DRN-6279295

Complaint

Mr E 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 that Moneybarn 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.

Mr E has used a representative to make his complaint. For ease of reference, I'll refer to Mr E throughout this final decision.

Background

Mr E has also complained that Moneybarn irresponsibly entered into the conditional sale agreement with him as proportionate checks would have shown that the agreement was unaffordable for him. We've already provided Mr E with an answer on his affordability concerns and therefore this decision is only looking at the commission aspect of his complaint.

In September 2018, Mr E sought finance in order to acquire a used car. The purchase price of the car was £9,999.00. Mr E didn't pay a deposit and entered into a conditional sale agreement with Moneybarn for the entire amount.

The agreement had a term of 60 months and had interest charges of £8,835.57. This meant that the total amount to be repaid of £18,834.57 was due to be repaid in 59 monthly instalments of £319.23.

Mr E's commission complaint was considered by one of our investigators. She thought that Moneybarn hadn't unfairly paid Mr E's credit broker commission for introducing his business. So she didn't recommend that Mr E's commission complaint should be upheld.

Mr E 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 Mr E'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 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 credit 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 E's credit broker a fixed commission payment of £600 for introducing his business. The agreement was that Moneybarn would pay Mr E's credit broker such a commission for each customer it introduced that went on to take out a conditional sale agreement.

I know that Mr E has said that he wasn't told about this commission and that he referred to a number of instances of Moneybarn breaching its obligations. In effect, Mr E's complaint is essentially that the undisclosed commission payment of £600 that Moneybarn paid to his credit 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 that the existence of commission, which in this case was £600, was disclosed to Mr E, 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 Moneybarn and Mr E unfair to Mr E 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 £600 did not involve a DCA. So the credit broker did not have discretion to set Mr E's interest rate.

- I think it less likely than not that a court would consider the £600 commission payment to be high when compared to the amount Mr E borrowed, or the cost of the agreement Mr E entered into. I think it unlikely that this commission of £600 would have been a major consideration in Mr E's mind, had it been disclosed to him at the time of entering into the conditional sale agreement, when the commission payment represented around 6% of the amount he borrowed and less than 7% of the total cost of the credit.

---

[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

- I think it less likely than not that a court would consider that a commercial tie existed between Mr E's credit 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 credit 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 credit broker.

I've noted what Mr E has said about not being able to easily access credit elsewhere and the cost of the credit on this agreement being high. However, Mr E has said he didn't have many other options, the cost of the credit was set out and I cannot see that the agreement was unaffordable for him either.

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 E's mind, or led to him reaching a different conclusion on entering into this agreement in the way that he now seeks to argue. 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 E agreed to pay as a result of choosing to enter into this agreement.

Overall and having carefully considered everything, I've not been persuaded that the commission Moneybarn paid to the credit broker that introduced Mr E's business means that it failed to act fairly and reasonably towards him. So I've not been persuaded to uphold Mr E's commission complaint. I appreciate that this will be disappointing for Mr E. 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 E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 May 2026.

Jeshen Narayanan
Ombudsman