

## **Complaint**

Mr W complains that Advantage Finance Limited (“Advantage Finance”) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable given his circumstances at the time and so he shouldn’t have been lent to.

He’s also said that Advantage Finance failed to disclose the commission that it paid to the credit broker that introduced his business and that this created an unfair relationship because of the impact this had on the interest he had to pay.

## **Background**

In September 2016, Advantage Finance provided Mr W with finance for a used car. The purchase price of the car was £9,300.00. Mr W paid a deposit of £300 and entered into a hire-purchase agreement with Advantage Finance for the remaining £9,000.00 he required to complete his purchase.

The loan had interest, fees and charges of charges of £8,600.20 (made up of interest of £8,100.20, an acceptance fee of £325 and an option to purchase fee of £175) and a 60-month term. This meant that the balance to be repaid of £11,646.20 (which doesn’t include Mr W’s deposit) was due to be repaid in 59 monthly instalments of £290.42 followed by a final monthly instalment of £465.42.

Advantage Finance didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend. Furthermore, it didn’t think that it had acted unfairly when paying commission to Mr W’s credit broker.

One of our investigator concluded that Advantage Finance hadn’t done anything wrong or treated Mr W unfairly both when deciding to lend to him, or paying commission to the credit broker. So the investigators didn’t recommend that Mr W’s complaint should be upheld. Mr W disagreed and asked for a final decision from an ombudsman.

Mr 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.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr W’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr W’s complaint. I’ll now explain why in a little more detail and start by setting out my thoughts on Mr W’s affordability complaint.

Advantage Finance needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Advantage Finance needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Advantage Finance says it agreed to this application after Mr W provided details of his monthly income which it says it verified with copies of bank statements. Advantage Finance says it also carried out credit searches on Mr W which showed that he did have three defaulted accounts but no county court judgments ("CCJ") - recorded against him. Furthermore, Mr W had a low amount of active credit too.

In Advantage Finance's view, when the amount due on Mr W's existing credit commitments plus an estimated amount for Mr W's living expenses, based on statistical data, were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr W says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr W and Advantage Finance have said.

The first thing for me to say is that I don't think that it was reasonable for Advantage Finance to use living costs based on statistical data for Mr W, given there wasn't anything to suggest that Mr W fell within the profile of the average borrower, which such statistics were based on. This is especially as it had information on Mr W's actual living costs.

That said, I don't think that Advantage Finance using the information on Mr W's actual living costs would have made a difference to its decision to lend in this instance. I say this because when Mr W's actual living expenses are added to his active credit commitments and deducted from his income, he, at the time at least, appears to have enough left over to repay this agreement.

So I think that Advantage Finance using Mr W's actual living costs is likely to have led it to conclude that when his regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I note that Mr W has said that his living expenses were significantly higher than that visible on the information he's now provided. However, while Mr W has referred to some transactions being for household bills, given the varying frequency and amounts of these transactions, I don't think that these are clearly transactions that I would have expected Advantage Finance to factor into its affordability assessment.

I also have to keep in mind that Mr W's most recent submissions are being made in support of a claim for compensation and any explanations Mr W would have provided at the time are more likely to have been with a view to persuading Advantage Finance to lend, rather than highlighting any unaffordability. So I think it unlikely that Mr W would have volunteered that he had the level of expenditure he's now referring to.

In reaching my conclusions, I've also considered whether the lending relationship between Advantage Finance and Mr W might have been unfair to Mr W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Advantage Finance irresponsibly lent to Mr W or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall and having carefully considered everything, while I don't think that Advantage Finance's enquiries into Mr W's circumstances before entering into this hire-purchase agreement with him did go far enough, I'm satisfied that further enquiries won't have stopped Advantage Finance from providing these funds, or entering into this agreement with Mr W. So I'm satisfied that Advantage Finance didn't act unfairly towards Mr W when it agreed to provide the funds.

I'll now turn to Mr W's complaint regarding the commission Advantage Finance paid to the credit broker that introduced him.

#### *Mr W's concerns regarding commission*

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 (Section 140 of The Consumer Credit Act 1974 ("S140 CCA")) in circumstances where neither the credit 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 had the discretion to set a higher interest rate to receive more commission.
- the credit broker would receive a high commission relative to the cost of credit or amount borrowed.
- the credit 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, Advantage Finance has provided evidence to show that it paid Mr W's credit broker a fixed commission payment of £375 for introducing his business. The agreement was that Advantage Finance would pay Mr W's credit broker £375 for each customer it introduced that went on to take out a hire-purchase agreement.

I know that Mr W has said that he wasn't told about this commission and that he referred to a number of instances of Advantage Finance breaching its obligations. In effect, Mr W's complaint is essentially that the undisclosed commission payment of £375 that Advantage Finance paid to his credit broker, resulted in the lending relationship between Advantage Finance and him being unfair to him under S140 CCA.

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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

While I've not been provided with sufficient evidence to be persuaded that the existence of commission, which in this case was £375, was disclosed to Mr W, I nonetheless consider that it is unlikely – and certainly less likely than not – that a court would find that this commission payment rendered the lending relationship between Advantage Finance and Mr W unfair to Mr W under S140 CCA. And I am not persuaded that Advantage Finance failed to act fairly and reasonably in all the circumstances of this matter.

I consider this to be the case because:

- the commission of £375 did not involve a DCA. So the credit broker did not have discretion to set Mr W's interest rate.
- I think it less likely than not that a court would consider the £375 commission payment to be high when compared to the amount Mr W borrowed, or the cost of the agreement Mr W entered into. I think it unlikely that this commission of £375 would have been a major consideration in Mr W's mind, had it been disclosed to him at the time of entering into the hire-purchase agreement, when the commission payment represented less than 6.5% of the amount he borrowed and less than 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 W's credit broker and Advantage Finance. In reaching this view, I have reviewed a range of contracts and agreements that Advantage Finance had with various brokers over several years. I have seen nothing in any of these agreements indicating that Advantage Finance had contractual ties with any of the credit brokers that it worked with. I consider this to be consistent with Advantage Finance'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 it has made about it not operating commercial ties. In this context, I've not seen anything to support an argument that a commercial tie existed between Advantage Finance and the credit broker.

I've noted what Mr W has said about not being able to easily access credit elsewhere and the cost of the credit on this agreement being high. However, Mr W has said he didn't have many other options, the cost of the credit was set out and for the reasons I've already explained, in some detail, I'm satisfied that the agreement was affordable for him. In these circumstances, it's unclear to me how or why knowing about the commission would have seen it become a major consideration in Mr W's mind, or led to him reaching a different conclusion on this matter.

This is particularly bearing in mind what I've already said about a DCA not being involved in this case and therefore there was no clear and direct link between the commission and the interest that Mr W agreed to pay as a result of choosing to enter into this affordable agreement.

Overall, I've not been persuaded that the commission Advantage Finance paid to the credit broker that introduced Mr W's business means that it failed to act fairly and reasonably towards him. So I've not been persuaded to uphold Mr W's commission complaint either.

Having carefully considered everything, I'm satisfied that Advantage Finance didn't act unfairly towards Mr W when it entered into this hire-purchase agreement with him. And I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr W. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 April 2026.

Jeshen Narayanan  
**Ombudsman**