



<u>Decision Ref:</u>	2022-0002
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Mis-selling Delayed or inadequate communication
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainants entered into a hire purchase agreement with the Provider in early **July 2015** to enable the First Complainant to purchase a car. Shortly after, one of the Provider's agents contacted the Second Complainant by telephone and spoke to her on two separate occasions. These conversations culminated in an agreement with the First Complainant to purchase a Guaranteed Asset Protection (**GAP**) insurance policy in respect of the car. Subsequent to this, the First Complainant was involved in a road traffic accident and sought to make a claim under the GAP insurance policy. The claim was declined on the basis that the First Complainant did not have a fully comprehensive private policy of insurance in respect of the car. The Complainants believe that they were misled by the Provider's agent in respect of the cover offered by the policy.

The Complainants' Case

The First Complainant purchased a car for the sum of €4,900 in **2015**. The car was purchased with the assistance of a hire purchase agreement from the Provider in the amount of €4,000. In **July 2015**, the Second Complainant was contacted by one of the Provider's agents in respect of GAP insurance.

The Complainants submit that the agent explained “... that GAP insurance will cover any shortfall there might be if the vehicle is written off and [the First Complainant’s] own insurance pays out a certain amount then the GAP insurance will pay the balance.”

The Complainants state that, under the terms of the GAP insurance policy “... it is not available and is not suitable for parties who have third party fire and theft insurance and is only suitable if the client has a comprehensive policy of insurance.”

In this instance, the First Complainant had a third-party fire and theft policy of insurance in respect of the car. The Complainants submit that this was made known to the Provider’s agent. The Complainants then cite a passage from the conversation with the Provider’s agent. The Complainants state that during the telephone conversations, they alerted the agent to the fact that they only had third party, fire and theft cover in respect of the car which would not deem them eligible for GAP insurance yet the Provider’s agent continued to ask a series of questions and sell the policy despite them not being eligible.

It is submitted that “[t]his led [the Complainants] in a false sense of security believing that if something happened the vehicle that the GAP policy of insurance would assist in paying off part of the hire purchase finance.”

In **December 2015**, the First Complainant was involved in a serious road traffic accident and the car was written off. The First Complainant intended to make a claim under the policy but was notified that the GAP insurance did not cover him as he did not have a comprehensive policy of insurance.

It is submitted that the Complainants:

“... were somewhat misled. It was not made clear to them that they would benefit under this policy if their vehicle was a write off due to fire damage or theft, they were simply told that if the vehicle was a write off they could benefit under this policy.”

The Provider’s Case

The Provider explains that the Complainants entered in a hire purchase agreement on **8 July 2015**. Shortly afterwards, the Second Complainant was contacted by one of the Provider’s agents in respect of GAP insurance. The Provider states that the Second Complainant was informed that third party cover had specific exclusions. The Second Complainant highlighted the insurance cover in respect of the car was third party fire and theft.

The Provider's agent advised the Second Complainant that the policy would not cover the car if it was written off by the First Complainant. The Provider submits that the policy was still sold with full authorisation and agreement from the Complainants. The Provider explains that full documentation was sent to the First Complainant, outlining in full, the entire terms and conditions relating to the sale. The Provider also states that during the calls, the basic information provided was to the standard required by law.

Further Submissions

The Complainants' solicitors wrote to this Office by letter dated **15 February 2019** and made the following observation in respect of the sales script furnished by the Provider:

"We note from the sales script furnished specifically states that if a customer does not have fully comprehensive understanding, the sales person is told to advise that they will not receive a pay out if the accident was [their] fault. Throughout the recording which we have, the seller refers to the fact that whatever the insurance pays out the gap policy will make up the difference on what is due and owing on finance.

In a situation such as this where the client, only has third party insurance there will be no pay out from the insurance. Therefore, the seller was misleading towards the client and confused the client as to the true nature of the product."

In response to this, the Provider states, by email dated **20 May 2019**, that the First Complainant paid the last instalment on the hire purchase agreement in **August 2018** and *"[t]he GAP premium of €210.00 was due to be paid the month after the final payment but he cancelled his direct debit – we subsequently wrote off this amount so he's never paid for the cover."*

The Provider continues its submission advising that:

"We still dispute the cover was mis-sold to [the First Complainant] as the policy would have covered him in the event of non-fault accident. The GAP insurance policy is designed to mirror his motor policy - if the customer was third party only cover, then the GAP premium would have covered the shortfall if the accident was proven to be somebody else's fault and the TP insurance covered his claim. If he was third party fire & theft then it would have covered the shortfall for the last point and also if the vehicle was subject to a fire or theft claim. ..."

