

The complaint

Mrs A is complaining that Motors Insurance Company Limited (MIC) hasn't paid her anything after she made a claim on her Guaranteed Asset Protection (GAP) insurance policy.

What happened

In September 2018 Mrs A acquired a car and paid around £13,050 for it. She partly paid for the car by taking out a finance agreement. At the same time she bought a five year GAP insurance policy to cover any losses regarding the finance agreement if the car was written off or stolen.

In April 2023 Mrs A's car was damaged which resulted in her insurer writing the car off. It settled the claim by paying the market value, but first cleared the outstanding balance on the finance agreement. Mrs A then looked to claim on the GAP insurance policy. However, MIC said the policy paid any shortfall between the outstanding balance on the finance agreement and the market value. But, it said there wasn't a shortfall in this case. So it said there wasn't anything to pay out under the GAP policy.

Mrs A complained and, in summary, said the following:

- She says she was told on the telephone that she was fully covered;
- She said one of MIC's call handlers said that she had full protection for three years, but after that was on a two year free extension. But she said that was incorrect as the documents clearly showed she took out a full five year policy;
- She says the product MIC says she has is different to the one she was told she was buying by the dealership who sold the policy;
- She says she's been unable to replace the car from the settlement.

MIC didn't uphold Mrs A's complaint. It apologised the call handler had given her incorrect information in saying she had had a policy for three years and then an extension for two years as she'd always had a five year policy. But it explained that she'd always had a financial protection shortfall policy, which paid off any outstanding finance remaining if the settlement from the insurer wasn't enough to pay off the finance in full. Mrs A still thought this was unfair and highlighted that this matter has had a profound impact on her health. So she referred her complaint to this Service.

I issued a provisional decision partially upholding this complaint and I said the following:

"I should first explain that I'm only considering the actions of MIC in this complaint. I note Mrs A has also raised a complaint about her car insurance provider, but that complaint has been reviewed in a separate complaint."

As the investigator set out, MIC provides two different types of GAP insurance policies. The first one is called a Financial Shortfall Protection policy in which MIC will cover any shortfall where the insurance settlement isn't enough to clear any outstanding finance. But if the amount the insurer pays is enough to clear the outstanding finance, there isn't a shortfall for MIC to cover – i.e. it's not required to pay anything under the terms of the insurance policy.

The other type of policy MIC provides is called “return to invoice” GAP. In this case MIC will pay the difference between what the policyholder initially paid for the vehicle and the vehicle’s market value at the date of loss.

I note Mrs A has consistently set out that she doesn’t agree that the policy she had covers what MIC says it does. She says she should be able to replace the car with a like-for-like but says she can’t do so with the settlement she’s received. She’s explained that she was told on the phone that she was fully protected, so believes this means she must have return to invoice GAP. I’ve listened to the telephone calls she had with MIC and she was given incorrect information on two separate occasions.

Mrs A contacted MIC after she received a settlement offer from her insurer and asked the call handler how GAP worked. The call handler said it depended on the type of GAP she had. She advised the call handler that she paid £13,050 for the car and asked if that meant she would receive the difference between that and what the insurer paid out and the call handler said that was correct. He does later explain that she had a Financial Shortfall Protection policy, but said that he doesn’t know what that policy does. But he did say that Mrs A would receive the difference between £13,050 and the amount the insurer paid.

Then, in a further call, MIC’s call handler said Mrs A took out two insurance policies – one that lapsed after three years and then a two year free extension. In that call, she said to Mrs A that the first policy was a return to GAP policy. Although, I also acknowledge that Mrs A does also say on the call that she had the original policy booklet which sets out that she did have a five year Financial Shortfall Protection policy.

However, it’s clear from all the evidence that Mrs A had a Financial Shortfall Protection policy. As I said, the terms of this policy cover any finance that’s still outstanding after the primary insurance policy pays out – i.e. where the amount still due on the finance agreement is more than the car’s market value.

In this case, the car insurance provider said the car’s market value was around £7,495, whereas the outstanding balance on the finance was £2,888.37. So, as there wasn’t a shortfall on the finance after the car insurance settlement, I can’t say it was unfair for MIC to say it wasn’t required to pay anything under the terms of the insurance policy.

I note Mrs A has set out that this matter has had a profound impact on her health and I naturally sympathise with the situation she’s found herself in. But I think the fundamental cause of Mrs A’s distress is that the policy didn’t cover what she says she was told it would do. However I’m satisfied the policy summary does reasonably explain what the policy covers. I’m satisfied MIC has taken reasonable steps to explain what the policy did so I can’t reasonably hold MIC responsible if Mrs A didn’t understand the policy. I recognise Mrs A says what the policy covers isn’t what she was told when she took it out. But the policy was sold by the car dealership, so she’d need to raise her concerns regarding this with the dealership directly.

That said, I think Mrs A was given an indication at the start of the claim that she would receive around £5,500 by being led to think she would get the difference between the car’s purchase price and the insurer’s estimated market value. I don’t think MIC is bound by this because this incorrect statement doesn’t invalidate the terms of the insurance policy. But I think, had MIC been clear from the start with what the policy did cover, I think it could have minimised some of the distress Mrs A suffered. So I think MIC should pay her £200 in compensation for the distress and inconvenience this has caused her.”

MIC responded to accept my provisional decision. Mrs A didn’t respond.

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.

As neither party has given me anything further to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in my provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require Motors Insurance Company Limited to pay Mrs A £200 in compensation. I don't award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 21 February 2024.

Guy Mitchell

Ombudsman