

The complaint

Miss O complains that First Response Finance Limited ('FRFL') treated her unfairly when it entered into a motor finance agreement with her.

She's said that FRFL failed to disclose that it paid commission to the motor dealer that introduced her business and that this resulted in her being charged more interest.

What happened

In November 2019 Miss O applied for finance to acquire a used car. The cash price of the car was £3,495 and Miss O paid a deposit of £100. She entered into a hire purchase agreement with FRFL to finance the remaining £3,395. After interest and charges the total amount due was £4,518, repayable in 18 monthly instalments of £251.

In June 2023 Miss O contacted FRFL to complain about an undisclosed commission payment. FRFL didn't uphold Miss O's complaint. Briefly, it said the documents Miss O was provided with disclosed that commission might be paid. It added that the motor dealer had no discretion over the interest rate, and so it couldn't agree that it incentivised the motor dealer to place Miss O's finance application with FRFL.

Miss O referred her complaint to our service, where one of our investigators looked into what had happened. She concluded that FRFL hadn't treated Miss O unfairly or acted unreasonably when they entered into the hire purchase agreement with her.

In response to our investigator's assessment Miss O maintained that commission wasn't disclosed to her and she could therefore not make an informed decision. She added that she was concerned that this made the relationship between her and FRFL unfair within the meaning of section 140A of the Consumer Credit Act 1974 ("s140 CCA").

As Miss O didn't agree, 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 Miss O'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

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

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 Miss O’s case, FRFL has provided evidence to show that it paid Miss O’s motor dealer a commission of £169.75 for introducing her business – this being 5% of the £3,395 it advanced to Miss O as part of this transaction.

Miss O’s complaint is effectively that the undisclosed commission payment of £169.75 that FRFL paid to her motor dealer resulted in the lending relationship between FRFL and her being unfair to her under s140 CCA.

I’ve not been persuaded that the existence of commission (in this case £169.75), was disclosed to Miss O. That said, I consider it more likely than not that a court would not find that the lending relationship between FRFL and Miss O was unfair to Miss O under s140 CCA.

I think it is likely – and certainly more likely than not – that a court would not find any failure to disclose the £169.75 commission payment to Miss O means that the lending relationship between FRFL and Miss O was unfair to Miss O. And 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 £169.75 did not involve a DCA. So, the motor dealer didn’t have discretion to set Miss O’s interest rate.
- I think it more likely than not that a court would not consider the £169.75 commission payment to be high when compared to the amount Miss O borrowed, or the cost of the agreement Miss O entered into.
- I don’t think it’s likely that the commission of £169.75 would have been a major consideration in Miss O’s mind, had it been disclosed to her at the time of entering into the hire purchase agreement, when the commission payment represented only 5% of the amount she borrowed and only 15.16% 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 Miss O’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.

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

My final decision

For the reasons I've explained, I'm not upholding Miss O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 12 March 2026.

Anja Gill
Ombudsman