

## The FCA Weighs In: Hopcraft, Wrench & Johnson Case Sends Ripples Through Motor Finance

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In October, the English Court of Appeal (the “Court”) in its landmark case Hopcraft, Wrench & Johnson [2024] EWCA Civ 1282, ruled it was unlawful for car dealers to receive commission from motor finance providers, unless such payment had been appropriately disclosed and consented to by the consumer.

In light of the judgment, lenders FirstRand Bank and Close Brothers (the “Proposed Appellants”) have sought permission to appeal the decision in this case. The application for appeal submitted by the Proposed Appellants flags a number of additional legal points, which include the impact of backward-looking liabilities to pay consumers as well as forward-looking adjustments to business models. The Financial Conduct Authority (“FCA”), which regulates consumer credit business (including motor finance), has raised concerns that these legal issues may have a wider implication for other financial services markets it regulates. Additionally, the appeal highlights the thousands of pending County Court proceedings and complaints before the Financial Ombudsman Service, all of which concern motor finance commissions as well.

Given the impact of the judgment and the proposed appeal, the FCA wrote to the Register of the Supreme Court on 2 December supporting the proposed appeal and requesting that if the application is granted, the Supreme Court expedites its determination to “assist in security legal certainty for the market”. In its letter, the FCA also highlighted that accounting standards generally require firms to recognise provisions for contingent liabilities for possible obligations. Since the judgment was published, the motor finance market has been left in a state of uncertainty with the market increasing its forecasts to provision for the potential compensation which motor finance firms could face, as well as the impact on any future business. Industry heads have requested the government’s support by intervening and working with the industry and regulators ahead of this potential Supreme Court ruling.

In its judgment, the Court ruled that acting as credit broker, the car dealership owed: (i) a “disinterested duty” (i.e., a duty to provide information and advice on an impartial or disinterested basis); and (ii) an “ad hoc fiduciary duty” (i.e., requiring them to act with loyalty and avoid conflicts of interest), to their customers.

There are obvious concerns about the wider implications of this ruling, given that the finding of a fiduciary duty being owed by credit brokers goes beyond the current understanding of the duties owed to consumers. This decision also potentially impacts all intermediary/broker-lead business where commission is paid, including in business to business markets for both regulated and unregulated products (including that required by the current rules in the Consumer Credit Sourcebook contained in the FCA Handbook).