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Motor Finance — UK Supreme Court Allows Lenders' Appeal in Large Part; No Fiduciary or "Disinterested" Duty, but Possible Liability for "Unfair" Credit Terms

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On 1 August 2025, the UK Supreme Court delivered a landmark, much-anticipated judgment in three conjoined appeals in *Hopcraft v Close Brothers Limited*; *Johnson v FirstRand Bank Limited* and *Wrench v FirstRand Bank Limited* [2025] UKSC 33 concerning the payment of commission to car dealers by motor finance lenders, holding that the customers' claims against motor finance lenders cannot succeed in equity or in tort.

At a Glance

Overturning the Court of Appeal's judgment, the Supreme Court held that the nature of motor finance transactions did not give rise to a fiduciary duty or a "disinterested duty" (i.e., a duty to act in a manner independent from any personal interest) sufficient to create liability for bribery under the common law tort or claims of breach of fiduciary duty pursuant to the principles of equity.

Each party to each motor finance transaction (customer, dealer and lender) was engaged at arm's length from the other participants in the pursuit of separate objectives. Neither the parties themselves nor any onlooker could reasonably think that any participant was doing anything other than considering their own commercial interest. Turning to the statutory and regulatory context, the Supreme Court held that it is clear the regulatory regime is not premised on car dealers (when acting as credit brokers), having the obligations of a fiduciary.

However, the Supreme Court allowed Mr. Johnson's claim as to an "unfair" credit term under Section 140A of the Consumer Credit Act 1974 (CCA). It held that the agreement between Mr. Johnson and FirstRand was unfair based on the size of the commission (55% of the total charge for credit) and because the commercial tie between FirstRand and the dealer was not disclosed in the documentation provided to Mr. Johnson.

This is a clear, robust and unequivocal decision by the Supreme Court that restores certainty as to the rights of customers and the obligations of both car dealers and motor finance lenders. The scope of redress payments, and consequent impact on the motor finance sector, is much narrower than it would have been had the Supreme Court upheld the Court of Appeal's judgment.

However, there could still be significant liability arising from commission arrangements deemed to be unfair. The Financial Conduct Authority (FCA) announced on 3 August 2025 that it will consult on an industry-wide redress scheme to compensate motor finance customers who were treated unfairly, with an estimated industry-wide liability of between £9 billion and £18 billion. The scheme may not be restricted to discretionary commission arrangements; the FCA will consult on which nondiscretionary commission arrangements should be included.

Background

In each case, the claimant customers were assisted by the car dealership to obtain financing to fund the hire purchase of a car. In turn, the car dealer received commission — at a rate of interest that they had some discretion to set — from the defendant lenders.

In one case, *Hopcraft*, the commission was not disclosed to the customer.

In the other two cases, the terms and conditions disclosed the possibility that commission may be paid but did not indicate the amount. There was no evidence to prove that the customers were made aware of the commission, let alone consented to it.

The claimants, unsuccessful at first instance, appealed to the Court of Appeal. The court upheld the appeal in all three cases in October 2024, finding:

- That in providing a credit brokerage service to each appellant, the car dealers incurred both a disinterested duty *and* a fiduciary duty to their customers because,

even though they were selling the cars, they undertook to search for and provide to their customers a finance package from among their panel of lenders that was both competitive and suitable for their customers' needs.
- That in neither the *Hopcraft* or *Wrench* cases was there any (in the *Hopcraft* case) or any sufficient (in the *Wrench* case) disclosure of the commissions sufficient to avoid them being secret for the purposes of the tort of bribery.
- Based upon the concession made by Mr. Johnson in the court below, there was sufficient partial disclosure of the commission in Mr. Johnson's case to avoid the commission being a bribe, but insufficient disclosure to obtain his informed consent to the commission, which was therefore an unauthorised profit made by the car dealer in breach of its fiduciary duty, in which FirstRand dishonestly assisted.
- Mr. Johnson's relationship with FirstRand was so clearly unfair for the purposes of the CCA that, in the interests of proportionality, that aspect of his claim should be upheld rather than remitted to the district judge, as had been ordered by Judge Jarman.

The decision impacted lenders' share prices, sparked concerns about the availability of motor financing options in the market and opened the door to swathes of future mis-selling claims.

The lenders were given permission to appeal by the Supreme Court. Given the broader market implications of these appeals, the Supreme Court also permitted the FCA and the National Franchised Dealers Association to intervene; however, it rejected His Majesty's Treasury's request to intervene on the basis that their intervention was based on the national economic consequences of the Court of Appeal's decision rather than on the legal issues in the case.

