

## **The complaint**

Miss B complains that Group 1 Retail Limited trading as Inchcape (“Inchcape”) mis-sold her a Guaranteed Asset Protection (“GAP”) insurance policy. In particular, she says the policy was unsuitable and they didn’t disclose to her they would be earning commission.

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

## **What happened**

Inchcape sold Miss B a GAP policy. The policy was for a three-year term and started in September 2015. Miss B then approached company Y who made a complaint, on her behalf, to Inchcape. Company Y said Inchcape were under a duty to provide information, advice and/or recommendations to Miss B on an impartial basis and to pay due regard to Miss B’s interests and treat her fairly. Company Y said, given that the GAP policy was recommended to Miss B, and therefore sold on an advised basis, Inchcape were required to make sure it was suitable for Miss B’s demands and needs. Company Y said that wasn’t the case here. They also complained Miss B wasn’t given a two-day period between receipt of policy information and taking out the policy, and that Inchcape hadn’t disclosed to Miss B that they would be receiving commission and the amount.

Inchcape responded and explained they were the distributor for the GAP insurance product. They said the policy was sold in 2015 and, due to the time which had now elapsed and their document retention policy, they no longer held any documentation relating to the sale. They said Miss B would’ve been required to sign a statement to confirm she’d been taken through the Keyfacts/Product Summary information for the policy. They said, by signing a Demands and Needs document, Miss B would’ve confirmed she understood that it was her responsibility to read the terms and conditions of the policy.

Inchcape said Miss B ordered her vehicle in May 2015 and, at that time, she decided she also wanted a GAP policy, so they would’ve provided her with the relevant policy documents at that time. Inchcape said the policy started in September 2015 therefore it’s clear the purchase and inception of the policy took place several months after she was given the relevant information, so Miss B was given sufficient time to consider this before the sale concluded. In relation to the disclosure of commission, Inchcape said, at the time Miss B took out her policy, there wasn’t any requirement on them to disclose details of the commission received.

Our investigator looked into things for Miss B. He thought Inchcape hadn’t provided sufficient reasoning for why they charged the commission level they did and recommended they pay Miss B £100 compensation. Inchcape agreed, but Miss B 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 to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters. I understand Miss B will be disappointed by this but I'll explain why I have made this decision.

#### *Treating customers fairly/suitability*

Inchcape have confirmed, given the passage of time since Miss B took out the policy, they no longer hold any records of verbal or written communications relating to the sale. They've said, this includes the Demands and Needs document completed by Miss B.

The absence of a full file means I haven't seen information about how, and in what format, the sale took place and the steps Inchcape took to determine whether a GAP policy was suitable for Miss B's needs. And, given the passage of time since the sale took place, I don't think it's unreasonable for Inchcape to no longer have a full file of papers. On that basis, I can't say that I've seen any evidence which demonstrates Inchcape sold Miss B a policy which was unsuitable.

That said, Inchcape have provided a blank Demands and Needs document which they say was used in all sales at the time Miss B took out the policy. So, I have, in any event, considered this further. And I'm persuaded, it's more likely than not, this was used for Miss B's sale. I say this for two main reasons. Firstly, I've seen a 'Supplementary Order' form which has been signed by Miss B – and this lists a GAP policy for a price of £449.99. So, it's clear Miss B was aware she was buying a GAP policy and the price she was paying for it. I haven't seen any evidence that Miss B challenged this at the time or raised any queries around why she needed a GAP policy. Secondly, the policy ran its full term and wasn't cancelled at any point. These points suggest Miss B wanted and needed a GAP policy. And that being the case, I'm more persuaded this would most likely have been determined following a Demands and Needs assessment being carried out.

Given that I'm more persuaded the Demands and Needs document was completed, I've gone on to consider the information within this document. There's a statement which refers to Inchcape making a recommendation based on a customer's demands and needs. 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.

One of the questions on the document asked, "*In the case of a total loss settlement over the next three years will your insurance company pay a value less than the original retail price?*" There's then a section which asked whether or not a customer wanted to take out a GAP policy. As I've said above, given that Miss B didn't challenge this being included in the supplementary order form or cancelled the policy at any point, I think it's safe and fair to conclude that Miss B would likely have answered this question 'Yes' to confirm she wanted to buy a GAP policy.

Based on this, it's clear from the answers provided by Miss B 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 Miss B doesn't appear to have claimed on her policy, the cover and benefits were there if she did make a claim. Miss B 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 Inchcape treated Miss B unfairly or that the recommendation was unsuitable, so I haven't upheld this part of the complaint.

### *Deferred opt-in*

Company Y says Miss B 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.

Inchcape have confirmed they don't hold a full file of papers, so they no longer hold any information on the sale of the policy. Inchcape have said they no longer have the signed Demands and Needs document, Insurance Product Information Document ("IPID") or any signed declarations. This means Inchcape aren't able to provide information which shows when key information was provided and whether Miss B was given sufficient time to consider the information before Inchcape 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 Miss B and what discussions took place. So, I can't conclude the sales process was unfair or that Miss B was pressured into taking out a GAP policy without being given sufficient time to read all the key information. So, I can't uphold this part of the complaint. That said, and in any event, I have gone on to consider further points relating to this part of the complaint.

The relevant rules company Y has referred to here didn't come into effect until 1 September 2015 – which was after the sales journey started. Inchcape say they first discussed the GAP policy with Miss B when she ordered her vehicle in May 2015. The 'Supplementary Order' form dated May 2015 supports this and lists the GAP policy together with the price. So, I'm persuaded the sale of the GAP policy started before the deferred opt-in rules came into effect.

