

## **The complaint**

Mr H complains that Moneybarn No.1 Limited (“Moneybarn”) failed to act fairly and reasonably towards him when entering into a conditional sale agreement with him.

He’s said that Moneybarn failed to disclose the commission it paid to the broker that introduced him to Moneybarn and that this created an unfair relationship because of the impact this had on the interest he had to pay.

Mr H initially used a representative to make his complaint to Moneybarn, but referred his complaint to our service himself. For ease of reference, I’ll refer to Mr H throughout this final decision.

## **What happened**

In April 2015, Mr H sought finance in order to acquire a used car. The purchase price of the car was £9,990.00. Mr H paid a deposit of £600.00 and entered into a conditional sale agreement with Moneybarn for the remaining £9,390.00.

The agreement had a term of 54 months and had interest charges of £6,994.95. This meant that the balance to be repaid of £16,384.95, which does not include Mr H’s deposit, was due to be repaid in 53 monthly instalments of £309.15.

Mr H’s commission complaint was considered by one of our investigators. They thought that Moneybarn hadn’t unfairly paid Mr H’s broker commission for introducing his business. So they didn’t recommend that Mr H’s commission 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

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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

140 of The Consumer Credit Act 1974 ("S140 CCA") in circumstances where neither the broker 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 broker would receive a high commission relative to the cost of credit or amount borrowed.
- the broker was required to select the lender in preference to other lenders the broker 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 Mr H's broker a total commission of £330.00. The agreement that Moneybarn had with Mr H's broker was that £330.00 would be paid for each customer introduced that went on to take out a conditional sale agreement for the amount and on the terms Mr H did.

Mr H told our service that he applied to Moneybarn directly and that no commission should have been paid to any introducer as there was no introducer. Mr H said he found the dealership himself and didn't use one of Moneybarn's recommended ones.

He also said that the lack of information about commission meant he wasn't fully informed and it prevented him from finding another provider. I know that Mr H has said that he wasn't told about this commission and that he has referred to a number of instances of Moneybarn breaching its obligations. In effect, Mr H's complaint is essentially that the undisclosed commission payment of £330.00 that Moneybarn paid to his broker, resulted in the lending relationship between Moneybarn and him being unfair to him under S140 CCA.

While I've not been provided with sufficient evidence to be persuaded the existence of commission, which in this case was £330.00, was disclosed to Mr H, 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 Mr H unfair to Mr H 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 £330.00 did not involve a DCA. So the broker did not have discretion to set Mr H's interest rate.
- I think it less likely than not that a court would consider the £330.00 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 £330.00 would have been a major consideration in Mr H's mind, had it been disclosed to him at the time of entering into the conditional sale agreement, when the commission payment represented around 3.5% of the amount he borrowed and around 4.7% 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 broker 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 indicating that

Moneybarn had contractual ties with any of the brokers 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 broker.

Mr H has said his previous representatives told him that commission shouldn't have been paid and that the lack of disclosure meant a breach of S140 CCA.

I've noted what Mr H has said about the commission not being disclosed to him. To confirm, 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.

Mr H said not knowing about the commission meant he didn't have the opportunity to find another provider. And the commission being built into the finance costs meant he was effectively overcharged.

Mr H initially said there was no broker involved so there should never have been any commission to begin with. However, he later confirmed that as part of the agreement being arranged he had been in contact with a credit intermediary (broker). I'm satisfied there was a broker in connection with arranging the agreement, so I've not considered this argument any further.

Mr H approached Moneybarn directly, so it's unclear to me how or why knowledge of the commission, given the relatively small amount, would have been a major consideration in Mr H's mind, or would have led to Mr H reaching a different conclusion on taking out this agreement. There is no dispute that Mr H knew the APR for this agreement and could have found alternative arrangements at the time if he wasn't happy with the terms.

While Mr H argues that the commission inevitably increased the cost of his agreement, the lack of a DCA means that there was no clear and direct link between the commission paid to the broker and the interest that Mr H had agreed to pay as a result of choosing to enter into this agreement.

So Mr H'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 Mr H unfair to Mr H under S140 CCA.

Overall and having carefully considered everything, I've not been persuaded that the commission Moneybarn paid to the broker that arranged Mr H's application means that it failed to act fairly and reasonably towards him. And I've not been persuaded to uphold Mr H's commission 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 9 April 2026.

Scott Walker  
**Ombudsman**