

## **The complaint**

Mr H complains that First Response Finance Limited (“First Response”) failed to act fairly and reasonably towards him when entering into a hire purchase agreement with him.

He said First Response failed to disclose the commission 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 H has used a representative to make his complaint. For ease of reference, I’ll refer to Mr H throughout this final decision.

## **What happened**

In August 2020, Mr H sought finance in order to acquire a used car. The purchase price of the car was £3,490.00. Mr H entered into a hire purchase agreement with First Response for this amount.

The agreement had a term of 49 months and had interest charges of £3,466.53. This meant that the balance to be repaid was £6,956.53, which was due to be repaid in 49 monthly instalments of £141.97.

Mr H’s complaint was considered by one of our investigators. They thought First Response hadn’t done anything wrong or treated Mr H unfairly when entering into this hire purchase agreement with him. So they didn’t recommend Mr H’s complaint should be upheld.

Mr H disagreed with our investigator and the complaint was passed to an ombudsman 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.

Having carefully considered everything, I’ve decided not to uphold Mr H’s complaint. I’ll explain why in a little more detail.

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

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 Section 140 of The Consumer Credit Act 1974 (“S140 CCA”) in circumstances where neither the car dealer nor the lender disclosed that:

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<sup>1</sup> *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

- 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 this case, First Response has provided evidence to show that it paid Mr H’s motor dealer a commission of £104.70 for introducing his business. This was on the basis that it paid 3% of the £3,490.00 it advanced to Mr H as part of this transaction.

I know that Mr H has said that he wasn’t told about this commission and that he referred to a number of instances of First Response breaching its obligations. In effect, Mr H’s complaint is essentially that the undisclosed commission payment of £104.70 that First Response paid to his motor dealer, resulted in the lending relationship between First Response and him being unfair to him under S140 CCA.

While I’ve not been provided with sufficient evidence to be persuaded that the existence of commission, which in this case was £104.70, was disclosed to Mr H, I nonetheless consider that it is unlikely – and certainly less likely than not – that a court would find that the lending relationship between First Response and Mr H was unfair to Mr H under S140 CCA. And I am not persuaded that First Response failed to act fairly and reasonably in all the circumstances of the complaint.

I consider this to be the case because:

- the commission of £104.70 did not involve a DCA. So the motor dealer did not have discretion to set Mr H’s interest rate.
- I think it less likely than not that a court would consider the £104.70 commission payment to be high when compared to the amount Mr H borrowed, or the cost of the agreement Mr H entered into. I think it unlikely that this commission of £104.70 would have been a major consideration in Mr H’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 3.02% of the total cost of the credit.
- I think it less likely than not that a court would consider that a commercial tie existed between Mr H’s motor dealer and First Response. In reaching this view, I have reviewed a range of contracts and agreements that First Response had with various brokers over several years. I have seen nothing in any of these agreements indicating that First Response had contractual ties with any of the motor dealers that it worked with. I consider this to be consistent with First Response’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 First Response and the motor dealer.

I’ve noted that Mr H focused his response to the investigator’s assessment on the fact that the investigator compared 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. However, I think that Mr H may have misunderstood the investigator's assessment and their 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 H that the commission paid in his case was also significantly lower than required in the FCA redress scheme for a claim to succeed. They did not make the finding that Mr H'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 the sake of completeness, I wish to make it clear that my finding here is that given the circumstances of this case, I think it is unlikely – and certainly less likely than not – that a court would find any failure to disclose to Mr H the £104.70 commission payment means that the lending relationship between First Response and Mr H was unfair to Mr H.

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 First Response and Mr H wasn't ultimately unfair to Mr H.

Overall and having carefully considered everything, I've not been persuaded that the commission First Response paid to the motor dealer that introduced Mr H's business means that it failed to act fairly and reasonably towards him. So I've not been persuaded to uphold Mr H's complaint. I appreciate that this will be disappointing for Mr H. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 February 2026.

Scott Walker  
**Ombudsman**