

# The Banking Law Journal

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# United Kingdom Supreme Court Overturns Bribery Findings in Motor Finance Appeal

*By James Norris-Jones, Kathryn Collar and Julia Kelsoe\**

*In this article, the authors review a decision by the United Kingdom Supreme Court finding that car dealers do not owe a fiduciary duty to their customers and that this was fatal to claims against lenders for bribery and dishonest assistance.*

The United Kingdom Supreme Court has delivered a much-anticipated judgment in three conjoined cases concerning the legality of commission payments made by lenders to car dealers in connection with the provision of finance for the hire purchase of cars.<sup>1</sup>

The Supreme Court held that the payments did not give rise to liability on the part of the lenders in the tort of bribery or for dishonest assistance, but that, in one case, the lender was liable to the consumer in the amount of the commission payment on the grounds that the relationship between them was “unfair” for the purposes of the Consumer Credit Act 1974 (the CCA).

The decision overturns a judgment of the Court of Appeal handed down in October 2024, which held lenders (i) primarily liable to account to consumers for commission payments made to car dealers, on the finding that the payments amounted to bribes, and (ii) liable as an accessory for their dishonest assistance in the receipt of secret profits by the dealer, who acted as the consumer’s fiduciary in arranging for the provision of finance.

Rejecting the reasoning of the Court of Appeal, the Supreme Court found that car dealers do not owe a fiduciary duty to their customers and that this was fatal to the claims against lenders for bribery and dishonest assistance. Finding in the lenders’ favour on these claims, the Supreme Court nevertheless rejected the lenders’ argument that English law does not, or should no longer, recognise a distinct tort of bribery.

As the judgment recognises, it is of “major financial significance to finance lenders, to motor dealers and to the very large number of members of the public who typically obtain cars in this way.”<sup>2</sup> Indeed, the decision at least partially

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<sup>1</sup> 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 (the Judgment).

<sup>2</sup> Judgment, paragraph 1.

closes the floodgates on what was expected to be a vast swathe of consumer claims, which some commentators had likened to the millions of payment protection insurance (PPI) claims that lenders in the UK have faced for more than a decade.

In light of the successful CCA claim, lenders' potential liability is not, however, wholly excluded and in fact remains potentially substantial. The UK's Financial Conduct Authority (FCA) has already announced its plans to consult on a redress scheme to compensate consumers who have been treated unfairly under the CCA.

## BACKGROUND

The Supreme Court considered three test cases in which consumers had purchased used cars with finance arranged by car dealers who had received commissions from the lenders providing the finance:

- *Hopcraft & Anor v. Close Brothers Limited*, where the claimant consumer, Hopcraft, purchased a used vehicle from a car dealer in Hull with finance from the defendant lender, Close Brothers Limited (Close). Close in turn paid the car dealer a commission for brokering the finance package with Hopcraft.
- *Wrench v. FirstRand Bank Limited*, where the claimant consumer, Wrench, acquired two used sports cars with finance from the defendant lender, FirstRand Bank Limited (FirstRand), in arrangements that had been brokered by the dealers from whom Wrench purchased the cars. FirstRand also paid commissions to those dealers.
- *Johnson v. FirstRand Bank Limited*, where the claimant consumer, Johnson, obtained a finance package from the defendant lender, FirstRand, comprising (i) a hire purchase agreement, and (ii) a personal loan, to acquire a used vehicle from a car dealer in Cardiff. The financing was arranged by the car dealer, who also received a commission from FirstRand for undertaking this role.

In each case, the claimant consumers had either not been informed at all about the payment of a commission, or disclosure of the payments was limited to a written statement (to which their attention was not drawn) that a commission of an unspecified amount might be paid.

The claimant consumers claimed that the commission payments constituted bribes or secret profits obtained by the dealers, whom they argued had been acting as their fiduciaries in arranging the finance. The claimant consumers thus brought claims against the defendant lenders for bribery and for dishonest assistance in the dealers' receipt of secret profits.

The claimant consumers had also sought to re-open their hire purchase agreements under Section 140A of the CCA, claiming that the agreements had given rise to an unfair relationship between them and the defendant lenders, as credit providers. Only one of the claims under the CCA (that of Johnson) remained live for determination by the Supreme Court.

### **TREATMENT BY THE COURT OF APPEAL**

Following appeals from the County Courts in which the claims had been first issued, the claims were considered by the Court of Appeal in 2024.

