

The complaint

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

What happened

Itc sold Mr B a combined ‘Return to Invoice’ and ‘Finance’ GAP policy. The policy was for a three-year term and started in October 2018. Mr B then approached company Y who made a complaint, on his behalf, to Itc. Company Y complained that the GAP policy sold to Mr B 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 B wasn’t given a two-day period between receipt of policy information and taking out the policy, and that Itc hadn’t disclosed to Mr B 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 Mr B made it clear Itc would retain a percentage of the premium. Itc said the IDD was issued to Mr B around a week before the sale concluded so Mr B was given sufficient time to consider the information.

Our investigator looked into things for Mr B. He thought Itc hadn’t mis-sold the policy and didn’t uphold the complaint. Mr 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 not to uphold the complaint. I understand Mr B 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 B 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 2018, so the requirements of the Consumer Duty don’t apply. That said, I have considered, more broadly, whether Itc treated Mr B 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 B's circumstances at the time the sale took place.

During the sales process, Itc recommended the GAP policy to Mr B. 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 stated, "*This insurance will satisfy the Demands and Needs of an individual who wishes to be compensated for the monetary difference between an insurance settlement figure in the event of a total loss motor insurance claim and the greater of either the original invoice price of the vehicle...or the finance settlement figure...*" It also asked Mr B a series of questions – which included whether the way Mr B intended to purchase his car, register and insure it, fitted with the requirements for a combined GAP insurance policy. This question was answered 'Yes'. Itc then recommended a combined GAP insurance policy for a duration of three years at a price of £449.

It's clear from the answers provided by Mr B 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 B doesn't appear to have claimed on his policy, the cover and benefits were there if he 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, Mr B 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 Itc treated Mr B 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 Mr B, wish to raise this issue with Itc in the first instance.

Deferred opt-in

Company Y says Mr 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.

The information shows the initial Statement of Demands and Needs was completed on 18 October 2018. 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 a policy summary document showing the key features*

benefits and exclusions to any GAP policies made available to you. It is important the 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 21st October 2018...

There was also a customer declaration which said, “*You confirm that you understand that all of our...insurance policies are optional...*” and “*We have provided you with the opportunity to read, review and ask any questions around any...insurance policy terms and conditions for products you are considering and that you have received our Initial Disclosure Document and relevant Insurance Product Information Documents (IPIDs)...Please ensure that you have been provided with a copy of our Initial Disclosure and Insurance Product Information Document/s (IPID), have reviewed all information above, that the answers recorded are an accurate reflection of your discussions...*”

I’ve seen the document which was sent to Mr B, and this set out what Mr B was insured for and the benefits, the restrictions on cover, and what isn’t covered by the policy. Mr B 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 Mr B on 24 October 2018, and which set out the same questions as the document dated 18 October 2018. On this document though it confirmed which products Mr B had decided to purchase, and this included the GAP policy. The document again drew Mr B’s attention to important aspects of the policy and confirmed Mr B 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 18 October 2018 explained the sale couldn’t be concluded until 21 October 2018, it’s clear the need to have a deferred period was brought to Mr B’s attention. A Schedule shows the policy started on 24 October 2018.

So, taking this information into account, I think Mr B 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 18 October 2018, and the one completed on 24 October 2018 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 18 October 2018 – 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 24 October 2018, has been signed by Mr B. I haven’t seen any evidence which suggests Mr B questioned or challenged the reference to him receiving the IDD on 18 October 2018, or Mr B raising questions about the customer declaration confirming he’d received the IPID. So, I’m persuaded, it’s more likely than not, Mr B was provided with the relevant information on 18 October 2018 – and therefore he 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.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn’t disclosed to Mr B. Company Y say Itc didn’t disclose the existence or amount of commission. Company Y say Mr 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 Itc should've communicated with Mr B in a way that was clear, fair and not misleading, and ensuring that Mr B was provided with all information to enable him 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, Mr 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, 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 Mr B 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 Mr B 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 Mr B 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 Mr 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 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 Mr 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 Statement of Demands and Needs document did inform Mr B he could buy a policy elsewhere – but he 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 Mr B 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.

Company Y has also referred to the amount of commission and say this was a material fact and should therefore have been brought to Mr B's attention to allow him 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 Mr B 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, the information shows the level of commission earned by Itc was approximately 47% - and it's clear Itc did carry out work which included assessing Mr B's needs to identify that he 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 Itc treated Mr B unfairly or him not being informed about the level of commission during the sale process prevented Mr B from making an informed decision.

I also acknowledge the point company Y make about many comprehensive motor insurance policies providing cover for a first-year new car replacement – and how it believes this reduces the value of a GAP policy for the first year. I'm not persuaded by this argument as there's no evidence Mr B had such cover under his motor policy. And that alone doesn't mean that a GAP policy is of no value for the first year as there might be circumstances where a customer may decide to accept a total loss settlement under their motor policy and then look to claim under their combined GAP policy.

I wish to reassure Mr 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.

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 Mr B to accept or reject my decision before 2 January 2026.

Paviter Dhaddy
Ombudsman