

## **The complaint**

Mr G complains that Carfinance247 Limited (“CFL”) 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 G’s complaint has been brought by a representative on his behalf – who I’ll refer to as company Y.

## **What happened**

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

CFL responded and said Mr G was made aware they earned commission both verbally over the phone at the start of the sales process, and it was also detailed in the terms and conditions that were accepted when the application was submitted. CFL said the GAP policy was first discussed with Mr G on 26 March 2021, and the policy was then purchased five days later, so Mr G was given time to consider the policy information before buying it.

Our investigator looked into things for Mr G. He thought CFL hadn’t provided Mr G with the prescribed information in a durable medium in advance of buying the policy, so they should pay compensation of £100. CFL agreed, but Mr G 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 Mr G 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 G 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 CFL treated Mr G 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 Mr G's circumstances at the time the sale took place.

During the sales process, CFL recommended the GAP policy to Mr G. 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. CFL have explained they didn't carry out a Demands and Needs assessment, but they have provided a recording of the sales call. I've listened to this call and, during the call, the call agent asked Mr G if he was aware of GAP insurance and what it covers. Mr G said he was aware of GAP insurance, and the call agent explained, in the event of a vehicle write-off, a motor insurer would pay him the market value of his car, and a GAP insurer would then, under the finance part of the policy, pay off the remaining finance on the car, and the return to invoice part of the policy would pay Mr G the difference between the market value settlement of his car and the invoice price of his car. The call agent explained the policy would pay out the greater amount of the two parts. The call agent then went through a series of questions to determine Mr G's eligibility and suitability for the policy, and also discussed what wasn't covered by the policy and any limitations and exclusions. The call agent then recommended a three-year policy for a price of £354.23. Mr G then confirmed he wanted to buy the policy but explained he couldn't pay for the policy at that point and asked if CFL could contact him later to take out the policy. CFL did later contact Mr G and he paid for the policy.

It's clear from the answers provided by Mr G that he expressed a need to have, and would benefit from, a policy which would provide cover in the event his vehicle was deemed a total loss, and he had an outstanding balance to pay towards the finance or wanted to ensure he received the invoice price of his vehicle. Although Mr G doesn't appear to have claimed on his policy, the cover and benefits were there if he did make a claim. So, Mr G 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 CFL treated Mr G 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 60 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 CFL 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 Mr G, wish to raise this issue with CFL in the first instance.

#### *Deferred opt-in*

Company Y says Mr G 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 relevant information was provided to Mr G during a phone call – and the sale was concluded five days later. While the sale was concluded more than the required two days under the deferred opt-in provision, I don't believe CFL acted fairly here. I say this because ICOBS 6A.1.4R requires the firm to communicate the relevant information to a customer in a clear and accurate manner and "...on paper or another durable medium..." This means CFL were required to communicate the key information about the GAP policy on paper or "*any instrument which enable the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information...*" Providing the information over the phone doesn't meet this requirement. CFL have provided a copy of an email which was intended to be sent to Mr G, and this attached an Insurance Product Information Document ("IPID") which did set out the key information about the GAP policy but, CFL have confirmed an IT error meant the email wasn't sent to Mr G. In addition to this, it was intended to be sent on 31 March 2021 – which was the day the sale concluded. So, even if there hadn't been an IT error, it would still have meant Mr G wasn't given the key information in a durable medium at least two clear days prior to the sale concluding.

So, taking this information into account, I think Mr G wasn't, 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, in a durable medium, and the sale concluding. So, I've thought about the impact on Mr G and what I believe would, more likely than not, have happened if CFL had provided the key information in a durable medium. Given the level of detail provided by the call agent during the sales call and how Mr G engaged with the call agent, I'm persuaded Mr G was aware that he was buying a GAP policy, what the key benefits and limitations were as well as the price and duration of the policy. Mr G didn't at any point ask for clarity on what he was buying or suggest he didn't understand any of the information provided by the call agent.

With that in mind, I think the assessment carried out during the phone call established that Mr G would benefit from a GAP policy, and the nature of the discussion suggests Mr G was aware that he was buying a policy and what it would cover. So, I'm persuaded, it's more likely than not, Mr G would still have bought the GAP policy even if the information had been communicated in a durable medium. And, given that Mr G did have a policy in place during the three-year term – and would likely have benefitted from this had a claim been made – I don't think it's reasonable for Mr G to be refunded the cost of the policy.

That said, Mr G wasn't given an opportunity to review the information in his own time and have the information for reference prior to the sale concluding. So, I think there has been a loss of opportunity here, for which CFL should pay Mr G compensation. Given the impact on Mr G, and the duration of that impact, I think £100 compensation is fair and reasonable in the circumstances.

I acknowledge company Y refer to the sales call during which, it says, CFL used 'absolute, unqualified assurances' that the GAP policy would pay off every single penny of finance, thereby creating a misleading impression about the scope and duration of cover. Company Y say this created an impression that the GAP policy would cover Mr G for the life of the finance agreement – and that it was only mentioned later in the call that the policy was for 36 months. I acknowledge the points made by company Y, but I'm not persuaded it did reasonably create this impression. At the point the call agent made these comments, they

were discussing how the policy would work in circumstances where Mr G's car was written-off and he had an outstanding balance to pay on the finance. The discussion was around the benefit the GAP policy offered, but no suggestion was made that the cover would extend to the life of the finance agreement. And I think this point was clear when the call agent later explained the duration of the GAP policy was 36 months.

### *Commission disclosure*

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

Turning to the specific issue in relation to the commission. I've started by considering whether there was a requirement for CFL 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, Mr G'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, CFL. I'm therefore satisfied that s140A CCA is not a relevant consideration in this complaint.

During the call in which the sale was concluded, the call agent played an automated message which said the provider will pay CFL a commission. While this was communicated to Mr G, the information provided by CFL shows that CFL didn't actually receive commission on the sale of Mr G's GAP policy. The information shows CFL purchased the policy at cost price and then sold it to Mr G at retail price, and therefore a mark-up was applied as opposed to commission.

While there's no evidence CFL informed Mr G they would be earning a profit on the resale, I'm not persuaded this would've made a difference. I say this for a number of reasons. Firstly, it's standard practice within the insurance industry for a broker to be remunerated for arranging an insurance policy. The expected source of income for insurance brokers generally is the commission earned when selling/arranging/administering the insurance policy, but it's not unusual for a broker's remuneration to take a different form. And I think it's a fair starting position to expect that the insurance broker is paid for their service. Secondly,

the automated message did make it clear CFL would be remunerated, but I can't see Mr G raised any concerns about this at the time. Finally, the policy was never presented to Mr G in a manner which suggested it was mandatory to purchase this with his car. So, Mr G did have the option to buy the policy elsewhere if he was unhappy about CFL being remunerated for their service, but he chose not to. I think it's important to also add, the information shows CFL's commercial arrangement with the provider meant they were able to buy the policy at a price which wouldn't likely have been available to Mr G direct from the provider.

I wish to reassure Mr G 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 CFL didn't communicate the key information about the GAP policy to Mr G in a durable medium. So, CFL should pay Mr G £100 compensation for the loss of opportunity caused.

### **My final decision**

My final decision is that I uphold the complaint. Carfinance247 Limited 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 Mr G to accept or reject my decision before 8 January 2026.

Paviter Dhaddy  
**Ombudsman**