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UK Supreme Court Delivers Landmark Ruling in the Motor Finance Commissions Litigation

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Overview

On 1 August 2025, the UK Supreme Court delivered its much anticipated judgment on the appeal from the Court of Appeal's decision in the UK motor finance commission litigation — being the joined cases of *Johnson v. FirstRand Bank Ltd., Wrench v. FirstRand Bank Ltd* and *Hopcraft v. Close Brothers Ltd.*[1] (the "Test Cases"). Unsurprisingly, given the ubiquity of car finance, the potential for very significant payouts, and relentless marketing by claims management companies ("CMCs"), thousands of similar claims were filed with the Courts but stayed pending the outcome of the Supreme Court decision.

In each of the Test Cases, the claimant had purchased a car on finance, arranged through the car dealer (in such capacity, the "dealer broker"). In one case (Hopcraft), the commission arrangement between the lender and dealer broker was concealed from the claimant entirely. In the other two cases, the lender's standard terms and conditions for the loans made reference to the fact that commission may be paid to the dealer broker but not the amount, nor was there any evidence that the claimants were made aware of or consented to the commission.

In October 2024, when considering the Test Cases, the Court of Appeal held that the dealer brokers owed disinterested and fiduciary duties to their customers when arranging finance, and that the lenders should be liable either (i) for dishonestly assisting a breach of such duty in respect of the partially disclosed commission payments, or (ii) "bribery" in respect of the "secret" commission payments. In addition the Court of Appeal found that in certain circumstances the relationship between lender and borrower may be unfair as defined by section 140A of the Consumer Credit Act 1974.

The Supreme Court has now rejected the more controversial Court of Appeal findings related to whether the dealer broker owed both a disinterested duty and a fiduciary duty to the borrowers when arranging finance. The Supreme Court took the more intuitive view that the commercial nature of the relationship between dealer broker and customer generally precludes fiduciary

1 [2025] UKSC 33

duties. Accordingly, since the dealer brokers did not owe their customers a fiduciary duty, the lenders could not be liable for dishonestly assisting a breach of fiduciary duty, nor could they be liable for "bribery" in respect of the "secret" commission payments. The Supreme Court additionally confirmed that there is not a separate legal concept of a disinterested duty.

However, the Supreme Court did agree that in the *Johnson* case, the relationship between lender and customer was unfair as defined by the Consumer Credit Act — albeit that its reasoning differed from that of the Court of Appeal. Such a finding is highly individualised and fact-specific.[2] To bring claims on this basis requires detailed assessments of individual customer-lender relationships. This significantly decreases incentives for CMCs to pursue claims by litigating against lenders in courts. It follows that the bar for claimants has now been raised significantly.

The Supreme Court judgment was followed by an announcement from the FCA that it would consult on a long-expected industry-wide redress scheme. The consultation is to be published by early October 2025 and will propose industry-wide redress measures for customers that it considers may have been treated unfairly when entering into motor finance agreements.

The Court of Appeal decision

In October 2024, the Court of Appeal, taking into account (amongst other things) that the claimants were deemed financially unsophisticated, and unlikely to have the detailed terms and conditions of the loans, determined that:

- the dealer brokers owed a fiduciary duty to their customers;
- as a result of that fiduciary duty: (a) in the absence of full disclosure of the amount and nature of any commission paid by the lender to the dealer broker (i.e., a "secret" commission), the lender should be directly liable to the customer for the sum of such commission paid on the basis that it was a "bribe" to a fiduciary to procure a breach of duty; or (b) in respect of any partially disclosed commission payments, the lender should be indirectly liable as an accessory to breach of such duty by the dealer-broker;
- for "secret" commissions, customers can rescind the financing contract with the lender, thereby recovering interest paid, subject to counter-restitution for the benefits received under the contract; and
- the relationship between a lender and a customer is not automatically unfair simply because the credit broker receives a commission and the customer is not actually aware of that fact; however, specifically in the case of Johnson, the Court of Appeal found that, his relationship with the lender was "unfair", as defined by section 140A of the

[2] The Supreme Court also noted that in some cases a claim for breach of contractual remedies, or an action for misrepresentation may be also available to a customer. Clearly these claims would also be very fact specific.

