DRN-6064810

The complaint

Ms B complains that Marshall Motor Group Limited ("Marshall") 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.

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

What happened

Marshall sold Ms B a combined 'Return to Invoice' and 'Finance' GAP policy. The policy was for a three-year term and started in August 2022. Ms B then approached company Y who made a complaint, on her behalf, to Marshall.

Company Y complained that the GAP policy sold to Ms 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, Ms B wasn't given a two-day period between receipt of policy information and taking out the policy, and that Marshall hadn't disclosed to Ms B that they would be receiving commission and the amount.

Marshall responded and explained Ms B's answers to a demands and needs assessment suggested she didn't have any insurance which would cover a shortfall in her finance settlement in the event her car was written off. They said Ms B was both suitable and eligible for a GAP policy and they'd provided sufficient information to Ms B to enable her to make an informed decision on whether to purchase the policy.

Our investigator looked into things for Ms B. He thought Marshall hadn't given Ms B sufficient time to review key information about the GAP policy before concluding the contract, so they should pay compensation of £100. Marshall agreed, but Ms 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 Ms 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 Ms 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 2022, so the

requirements of the Consumer Duty don't apply. That said, I have considered, more broadly, whether Marshall treated Ms 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 Ms B's circumstances at the time the sale took place.

During the sales process, Marshall recommended the GAP policy to Ms 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 Marshall completed a Statement of Demands and Needs which asked Ms B a series of questions. It asked, "*If your vehicle were to be written off by your motor insurer, would they give you back either: a sum equivalent to what you originally paid for your vehicle or, if higher a sufficient amount to pay off any outstanding motor finance*." and "*Do you have any existing insurance that would provide a payment to top up your motor insurance settlement figure to the invoice price of your vehicle or finance settlement figure?*" Both of these questions were answered 'No'. Marshall then recommended a combined GAP insurance policy for a duration of three years at a price of £401.

It's clear from the answers provided by Ms 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 had an outstanding balance to pay towards the finance or wanted to ensure she received the invoice price of her vehicle. Although Ms B doesn't appear to have claimed on her policy, the cover and benefits were there if she did make a claim. The Statement of Demands and Needs also had a section headed 'Important aspects of your GAP Insurance policy which you should read' and this said, "*The purchase of GAP insurance is optional. GAP contracts are sold by other distributors…*" So, Ms 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 Marshall treated Ms 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 Marshall 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 Ms B, wish to raise this issue with Marshall in the first instance.

Deferred opt-in

Company Y says Ms 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 a Statement of Demands and Needs was completed on 18 August 2022. This contained a customer declaration section which confirmed Ms B had received a copy of the Insurance Product Information Document ("IPID"). I've seen the IPID and this did set out the features and benefits and any exclusions and limitations of the policy. And, as mentioned above, the Statement of Demands and Needs set out the price and duration of the policy as well as confirming it was optional. So, taking this all into account, I think the relevant information was provided to Ms B.

That said, the information shows a 'Vehicle order form' signed and dated by Ms B on 14 August 2022, which includes a fee of £401 described as 'Non VAT Options'. This document also refers to a deposit of £775 having been paid. There's then a 'Disbursement form' dated 16 August 2022 which shows the £775 deposit and £401 being deducted from this for the GAP policy. There's then a separate Statement of Demands and Needs dated 19 August 2022 which says, "*Sales Type – Customer not present Telesales)*". This suggests the initial demands and needs assessment took place on 18 August 2022 with Ms B agreeing to take out the policy during a call the following day. I can see Marshall say Ms B purchased her vehicle on 18 August 2022, and the GAP policy was registered on 23 August with an inception date of 18 August to match the date of the vehicle purchase. System notes provided by Marshall show a 'purchase date' and 'inception date' as 18 August and a 'transaction date' as 23 August. But the 'expiry date' is shown as 17 August 2025 so, given it was a three-year policy, it's clear the policy started on 18 August 2022.

The Statement of Demands and Needs says, "*Should you decide to purchase Combined GAP Insurance we will not be able to conclude the contract until the 21st August 2022 or on the 19th if expressly required by you and subject to obtaining your confirmation.*" This shows Marshall were aware of the need to provide a deferred opt-in period, but the information relating to Ms B's purchase of the policy shows that wasn't provided here. The policy was incepted the same day the Statement of Demands and Needs was started, and the same day the IPID, containing the relevant information, was shared with Ms B. Also, sales information which is dated before the date the IPID was shared with Ms B, such as the vehicle order form and disbursement form, already factored in the price of the GAP policy.

So, taking this information into account, I think Ms B 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 and the sale concluding. So, I've thought about the impact on Ms B and what I believe would, more likely than not, have happened if Marshall had provided the key information and allowed a deferred opt-in period. Given that Ms B clearly expressed a need to have, and would benefit from, a GAP policy, and in view of the fact that Ms B was later made aware of the benefits and limitations of the policy and didn't then at any point raise any issues once the policy was incepted, I think it's more likely than not that Ms B would still have chosen to take out the policy. After the policy started, Ms B didn't then at any point ask for clarity on what she had bought or suggest she didn't understand any of the information provided in the IPID. And, given that Ms B 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 Ms B to be refunded the cost of the policy.

That said, after being presented with the relevant information, Ms B wasn't given an opportunity to review the information in her own time, and for at least two clear days, prior to the sale concluding. So, I think there has been a loss of opportunity here, for which Marshall should pay Ms B compensation. Given the impact on Ms B, and the duration of that impact, I think £100 compensation is fair and reasonable in the circumstances.

Commission disclosure

Company Y say the payment of commission relating to the sale of the GAP policy wasn't disclosed to Ms B. Company Y say Marshall didn't disclose the existence or amount of commission. Company Y say Ms 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 Marshall should've communicated with Ms B in a way that was clear, fair and not misleading, and ensuring that Ms B was provided with all information to enable her 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 Marshall 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, Ms 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, Marshall. 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 Ms B had, "…*received our Initial Disclosure Document…*" I've seen the Initial Disclosure Document ("IDD") and under a heading, 'What will you have to pay us for our services?' it said, "*We may receive a financial benefit or commission from the claims administrator…for arranging general insurance products for you. This commission is paid to us from your insurance premium.*"

The requirement under ICOBS 4.3 R was for Marshall to disclose to Ms B the fact they earned commission, and the IDD does say they 'may' receive commission. This doesn't confirm commission is guaranteed. Instead, it puts Ms B on notice that this is something Marshall '*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 Ms 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 Marshall 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 Marshall said they 'may' receive, related to commission.

Finally, I've also considered what, if anything, would likely have been different if Marshall had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Ms 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 Ms B she could buy a policy elsewhere – but she chose not to. So, in relation to the disclosure of commission, I'm satisfied Marshall have acted in line with ICOBS, and I haven't seen any information which persuades me that the term 'may' has led to Ms 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 Marshall 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 Ms B'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 Ms 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 Marshall to disclose the level of commission. Beyond that, the information shows the level of commission earned by Marshall was just under 50% - and it's clear Marshall did carry out work which included assessing Ms B'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 Marshall treated Ms B unfairly or her not being informed about the level of commission during the sale process prevented Ms B from making an informed decision.

I wish to reassure Ms 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 Marshall didn't provide Ms B with sufficient time to consider key information about the GAP policy before concluding the contract. So, Marshall should pay Ms B £100 compensation for the loss of opportunity caused.

My final decision

My final decision is that I uphold the complaint. Marshall Motor Group 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 Ms B to accept or reject my decision before 19 February 2026.

Paviter Dhaddy
Ombudsman