

The complaint

Mr R complains that John Clark (Aberdeen) Limited (“JCAL”) 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 R’s complaint has been brought by a representative on his behalf – who I’ll refer to as company Y.

What happened

JCAL sold Mr R a combined ‘Return to Invoice’ and ‘Finance’ GAP policy. The policy was for a four-year term and started in July 2017. Mr R then approached company Y who made a complaint, on his behalf, to JCAL. Company Y said JCAL were under a duty to provide information, advice and/or recommendations to Mr R on an impartial basis and to pay due regard to Mr R’s interests and treat him fairly. Company Y said, given that the GAP policy was recommended to Mr R, and therefore sold on an advised basis, JCAL were required to make sure it was suitable for Mr R’s demands and needs. Company Y said that wasn’t the case here. They also complained Mr R wasn’t given a two-day period between receipt of policy information and taking out the policy, and that JCAL hadn’t disclosed to Mr R that they would be receiving commission and the amount.

JCAL responded and explained they didn’t make a recommendation and provided a quote for Mr R to then consider whether he wished to take out the policy. JCAL explained they’d provided Mr R with all key information about the policy and then allowed him sufficient time to consider this before concluding the sale. They also confirmed they’d provided Mr R with details of their commission arrangements.

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

Treating customers fairly/suitability

During the sales process, Mr R signed a declaration which said, “*I have not been given any advice or recommendation by [JCAL].*” This document also said JCAL were making Mr R aware of products he may wish to buy. The sales documentation provided by JCAL also doesn’t suggest they provided a recommendation. That means they didn’t sell the policy on what’s known as an ‘advised sale’ basis. That said, they did still need to ensure they provided sufficient information to Mr R to enable him to make an informed decision on the suitability of the GAP policy.

The information shows Mr R signed a Statement of Demands and Needs which asked, “*Will your insurance policy pay you back what you paid for the vehicle if it is written off or stolen, regardless of who was at fault?*” and “*Will your insurance policy settle your outstanding finance if you owe more than you paid for the vehicle at the time that it was written off or stolen?*” Both of these questions were answered ‘No’. There was a declaration, at the bottom of this document, which was signed by Mr R and said, “*I confirm that I have received a copy of About Our Finance & Insurance Services and have been asked and answered the above eligibility assessment questions.*”

It’s clear from the answers provided by Mr R that he didn’t have a policy in place 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. It doesn’t appear Mr R ever claimed on this policy, but I’m satisfied the cover and benefits were there if he did make a claim. There’s also a document headed ‘GAP Insurance Quotation’ which was signed by Mr R. This document set out the price of the GAP policy and there’s a declaration which said, “*This GAP Insurance cover is optional and similar cover may be purchased elsewhere.*” There’s a separate customer declaration, signed and dated by Mr R, which said, “*I confirm that I have had the cost, features and benefits of all these products explained to me. I have been made aware of any significant exclusions or limitations and been given a Key Facts Policy Summary for each insurance product.*”

So, Mr R 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 JCAL treated Mr R unfairly or that they didn’t provide sufficient information to enable Mr R to make an informed decision, so I haven’t upheld this part of the complaint.

I 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, although company Y has provided evidence which shows Mr R had ‘New vehicle replacement’ as part of the motor insurance he took out in July 2017, 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.

Company Y has also raised an issue about there being a term mismatch between the GAP policy and the finance agreement. But the information shows the term of the GAP policy matched the term of the finance agreement – which was four years.

Deferred opt-in

Company Y says Mr R 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 'GAP Insurance Quotation' document I've referred to above was signed by Mr R on 30 June 2017, and this set out the price of the policy and the term, as well as confirming the purchase of the GAP policy was optional. It also contained a declaration which confirmed Mr R received, and read, a 'Key Facts Policy Summary' document. I've seen this 'Key Facts' document, and this set out what Mr R is insured for and the benefits, the restrictions on cover, and what isn't covered by the policy. The 'GAP Insurance Quotation' also contained a declaration which said, "*The sale of this GAP insurance is subject to a 4 day Deferred Period.*" So, it's clear the need to have a deferred period was brought to Mr R's attention. The Schedule of Insurance for Mr R's GAP policy shows cover started on 5 July 2017.

So, taking this information into account, I think Mr R 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 JCAL meet the requirements set out under ICOBS. The Statement of Demands and Needs shows this was completed on 14 April 2017, and this was signed by Mr R below a declaration which said JCAL would explain the price, features and benefits, and any significant exclusions or limitations, and would also provide Mr R with a copy of the 'Key Facts Policy Summary' document, relating to the GAP policy. Then the 'GAP Insurance Quotation' signed by Mr R on 30 June 2017 confirmed Mr R had received and read the 'Key Facts Policy Summary' document. I haven't seen any evidence which suggests Mr R questioned or challenged the reference to him receiving the Key Facts document, or Mr R raising questions about the customer declaration confirming he'd received it. So, I'm persuaded, it's more likely than not, Mr R was provided with the relevant information on 14 April and again on 30 June 2017 – and therefore he was in receipt of all key information relating to the GAP policy. So, I'm persuaded JCAL 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 R. Company Y say JCAL didn't disclose the existence or amount of commission. Company Y say Mr R 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 JCAL should've communicated with Mr R in a way that was clear, fair and not misleading, and ensuring that Mr R 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 JCAL to disclose the details of their commission. ICOBS 4.3 R covers commission disclosure for customers and sets out the remuneration disclosure rule, but this has been effective from October 2018, so wasn't in place at the time of Mr R's sale. I have though, more broadly, considered whether JCAL treated Mr R fairly and provided him with information to make an informed decision.

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

The information shows Mr R signed the 'GAP Insurance Quotation' document and this contained a declaration which said, "*I have been provided with an Initial Disclosure Document...*" I've seen the Initial Disclosure Document ("IDD") and this said, under the heading 'What will you have to pay for these services?', "*We do not charge any fees for our...insurance services, but we may receive some payment from the provider if you decide to enter into an agreement with them.*"

This doesn't confirm commission is guaranteed. Instead, it puts Mr R on notice that this is something JCAL '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 R 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 JCAL don't charge any 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 JCAL said they 'may' receive, related to commission.

Finally, I've also considered what, if anything, would likely have been different if JCAL had confirmed they would earn commission as opposed to saying they 'may'. I'm not persuaded this would likely have led to Mr R 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 Quotation' document signed by Mr R contained a declaration which said Mr R could buy a policy elsewhere – but he chose not to. So, in relation to the disclosure of commission, I'm satisfied JCAL provided Mr R with sufficient information about the commission arrangement, and I haven't seen any information which persuades me that the term 'may' has led to Mr R being treated unfairly. And, looking at the information more broadly in terms of what was contained in the IDD and Key Facts Policy Summary, and the way it was explained, I'm persuaded JCAL 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 R'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 R was treated unfairly.

The starting position is, there wasn't any specific requirement for JCAL to disclose the level of commission. Beyond that, the information shows the level of commission earned by JCAL was approximately 35% - and it's clear JCAL did carry out work which included assessing Mr R's needs to identify that he would benefit from a GAP policy and then providing information to Mr R to enable him to make an informed decision on whether to buy the policy. So, I'm not persuaded the commission was at a level which suggests JCAL treated Mr R unfairly or him not being informed about the level of commission during the sale process prevented Mr R from making an informed decision.

I wish to reassure Mr R 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 R to accept or reject my decision before 9 April 2026.

Paviter Dhaddy
Ombudsman