Consumer Credit Act 1974[3] and identified several key factors making such determination (being, (a) the very large, undisclosed commission paid by the lender to the dealer (amounting to c. 25% of the loan advance and 55% of the total charge for credit), (b) the non-disclosure of a commercial tie between lender and dealer, and (c) the lack of disclosure as to the relationship between the lender and broker).

The Supreme Court decision

The Supreme Court unanimously rejected the analysis of the Court of Appeal as to whether dealer brokers owe fiduciary duties to their customers, concluding that ordinarily they do not. For a fiduciary relationship to arise, the dealer broker would have had to undertake to act with single-minded loyalty to the customer and that would be "irreconcilably hostile" to the commercial nature of the transaction between the customers and the dealers. There was also no lesser duty on the broker to avoid being affected by its own interests (sometimes referred to as a "disinterested" duty). The cases on appeal were examples of a three-cornered transaction in which each of the parties is dealing at arms'-length in pursuit of their own commercial interests, and it was insufficient that the customer may have placed trust and confidence in the dealer broker. Moreover, the level of financial sophistication, or vulnerability, of the customer is irrelevant to the analysis. Even the dealer committing to find a good, or the best, financing deal for the customer is insufficient to give rise to fiduciary duties. However, such a commitment could give result in the dealer being liable in contract or for misrepresentation.

The absence of a fiduciary relationship means that the tort of bribery, which as explained above had been the basis for "direct" lender liability, cannot arise. Nor can there be secondary/accessory liability for breach of fiduciary duty.

However, in the case of *Johnson* the Supreme Court found that the customer/lender relationship was unfair, under s.140A CCA. The Supreme Court did not, however, agree with all of the Court of Appeal's reasoning on this point — and said it should not have placed any reliance on the fact that Johnson had made a "bad bargain" in the sense of paying considerably above the market value of the car, and should also not have assumed that the discrepancy was accounted for by the payment of the commission. Importantly, the Supreme Court noted that in this context the factors that may indicate a relationship of unfairness include: the size of the commission relative to the charge for credit; the nature of the commission (as a discretionary commission may create incentives to charge a higher interest rate); the characteristics of the customer; the extent and manner of the disclosure — including by the broker — and compliance with the regulatory rules.

The Supreme Court found that an unfair relationship existed on the facts of *Johnson*, despite this being a fixed commission case. Key factors included the size of the commission, which was not adequately disclosed, and the failure to disclose the lender's right of first refusal of the dealer

[3] s,140A provides that a relationship between creditor and debtor arising out of a credit agreement can be unfair by reference to the terms of the agreement or a related agreement, the way in which the creditor has exercised or enforced its rights and any other thing done or not done by the creditor before or after the making of the relevant agreement.

broker's business in circumstances where the customer documentation referred to a panel of lenders. In addition, one element of the commission structured was discretionary, in that the broker was entitled to set the rate of interest. The lender in Johnson was ordered to repay the amount of the commission, together with interest. Importantly, the Supreme Court cautioned that its conclusions should not be taken out of context and applied in the context of different financial arrangements.

A separate but interesting feature of the judgment was the desire by the Supreme Court to emphasise the separation of law and politics in UK judicial decision making. It commented that it had rejected HM Treasury's attempt to appear in the case as an intervener as, despite outlining national economic concerns, it provided "*nothing of substance either as to the relevant law or context*."

FCA redress scheme

On 3 August 2025, following the Supreme Court's decision, the FCA announced that it would consult on an industry-wide redress scheme. Its objective is to streamline consumer compensation, avoiding the need for consumers to use other routes to secure compensation and to prevent large numbers of ongoing disputes in the courts. The FCA aims to publish the consultation by early October 2025 following which it will remain open for six weeks. If approved, the scheme is expected to be operational in 2026.

The FCA must now proceed with its consultation and consider the responses before deciding on the parameters of any scheme, based on its initial statements in connection with its 3 August 2025 announcement. However, it seems clear that in addition to discretionary commission arrangements, which had already been subject to a market review, the redress scheme will likely include at least some non-discretionary commission arrangements as a result of the Supreme Court decision in relation to Mr Johnson's "unfairness" claim.

The basis of assessment for redress remains uncertain and will be a key consideration of the consultation. Potential challenges may include the methods by which banks should be expected to assess the differing degrees of experience and expertise of customers, the relevance of commission as a percentage of finance cost in circumstances where the APR may have been very low, and how to take into account benefits received by the customer, including discounts received on the car in return for arranging finance through the dealer.

