

The complaint

Mr C complains that Ford Retail Limited trading as TrustFord ("Ford Retail") 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 C's complaint has been brought by a representative on his behalf – who I'll refer to as company Y.

What happened

Ford Retail sold Mr C a combined GAP policy in March 2011. Mr C then approached company Y who made a complaint, on his behalf, to Ford Retail. Company Y complained that the GAP policy sold to Mr C 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 C 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 Mr C that they would be receiving commission and the amount.

Ford Retail responded and said the policy was sold over 13 years ago, and before the requirement for firms to allow a deferred opt-in period.

Our investigator looked into things for Mr C. He thought Ford Retail hadn't mis-sold the policy and didn't uphold the complaint. Mr C 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 C 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 C 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 2011, and so the requirements of the Consumer Duty don't apply. That said, I have considered, more broadly, whether Ford Retail treated Mr C 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 also considered that although Mr C doesn't appear to have claimed on his policy, the cover and benefits were there if he did 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 Ford Retail treated Mr C unfairly, so I haven't upheld this part of the complaint.

Deferred opt-in

Company Y says Mr C 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.

Ford Retail have confirmed Mr C bought his vehicle in March 2011 and, given their retention policy, they no longer hold any information on the sale of the vehicle. This means Ford Retail aren't able to provide information which shows when key information was provided and whether Mr C was given sufficient time to consider the information before Ford Retail concluded the contract. Company Y also hasn't provided any information which suggests this wasn't done.

The absence of a full file means I haven't seen information about how the information was presented to Mr C and what discussions took place. So, I can't conclude the sales process was unfair or that Mr C was pressured into taking out a GAP policy without being given sufficient time to read all the key information. That said, I think it's important to acknowledge the relevant rules company Y has referred to here didn't come into effect until 2015 – which was after the sale of the GAP policy to Mr C. So, it wouldn't be fair for me to measure Ford Retail's actions against a set of rules which weren't in place at the time. So, I can't uphold this part of the complaint.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Mr C. Company Y say Ford Retail didn't disclose the existence or amount of commission. Company Y say Mr C 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 Mr C in a way that was clear, fair and not misleading, and ensuring that Mr C was provided with all information to enable him to make an informed decision.

There's no information here which shows Ford Retail earned commission, or what remuneration structure Ford Retail applied to this sale. So, it's not clear whether Ford Retail did receive any commission – and I've seen no evidence from company Y which suggests Ford Retail did receive commission from the sale of Mr C's GAP policy.

The relevant rules which require disclosure of commission, ICOBS 4.3 R, didn't come into effect until 2018 – which was after the sale of Mr C's policy. But the extent to which Ford Retail needed to be open and transparent about the commission isn't something I can

consider here as there's no evidence Ford Retail did receive commission on this sale. So, I can't uphold this part of the complaint.

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 C'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.

I can see company Y say the complaint should be upheld on the basis of what it believes is the absence of any evidence from Ford Retail, the high commission nature of GAP insurance sales in 2011 and the FCA's later intervention into GAP products. I have taken this into account, but I'm not persuaded this fairly leads to a finding here that the GAP policy was mis-sold to Mr C. Given the passage of time – which is 14 years – I acknowledge why a complete file may not be available. And, while I acknowledge company Y's points about the nature of GAP sales in 2011, there's no evidence that Mr C was subject to an unfair level of commission.

I wish to reassure Mr C 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 C to accept or reject my decision before 24 October 2025.

Paviter Dhaddy
Ombudsman