

MOTOR FINANCE COMMISSIONS – SUPREME COURT DECISION

On 1 August 2025, the UK's Supreme Court handed down its keenly awaited judgment following its hearing, in April 2025, of the appeal from the far-reaching Court of Appeal decision in three linked cases, *Johnson and Wrench v FirstRand Bank, and Hopcraft v Close Brothers [2024] EWCA Civ 1282*. In this briefing, we give our initial analysis of the Supreme Court's findings of the issues, and outline next steps.

Clifford Chance will host an Insights Call on the decision on Tuesday 5 August at 12pm (BST).

WHAT DID THE SUPREME COURT CONSIDER?

At the Supreme Court appeal hearing, which took place on 1-3 April 2025, the issues covered were:

- the nature of the duties owed by car dealers to their customers for arranging motor finance (credit broking);
- the liability of lenders who pay commissions to brokers;
- the remedies that might flow from that liability;
- the level of disclosure required in order to obtain customers' fully informed consent to commissions paid by lenders to car dealers; and
- how that disclosure affects an assessment of the unfairness of the relationship between lender and consumer under the Consumer Credit Act 1974 (CCA).

The Supreme Court also heard arguments from Counsel for the Financial Conduct Authority (FCA) and the National Franchised Dealers Association (NFDA).

In the sections below, for each of the five key issues before the Court, we summarise at a very high level the arguments put forward by Counsel for the Appellant Lenders (Close Brothers and FirstRand Bank (T/A Moto Novo)) and the Respondent Consumers (Marcus Johnson, Andrew Wrench and Amy and Carl Hopcraft), along with our immediate analysis of how the position has been resolved by the Supreme Court.

Key issues

- Car dealers arranging finance for customers do not owe them a fiduciary duty.
- Because the dealers do not owe a fiduciary duty, lenders are not liable for bribery or as an accessory for any breach of fiduciary duty.
- The common law tort of bribery has not been abolished, but will only be engaged if the bribe is paid to a fiduciary (not here).
- A car hire-purchase agreement may be unfair under s 140A of the CCA. Key factors: the amount of commission paid to the intermediary by comparison to the cost of credit paid by the customer; and the adequacy of disclosure of the commission.
- The FCA has immediately reacted to the judgment by announcing that it will provide clarity on whether it will consult on a redress scheme by next Monday, 4 August 2025.
- Court of Appeal judgment on judicial review of a FOS decision, which was delayed pending the Supreme Court's decision, is now expected to be handed down and may have a bearing on the FCA's proposed course of action following its investigation into motor finance commissions.
- The time-frame for the pause on firms' handling of complaints during the FCA's ongoing investigation is until 4 December 2025.

Issue 1:

What duties are owed by car dealers to their customers in the context of arranging financing?

Appellant Lenders

Respondent Consumers

Dealer's duty

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| <ul style="list-style-type: none"> • No fiduciary or disinterested duty is owed by car dealers to car purchasers. • A car dealer does not undertake to act with 'single minded loyalty' – it has its own commercial interest in the transaction. • The car sale and financing arrangements form a single transaction. • A car dealer is paid by the lender for the credit-broking and the customer does not pay for the dealer's advice. • The car dealer-consumer relationship is not a recognised fiduciary relationship in law, and there is no separate concept of "disinterested" duty. • The Court should not impose new common law duties, given there are extensive statutory and regulatory consumer protections. | <ul style="list-style-type: none"> • A dealer is in a position of trust vis-à-vis a consumer and its significant role in the consumer's decision-making, and ability to influence the finance deal a customer enters, justifies the imposition of a duty of loyalty or at least impartiality in its provision of information. • An undertaking is not required – the car dealer's duty arises from the fact that it exercised discretion and choice on behalf of the customer in the transaction. • The car sale and financing should be viewed as two separate transactions, with a fiduciary duty (or disinterested duty) arising at the financing stage. |
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What did the Supreme Court decide?

- The Court indicated that the Court of Appeal had failed to understand that the dealer was acting in its own commercial interests when dealing with its customer.
- The Court found that because the dealer was clearly acting in its own interest, it did not owe a fiduciary duty to the customer.
- The Court stated that a fiduciary duty is not created by the vulnerability of the customer or its reliance on the dealer. It is instead generated by an undertaking by the dealer to act as a fiduciary for the customer or the dealer otherwise assuming such a role.
- The Court confirmed that there is not a separate legal concept of a disinterested duty.

