

The complaint

Mr B complains a claim was declined by Acasta European Insurance Company Limited on his Guaranteed Asset Protection policy (GAP).

What happened

Mr B took out a GAP policy with Acasta which started in July 2020. In July 2024, Mr B found his car had been hit whilst parked overnight. The third-party had left a note with his insurance details. Mr B claimed for the damage to his vehicle against the third-party's insurance policy directly via an accident management company (AMC). Mr B also raised a claim on his GAP policy. Acasta reviewed the claim but ultimately declined it for two reasons:

- Mr B had no valid motor insurance policy in place
- The car hadn't been declared a total loss by his own motor insurance company

Mr B was unhappy his claim was declined and was also unhappy with delays, so raised a complaint. Acasta didn't uphold his complaint as they didn't think they'd done anything wrong. As Mr B was still unhappy, he brought the complaint to this service.

Our investigator didn't think Acasta had done anything wrong. He thought they'd fairly declined the claim and there weren't any avoidable delays in handing the claim. Mr B appealed. He raised the following points:

- Policy wording is unclear and ambiguous
- Policy doesn't exclude claiming through a third-party insurer or using an AMC
- He used his best endeavours as the policy requires
- He was misled by the delays and deprived of the ability to comply.

As no agreement could be reached, the complaint has been passed to me to make a final decision.

Because I disagreed with our investigator's view, I issued a provisional decision in this case. This allowed both Acasta and Mr B a chance to provide further information or evidence and/or to comment on my thinking before I made my final decision.

What I provisionally decided – and why

I previously issued a provisional decision on this complaint as my findings were different from that of our investigator. In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Based on what I've seen so far, I intend to uphold Mr B's complaint. I've explained why in more detail below.

When considering complaints such as this, I need to consider the relevant law, rules and

industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether Acasta acted in line with these requirements when it declined Mr B's claim.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr B has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

As a starting point, it's important to understand what the policy terms and conditions say. The policy sets out the following:

"What does your Total Loss Gap Insurance cover?"

In the event of the Insured Vehicle being declared a Total Loss, providing Your own Motor Insurer have agreed to give full indemnity for Your Claim, Your policy will pay the difference between the Motor Insurers Settlement at the point of Total Loss and the higher of:

- *The amount outstanding on finance; or*
- *The original Net Invoice Selling Price you paid; or*
- *The cost of a Replacement Vehicle, matching the original Vehicle specification or an equivalent superseding model in the event this is no longer available."*

The policy also has the following exclusion:

"What your policy will not cover?"

Please read as this is important information. Your policy will not be able to cover You for:...

- *Any Vehicle, which is not covered by a Motor Insurance Policy for the full duration of the Period of Insurance."*

Acasta has said that Mr B's policy has been or likely would have been avoided by his motor insurer had they been aware of a misrepresentation at the point of application. Mr B has told us his motor insurance policy hasn't been avoided and so is valid. Our investigator asked Acasta what evidence they have to rely on this. They informed us of the following:

"Our head of claims has also advised we do not have anything from [insurer] confirming they would not deal with the claim if reported".

Based on what I've seen, there's no evidence that Mr B's policy has been avoided. As such, I don't think it's fair for Acasta to rely on the above exclusion.

Whilst if relying on the strict interpretation of the policy terms and conditions, I accept that Mr B hasn't met the policy terms and conditions as his claim wasn't accepted by his own insurer. However, this is an unusual term in a GAP insurance policy, and I don't think it has been sufficiently highlighted to Mr B.

The purpose of the term, is to ensure a policyholder receives a fair pre-accident valuation for their vehicle. Acasta has suggested that by not claiming through their own insurer, it can allow a policyholder to "manipulate the claim and oblige the third party to treat the

policyholder vehicle as a total loss (often when it is not) because they are faced with rapidly accruing daily rate credit hire charges and storage charges”.

Mr B’s car was assessed by an independent engineer. They completed a report which was titled “Repairable Report”. The report states the pre-accident value of the car is £21,550. This is based on one of the trade valuation tools used by this service. It also sets out the estimated repair costs at £12,484.54. However, it also adds that it’s a desktop report and if additional damage is found on dismantling, the repair costs may increase. This gives the repair cost at 58% of the market value. Acasta has said the report doesn’t state the car is a total loss and due to its title, the car could have been repaired. Any car following an accident can be repaired, the question will be whether it’s economical to do so. It’s widely accepted that a car will be considered a total loss when the repairs are around 60% of its value or higher. At 58%, Mr B’s car is very close and it wouldn’t be unreasonable for an insurer to deem it a total loss, especially if there may be further damage found when dismantling.

Based on what I’ve seen, I don’t think the third-party has been manipulated into settling the claim as a total loss, and the pre-accident value has been determined using a trade recognised valuation tool. As such, I see no detriment to Acasta when considering this term. When considering what’s fair in all the circumstances, I don’t think it’s fair or reasonable for Acasta to decline the claim on the basis of this term.

Based on the above, I intend to direct Acasta to consider the claim further under the remaining policy terms and conditions.

I appreciate that it must have been frustrating for Mr B to have his claim unfairly declined by Acasta. I’ve considered everything in the round and I think Mr B has been caused an unreasonable amount of distress and inconvenience which has required a reasonable amount of effort to sort out. In line with our website guidelines, I intend to tell Acasta to pay Mr B £200 compensation for the trouble and upset caused.