The Complaint for Adjudication

The complaint is that the Provider misled and/or misinformed the Complainants in respect of the cover offered by the GAP policy and/or that the policy was mis-sold to the Complainants.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 29 November 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The First Call

The Complainants entered into a hire purchase agreement with the Provider in or around **8 July 2015**. Around a week after the Complainants' entry into the hire purchase agreement, the Provider's agent spoke to the Second Complainant on two separate occasions with respect to the sale of GAP insurance. I note that the first call was unsolicited and the second call was agreed to by the Second Complainant.

Recordings of these calls have been submitted in evidence. I have considered the content of these calls.

In relation to the first call, once certain formalities were dispensed with, the Provider's agent clarified which of the Complainants the car was for. The Second Complainant advised the Provider's agent that it was for the First Complainant. The Provider's agent then enquired as to the level of insurance cover on the car. The Second Complainant told the agent that it was third party, fire and theft. In response to this, the Provider's agent informed the Second Complainant:

"With it being third party, fire and theft, I just need to make you aware that if the [First Complainant] was to suffer a total loss due to his own fault then he wouldn't be covered. He would only be covered if it was due to a third party's fault and they accepted liability ..."

It was then confirmed that the First Complainant had a private insurance policy in respect of the car. The cover offered by the First Complainant's insurance policy was then discussed. During this part of the conversation, the Provider's agent asked:

"But if the Ford [model redacted] was to be declared a total loss or write off, do you know if the insurance company would replace it like for like with another one of the same age or would they provide a cash settlement?"

The Second Complainant told the Provider that she did not know the answer to this question.

The Provider's agent then said:

"What I can tell you is what we usually find with most insurers is that they do sometimes offer the like for like."

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Now if that isn't available as an option it is usually just within the first twelve months where a vehicle is brand new. Anytime after that then it's normally a cash or a cheque settlement. ..."

The conversation then moved towards GAP insurance:

"With this vehicle being on finance, as I mentioned at the start of the call, there is a product we wanted to go through with you. ... Have you ever heard of something called GAP insurance before?"

The Second Complainant responded that she had never heard of GAP insurance. The Provider's agent then began to explain what this was:

"Now it is something we like to give the option of because we are a responsible lender ... I'll run through it with you and tell you what it is and what it does and then it's entirely your choice from there ..."

So it's all to do with is if the three years while the [model redacted] is on finance if it was to be declared a total loss or a write off, you probably know yourself already that insurers typically tend to pay the market value at the time of the loss which unfortunately is not always enough to pay off the outstanding finance balance on the vehicle. So it can potentially leave you and [the First Complainant] with what we call a finance shortfall which would need to be paid back straightaway as the vehicle on which the finance is secured against would no longer exist. Does that make sense so far? ..."

So as I said, to help protect against this there is the product called GAP. It stands for Guaranteed Asset Protection and its designed to cover the potential shortfall between the settlement for your vehicle as per your motor insurer's valuation and the amount that's required to settle your finance agreement. Now as well as covering the potential shortfall, in the event of a successful claim, our GAP policy will also pay up to €250 to put towards [the First Complainant's] excess and then the premium for the GAP would form part of the shortfall balance which would then be settled by the GAP insurers for you as well ..."

The Provider's agent then acknowledged that the Second Complainant had not heard of GAP insurance before and asked if she understood what had been explained, to which the Second Complainant answered, Yes.

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The Provider's agent then explained that the premium for the policy was a one off payment which the Provider was entitled to collect at any time however, the Provider did not require the premium to be paid immediately.

The Provider's agent then told the Second Complainant that there are circumstances where a GAP policy may end early, for example when the finance agreement is settled or if a claim is made under the GAP policy. If the Provider has not received payment by that point or by the time the policy expires, the Complainants would be asked to pay the premium at the end of their agreement. The Second Complainant was informed that the policy would be effective from the end of the call for the full three years of the hire purchase agreement. The Second Complainant accepted what the Provider's agent had said but also advised the agent that she would have to consult with the First Complainant and a further call was arranged.

The Second Call

A second call then took place between the Provider's agent and the Second Complainant. During this call the Second Complainant indicated that the First Complainant would like to take out the policy. The Provider's agent then, after clarifying the type of insurance cover on the car, repeated almost verbatim, the matters explained to the Second Complainant in the first call.

