# SUPREME COURT PARTIALLY SIDES WITH LENDERS IN AUTO FINANCE COMMISSION CASE, BUT EXPOSURE REMAINS

## OVERVIEW

On 1 August 2025, the UK Supreme Court delivered its judgment in the conjoined cases of *Hopcraft v Close Brothers Limited; Johnson v FirstRand Bank Limited; and Wrench v FirstRand Bank Limited*, providing much-needed clarity on commission payments in auto finance. The Supreme Court largely overturned the Court of Appeal's decision, rejecting two of the claims in full and partially upholding one claim under the Consumer Credit Act 1974.

## BACKGROUND

Each of the claimants in the three cases entered into a hire-purchase agreement for a vehicle with either FirstRand or Close Brothers. In each case, the dealer received a commission from the lender for introducing the customer, which was either not disclosed at all or only partially disclosed.

The Court of Appeal concluded in all three cases that the dealers owed a fiduciary duty to the customer by undertaking the task of sourcing finance and that this duty was breached by the failure to fully disclose the commission, and the customers were therefore entitled to compensation.

## FINDINGS OF THE SUPREME COURT

*Fiduciary Duties*

The Supreme Court held that the typical features of hire-purchase finance transactions are incompatible with the existence of a fiduciary duty. In particular, the Supreme Court found that each of the customer, dealer and lender were operating at arm's length, pursuing their own commercial objectives, and a reasonable person would not expect the dealer to be solely acting in the customer's best interests. Moreover, the financing and the sale of the vehicle were commercially intertwined, and the dealer's separate commercial interest therefore extended to the act of sourcing the finance arrangement as well.

On the basis that there was no fiduciary duty, the claims under equity and the tort of bribery were rejected.

*Unfair Relationship*

Although the tort and equity claims failed due to the absence of a fiduciary duty, the Supreme Court upheld Mr Johnson's claim under section 140A of the Consumer Credit Act 1974, finding that his agreement with FirstRand gave rise to an unfair relationship.

The Supreme Court emphasised that the test of unfairness is highly fact-sensitive and allows a very broad range of factors to be considered. Non-disclosure or partial disclosure of a commission will not necessarily give rise to an unfair relationship, however the specific relationship between FirstRand and Mr Johnson was found by the Supreme Court to be unfair on the basis of the following key factors:

- The commission of £1,650.95 was exceptionally high, representing 55% of the total charge for credit and 26% of the amount advanced.
- A commercial tie existed between the dealer and FirstRand, granting the lender a right of first refusal. This was not disclosed, and the documentation gave a misleading impression that the dealer was offering products from a range of lenders and recommending the most suitable one for the customer.
- The terms and conditions of FirstRand disclosed that a commission may be payable but the statement was not given prominence and the amount was not disclosed. Given the commission's size, prominent disclosure was required and the customer's attention should have been expressly drawn to it.

The Supreme Court ordered payment to Mr Johnson of the commission, together with interest from the date of the agreement.

## MARKET IMPACT AND NEXT STEPS

The Supreme Court decision has been welcomed by auto finance providers and ABS market participants as providing clarity following the Court of Appeal's ruling in October 2024. While the Supreme Court confirmed that dealers in typical auto finance arrangements do not owe fiduciary duties to customers, lenders may still face liability where the Consumer Duty or other Financial Conduct Authority (FCA) rules have been breached, or where an unfair relationship can be established under section 140A of the Consumer Credit Act based on the specific circumstances of the case.

The liability risks are expected to relate mainly to historic lending given that the FCA tightened disclosure rules for commission arrangements and banned discretionary commissions in 2021.

Following the judgment, the FCA announced it plans to launch a consultation on an industry-wide redress scheme by early October. The FCA will propose rules for how lenders should consistently, efficiently and fairly determine whether

someone is owed compensation and, if so, how much. The FCA estimates that most individuals will receive less than £950 in compensation per agreement, and that the total cost of the scheme will likely range from £9 billion to £18 billion.

Uncertainty remains regarding the extent of the proposed FCA redress scheme, including the circumstances in which compensation will be owed, whether the scheme will operate on an opt-in or opt-out basis, and what period of lending will be covered. The FCA has proposed that the compensation scheme should cover finance agreements dating as far back as 2007, but lenders have raised concerns about the practicality of this, given the potential lack of historical records.

Despite these uncertainties, the number of affected loans in auto Asset Backed Securities (ABS) transactions is expected to be low and the impact on such deals limited. The EMEA ABS sector lead at S&P has stated that "systemically there's now no risk to auto ABS in the UK" due to the structural protections in place in such deals and noted that, in practice, an auto finance provider would likely need to become insolvent before a risk is posed to auto ABS deals.

## FOR MORE INFORMATION

Our Structured Finance team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below:

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