

The complaint

Mr M complains that Eastern Western Motor Group Limited ('EW Motor') mis-sold him a Guaranteed Asset Protection ('GAP') insurance policy.

Mr M is professionally represented in bringing this complaint by a company who I will refer to as "Company Y" in this decision.

What happened

Mr M purchased a vehicle in June 2015 which included the sale of a GAP policy. The policy premium was not included as part of the finance agreement of the vehicle and was paid for in a lump sum of £359.

Mr M later raised a complaint to EW Motor and said that the Financial Conduct Authority ("FCA") had deemed GAP to be a product which didn't represent fair value. Mr M said he didn't recall being given a two-day period between receipt of policy information and taking out the policy, and that EW Motor hadn't disclosed to him that they would be receiving commission as well as the amount. Mr M asked EW Motor to refund the GAP insurance premiums plus interest in order to put things right. EW Motor issued a final response to Mr M's complaint in January 2025, but Mr M remained dissatisfied with the response – so, he brought the complaint to this Service.

An Investigator looked at what had happened but didn't recommend the complaint should be upheld. They said the need for a two-day period wasn't applicable to the sale of the GAP policy as they had come into force after the policy was sold, the FCA's Consumer Duty wasn't retrospective, and Mr M hadn't explained why he believed the GAP insurance didn't provide fair value. The Investigator also explained that, due to EW Motor's data retention policies, there was no available evidence which persuaded him that EW Motor had acted unfairly when the policy was sold.

Mr M, via Company Y, didn't agree with the Investigator's conclusions. In summary, they said the complaint couldn't fairly be assessed without establishing the level of commission paid on the policy and said because EW Motor couldn't provide records showing what was charged, or what was explained to Mr M, or how suitability was assessed, any uncertainty should be resolved in Mr M's favour. Company Y also said that, given the FCA's findings about high commission levels and low claims ratios in the GAP market, it wasn't reasonable to conclude the policy offered fair value. Finally, they said the vehicle was brand new at the time of purchase and motor insurance policies often provide new car replacement coverage in the first year, meaning a GAP policy offered very little benefit initially.

Mr M asked for an Ombudsman to consider the complaint, so, it's been passed to me to decide.

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 reached the same overall outcome as the Investigator, and I do not uphold this complaint.

I want to start by assuring both Mr M and EW Motor that while I've summarised the background to this complaint, I've read and considered everything submitted in its entirety. As an informal dispute resolution service, our role is to focus on the main issues of a complaint in order to reach a fair and reasonable outcome overall. I have therefore focused my decision on what I consider to be the key points of the dispute, and I've addressed each of these below in turn, for ease of reference.

Fair value and the Consumer Duty principles

Company Y has said the GAP insurance Mr M 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 2015, so the requirements of the Consumer Duty don't apply, and I note Company Y accepts this does not apply retrospectively. As such, I have considered, more broadly, whether EW Motor treated Mr M fairly.

I've carefully considered Company Y's submissions about the data referred to and the contact the FCA had with GAP insurers in September 2023, and I've taken this into account when determining what I consider to be fair and reasonable in this complaint. However, I've also considered that although Mr M doesn't appear to have claimed on the policy, the cover and benefits were there if he did make a claim and he knew how much the policy was going to cost. I also haven't seen any persuasive evidence which demonstrates to me that the price charged for the policy was outside the range typically charged for GAP policies at the time.

I've also thought carefully about whether the GAP policy was suitable for Mr M more broadly. When they sign suitability, I'd usually expect to see evidence of the sales process followed by the seller of the policy, which would normally include the steps taken to assess a customer's eligibility and needs. This is often recorded in a statement of demands and needs. However, E W Motor has explained that they no longer hold records from the time of the sale, and so this document isn't available. In these circumstances, I'm unable to assess what steps were taken, and this means I'm unable to fairly conclude that the sales process was inadequate or that the policy was unsuitable for Mr M. Ultimately, I haven't seen anything that demonstrates to me that EW Motor treated Mr M unfairly, so I'm not persuaded to uphold this aspect of the complaint.

Deferred opt-in period

Company Y says Mr M doesn't recall being 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 any 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.

However, as the Investigator has previously set out, the requirements under ICOBS 6A came into effect on 1 September 2015. And because the GAP policy was sold in June 2015, this means EW Motor weren't required to comply with this. So, while I haven't been provided with any evidence to demonstrate whether Mr M was provided with two-days' notice or not; I do not find that this is a relevant consideration when determining whether he was treated fairly. Instead, I need to consider more broadly whether Mr M was given enough information and time to make an informed decision about purchasing the GAP policy.

But given the passage of time, there is no evidence available to show exactly how the sale took place or what information Mr M was provided with before he agreed to take out the policy. So, in these circumstances, I'm unable to fairly conclude that the way the policy was sold was unfair simply because there's no evidence that a specific period of time passed between Mr M receiving information about the policy and then deciding to purchase it.

Commission disclosure

Company Y says the payment of commission relating to the sale of the GAP policy wasn't disclosed to Mr M, nor did EW Motor disclose the amount of commission. Company Y says Mr M therefore wasn't in a position to make an informed decision about purchasing the GAP policy. I note that Company Y agrees ICOBS 4.3 is not relevant in the context of this complaint; given it did not come into force until October 2018, and the sale of Mr M's GAP policy was in 2015. Instead, they have referred to the broader context of Principle 6 (treating customers fairly) and Principle 7 of the FCA Principles for Business and say the issue relating to commission disclosure should be considered under these principles, by ensuring Mr M was provided with information that enabled him to make an informed decision.

I also understand Company Y says that because EW motor hasn't been able to provide records showing the level of commission that was paid on the policy, this Service should draw an inference that the commission was excessive and that the policy therefore didn't offer fair value. I've thought very carefully about that argument, and I accept the FCA's later work highlighted that, in parts of the GAP Insurance market, commission levels were higher and claim ratios were low. But I also have to recognise that the work the FCA carried out related to the market as a whole, rather than to any particular GAP policy or sale.

In order for me to conclude that Mr M was treated unfairly, I would need to be persuaded that something about the circumstances of this particular sale meant the policy was unsuitable, misleadingly sold, or unlikely to provide meaningful benefit to Mr M. However, I haven't seen any persuasive evidence of that here. And while I appreciate EW Motor hasn't been able to provide full records of the sale given the time that's passed; the absence of documentation doesn't establish that the policy was mis-sold or that the commission was excessive. It also wouldn't be fair or reasonable of me to assume that unfairness occurred simply because the level of commission now isn't known.

Taking everything into account, I'm not persuaded that the available evidence demonstrates that the commission arrangements for this policy were likely to have caused Mr M to be treated unfairly. And I'm ultimately not persuaded the absence of information about the commission paid means the policy was mis-sold.

My final decision

For the reasons I have given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2026.

Stephen Howard
Ombudsman