

The complaint

Miss S complains that Itc Compliance Limited (“Itc”) 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.

Miss S’s complaint has been brought by a representative on her behalf – who I’ll refer to as company Y.

What happened

Itc sold Miss S a combined ‘Return to Invoice’ and ‘Finance’ GAP policy. The policy was for a three-year term and started in September 2021. Miss S then approached company Y who made a complaint, on her behalf, to Itc. Company Y complained that the GAP policy sold to Miss 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, Miss S wasn’t given a two-day period between receipt of policy information and taking out the policy, and that Itc hadn’t disclosed to Miss S that they would be receiving commission and the amount.

Itc responded and said they were the product distributor and that the FCA had reinstated the sale of GAP insurance. Itc said the Initial Disclosure Document (“IDD”) which was issued to Miss S made it clear Itc would retain a percentage of the premium. Itc said the IDD was issued to Miss S around three weeks before the sale concluded so Miss S was given sufficient time to consider the information.

Our investigator looked into things for Miss S. He thought Itc hadn’t mis-sold the policy and didn’t uphold the complaint. Miss 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 Miss 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 Miss 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 2021, so the requirements of the Consumer Duty don’t apply. That said, I have considered, more broadly, whether Itc treated Miss 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 Miss S's circumstances at the time the sale took place.

During the sales process, Itc recommended the GAP policy to Miss 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 Miss S 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'. Itc then recommended a combined GAP insurance policy for a duration of three years at a price of £320.

It's clear from the answers provided by Miss S 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 Miss S doesn't appear to have claimed on her policy, the cover and benefits were there if she did 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, Miss S 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 Itc treated Miss 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 49 months. 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 Itc 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 Miss S, wish to raise this issue with Itc in the first instance.

Deferred opt-in

Company Y says Miss 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 the initial Statement of Demands and Needs was completed on 21 August 2021. 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 Combined GAP insurance we will not be able to conclude the contract until the 24th August 2021..."*

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 Miss S was insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. Miss S 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, and signed and dated by Miss S on 11 September 2021, and which set out the same questions as the document dated 21 August 2021. On this document though it confirmed which products Miss S had decided to purchase, and this included the GAP policy. The document again drew Miss S's attention to important aspects of the policy and confirmed Miss S 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 21 August 2021 explained the sale couldn't be concluded until 24 August 2021, it's clear the need to have a deferred period was brought to Miss S's attention. A Schedule shows the policy started on 11 September 2021.

So, taking this information into account, I think Miss 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 Itc meet the requirements set out under ICOBS. The initial Statement of Demands and Needs shows this was completed on 21 August 2021, and the one completed on 11 September 2021 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 21 August 2021 – which is consistent with the date the information shows the initial Statement of Demands and Needs was completed. I think it's important to also mention that the Statement of Demands and Needs completed on 11 September 2021, has been signed by Miss S. I haven't seen any evidence which suggests Miss S questioned or challenged the reference to her receiving the IDD on 21 August 2021, or Miss S raising questions about the customer declaration confirming she'd received the IPID. So, I'm persuaded, it's more likely than not, Miss S was provided with the relevant information on 21 August 2021 – and therefore she was in receipt of all key information relating to the GAP policy. So, I'm persuaded Itc did meet the requirements set by ICOBS 6A.1.4R and ICOBS 6A.1.6R.

Company Y also say, given that 21 days had lapsed between Itc providing the prescribed information and the sale concluding, ICOBS 6A.1.8G applies which says, *"a firm should have regard to the information needs of its customers and consider whether it would be in the customer's interest to receive the information in ICOBS 6A.1.4R again, for example, if a long time has passed between providing the information and the conclusion of the contract"*

I've taken this into account, but I'm not persuaded it's reasonable in the circumstances of this case for Itc to have provided the information in ICOBS 6A.1.4R again. I say this because Miss S signed a declaration on 11 September 2021 saying that she, "...*had the opportunity to read, review and ask any questions around any...insurance policy terms and conditions for products we [Itc] have recommended and that you have received our...Insurance Product Information Documents...*" I can't see Miss S raised any concerns at this point about the GAP policy or brought to Itc's attention that she required an additional period to consider the key information about the GAP policy. In these circumstances, and taking into account the period of 21 days which lapsed here, I'm not persuaded it was reasonable here for Itc to provide the information in ICOBS 6A.1.4R again.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Miss S. Company Y say Itc didn't disclose the existence or amount of commission. Company Y say Miss 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 Itc should've communicated with Miss S in a way that was clear, fair and not misleading, and ensuring that Miss S 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 Itc 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, Miss 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, Itc. 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 Miss S 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 Itc to disclose to Miss S 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 Miss S on notice that this is something Itc '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 Miss 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 IDD did say Itc 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 Itc said they 'may' receive, related to commission.

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

So, in relation to the disclosure of commission, I'm satisfied Itc have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Miss S 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 Itc provided information which was clear, fair and not misleading.

I can see company Y also argue that the lack of key information meant Miss 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 Miss 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 Miss S was given sufficient information to enable her 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 Miss 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 Itc to disclose the level of commission. Beyond that, it's clear Itc did carry out work which included assessing Miss S's needs to identify that she would benefit from a GAP policy and then recommending a suitable policy.

So, I'm not persuaded the facts in this case suggest Itc treated Miss S unfairly or her not being informed about the level of commission during the sale process prevented Miss S from making an informed decision.

I wish to reassure Miss 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 Miss S to accept or reject my decision before 24 October 2025.

Paviter Dhaddy
Ombudsman