- This clarity will be welcomed by dealers and lenders, as it means that there is more certainty as to when intermediaries are subject to fiduciary duties or not. The newly clarified statement of law means that the fiduciary duty is not created accidentally by the circumstances of the arrangement, but is created when the parties agree that the dealer will act as a fiduciary or otherwise assume such a role.

Issue 2:

Are lenders liable to customers for dishonest assistance?

Appellant Lenders	Respondent Consumers
<ul style="list-style-type: none"> • Accessory liability (for aiding a breach of fiduciary duty) requires the accessory to act dishonestly. • The lenders followed standard industry practice and did not exhibit dishonesty. • The Court was urged to adopt a narrow test for accessory liability, imposing liability only where a lender knowingly participated in the dealer's breach. • The standard of dishonesty should be the one described in the <i>Twinsectra</i> case, such that lenders should not be considered dishonest for paying a commission which was disclosed in the financing paperwork. 	<ul style="list-style-type: none"> • Lack of informed consent of the customer renders lenders paying commission liable as accessory to the dealer's breach of duty. • Disclosing that a commission 'may' be paid is not the same as obtaining informed consent. • Even where commission is not fully secret, the dealer would still breach its duty by not securing informed approval from the customer. • There should be a broad test of dishonesty.

What did the Supreme Court decide?

- Because dealers do not owe their customers a fiduciary duty, lenders cannot be liable for dishonestly assisting a breach of that fiduciary duty.
- For the same reason, as further explained below, lenders cannot be liable in the tort of bribery.

Issue 3:

Does the law recognise a distinct tort of bribery?

Appellant Lenders	Respondent Consumers
<ul style="list-style-type: none"> • There should not be a tort of bribery and that historical cases were wrongly decided. 	<ul style="list-style-type: none"> • The tort of bribery is an important protection against corrupt payments, and to abolish it would

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| <ul style="list-style-type: none"> • Treating bribery as an equitable matter is sufficient. • Should the tort be preserved in common law, a narrow approach to remedies should be taken, avoiding any expansion beyond what equity would provide. | <ul style="list-style-type: none"> • result in a gap in the law and limit consumer protection. • Under the tort of bribery, the bribe can be recovered from the payer and the credit agreement can be rescinded – while these remedies overlap with equity, they underscore the briber's primary liability. |
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What did the Supreme Court decide?

- The tort of bribery should not be abolished. It is well-established and provides for strict remedies that deter destructive behaviour.
- However, liability for bribery depends on the recipient of the bribe being a fiduciary. As explained above, the Court has decided that car dealers do not owe their customers fiduciary duties, so lenders cannot be liable for bribery.

Issue 4:

What level of disclosure will prevent liability for breach of fiduciary duty or bribery from arising?

Appellant Lenders

- Commissions were disclosed in principle (albeit in small print or standard terms) – a commission is only secret if the customer is completely unaware of it.
- The 'evil' in a bribe is lack of transparency, not the payment itself.
- No unlawful secret commission occurred – either the customer knew of the commission or the law should treat generic disclosure as sufficient notice.

Respondent Consumers

- Customers had no informed knowledge, meaning the commissions were secret in substance (and in the case of Hopcraft there was no disclosure at all).
- Fine print disclosure that a commission "may" be paid is insufficient to inform the average consumer.
- Lenders who choose not to ensure clear disclosure of commission assume the risk of liability for a secret commission.

What did the Supreme Court decide?

- Because the Court decided that dealers and lenders could not be liable for breach of fiduciary duty or bribery, as explained above, the Court's decision on what level of disclosure is required to avoid that kind of liability is of less interest in the context of motor financing. However, the extent and manner of the disclosure provided is still an important factor in the assessment of whether a lending relationship is unfair under the CCA, as explained below.

- For completeness, we note that the judgment clarifies that a fiduciary's liability can be avoided if full disclosure (of all material facts) is made and the customer gives their fully informed consent to the commission. What amounts to full disclosure depends on the circumstances.
- The same requirement of disclosure applies for bribery and breach of fiduciary duty. In this context, there is no relevant distinction between "secret" and "half secret" commissions.

Issue 5:

In Mr Johnson's case, was the relationship between customer and lender "unfair" for the purposes of the CCA?

Appellant Lenders	Respondent Consumers
<ul style="list-style-type: none"> • Paying commission does not of itself make a loan unfair. • <i>Plevin</i> (which related to the sale of Payment Protection Insurance or PPI) should be distinguished, because in motor finance, the commission is paid by the lender to the dealer, with the customer obtaining the loan at the agreed interest rate. • The relationship should not be categorised unfair where credit terms were within normal parameters and the customer was not misled about the terms of the loan. • The Court should find that insufficient commission disclosure does not automatically result in an unfair relationship. 	<ul style="list-style-type: none"> • A lender who allows a commission to be taken from a transaction without the customer's fully informed consent creates an unfair relationship under s. 140A CCA. • <i>Plevin</i> should apply to motor finance commission. • The Court should find that if a lender does not ensure that a borrower is properly informed about commission that could affect the loan's cost, the relationship is unfair.