Supreme Court's Decision

1. Claims in Equity and Tort

When examining whether a typical tripartite motor finance transaction (involving a car dealer, motor finance lender and customer) gives rise to a fiduciary duty or a disinterested duty, the Supreme Court considered the features common to the transactions that were the subject of the appeal and were representative of many typical motor finance transactions. All such features gravitated towards a finding that no fiduciary or disinterested duty is owed by car dealers to their customers. The key features identified by the Supreme Court were:

- **Arm's Length Commercial Interests**: The Supreme Court noted that each party to a motor finance transaction (car dealer, motor finance lender and customer) acts independently, pursuing its own commercial objectives. The car dealer aims to sell a car at a profit; the motor finance lender seeks to extend finance to a reasonably creditworthy customer on terms sufficient to contribute to a profitable lending business; and the customer seeks to acquire an affordable car. The Supreme Court recognised that such interests can and often do conflict and all parties are expected to act in their own interests throughout negotiations — highlighting that neither the parties themselves nor any onlooker could reasonably think that each party was doing anything other than considering its own interests.
- **Credit Brokerage as Ancillary Service**: The Supreme Court looked at the car dealer's role in arranging finance, finding that it is not a distinct, standalone service that the car dealer performs for the customer. Rather, it is an ancillary part of the car sale — akin to offering delivery service or an extended warranty. There is no separate contract or reward for arranging finance.
- **No Express or Implied Undertaking to Put Commercial Interests Aside**: At no time in the negotiation of any of the transactions did the car dealer expressly or implicitly promise to put aside their own interests when arranging finance. The Supreme Court noted that even where the car dealers stated (either in writing or orally) that they would seek the most suitable finance package (such as in *Johnson* or *Wrench*), this did not amount to an undertaking or assurance by the dealer to put its commercial interest aside in seeking a finance package for the customer. Disclosures that a commission "may" be paid further indicated the dealer was not excluding its own interests.
- **No Agency Relationship Between the Customer and Car Dealer**: The Supreme Court noted that there was no agency undertaken by the car dealer in the negotiation of the finance package with the motor finance lender, in the sense in which the terms agency is used at law. Car dealers did not have the authority to bind their customers to finance agreements. These agreements were entered into personally by the customers. While the car dealers did obtain confidential financial information from the customer in the course of arranging the finance, this intermediary activity did not require or point towards the car dealer assuming the mantle of an agent.
- **Customer Dependency or Vulnerability**: The Supreme Court acknowledged that when it comes to the finance package, there may be *an element* of dependency upon or vulnerability to the car dealer affecting the customer, as there is commonly a large difference between their respective knowledge of the motor finance market. However, the Supreme Court recognised that it is open to customers to arrange their own finance package or compare the package offered by the dealers if they wished

to do. Furthermore, dependency or vulnerability are not indicia of a fiduciary relationship, in the absence of an undertaking of loyalty.

- **Trust and Confidence**: Looking at the way in which a car dealer proffers the service of finding a finance package for the customer, the Supreme Court did not doubt the Court of Appeal's conclusion that this may engender an element of trust and confidence in the car dealer. However, there was no evidence that showed this was anything that goes beyond that which frequently arises in ordinary commercial relationships, such as that of a shop assistant.

Taking these common features together, the Supreme Court concluded that the typical features of the transactions are incompatible with the recognition of any obligation of undivided or selfless loyalty by the car dealer to the customer when sourcing and recommending a suitable credit package. It is inherent in the arm's length status of the car dealer during the negotiation of such transactions that the car dealer retains its own interest as seller — i.e., it continues throughout to pursue its own commercial interests — free of any undertaking, express or implied, to act selflessly in the finding and negotiation of a finance package.

Given that no fiduciary duty or disinterested duty on the car dealer arose, it also followed that the tort of bribery was not engaged (since the Supreme Court held that the tort of bribery is only engaged when there is receipt of a benefit by a person who is subject to a fiduciary duty to which the beneficiary of that duty has not given fully informed consent).

2. The Unfair Relationship Claim: Mr. Johnson's Claim

While rejecting Mr. Johnson's claim in both equity and tort, the Supreme Court upheld the claim that his relationship with FirstRand Bank was unfair under Section 140A of the CCA.[1]

The Supreme Court recognised that the test of the unfairness is stated in general terms, permitting courts to take account of a very broad range of factors. Thus, the application of the test will, inevitably, be a highly fact-sensitive exercise. In addition to the CCA, pursuant to rules made by the FCA under Section 137A of the Financial Services and Markets Act 2000, the Supreme Court also took into account the Consumer Credit Sourcebook of the FCA (referred to as CONC).

