ms F 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 Statement of Demands and Needs document did inform Ms F she could buy a policy elsewhere – but she chose not to.

So, in relation to the disclosure of commission, I'm satisfied Ford Retail have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Ms F being treated unfairly. And, looking at the information more broadly in terms of what was contained in the IPID and IDD, and the way it was explained, I'm persuaded Ford Retail provided information which was clear, fair and not misleading.

I can see company Y also argue that the lack of key information meant Ms F wasn't in a position to make a fully informed decision. As I've already mentioned, the Statement of Demands and Needs indicated that Ms F 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 Ms F was given sufficient information to enable her to make an informed decision about whether to purchase the GAP policy.

Company Y say the level of commission earned by Ford Retail was 38%, and believe this is therefore a material, sales-incentivising, remuneration which required clear and meaningful disclosure. As I've mentioned above, it's not unreasonable for Ford Retail 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 Ms F wasn't treated unfairly and why the information provided was clear, fair and not misleading. 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 Ms F was treated unfairly.

The starting position is, and as I've already mentioned above, ICOBS 4.3 R didn't set a requirement for Ford Retail to disclose the level of commission. Beyond that, the information shows the level of commission earned by Ford Retail was 38% - and it's clear Ford Retail did carry out work which included assessing Ms F's needs to identify that she 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 Ford Retail treated Ms F unfairly or her not being informed about the level of commission during the sale process prevented Ms F from making an informed decision.

I wish to reassure Ms F 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 Ms F to accept or reject my decision before 20 October 2025.

Paviter Dhaddy
Ombudsman