What did the Supreme Court decide?

- The Court provided helpful guidance on the factors that trigger an unfair relationship under s 140A of the CCA in the context of motor finance.
- Any decision under this section of the CCA will always be highly fact-sensitive and involve the consideration of a broad range of factors, including: the size of the commission relative to the charge for credit; the nature of the commission (discretionary or otherwise); the characteristics of the consumer; the extent and manner of the disclosure; and compliance with regulatory rules.
- The fact that there was no or only partial disclosure of a commission will not necessarily make the lender-customer relationship unfair. It is one factor to be taken into account.

- In Mr Johnson's case, the Court found that his relationship with FirstRand was unfair and awarded the amount of the commission paid, plus interest. In its decision on the particular facts of Mr Johnson's case, the Court highlighted:
 - The significant size of the commission: 25% of the advance of credit and 55% of the total charge for credit.
 - The non-disclosure of the commercial tie between the dealer and FirstRand, which gave FirstRand a first right of refusal. The documents created the false impression that the dealer was offering a product from a select panel of lenders that best suited Mr Johnson's individual requirements.
 - Finally, and on the other hand, the fact that Mr Johnson did not read the documents he was given. However, the Court questioned whether a lender could reasonably expect a customer to read and understand the documents, especially where the customer lacked commercial sophistication and no prominence had been given to the relevant disclosure statements.

WHAT NEXT?

The Supreme Court has had an opportunity to settle once and for all the legal principles on secret and partially secret commissions and the application of disinterested and fiduciary duties and agency principles in this area. The judgment will provide valuable guidance for judicial decisions on the backlog of motor-finance related cases in the County Court, and for Financial Ombudsman Service (FOS) decisions on the backlog of complaints before it.

The FCA released a statement in June on its proposed approach to a potential industry-wide redress scheme (see [our recent blog](#) for details). The industry will now need to wait for the FCA's update on its proposed approach and the scope of any redress scheme. This update is expected early on Monday, 4 August 2025.

The Court of Appeal is also expected to hand down its judgment in the appeal of Clydesdale Financial Services Limited (T/A Barclays Partner Finance) for judicial review of the FOS decision ([DRN-4326581](#)) to uphold a complaint relating to its use of a discretionary commission arrangement (DCA). That judgment, which was delayed pending the Supreme Court decision, is expected to establish among other things whether there was a breach of the FCA's consumer credit rules (CONC 4.5.3R), which could have a bearing on the approach the FCA takes with respect to formulating its redress scheme.

KEY DATES FOR THE REMAINDER OF 2025

- **4 August 2025** – FCA to provide an update on whether it will consult on a redress scheme. This will include whether and in what circumstances compensation should be payable to affected consumers (most likely to be confined to DCAs). Should the FCA proceed with an industry-wide redress scheme, there will be pre-consultation engagement with stakeholders, and formal consultation on the parameters and rules of the proposed scheme.

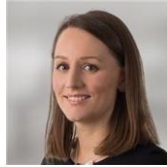
- **H2 2025** – Court of Appeal decision on judicial review of FOS decision against Clydesdale expected.
- **H2 2025** – FCA and FOS intend to proceed on next steps with respect to modernising the UK redress system.
- **4 December 2025** – Date by which FCA intends to confirm final rules for how consumers will be compensated. End of pause to the complaints-handling rules - firms will be expected to provide a final response to existing complaints from this date, and resume complaints-handling within the usual 8-week time-frame going forward.
- **11 April 2026** – FCA proposes to extend until this date the rule requiring lenders and credit brokers to maintain and preserve records relevant to future claims relating to agreements with DCAs entered into before the DCA ban was imposed.
- **29 July 2026, or 15 months from receipt of a final response letter from a firm** – FCA proposes these timescales for consumers to be able to refer a complaint to FOS (an extension on the usual six-month window).

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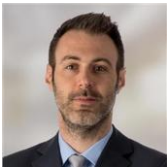
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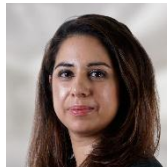
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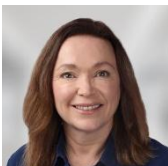
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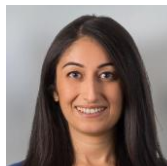
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