In summary, the Court of Appeal held that:

- When obtaining finance offers for the hire purchase of cars by consumers, car dealers acted as credit brokers and undertook both:
  - A fiduciary duty of loyalty to their customers; and
  - A duty to provide information, advice or recommendation on an impartial or disinterested basis (the so-called “disinterested” duty).
- Where there had been no disclosure of the commissions at all, the payments were “fully secret,” in breach of both the fiduciary duty and the “disinterested” duty, and thus constituted bribes for which lenders held primary liability.
- In one of the transactions considered, there had been sufficient disclosure of the commission to prevent it from being fully secret, but the consumer had not given sufficiently informed consent to the payment.
  - The commission therefore amounted to an unauthorised profit received by the dealer in breach of its fiduciary duty.
  - The lender had acted dishonestly in its dealings with the consumer, and was thus liable as a dishonest assistant in the dealer’s breach of fiduciary duty.
  - In this case, the relationship between the lender and the consumer was also “unfair” for the purposes of the claim under the CCA.

The Court of Appeal thus concluded that the lenders were liable to repay the commissions in all three cases. The lenders appealed to the Supreme Court.

### **ISSUES BEFORE THE SUPREME COURT**

The central issue for determination by the Supreme Court was whether, in a tripartite transaction between consumer, dealer, and lender in which a car is



bought on finance, the dealer selecting and negotiating the finance package owes a fiduciary and/or a “disinterested” duty to the consumer that is sufficient to found a bribery claim against the lender.

The appeal also required consideration of the following questions:<sup>3</sup>

- Does, or should, the law recognise a distinct tort of bribery?
- If so, what is the nature of the duty or relationship that must exist in order for the tort to be engaged? Is anything less than a “full fiduciary duty of single-minded loyalty” sufficient?
- What level of disclosure will prevent liability for bribery from arising?

Additionally, in the case of Johnson, the Supreme Court was required to consider whether the relationship between customer and lender was “unfair” for the purposes of the CCA.

## KEY FINDINGS OF THE SUPREME COURT

### Claims for Bribery and Dishonest Assistance

The Supreme Court upheld the appeal in relation to the claims for bribery and dishonest assistance, concluding that:<sup>4</sup>

- It is a “central criterion” of the tort of bribery that the recipient of the payment owes a fiduciary duty to the principal. The Court of Appeal was mistaken in concluding that a “disinterested” duty was sufficient.
- Accordingly, both the bribery and dishonest assistance claims relied upon a finding that the dealer owed a fiduciary duty to the consumer.
- Whether such a fiduciary duty exists in a particular case will depend upon various factors, including whether the purported fiduciary undertook or agreed to act in the other’s interests “to the exclusion of any interests of their own.”<sup>5</sup>
- However, the “typical features” of the hire purchase transactions were

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<sup>3</sup> Had liability for bribery been established, the Supreme Court would also have been required to consider the available remedies, including questions as to whether and on what conceptual basis the customer has an automatic remedy against the payer of the bribe for the full amount of the bribe and whether the customer has both a common law and an equitable right to rescind in cases of bribery.

<sup>4</sup> In reaching these findings, the Supreme Court rejected the lenders’ argument that English law does not, or should not, recognise the tort of bribery.

<sup>5</sup> This reflected the “no conflict” rule (which prohibits a fiduciary from allowing personal interests to conflict with its duty to its principal) and the “no profit” rule (which prohibits a fiduciary from making any profit for itself out of its fiduciary position without the fully informed consent of its principal).

“incompatible with the recognition of any obligation of undivided or selfless loyalty by the dealer to the customer when sourcing and recommending a suitable credit package.” In particular, in each transaction under consideration:

- The dealer was an “arm’s length party to a commercial negotiation pursuing its own separate interests,” and its status as such was “irreconcilably hostile to the recognition of a fiduciary obligation owed to another party in that negotiation.”
  - The dealer had at no point expressly assured the consumer that, when seeking a suitable finance package for the consumer, it would set aside its own commercial interest in the transaction as the seller of a vehicle.
  - The activity of the dealer in selecting and negotiating a finance package was “ancillary to the sale of the car” and was not a “distinct and separate service” (there was no separate contract for the service, nor even a separate reward).
  - The dealer did not have the consumer’s authority to enter into legal relations with the lender, and did not act as the consumer’s agent when negotiating the finance package.
  - On the contrary, there were “important respects” in which the dealer acted as agent of the lender: in two of the transactions considered, the dealer appeared to have the authority of the lender to choose the applicable interest rate under the hire purchase agreement.
  - Although there may have been “an element of dependency upon or vulnerability to the dealer” on the part of the consumer, this was not sufficient to give rise to a fiduciary duty in the absence of an undertaking of loyalty on the part of the dealer.
- Accordingly, the dealers had not assumed any fiduciary duty towards the consumers, and the claims for bribery and dishonest assistance failed on this basis.

