

The complaint

Mrs M complains that Sytner Group Limited (“Sytner”) 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.

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

What happened

Sytner sold Mrs M a GAP policy. The policy was for a three-year term and started in February 2019. Mrs M then approached company Y who made a complaint, on her behalf, to Sytner. Company Y complained that the GAP policy sold to Mrs M 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, Mrs M wasn’t given a two-day period between receipt of policy information and taking out the policy, and that Sytner hadn’t disclosed to Mrs M that they would be receiving commission and the amount.

Sytner responded and explained Mrs M was given all relevant information to make an informed decision. They said a Statement of Demands and Needs was completed and all key information about the policy was provided to Mrs M in advance of the sale concluding. Sytner also said they’d informed Mrs M they would be earning commission.

Our investigator looked into things for Mrs M. He thought Sytner hadn’t mis-sold the policy and didn’t uphold the complaint. Mrs M 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 Mrs M will be disappointed by this but I’ll explain why I have made this decision.

Fair value

Company Y has said the GAP insurance Mrs M 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 2019, so the requirements of the Consumer Duty don’t apply. That said, I have considered, more broadly, whether Sytner treated Mrs M 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 Mrs M's circumstances at the time the sale took place.

During the sales process, Sytner recommended the GAP policy to Mrs M. 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 'Demands and Needs questionnaire and statement' which asked Mrs M a series of questions. The information referred to the possibility of there being a shortfall in the event Mrs M's car was declared a total loss and there being a difference between her total loss settlement and her invoice price. The Demands and Needs statement asked, "*In the event of a financial loss, would you prefer that someone else makes up the shortfall on your behalf?*" This question was answered 'Yes'. Sytner then recommended a GAP insurance policy for a duration of three years at a price of £500.

It's clear from the answers provided by Mrs M 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 wanted to ensure she received the invoice price of her vehicle. Although Mrs M 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 'GAP insurance supplementary order' document, which has been signed by Mrs M, which said, "*GAP insurance is available from other sources and is an optional insurance.*" So, Mrs M 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 Sytner treated Mrs M unfairly, so I haven't upheld this part of the complaint.

Deferred opt-in

Company Y says Mrs M 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 a 'GAP insurance supplementary order' document was completed and signed and dated by Mrs M on 28 February 2019. As well as the price and duration of the policy, and also confirming the policy was optional, it also said, "*GAP insurance cannot be concluded until your deferred period has expired on the fourth day from when you received your Prescribed Information.*" System notes provided by Sytner show a 'RTI GAP prescribed info' document was sent to Mrs M on 11 February 2019. I've seen this document, and this set out what Mrs M is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. It also explained what a 'deferred opt-in' is and that the GAP policy can be purchased four days after providing Mrs M with all the information set out in that document.

There is then a separate Statement of Demands and Needs document which was completed and signed and dated by Mrs M on 28 February 2019. This contained a declaration which said, "*I confirm that I have received the key documentation relating to the RTI GAP*

Insurance i.e GAP Prescribed Information and Insurance Product Information Document (IPID) and had the key features, benefits and significant exclusions explained to me in good time.” It also said, “I have received a copy of the GAP Prescribed Information and was recommended to take at least four days to consider the benefits and suitability before making a purchase decision.”

This document again drew Mrs M's attention to important aspects of the policy and confirmed Mrs M had received a copy of the 'RTI GAP prescribed info' and understood the benefits and limitations of the policy. And, given that the 'RTI GAP prescribed info' explained the sale couldn't be concluded until four days had passed from receiving this document, it's clear the need to have a deferred period was brought to Mrs M's attention. A Schedule shows the policy started on 28 February 2019.

