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UK Motor Finance Cases: Supreme Court Appeal

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Between 1 and 3 April 2025, the UK Supreme Court heard the appeal by Close Brothers and FirstRand Bank against the Court of Appeal's decision from October 2024. A panel of five justices heard submissions from the Appellants (Close Brothers and FirstRand Bank) and the Respondents (Hopcraft, Johnson and Wrench) – as well as two interveners (the Financial Conduct Authority (FCA) and the National Franchised Dealers Association (NFDA)). Our *Alert* on the Court of Appeal's judgment is [here](#).

The Supreme Court's ultimate judgment is expected to have major implications not only for consumers and companies in the motor finance market (and those invested in their capital structures), but potentially more widely, on consumer businesses with similar credit broker arrangements.

The Supreme Court heard submissions on several key issues:

1. When acting as credit brokers, do car dealers owe consumers a “disinterested” and/or fiduciary duty to provide information, advice or recommendation?
2. If so, were the payments of commissions by the lenders to the car dealers secret such that the lenders become primary wrongdoers?
3. Can the lenders be liable in the tort of bribery? If so, what is the correct approach to remedies?
4. If there was sufficient disclosure of the commission to negate secrecy, was there insufficient disclosure to procure the consumers' fully informed consent to the payment such that the lenders are liable as accessories for procuring the credit brokers' breach of duty?
5. Can insufficient disclosure also suffice to make the relationship between lender and consumer “unfair” for the purposes of the Consumer Credit Act 1974?

In their submission, broadly, the Appellants sought to persuade the court that a fiduciary duty is not owed by motor dealers to their customers and that, in recognising the common law tort of bribery, the law had taken a wrong turn. They further argued that, even if the common law tort of bribery should be retained, in relation to that tort there is or should be no automatic entitlement to any money judgment.

The Respondents, on the other hand, as expected, argued that the tort of bribery should not be abolished and restated the duty owed by an agent (in their argument, the dealer) under this tort. They submitted that the motor dealers, in acting as brokers, did owe a fiduciary (or 'disinterested') duty and raised the issue of FirstRand's liability as an accessory. Brief submissions were also made in relation to the consumers' knowledge of and consent to the commissions, and the potential remedies of rescission and return of commission.

Intervening in the case, the NFDA took a similar stance to the Appellants – that motor dealers should not be considered fiduciaries – and disagreed that, in accepting commissions, the dealers had taken bribes.

The FCA, also intervening, took more of a middle ground. They considered that deeming all motor finance brokers to be fiduciaries would be too sweeping an approach, but at the same time, abolishing the tort of bribery would be a surprising outcome. Warning of a potential *lacuna* in the law should the tort be abolished – regarding agents who do not owe fiduciary duties – the FCA submitted that the disinterested duty is not an equivalent of a fiduciary duty, but it is the type of duty an agent must owe for the tort of bribery to be engaged.

Commenting on the timing of a judgment, the FCA stated that it would greatly assist with their work, in consulting on a potential consumer redress scheme, for judgment to be expedited. Lord Reed indicated that it may be realistic to expect a judgment to be handed down in or around July.

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