The Provider's agent advised the Second Complainant that she would go through some of the key benefits and exclusions under the policy and provide the Second Complainant with some basic information regarding the policy and once the Second Complainant decided to purchase the policy, full policy documentation would be posted to the Complainants on the completion of the call. The Second Complainant was given the option to hear the basic information or full details of the policy. The Second Complainant opted to hear the basic information.

When discussing the basic information of the policy, the Provider's agent highlighted certain policy exclusions and also directed the Second Complainant to the parts of the policy where she could find further information in relation to the policy exclusions.

The Second Complainant was advised of her right to cancel the policy and how she could go about doing this. The Second Complainant was also informed that she would receive a number of documents in the post in the coming days and was advised to take the time to read these documents and if the Complainants had any questions, to contact the Provider.

Provider's Call Script

The Provider has furnished a copy of the script used by its agents when selling GAP insurance.

I note the following parts of this script:

“ ...

<i>What insurance over have you taken out? Fully comprehensive/TPFT/or TP basis?</i>	<i>If the customer does not have fully comp, advise they will not receive a payout if accident was their fault. If insurance doesn't cover full purchase price or not on a private insurance, customer not eligible for RTI [GAP]</i>
<i>Have you insured it on private insurance?</i>	
<i>Does the policy cover the full purchase price of the vehicle? Y/N</i>	

...”

I note that the script also requires the Provider's agents to describe, amongst other things, GAP insurance, how it works, the exclusions and limitations under the policy, to recommend that the policy documents be read, and about the right to cancel.

Confirmation of Policy

The Provider wrote to the First Complainant on **15 July 2015** confirming the setting up of the GAP policy. This letter states:

“You agreed that a GAP insurance policy should be purchased and as above we discussed the main benefits and exclusions of the policy to make sure it was right for you.

Please now find enclosed the following documents, which explain the policy in more detail:

- *Terms of Business and Policy Summary*
- *Policy Document*

/Cont'd...

As discussed during our telephone conversation we recommend that you read these carefully; particularly the sections detailing your cover and exclusions. ...

[The Provider] will collect the premium of €210.00 for your GAP Insurance as an additional Direct Debit payment after your finance agreement has been paid. ...”

Policy Summary

The policy summary states:

“This policy summary does not contain the full details of your policy; these can be found in the policy document.

...

Can I take out this cover?

To be eligible for this cover on the start date you must:

...

Please note - *If you have Third Party, Fire and Theft Motor Insurance and you suffer a total loss due to your own fault, you will not be able to benefit under this policy.*

What happens if I take out cover and then change my mind?

You may cancel this policy by writing to [the Provider] ... within 14 days of the date your policy begins or the date you receive your policy document if this happens later.

If you cancel in this period you will receive a full premium refund.

...

What am I NOT covered for under this policy?

We will not pay any benefit for a total loss of a vehicle:

1. Where no payment is made under the accidental damage, fire or theft parts of your motor insurance policy; ...”

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GAP Policy

A copy of the policy has been furnished by the parties. I will now set out certain sections of this policy. On the top of the first page of the policy, it states:

“IMPORTANT: This **policy** contains terms that set out what is covered and what is not covered by this insurance. **You** should read this document carefully so that **you** know what insurance **you** have.

...

What this policy is for – Provided **you** have paid **your** premium, **we** will pay the benefit described in Section 1 if the **insured vehicle** is a **total loss**. Full details of **your** cover and its limitations are contained in this **policy**.

...

Please note - if you have Third Party Motor Insurance only, and you suffer a total loss due to your own fault, you will not be able to benefit under this policy.

...

YOUR RIGHT TO CHANGE YOUR MIND

You may cancel this **policy** by writing to the **lender** within 14 days of the **start date** or the date **you** receive **your** documents if this is later. If **you** cancel in this period **we** will refund any premium paid ...”

Part 2 of the policy deals with exclusions and states:

“We will not pay for

1. A **total loss** where no payment is made under the accidental damage, fire or theft parts of the **motor insurance policy**; ...”

Part 6 of the policy sets out a number of definitions, in particular:

““Motor insurance policy” means a policy of motor insurance which covers the **insured vehicle** for claims against accidental damage, fire and theft and which is kept in force throughout the **period of cover**,

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...

“Total loss” means a claim for accidental damage, fire or theft of the insured vehicle being paid under the motor insurance policy, as a result of which the motor insurance policy underwriters become the owners of the insured vehicle; ...”