System notes show Miss B then bought the GAP policy on 11 September 2015, and the policy started the same day. This was after the deferred opt-in period took effect, so I have considered, more broadly, whether Miss B was given sufficient information to make an informed decision.

I've already decided that I'm more persuaded the Demands and Needs document was used in Miss B's sale. This shows a question asking, "*I confirm that I received the prescribed information for Retail Price Protection on...*" there's then a section for a date to be entered. Below this, it says, "*I understand that a purchase of Retail Price Protection cannot be concluded...any earlier than the 3<sup>rd</sup> day after the date shown above.*" It then asks for a box to be ticked to indicate whether a customer wishes to purchase the GAP policy, and for the customer to sign the document. There's then a separate declaration section which says, "*I agree by signing below that I have been taken through the Keyfacts/Product Summary Cards for the recommended products outlined within this document and they have been fully explained to me...*"

As I've mentioned above, there's no evidence Miss B challenged or queried Inchcape about the GAP policy either at the point of sale or at any point during the three-year term. So, I think it's fair and safe to conclude the key information was shared with Miss B – particularly as system notes show policy documents were issued to Miss B.

The Demands and Needs document confirmed Miss B had received a copy of the key information. And, given that it also contained a statement which explained the sale couldn't be concluded until at least two clear days had passed from receiving the key information, it's clear the need to have a deferred period was brought to Miss B's attention.

So, taking this information into account, I think Miss B was given sufficient time to consider key information about the GAP policy before the sale concluded.

### *Commission disclosure*

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Miss B. Company Y say Inchcape didn't disclose the existence or amount of commission. Company Y say Miss B 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 Inchcape should've communicated with Miss B in a way that was clear, fair and not misleading, and ensuring that Miss B was provided with all information to enable her to make an informed decision.

The relevant rules which require disclosure of commission, ICOBS 4.3, didn't come into effect until 2018 – which was after the sale of Miss B's policy. So, it wouldn't be fair for me to measure Inchcape's actions against a set of rules which weren't in place at the time. I have though looked, more broadly, at whether Miss B was treated fairly.

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 B'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, Inchcape. I'm therefore satisfied that s140A CCA is not a relevant consideration in this complaint.

Inchcape have provided a copy of an 'Initial Status Disclosure' document they say was issued to all customers - and would've been issued to Miss B at the time of the sale. This said Inchcape, "*...is permitted to advise on and arrange non-investment insurance policies for its customers and is contracted to do so by a select number of insurance providers...and no additional fees are charged for providing this service.*"

This doesn't refer to Inchcape earning commission. So, I've thought about the general position regarding insurance brokers and Miss B's circumstances at the time she took out the policy. And, for a number of reasons, I'm not persuaded Miss B 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 'Initial Status Disclosure' document does make reference to no additional fees being charged for Inchcape's services. So given what I've said about it being standard practice for brokers to charge commission, I think it was reasonable therefore to expect any fees charged by Inchcape would relate to commission.

Finally, I've also considered what, if anything, would likely have been different if Inchcape had confirmed they would earn commission. I'm not persuaded this would likely have led to Miss B 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 'Initial Status Disclosure' did make Miss B aware the policy was optional – but she chose to purchase it. So, I haven't seen any information which persuades me that the lack of confirmation around Inchcape earning commission led to Miss B being treated unfairly. And, looking at the information more broadly in terms of what was contained in all the documentation provided to Miss B, and the way it was explained, I'm persuaded Inchcape provided information which was clear, fair and not misleading.

That said, the information does show that Inchcape earned commission of £330.99 from the sale of Miss B's policy. While, as I've mentioned above, there wasn't any specific duty on Inchcape to disclose the level of commission at the time the sale took place, the commission earned by them represents 73.6% of the policy price. So, I've kept in mind a press release from the Financial Conduct Authority ("FCA") in September 2023 which followed the publication of the insurance Value Measures Data and a review into the GAP insurance market. The press release set out concerns the FCA had about GAP insurance and said, "*The FCA has seen examples of some firms paying out up to 70% of the value of insurance premiums in commission to parties in the distribution chain, such as motor dealerships.*" I think it's important to also acknowledge that, from what I've seen across the market, the commission earned here is higher than what other brokers have charged for carrying out the same level of work.

Inchcape say costs were higher that year due to the implementation of the GAP rules on 1 September 2015 which they say was of significant cost across the market due to system and process change requirements. I do acknowledge Inchcape's points, but I'm not persuaded they've provided sufficient reasoning or an explanation for what, in the case of Miss B's purchase, additional work, above and beyond the work other brokers were carrying out at the time, was necessary during the sales process or what additional costs Inchcape incurred.

I can see company Y say the premium should be refunded or, at the very least, any commission level above a fair benchmark. But, as I've mentioned above, given the facts in this case, I'm persuaded Miss B would still likely have continued with the purchase given that she was aware of the full price and decided she wanted and needed such a policy. And, while Miss B doesn't appear to have claimed on the policy, it did run its full term, so Miss B had the benefit of having cover in place should a claim have been made. I've also kept in mind that there wasn't a requirement for Inchcape to disclose the level of commission. Therefore, in the circumstances of this case, I think the most appropriate remedy is compensation – and the £100 which Inchcape have agreed to pay is fair and reasonable.

I wish to reassure Miss B 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.

### **Putting things right**

I've taken the view that the £100 compensation Inchcape have agreed to pay Miss B is fair and reasonable in the circumstances.

**My final decision**

My final decision is that I uphold the complaint. Group 1 Retail Limited trading as Inchcape must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 March 2026.

Paviter Dhaddy  
**Ombudsman**