

## **The complaint**

Mr D complained 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 complained that the conditional sale agreement was unaffordable for him and 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 D used a representative to make his complaint. For ease of reference, I’ll refer to Mr D throughout this final decision.

## **What happened**

In April 2016, Mr D sought finance in order to acquire a used car. The purchase price of the car was £10,200.00. Mr D paid a deposit of £500.00 and entered into a conditional sale agreement with Moneybarn for the remaining £9,700.00.

The agreement had a term of 60 months and had interest charges of £7,758.10. This meant that the balance to be repaid of £17,458.10, which does not include Mr D’s deposit, was due to be repaid in 59 monthly instalments of £295.90.

An investigator first considered Mr D’s complaint about the agreement being unaffordable and they didn’t think that the finance had been provided irresponsibly. While they felt proportionate checks hadn’t been carried out, they said they weren’t provided with enough evidence from Mr D in order to establish what proportionate checks would’ve shown.

The commission element of Mr D’s complaint was later considered by one of our investigators. They thought that Moneybarn hadn’t unfairly paid Mr D’s broker commission for introducing his business. So, given the answer he’d already been given on the affordability aspect of his complaint, they didn’t recommend that Mr D’s complaint should be upheld.

Mr D 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 D’s complaint. I’ll explain why in a little more detail.

In order to reach my decision, I’ve first considered whether the lending checks were proportionate given the circumstances of the lending. If they were, I will go on to consider whether Moneybarn made a fair lending decision. If they weren’t, I will consider what

proportionate checks would've told Moneybarn. I will then consider the commission Moneybarn paid to the broker that arranged Mr D's credit agreement.

*Did Moneybarn carry out proportionate checks to ensure Mr D could make the monthly repayments to this agreement?*

Before lending, Moneybarn needed to ensure it wasn't lending irresponsibly. In doing so, it had to carry out proportionate checks to establish the repayments were affordable for Mr D.

There are no specific checks that lenders must carry out, but they should have been proportionate to the circumstances based on what Moneybarn knew about Mr D. You might expect checks to be more thorough for a consumer, for example, with lower income or previous debt issues. But the expectation of more detailed checks being carried out may be lower where, for example, the amount borrowed is low or the borrower has a long history of maintaining credit well. But there's no hard and fast rules and what's proportionate will vary depending on the circumstances.

Moneybarn said it conducted a credit check and verified Mr D's income using bank statements. Its system notes suggest Mr D's existing debt totalled around £20,000, that he'd most recently defaulted on a credit commitment around 40 months prior to the application and his total outstanding defaulted account balances were around £18,900.

Moneybarn seems to have verified Mr D's income through bank statements and noted his income was £2,325. However, it also noted that this full amount was disposable income – suggesting he had no expenditure. Other than some allowance for his existing credit commitments, I haven't seen any evidence to suggest that Moneybarn considered any element of Mr D's expenditure, including the expenditure noted in the bank statements it had obtained. Although I don't rule out the possibility that some form of assessment of Mr D's other expenditure took place and the fields for this information are now blank because of the length of time it has been since the application.

Nonetheless, given Moneybarn had Mr D's bank statements and not only can't I see that it played a part in its assessment of Mr D's expenditure, Moneybarn hasn't even said it did, I can't conclude that it reasonably considered the information that it had obtained or that its checks went far enough.

*What would further scrutiny of the information gathered have led to?*

Our investigator asked Mr D for bank statements for all of his accounts in the months leading up to the application. Despite having been provided with significant opportunity to do so, Mr D still hasn't provided this information.

In those circumstances I am limited in what I can base my determination on. And having considered the information in the bank statements that Moneybarn obtained from Mr D, there isn't anything in it which suggests that when his expenditure is deducted from his income, he wouldn't be left with sufficient funds to make the repayments to this agreement.

So I've not seen anything to indicate that Moneybarn doing more by applying further scrutiny to the bank statements it obtained, would've led it to conclude that Mr D shouldn't have been lent to.

