

Complaint

Mrs W complain that Moneybarn No.1 Limited (“Moneybarn”) failed to act fairly and reasonably towards her when entering into a conditional sale agreement with her.

She’s said that Moneybarn failed to disclose the commission it paid to the motor dealer that introduced her to Moneybarn and that this created an unfair relationship because of the impact this had on the interest she had to pay.

Mrs W have used a representative to make his complaint. For ease of reference, I’ll refer to Mrs W throughout this final decision.

Background

Mrs W also initially complained that the conditional sale agreement was unaffordable for her. However, an investigator separately notified her that he didn’t think that the finance had been provided irresponsibly, as proportionate checks would have shown that the monthly payments to this agreement were affordable.

Mrs W confirmed that she accepted the investigator’s conclusions on affordability and asked for the commission aspect of her complaint to be reviewed. So this decision is only looking at Moneybarn’s actions in relation to the commission it paid to the motor dealer that introduced Mrs W to it.

In February 2016, Mrs W sought finance in order to acquire a used car. The purchase price of the car was £10,498.00. Mrs W paid a deposit of £1,100.00 and entered into a conditional sale agreement with Moneybarn for the remaining £9,398.00.

The agreement had a term of 60 months and had interest charges of £10,445.47. This meant that the balance to be repaid of £19,843.47, which does not include Mrs W’s deposit, was due to be repaid in 59 monthly instalments of £336.33.

Mrs W’s commission complaint was considered by one of our investigators. He thought that Moneybarn hadn’t unfairly paid Mrs W’s motor dealer commission for introducing her business. So he didn’t recommend that Mrs W’s commission complaint should be upheld. Mrs W disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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 Mrs W’s complaint. I’ll explain why in a little more detail.

In the joined cases of *Hopcraft, Johnson & Wrench*¹, 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 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/motor dealer 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, Moneybarn has provided evidence to show that it paid Mrs W’s motor dealer a total commission of £480. The agreement that Moneybarn had with Mrs W’s motor dealer was that £330 would be paid for each customer introduced that went on to take out a conditional sale agreement for the amount Mrs W did. A further agency fee of £150 also appears to have been paid as a result of Mrs W’s transaction.

I know that Mrs W has said that they weren’t told about this commission and that they have referred to a number of instances of Moneybarn breaching its obligations. In effect, Mrs W’s complaint is essentially that the undisclosed commission payment of £480 that Moneybarn paid to her motor dealer, resulted in the lending relationship between Moneybarn and her being unfair to her under Section 140 of The Consumer Credit Act 1974 (“S140 CCA”).

While I’ve not been provided with sufficient evidence to be persuaded the existence of commission, which in this case was £480, was disclosed to Mrs W, I nonetheless consider it is unlikely – and certainly less likely than not – that a court would find that the commission rendered the lending relationship between Moneybarn and Mrs W unfair to Mrs W under S140 CCA. And I am not persuaded that Moneybarn failed to act fairly and reasonably in all the circumstances of this matter.

I consider this to be the case because:

- the commission of £480 did not involve a DCA. So the motor dealer did not have discretion to set Mrs W’s interest rate.
- I think it less likely than not that a court would consider the £480 commission payment to be high when compared to the amount Mrs W borrowed, or the cost of the agreement Mrs W entered into. I think it unlikely that this commission of £480 would have been a major consideration in Mrs W’s mind, had it been disclosed to her at the time of entering into the conditional sale agreement, when the commission payment represented around 5% of the amount they borrowed and around 4.6% 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 Mrs W’s motor dealer and Moneybarn. In reaching this view, I have reviewed a range of contracts and agreements that Moneybarn had with various brokers over several years. I have seen nothing in any of these agreements

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

indicating that Moneybarn had contractual ties with any of the motor dealers that it worked with. I consider this to be consistent with Moneybarn'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 and the public explanation its Chief Executive Officer made to the stock market about it not operating commercial ties. In this context, I've not seen anything to support an argument that a commercial tie existed between Moneybarn and the motor dealer.

I've noted what Mrs W has said about the investigator putting too much emphasis on the fact that this agreement didn't involve a DCA and the cost of the credit on this agreement was high. For the avoidance of doubt and as I've explained above, I wish to make it clear that I agree the Supreme Court held that the failure to disclose a commission payment could result in the relationship between the creditor and the debtor being unfair to the debtor.

However, this won't always be the case on every occasion that there was a failure to disclose commission to the consumer. In this particular case, Mrs W now accepts that the agreement was affordable for her, she knew the APR was high and I think it more likely than not she accepted it because she was finding it difficult to access credit elsewhere.

In these circumstances, it's unclear to me how or why knowledge of the commission, given the amount, would have been a major consideration in Mrs W's mind, or would have led to Mrs W reaching a different conclusion on taking out this agreement. This is particularly bearing in mind the lack of a DCA means that there was no clear and direct link between the commission paid to the motor dealer and the interest that Mrs W had agreed to pay as a result of choosing to enter into this agreement. So Mrs W's arguments have not persuaded me that it is more likely than not that a court would find the commission rendered the lending relationship between Moneybarn and Mrs W unfair to Mrs W under S140 CCA

Overall and having carefully considered everything, I've not been persuaded that the commission Moneybarn paid to the motor dealer that introduced Mrs W's business means that it failed to act fairly and reasonably towards her. I appreciate that this will be disappointing for Mrs W. But I hope she'll understand the reasons for my decision and at least consider that her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 20 March 2026.

Jeshen Narayanan
Ombudsman