

The complaint

Ms O complains that ITC Compliance Limited ('ITC') mis-sold her a Guaranteed Asset Protection ('GAP') insurance policy.

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

What happened

Ms O purchased a new vehicle in 2012 which included the sale of a GAP policy which was for a three-year term.

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

An Investigator looked at what had happened but didn't recommend the complaint should be upheld. They said there was no evidence which demonstrated the GAP policy had been mis-sold and noted Ms O's representative hadn't provided any evidence which persuaded him the policy was unsuitable or that ITC had acted unfairly when arranging it.

Ms O, 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 ITC couldn't provide records showing what was charged, or what was explained to Ms O, or how suitability was assessed, any uncertainty should be resolved in Ms O'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.

Ms O 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 Ms O and ITC 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 should also make it clear that while I can see Company Y has raised supplementary points of the dispute after ITC issued their final response that they want our Service to consider, I haven't commented on every point raised where it is either not a complaint point which was originally raised to ITC, or where I do not consider it central to the core complaint. Additionally, Company Y raised the additional points at a late stage in our investigation, so I think it's fair in the circumstances, and keeping in mind that ITC are entitled to have the complaint against them concluded swiftly, for any new points to be considered separately and under a separate case, should Company Y ask our Service to consider these.

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.

Time bar

I note ITC's final response to the complaint outlined that the complaint had been brought more than six years since the GAP policy was sold, and they therefore considered the complaint would be out of time for this Service to consider.

However, while the policy was sold more than six years before the complaint was made, I'm satisfied Ms O couldn't reasonably have been aware she had recourse to complain until much later, when concerns about the value of GAP insurance were raised more widely in the market. So, I'm satisfied the complaint has been referred to this Service within the relevant time limit set out in DISP2.8, and I am therefore satisfied we can consider the merits of the complaint.

Sales process and suitability

Company Y said that because ITC hasn't been able to provide records showing what was discussed during the sales process, it isn't possible to determine whether the policy was suitable or properly explained to Ms O. I understand that point, but I'm not persuaded it would be fair or reasonable for me to determine the complaint on that conclusion alone. The policy was sold in 2012, and it isn't unusual for firms not to retain detailed sales records indefinitely.

While the absence of records means I can't see precisely what was said at the time of the sale, that doesn't automatically mean I can find that the policy was sold unfairly. In order to uphold the complaint, I would need to see persuasive evidence that the specific policy was unsuitable for Ms O, or that she was given misleading or insufficient information. But based on the available evidence, I haven't seen anything which demonstrates this was the case. It therefore follows that I do not uphold this aspect of the complaint.

Fair value and the Consumer Duty principles

Company Y has said the GAP insurance Ms O 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 2012, 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 ITC treated Ms O fairly.

Company Y says that because Ms O's vehicle was brand new when the policy was purchased, she may have benefited from a new car replacement feature under her motor insurance policy during the first year. They submit this would have significantly reduced any potential benefit of gap cover. I've carefully considered that submission, but even where a motor insurance policy includes a new car replacement feature, which I note company Y has not provided any evidence of in this particular case, this usually only applies in limited circumstances and typically only during the first year of ownership. I'm satisfied GAP Insurance can still provide protection beyond that period and also provides cover where a customer chooses not to replace their vehicle and instead end their financial agreement for the vehicle. It follows that I'm not persuaded the potential existence of a new car replacement feature demonstrates the GAP policy offered little or no value.

Deferred opt-in period

Company Y says Ms O 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 this means ITC weren't required to comply with this, as the sale was in 2012. So, while I haven't been provided with any evidence to demonstrate whether Ms O was provided with two-days' notice or not; I do not find that this is a relevant consideration when determining whether she was treated fairly. Instead, I need to consider more broadly whether Ms O 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 Ms O was provided with before she 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 Ms O 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 Ms O, nor did ITC disclose the amount of commission. Company Y says Ms O 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 Ms O's GAP policy was in 2012. 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 Ms O was provided with information that enabled her to make an informed decision.

I also understand Company Y says that because ITC 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 Ms O 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 Ms O. However, I haven't seen any persuasive evidence of that here. And while I appreciate ITC 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 Ms O 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 Ms O to accept or reject my decision before 15 April 2026.

Stephen Howard
Ombudsman