*Did Moneybarn unfairly respond to Mr D's financial situation?*

Mr D also complained that he was treated unfairly by Moneybarn when he experienced financial difficulties.

I can see one instance of Mr D missing a payment soon after the agreement began. He had a conversation with Moneybarn at the time and explained his direct debit had been cancelled by accident. The payment was made as soon as the issue had been brought to his attention and the direct debit was reinstated.

There are some notes a couple of years later where Mr D asks to settle the agreement in full in order to part exchange and replace the vehicle. I can see Mr D had some concerns about the size of the settlement figure. Mr D went on to voluntarily terminate the agreement some time later and even asked to continue with the agreement as his new car wouldn't be ready for a further six months.

While I appreciate what Mr D has said about his circumstances at the time, I haven't seen anything that might have put Moneybarn on notice that Mr D might have been struggling financially.

Mr D seems to have queried a few charges after the agreement had been settled, but again I can't see any evidence of Mr D explaining he was struggling financially or anything that would have put Moneybarn on notice of the need to respond with due consideration and forbearance.

#### *The commission Moneybarn paid to Mr D's broker*

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 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 D's broker a total commission of £485.26. The agreement that Moneybarn had with Mr D's broker was that £450.00 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 D did. And a further amount of up to £75.00 could also be paid for each agreement depending on the broker meeting a number of other requirements. In this case, a further £35.26 was paid so it would seem that the broker only partially met these other requirements.

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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

I know that Mr D 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 D's complaint is essentially that the undisclosed commission payment of £485.26 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 £485.26, was disclosed to Mr D, 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 D unfair to Mr D 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 £485.26 did not involve a DCA. So the broker did not have discretion to set Mr D's interest rate.
- I think it less likely than not that a court would consider the £485.26 commission payment to be high when compared to the amount Mr D borrowed, or the cost of the agreement Mr D entered into. I think it unlikely that this commission of £485.26 would have been a major consideration in Mr D's mind, had it been disclosed to him at the time of entering into the conditional sale agreement, when the commission payment represented around 5.0% of the amount he borrowed and around 6.3% 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 D'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.

I appreciate and have considered what Mr D has said about being vulnerable and finding it difficult to access credit elsewhere. He said the cost of the credit agreement was high and the commission was high in comparison to the disposable income Moneybarn calculated. He said that considering the entirety of the credit relationship, Moneybarn hasn't treated him fairly.

As outlined above, 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. While I agree that a lack of disclosure could result in unfairness, this won't always be the case on every occasion.

Mr D hasn't persuaded me that proportionate checks would have shown the monthly payments for this agreement were unaffordable for him. It's also worth noting that the APR was set out on Mr D's conditional sale agreement. So I'm satisfied Mr D knew the APR was high and I think it more likely than not he accepted this because, as has been acknowledged, he was finding it difficult to access credit elsewhere.

In those circumstances, the relevance of comparing the commission to Mr D's disposable income is unclear. This is especially the case because there was no DCA in place, meaning there was no clear and direct link between the commission paid to the broker and the interest that Mr D had agreed to pay as a result of choosing to enter into this agreement.

As this is the case, it's unclear to me how or why knowledge of the commission, given the amount, would have been a major consideration in Mr D's mind, or would have led to Mr D reaching a different conclusion on taking out this agreement.

Taking into account all of the above, Mr D's arguments have not persuaded me that it is more likely than not that a court would find that the lending relationship between Moneybarn and Mr D was unfair to Mr D under S140 CCA.

Overall and having carefully considered everything, I've not been persuaded that the commission Moneybarn paid to the broker that introduced Mr D's business – or its decision to grant him credit – means that it failed to act fairly and reasonably towards him. And I've not been persuaded to uphold his complaint. I appreciate that this will be disappointing for Mr D. 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 D's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 April 2026.

Scott Walker  
**Ombudsman**