So, taking this information into account, I think Mrs M 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 say the timeframe, in respect of the deferred opt-in period, should've restarted on the basis Sytner offered Mrs M a discount from the original price of £569 down to £500. I acknowledge company Y's point, but I don't believe there has been any detriment to Mrs M here, or that Mrs M would likely have declined to take out the policy had an additional deferred opt-in period been provided. I say this because the information shows Mrs M didn't decline to take out the policy even at the price of £569 and continued through the sales journey knowing what the price of the policy was. It's not clear when the discount was offered and whether this, in any event, gave Mrs M two clear days between being offered the discount and the sale concluding, but Mrs M did decide to take out the policy and was aware of information such as the benefits and limitations of the policy. So, I'm more persuaded Mrs M would likely have taken out the policy even if an additional two clear days had been provided.

I can see company Y question whether Sytner did actually comply with the relevant rules and that presentation of documents doesn't necessarily mean they'd complied with the requirements. System notes provided by Sytner show Mrs M confirmed she'd received the 'RTI GAP prescribed info' and this was also emailed to her. As I've already mentioned, Mrs M signed a declaration confirming she'd received key information about the policy and also had this explained to her. I haven't seen any evidence which suggests Mrs M questioned or challenged the reference to her receiving the 'RTI GAP prescribed info' or Mrs M raising questions about the customer declaration confirming she'd received it. So, I'm persuaded, it's more likely than not, Mrs M was provided with the relevant information – and therefore she was in receipt of all key information relating to the GAP policy. So, I'm persuaded Sytner 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 Mrs M. Company Y say Sytner didn't disclose the existence or amount of commission. Company Y say Mrs M 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 Sytner should've communicated with Mrs M in a way that was clear, fair and not misleading, and ensuring that Mrs M 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 Sytner 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, Mrs M'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, Sytner. 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 a 'Status disclosure' document was issued to Mrs M and, under a heading 'Insurance products', it said, *“...we may receive commission from the insurer which is a percentage of the total premium paid.”*

The requirement under ICOBS 4.3 R was for Sytner to disclose to Mrs M the fact they earned commission, and the 'Status disclosure' document does say they 'may' receive commission from the insurer. This doesn't confirm commission is guaranteed. Instead, it puts Mrs M on notice that this is something Sytner '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 Mrs M 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 'Status disclosure' document doesn't make reference to any arrangement fees – and Sytner confirm they don't charge a separate fee for this. 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 document to the commission, which Sytner said they 'may' receive, to reasonably be interpreted as commission they 'would' receive.

Finally, I've also considered what, if anything, would likely have been different if Sytner had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Mrs M 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 'GAP insurance supplementary order' document signed by Mrs M did make her aware she could buy a policy elsewhere – but she chose not to. So, in relation to the disclosure of commission, I'm satisfied Sytner have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Mrs M being treated unfairly. And, looking at the information more broadly in terms of what was

contained in all the documentation provided to Mrs M, and the way it was explained, I'm persuaded Sytner provided information which was clear, fair and not misleading.

Company Y has also referred to the amount of commission and say this was a material fact and should therefore have been brought to Mrs M's attention to allow her 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 Mrs M was treated unfairly.

The starting position is, and as I've already mentioned above, ICOBS 4.3 R didn't set a requirement for Sytner to disclose the level of commission. Beyond that, the information shows the level of commission earned by Sytner was approximately 46% - and it's clear Sytner did carry out work which included assessing Mrs M'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 Sytner treated Mrs M unfairly or her not being informed about the level of commission during the sale process prevented Mrs M from making an informed decision.

I can see company Y also argue that the lack of key information meant Mrs M wasn't in a position to make a fully informed decision. As I've already mentioned, the Statement of Demands and Needs indicated that Mrs M would benefit from a GAP policy, and the 'RTI GAP prescribed info' document contained key information about the GAP policy, together with the benefits and limitations. So I'm persuaded Mrs M was given sufficient information to enable her to make an informed decision about whether to purchase the GAP policy.

I wish to reassure Mrs M 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 Mrs M to accept or reject my decision before 10 February 2026.

Paviter Dhaddy
Ombudsman