Analysis

The purpose of a GAP insurance policy is to make up for any shortfall that may arise in the event of a *total loss*. This occurs when the amount paid out in respect of the value of a car under a private insurance policy is insufficient to discharge the balance outstanding on the hire purchase agreement.

The Complainants outline in their submissions that they were misled during two telephone conversations with the Provider’s agent. Firstly, on the basis that the policy was not suitable for parties with a third-party, fire and theft private insurance policy and secondly, the Complainants assert that they were not advised that a payment would not be made under the policy if the accident was the fault of First Complainant. The First Complainant was not a party to either of the telephone conversations. However, towards the end of the first telephone conversation, the Second Complainant indicated to the Provider’s agent that she would have to discuss the policy with the First Complainant before agreeing to purchase it.

During both telephone calls, the Provider’s agent asked the Second Complainant about the type of insurance cover on the car. On each such occasion, the Second Complainant told the Provider’s agent that it was third-party, fire and theft.

The Provider’s call script makes clear that its agents are required to ascertain the type of insurance cover on the vehicle in question and to inform a prospective customer that if they do not have a fully comprehensive insurance policy, they will not receive a payout under their policy if they are involved in an accident that is their fault.

It is important to note, contrary to the submission made by the Complainants’ solicitors on **15 February 2019** in relation to the call script and which I have outlined above, it does not relate to the GAP policy itself rather, it relates to the type of cover provided by a vehicle’s private policy of insurance.

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In any event, having considered the content of both conversations, I am satisfied that the Provider's agent, as required by the Provider's script, advised the Second Complainant that, as a result of the policy of insurance maintained in respect of the First Complainant's car, should the First Complainant be involved in an accident that was his fault, a payment would not be made under GAP policy. The Provider's agent then gave a general explanation of GAP insurance in line with the Provider's script.

It was agreed that the First Complainant would take up the Provider's offer of GAP insurance and this was communicated by the Second Complainant to the Provider's agent on the second telephone call. The Provider's agent then went through a number of aspects of the cover offered by the policy with the Second Complainant. The Second Complainant was also advised where to find further information regarding the policy's terms and conditions, and that she should read the documentation that was being sent out in the coming days.

The First Complainant received a letter from the Provider dated **15 July 2015** enclosing the policy documents. This letter, together with the policy summary and the policy itself, state that the policy should be read carefully in order to understand the type of cover being offered. I note that both the policy summary and the policy, prominently state in clear and plain language that if the policyholder has third-party, fire and theft insurance, they will not be covered under the policy if they suffer a total loss due to their own fault. The policy documents also make clear that no payments will be made under the GAP policy where no payment is made under the accidental damage, fire or theft parts of a policyholder's private insurance policy. Therefore, contrary to the Complainants' submission, the GAP policy does in fact offer cover when a vehicle is insured under a third-party, fire and theft policy. However, the GAP cover is limited in such circumstances. This is clear from the content of the policy documents.

Coming back to the telephone conversations, it is apparent that the limited nature of GAP cover in the context of third-party, fire and theft policies was not explained to the Second Complainant on either occasion by the Provider's agent. While this is something that the Complainants believe ought to have been conveyed to the Second Complainant during these telephone conversations, I am not satisfied that the Provider's agent was required to identify and explain every limitation on cover and exclusion contained in the policy particularly in light of the fact that the Second Complainant chose to hear the basic information option regarding the policy during the second telephone call.

Furthermore, in addition to the two telephone conversations, consideration should also have been given by the Complainants to the policy documents. While the information conveyed to the Second Complainant during these conversations was most likely relayed to the First Complainant, the Complainants were advised and also given an opportunity to read the policy documents.

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I accept that if the policy documents were given an appropriately level of consideration, the Complainants should, or ought to have been aware of and familiar with, the terms of the policy. The policy documents were all the more important in circumstances where the First Complainant was not a party to either of the telephone conversations; and where the Second Complainant opted to hear the basic information regarding the policy and also in light of the information given to her by the Provider's agent. Furthermore, no queries were raised by the Complainants regarding the policy following the telephone conversations or the receipt of the policy documents nor did the First Complainant seek to exercise his right to cancel the policy on the basis that either Complainant was misled or that the policy was mis-sold.

Finally, I do not accept the Provider's point in respect of the non-payment of premium. I am satisfied that the agreement was entered into in **July 2015** and as the Provider's agent explained, cover started immediately despite the Provider's payment terms.

Therefore, looking at the circumstances of this complaint as whole, I do not accept that either of the Complainants were misled or that the policy was mis-sold. Accordingly, I do not uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

5 January 2022

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.