

The complaint

Mr C complains that First Response Finance Limited ('FRFL') treated him unfairly when it entered into a motor finance agreement with him.

He's said that FRFL failed to disclose the commission that it paid to the motor dealer that introduced his business and that this created an unfair relationship because of the impact this had on the interest he had to pay.

Mr C is represented in his complaint by a third party. For ease of reference, I'll only refer to Mr C throughout this decision.

What happened

In March 2016 Mr C applied for finance to acquire a used car. The cash price of the car was £7,350 and Mr C paid a deposit of £2,000. He entered into a hire purchase agreement with FRFL to finance the remaining £5,350. After interest and charges the total amount due was £9,065.28, repayable in 48 monthly instalments of £188.86.

In March 2024 Mr C's representatives contacted FRFL to complain about an undisclosed commission payment. They said, in summary, that FRFL failed to disclose the existence of commission, so Mr C couldn't make a properly informed decision before entering into the agreement. They added that FRFL didn't make Mr C aware of the commission arrangement, which allowed the motor dealer to change the interest rate to increase the commission they'd earn. And that this made the relationship between Mr C and FRFL unfair within the meaning of section 140A(1) – (3) of the Consumer Credit Act 1974 ("s140 CCA").

FRFL didn't uphold Mr C's complaint. Briefly, it said the commission was disclosed to Mr C prior to him entering into the agreement. It didn't think full disclosure was required given that the motor dealer had no discretion to vary the interest on Mr C's agreement.

Mr C referred his complaint to our service, where one of our investigators looked into what had happened. She concluded that FRFL hadn't treated Mr C unfairly or acted unreasonably when it entered into the hire purchase agreement with him. Mr C didn't agree, and so the complaint has come to me for a final 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.

I realise my decision will likely come as disappointing news, but having carefully considered everything, I have decided not to uphold Mr C's complaint. I'll explain why.

In the joined cases of *Hopcraft, Johnson & Wrench*¹, the Supreme Court considered how the law applies to claims relating to motor finance commission.

Broadly speaking, the Supreme Court concluded that the relationship between a motor finance lender and a consumer could sometimes be unfair to the consumer (under s140 CCA) in circumstances where neither the car dealer nor the lender disclosed that:

- there was a discretionary commission arrangement (“DCA”) – an arrangement where the commission paid was linked to the loan interest rate and the broker had the discretion to set a higher interest rate to receive more commission.
- the car dealer would receive a high commission relative to the cost of credit or amount borrowed.
- the car dealer was required to select the lender in preference to other lenders the car dealer could offer. This is sometimes referred to as a commercial tie or a right of first refusal.

In Mr C’s case, FRFL has provided evidence to show that it paid Mr C’s motor dealer a commission of £160.50 for introducing his business – this being 3% of the £5,350 it advanced to Mr C as part of this transaction.

Mr C has said he wasn’t told about this commission. And he’s referred to a number of breaches by FRFL of its obligations. Mr C’s complaint is effectively that the undisclosed commission payment of £160.50 that FRFL paid to his motor dealer resulted in the lending relationship between FRFL and him being unfair to him under s140 CCA.

I haven’t been provided with sufficient evidence to be persuaded that the existence of commission (in this case £160.50), was disclosed to Mr C. That said, I consider it likely – certainly more likely than not – that a court would not find that the lending relationship between FRFL and Mr C was unfair to Mr C under s140 CCA.

Overall, I’m not persuaded that FRFL failed to act fairly and reasonably in all the circumstances of this complaint. This is because:

- the commission of £160.50 did not involve a DCA. So, the motor dealer didn’t have discretion to set Mr C’s interest rate.
- I think it more likely than not that a court would not consider the £160.50 commission payment to be high when compared to the amount Mr C borrowed, or the cost of the agreement Mr C entered into.
- I don’t think it’s likely that the commission of £160.50 would have been a major consideration in Mr C’s mind, had it been disclosed to him at the time of entering into the hire purchase agreement, when the commission payment represented only 3% of the amount he borrowed and only 4.32% of the total cost of the credit.
- I think it’s more likely than not that a court would not consider that a commercial tie existed between Mr C’s motor dealer and FRFL. In reaching this view, I have reviewed a range of contracts and agreements that FRFL had with various brokers over several years. I’ve seen nothing in any of these agreements indicating that FRFL had contractual ties with any of the motor dealers that it worked with. I consider this to be consistent with FRFL’s position within the market as a lender serving customers that typically find it difficult to obtain credit from more mainstream lenders and have less choice as a result. In this context, I’ve not seen anything to support an argument that a commercial tie existed between FRFL and the motor dealer.

¹ *Hopcraft and another (Respondents) v Close Brothers Limited (Appellant); Johnson (Respondent) v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant); Wrench (Respondent) v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant)* [2025] UKSC 33

I've noted that Mr C focused his response to the investigator's assessment on her comparison of the commission in this case, when expressed as a percentage of the amount advanced and a percentage of the total cost for credit, to the possible thresholds for 'high commission' that the Financial Conduct Authority ("FCA") has proposed for its redress scheme. It appears that Mr C may have misunderstood the investigator's assessment and her reference to the FCA's proposed scheme.

I say this because the investigator referred to the thresholds proposed by the FCA for its scheme only to reassure Mr C that the commission paid in his case was also significantly lower than required in the FCA redress scheme for a claim to succeed. She didn't reach the finding that Mr C's complaint should not be upheld because the commission, when expressed as a percentage of the amount advanced and the cost of the credit, was lower than the FCA's proposed thresholds and might not be upheld by the redress scheme as a result.

For completeness, I want to be clear that my finding here is that given the circumstances of this case, I think it is likely – and certainly more likely than not – that a court would not find any failure to disclose the £160.50 commission payment to Mr C means that the lending relationship between FRFL and Mr C was unfair to Mr C.

For the avoidance of doubt, I also wish to make it clear that the fact that the commission in this case is below the threshold that the FCA has proposed for high commission in its redress scheme, which it is currently consulting on, is not the reason why I'm not persuaded that the overall relationship between FRFL and Mr C wasn't ultimately unfair to Mr C.

Overall and having carefully considered everything, I've not been persuaded that the commission FRFL paid to the motor dealer that introduced Mr C's business means that it failed to act fairly and reasonably towards him. So, I've not been persuaded to uphold Mr C's complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 February 2026.

Anja Gill
Ombudsman