The FCA may propose that the scheme cover agreements from 2007 onwards. If this proposal is ultimately reflected in the consultation, it is likely to be one of the most contentious aspects of the FCA's proposed redress scheme. The FCA's rationale is that this timing is consistent with the jurisdiction of the Financial Ombudsman Service ("FOS"), which can accept complaints about regulated consumer credit activity from April 2007. Excluding from the scheme claims that are within the jurisdiction of the FOS would result in customers seeking compensation via the FOS. However, at this early stage, the proposal raises two substantial challenges:

- First, there could be acute practical difficulties, as an 18-year lookback exceeds standard document retention requirements for regulated firms, and both lenders and consumers may struggle to locate the relevant records. It is difficult to see how in such cases redress could be accurately or fairly applied.

- Secondly, the application of limitation periods raises complex legal hurdles. Industry-wide redress schemes under s. 404 of FSMA can only mandate redress for customers with valid legal claims that are not out of time, because the relevant statutory limitation periods have expired. Comments made to market analysts suggest that the FCA is working from the premise that limitation begins only when the individual complainant becomes aware of the material facts. However, this understates the legal test, which requires fraud, mistake, or — most relevantly — deliberate concealment of a fact relevant to the claim.[4] The UK Supreme Court's 2023 ruling in *Canada Square Operations v Potter* clarified that it is insufficient for a defendant merely to suspect disclosure is needed —they must make a conscious choice not to disclose. This is a high bar for claimants to meet, and will still not suffice where the claimant could have with reasonable diligence discovered the relevant facts.

The FCA will need to resolve the complex issues of limitation periods and evidentiary standards in a way that commands broad stakeholder confidence. Unless these concerns are satisfactorily addressed in the consultation and subsequent scheme design, the regulator will likely face sustained industry resistance and, potentially, legal challenge.

The final cost of any redress scheme will depend on the final design and the factors. However, assuming the compensation scheme moves ahead, the total redress bill is currently expected to be between £9bn and £18bn with customers currently expected to receive less than £950 in compensation per agreement. This is most likely to be an "opt out" scheme in light of FCA's desire to simplify the process of redress for customers and minimise the use of CMCs. Past FCA statements have also indicated that an opt-out scheme is preferred, not least because it reduces the likelihood of customer reliance on CMCs.

Conclusion

The Supreme Court ruling marks a turning point for the UK motor finance industry, offering much-needed legal certainty on the question of when and how fiduciary duties arise, and considerably narrowing the scope for mass litigation related to dealer broker commissions. In addition, participants in the wider consumer financing market will be considering the impact of the ruling for their businesses.

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[4] CCA unfairness and contractual misrepresentation claims both have a six-year limitation period — from the end of the credit relationship, or the misrepresentation/contract date, respectively.

As a result of the ruling, it will generally be unnecessary to assess consumer finance arrangements by reference to the behaviours and loyalty expected of a fiduciary — a significantly higher standard than that imposed by FCA rules applicable to advisory or discretionary client relationships. That said, the facts in the cases on appeal, and the FCA's broader examination of motor finance commission disclosures, highlight the importance of ensuring that consumer customers have key features that are likely to be relevant to their decision drawn to their attention — particularly in the context of the open-textured consumer duty.

The FCA consultation will seek to balance the interests of consumers, lenders, and the wider market, aiming for a practical and structured approach to compensation. However, at this stage, considerable uncertainties remain as to the parameters for any such scheme and the potential breadth raises material questions about feasibility, fairness, and legal risk.

Finally, whilst the UK Government had appeared poised to intervene had the Court of Appeal findings been upheld in order to mitigate the consequences for the consumer credit sector, based on the current landscape, it seems unlikely that there will be a need for any government intervention.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Tom Grodecki	+44 (0) 20 7170 8570	tom.grodecki@cwt.com
Suzanne Bell	+44 (0) 20 7170 8549	suzanne.bell@cwt.com
Robert Cannon	+44 (0) 20 7170 8735	robert.cannon@cwt.com
Bevis Metcalfe	+44 (0) 20 7170 8695	bevis.metcalfe@cwt.com
Sabah Nawaz	+44 (0) 20 7170 8583	sabah.nawaz@cwt.com