Taking into account the applicable test, rules and facts, the Supreme Court found that Mr. Johnson's relationship with FirstRand was unfair:

- **Size and Nondisclosure of Commission**: The commission paid to the car dealer (£1,650.95) was very high relative to the total charge for credit (representing 55% of the total charge for credit). The fact that the undisclosed commission was so high was considered by the Supreme Court to be a powerful indication that the relationship between the car dealer and Mr. Johnson was unfair. The failure to disclose the existence of the commission by the car dealer to Mr. Johnson was a breach of CONC 4.5.3R.
- **Concealment of Commercial Tie**: The existence of a commercial tie between the car dealer and FirstRand and its nondisclosure to Mr. Johnson was also a highly material consideration to the issue of the unfairness of the relationship between Mr. Johnson and FirstRand under Section 140A of the CCA. The car dealer was contractually tied to FirstRand and was obliged to offer all business to it first. This was not disclosed to Mr. Johnson. The documentation misleadingly suggested that the dealer was offering impartial access to a panel of lenders and selecting the best product for the customer, when, in reality, the dealer was acting in its own interests and in accordance with its tie to FirstRand.
- **Failure to Read Documents**: As part of its determination as to the existence of an unfair relationship between creditor and debtor under Section 140A CCA, the court considered Mr. Johnson's failure to read any of the documents provided by the car dealer either before concluding the agreements or during the 14-day withdrawal period that followed. The Supreme Court noted that, had he pursued the matter, Mr. Johnson was likely to have discovered the amount of the commission. However, on the flip side, the Supreme Court noted that Mr. Johnson was commercially unsophisticated and questioned the extent to which a lender could reasonably expect a customer to have read and understood the detail of such documents. In addition, in this case, no prominence was given to the relevant statements in these documents, which, given the size of the commission, is required to be displayed more prominently than it was. Furthermore, regarding the commercial tie between the car dealer and FirstRand, there was nothing in the documentation that would have alerted Mr. Johnson to the true position. To the contrary, the documents created a false impression that the dealer had access to a selected panel of 22 lenders and had selected the deal most suitable for Mr. Johnson.

Accordingly, the Supreme Court ordered that the full amount of the commission (£1,650.95) should be paid to Mr. Johnson, with interest, at an appropriate commercial rate from the date of the agreement.

Implications of the Decision; FCA Redress Scheme

The Supreme Court's finding that typical motor finance transactions do not give rise to a fiduciary duty, nor a disinterested duty, will be welcomed not only by motor finance lenders and car dealers, but the consumer finance industry in general.

The Supreme Court did leave the door open for claims by customers under Section 140A of the CCA, where the circumstances of the motor finance agreements are unfair. The Supreme Court agreed with the FCA's submission that the following factors will normally be relevant to unfairness: the size of the commission relative to the charge for credit; the nature of the commission (because, for example, a discretionary commission may create incentives to charge a higher interest rate); the characteristics of the consumer; the extent and manner of the disclosure; and compliance with the regulatory rules.

The FCA confirmed on 3 August 2025 that it will publish a six-week consultation in October 2025 on an industry-wide redress scheme to compensate customers who were treated unfairly. In particular, the consultation will cover how regulated firms should assess whether a relationship between the motor finance lender and customer was unfair for the purposes of the redress scheme and if so, what compensation should be paid. The proposed scheme will cover agreements dating back to 2007 and cover discretionary commission arrangements. The consultation will also address which nondiscretionary commission arrangements should be included within its scope.

As part of the consultation, the FCA will consider how a range of factors present in such transactions should be assessed together when determining whether the relationship was unfair, including if and how factors such as the nondisclosure of the nature and size of the commission, the existence and nondisclosure of tied commercial relationships, and customer sophistication should be factored in . Insofar as redress is concerned, the FCA has indicated that it will be informed by the degree of harm suffered by the consumer, as well as the need to ensure consumers can continue to access affordable motor finance loans. Accordingly, the consultation will consider both the remedy decided upon in *Johnson* (return of the commission payment) along with other alternative approaches, each of which is expected to result in lower redress being payable. Finally, the FCA will consult on whether there should be a *de minimis* threshold to be eligible for a compensation payment at all.

Other details of the scheme remain to be decided upon, including, for example, whether the FCA will propose an opt-in or opt-out model. The total cost to industry is therefore uncertain, but the FCA currently estimates a cost of between £9 billion and £18 billion, with estimates in the midpoint of this range more plausible. Most individual

claimants are expected to receive less than £950 in compensation per agreement. The timing of the consultation leads the FCA to hope that the scheme will launch and customer compensation payments will start to be received during 2026.

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1. The relevant provisions of Section 140A of the CCA provide:

> "(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement…is unfair to the debtor because of one or more of the following —
>
> (a) any of the terms of the agreement or of any related agreement;
>
> (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
>
> (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).
>
> (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor)."

Per Section 140B of the CCA, once a debtor alleges that the relationship with the creditor is unfair, the burden of proof is on the creditor to prove the contrary.↩

Authors

Kon M. Asimacopoulos

Partner / London

Richard Boynton

Partner / London

Hannah Crawford

Partner / London

Julia Dixon

Partner / London

Stuart Doxford

Partner / London

Harkiran Hothi

Partner / London

Kate Stephenson

Partner / London

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