I’ve considered the time it took Acasta to review the claim. Overall, I agree with our investigator. I don’t think there were significant avoidable delays which require any compensation. I don’t intend to uphold this complaint point.”

I set out what I intended to direct Acasta to do to put things right. And gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to my provisional decision

Mr B accepted my provisional decision.

Acasta confirmed they didn’t agree with my provisional decision. They raised the following points:

- They believe this service has misunderstood the basis for declining the claim
- They maintain there has been a breach of the policy terms and conditions and it was fair to decline the claim on this basis
- They have concerns about the repair report and how the total loss has been considered
- The policy would have been avoided had a claim been raised with Mr B’s insurer.

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.

I've thought carefully about the responses to my provisional decision. Having done so, while I appreciate it will come as a disappointment to Acasta, my conclusions remain the same. I'll explain why. I've separated my responses out based on the above points.

Misunderstood reasons for declining the claim

To confirm, in my provisional decision, I stated that Acasta had declined the claim for the following reasons:

- Mr B had no valid motor insurance policy in place
- The car hadn't been declared a total loss by his own motor insurance company

As part of this point, Acasta provided a further copy of the decline letter. This ends with the following:

"In the circumstances, where your GAP insurer concludes that,

- 1. There is no valid policy in place after 1st March 2024 because there is no valid motor insurance policy in place, and*
- 2. Even if there was a policy, there is no total loss declared by YOUR Motor insurer"*

They also ended this point of their response to my provisional decision by setting out the following:

"Acasta maintains that

- The policy terms and conditions are clear in that the total loss has to be assessed and paid by the policyholder's own motor insurer. There is a breach of those conditions. This fundamental term has not been met.*
- The policyholder's car was NOT assessed as a total loss.*
- There was no valid motor insurance policy in place."*

Whilst Acasta has said they believe this service has misunderstood the reason for the decline. They haven't explained what they believe the misunderstanding is. I believe my provisional decision accurately reflected why the claim was declined, so, this point doesn't change the outcome of my decision.

They maintain there has been a breach of the policy terms and conditions and it was fair to decline the claim on this basis

Acasta has said they don't think the policy term they relied upon to decline the claim is an unusual term. They also think the term is clear and expressed in simple, plain English.

Having considered these points, they don't change my outcome. Even if the term wasn't unusual, as a service, we can still set out whether we think it's fair and reasonable to rely on it to decline the claim. I'm still of the opinion that in this instance it isn't. This is for the same reasons that I set out in my provisional decision. So, I won't repeat this again here.

Concerns about the repair report and how the total loss has been considered

Acasta has raised the following points:

- The report isn't independent as it was commissioned and paid for by Mr B's accident management company.
- If the car was a total loss, the report would be called a total loss report. The report also doesn't include a salvage value.
- All reports state additional damage might be found.
- The market value plus a generous salvage figure of 20% leaves a significant amount which would suggest the car wouldn't be written off.
- They disagree that it's widely accepted motor insurers routinely write off vehicles at 60% of their pre-accident value
- This service has failed to account for the impact of ongoing storage and credit hire charges in influencing the decision of the claims agent.

I don't agree that Mr B's accident management company commissioning a report would mean it can't be independent. If this were the case, it would be impossible to get an independent report as someone always has to commission and pay for it.

Acasta has provided no evidence to show the engineer that completed the report and the accident management company are connected other than in the commissioning of the report.

The report is addressed to Court and a declaration about the contempt of court is at the bottom of the report. There is also no evidence provided that any of the information on the report is incorrect.

I don't agree that the report not being called a total loss report, or the report not including a salvage figure would mean the car can't be considered a total loss, or couldn't be written off by an insurer.

I agree that most reports of this kind will include a statement that additional damage may be found. This is because when a car is taken apart, additional damage can often be found which couldn't be seen. This would then increase the repair costs, giving it a higher repair cost to pre-accident value percentage which would only give more justification to writing off a vehicle.

Acasta believe that a generous salvage figure would be 20% but more usually it would be closer to 10-15%. I don't agree. The experience of this service, for a vehicle worth similar to Mr B's, with a category N total loss, the salvage figure would usually be closer to 40%. This wouldn't leave any gap between the pre-accident value and the repair costs. This is an example of why it's widely seen that vehicles are routinely written off with repair costs at 60% of the pre-accident value.

Policy would have been avoided

Acasta has accepted in their response there is no evidence to support the policy has been cancelled or avoided. However, they state based on a matter of common sense, this is what would have happened. In their initial response to my provisional decision, Acasta asked for

an extension so they could speak to Mr B's insurer. However, in their full reply to my provisional decision, they haven't provided any information from Mr B's insurer. There is no evidence that Mr B didn't have a valid car insurance policy in place, or that it would've been avoided. So, as Mr B had a valid car insurance policy on the car covered by the GAP policy, my decision remains the same that it's not fair for Acasta to decline the claim on this basis.

As my outcome remains the same, so does the redress I set out in my provisional decision, for the same reasons.

Putting things right

To put things right, Acasta should do the following:

- Assess the claim further considering the remaining terms and conditions
- Pay Mr B £200 for the distress and inconvenience caused

My final decision

For the reasons I've explained above, I uphold this complaint and direct Acasta European Insurance Company Limited to put things right by doing as I've said above, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 November 2025.

Anthony Mullins
Ombudsman