In light of this conclusion, it was not necessary for the Supreme Court to make any findings as to whether there had been sufficient disclosure of the commission payments to negate secrecy and thus to exclude liability for bribery. Nevertheless, the Supreme Court held that the Court of Appeal had erred in holding that something less than full disclosure of the material facts was sufficient to found a claim in bribery.

## CLAIM UNDER THE CCA

With regard to Johnson's claim that the finance transaction between him and FirstRand as lender was "unfair" for the purposes of Section 140A of the CCA, the Supreme Court agreed with a submission by the FCA, who intervened in the appeal, that payment of an undisclosed commission was not itself sufficient to render the lender-borrower relationship "unfair". Instead, the fairness (or otherwise) of a particular transaction would be assessed on a case-by-case basis, taking into account at least the following factors:

- The size of the commission relative to the charge for credit (interest plus fees);
- The nature of the commission (e.g., discretionary commissions may create incentives to charge a higher interest rate);
- The characteristics of the consumer;
- The extent and manner of disclosure of the commission; and
- Compliance with the regulatory rules.

On the facts, the Supreme Court found the transaction between Johnson and FirstRand to be unfair in light of:

- The size of the commission (being 55% of the total cost of finance);
- The failure to disclose the commission (which constituted a breach of the FCA's rules for consumer credit related activities); <sup>6</sup> and
- The concealment of the dealer's contractual obligation to offer all of its business to FirstRand before approaching any other lender (in a further breach of the applicable rules).

Johnson's failure to read the finance-related documents provided to him by the dealer was "an important item" to take into account, but it did not negate the unfairness in circumstances where: (i) Johnson was "commercially unsophisticated"; (ii) no prominence had been given to the relevant statements; and (iii) the documents falsely suggested that the dealer had selected the most suitable deal for Johnson from a panel of lenders.

Johnson's claim under the CCA thus succeeded and the Supreme Court found that the appropriate remedy was repayment of the commission with interest from the date on which the finance agreement was signed.

## IMPLICATIONS OF THE JUDGMENT

When handed down in 2024, the Court of Appeal's judgment in these conjoined cases dealt a drastic blow to the motor finance industry. As the hire

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<sup>6</sup> The Consumer Credit Sourcebook of the FCA.

purchase of cars, both new and used, has been a widespread practice in the UK for at least 75 years,<sup>7</sup> the court's finding that lenders were liable to account to consumers for any commission payments that had been made to car dealers without the consumers' informed consent exposed the industry to tens of billions of pounds worth of potential payouts.

Indeed, the ramifications of the Court of Appeal's judgment could have extended well beyond the sphere of motor finance and into any industry where a seller of goods arranges finance for its customer and receives a commission from the lender.

In broad terms, therefore, the decision of the Supreme Court has substantially reduced the impact of the lower court's decision, limiting the potential claims available to consumers to those where the relationship between the consumer and the lender is found to be "unfair" for the purposes of the CCA.

The availability of such claims will depend on the particular facts of each case. Unfairness is perhaps most likely to arise where the commission was particularly or unusually high, or where discretionary commissions (now banned by the FCA) were paid, but the Supreme Court's decision does not set down a precise framework for establishing liability under the CCA.

The fact-specific nature of these claims thus also raises questions as to how consumers who believe their finance transactions were unfair may effectively and efficiently seek compensation, including whether an effective compensation scheme may be put in place.

In response to the Supreme Court's judgment, the FCA has announced that it intends to launch a consultation on such a scheme later this year, indicating that it will "propose rules on how lenders should consistently, efficiently and fairly decide whether someone is owed compensation and how much."<sup>8</sup>

It is thus clear that lenders remain exposed to large numbers of consumer claims in this area, with the FCA suggesting that its proposed compensation scheme should cover agreements dating back to 2007. That would bring tens of millions of car finance deals potentially within the ambit of the scheme, albeit only a proportion would be eligible for compensation.

The extent of lenders' liability is likely to depend upon the scope and scale of any compensation scheme implemented by the FCA, with initial estimates

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<sup>7</sup> Judgment, paragraph 3.

<sup>8</sup> FCA Press Release, 3 August 2025 (<https://www.fca.org.uk/news/press-releases/fca-consult-motor-finance-compensation-scheme>).

from the FCA suggesting that it could cost the industry between £9 billion and £18 billion.<sup>9</sup>

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<sup>9</sup> Ibid.; see also FCA Statement, 3 August 2025 (<https://www.fca.org.uk/news/statements/fca-consult-compensation-scheme-motor-finance-customers>).

