DRN-6282106

Financial Ombudsman Service

Complaint

Mr and Mrs L complain that Moneybarn No.1 Limited ("Moneybarn") failed to act fairly and reasonably towards them when entering into a conditional sale agreement with them.

They've said that Moneybarn failed to disclose the commission it paid to the broker that introduced them to Moneybarn and that this created an unfair relationship because of the impact this had on the interest they had to pay.

Mr and Mrs L have used a representative to make his complaint. For ease of reference, I'll refer to Mr and Mrs L throughout this final decision.

Background

Mr and Mrs L also initially complained that the conditional sale agreement was unaffordable for them. However, an investigator separately notified them 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.

Mr and Mrs L didn't challenge the investigator's conclusions on affordability and asked for the commission aspect of their complaint to be reviewed. So this decision is only looking at Moneybarn's actions in relation to the commission it paid to the credit broker that introduced Mr and Mrs L.

In February 2017, Mr and Mrs L sought finance in order to acquire a used car. The purchase price of the car was £10,852.14. Mr and Mrs L paid a deposit of £1,502.14 and entered into a conditional sale agreement with Moneybarn for the remaining £9,350.00 that they required.

The agreement had a term of 60 months and had interest charges of £8,413.72. This meant that the balance to be repaid of £17,763.72, which does not include Mr and Mrs L's deposit, was due to be repaid in 59 monthly instalments of £301.08.

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

Mr and Mrs L 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 and Mrs L'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 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 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 it 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 and Mrs L's broker a total commission of £500. The agreement that Moneybarn had with the broker that Mr and Mrs L used was that £500 would be paid for each customer introduced that went on to take out a conditional sale agreement.

I know that Mr and Mrs L have 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, Mr and Mrs L's complaint is essentially that the undisclosed commission payment of £500 that Moneybarn paid to their broker, resulted in the lending relationship between Moneybarn and them being unfair to them under S140 CCA.

While I've not been provided with sufficient evidence to be persuaded the existence of commission, which in this case was £500, was disclosed to Mr and Mrs L, 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 and Mrs L unfair to Mr and Mrs L 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 £500 did not involve a DCA. So the broker did not have discretion to set Mr and Mrs L's interest rate.

- I think it less likely than not that a court would consider the £500 commission payment to be high when compared to the amount Mr and Mrs L borrowed, or the cost of the agreement Mr and Mrs L entered into. I think it unlikely that this commission of £500 would have been a major consideration in Mr and Mrs L's minds, had it been disclosed to them at the time of entering into the conditional sale agreement, when the commission payment represented less than 5.5% of the amount they borrowed and less than 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 Mr and Mrs L's broker and Moneybarn. In reaching this view, I have

[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

> 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've noted what Mr and Mrs L have said about not being able to easily access credit elsewhere and the cost of the credit on this agreement being high. However, Mr and Mrs L have said they didn't have many other options, the cost of the credit was set out and they've not challenged our finding that the agreement wasn't unaffordable for them.

In these circumstances, it's unclear to me how or why knowing about the commission would have seen it become a major consideration in their minds, or led to them reaching a different conclusion on entering into this agreement in the way that that they now seek 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 and Mrs L 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 broker that introduced Mr and Mrs L's business means that it failed to act fairly and reasonably towards them. So I've not been persuaded to uphold Mr and Mrs L's commission complaint. I appreciate that this will be disappointing for Mr and Mrs L. But I hope they'll understand the reasons for my decision and at least consider that their concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr and Mrs L's complaint.

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

Jeshen Narayanan
Ombudsman