

Dispute Resolution  
Case Law Update  
Rosling King LLP



### Case Summary

A landmark Supreme Court decision on motor finance claims has been hailed by lenders as a triumph of common sense.

The highly anticipated judgment in the conjoined appeals of *Hopcraft v Close Brothers Limited*; *Johnson v FirstRand Bank Limited*; and *Wrench v FirstRand Bank Limited* [2025] UKSC 33 has been positively received throughout the lending industry.

The case had major implications for the lending market with the court asked to decide whether commissions paid to car dealers by motor finance lenders were in breach of their fiduciary duty where those payments had not been disclosed. Overturning an earlier Court of Appeal (CoA) decision, five Supreme Court judges unanimously ruled that lenders did not owe a fiduciary duty to disclose commissions. They also found that such arrangements were not bribery under common law.

### No fiduciary duty owed

The Court discussed the distinguishing obligation of a fiduciary; that a fiduciary must not profit from their position as a fiduciary or put themselves in a position where they will have a conflict of interest. Fiduciary duties arise where a person consciously assumes or undertakes responsibility in relation to the management of the property or affairs of another in circumstances where they know, or ought to appreciate, that this carries with it the expectation they will act with loyalty to the other in that regard. The judgment emphasised the arm's length nature of these transactions—dealers act with their own interests in mind, not as fiduciaries favouring the customer. The Court highlighted that the mere position of influence does not generate a fiduciary obligation; for such a duty to arise, the party must have consciously undertaken loyalty obligations.

The Court reiterated that the authorities on bribery show that liability for bribery, at common law as well as in equity, is dependent on the recipient of the bribe being a fiduciary. The Supreme Court found that the *Court of Appeal in Wood v Commercial First Business Ltd* [2022] Ch 123 was wrong to hold that the existence of a “disinterested duty” between the parties would suffice.

The statutory and regulatory rules which govern the behaviour of car dealers and lenders were also considered. The Court held that the rules and principles in the Financial Conduct Authority Handbook that apply to lenders and dealer brokers do not mirror the more rigorous duties of a fiduciary in relation to the exclusion of self-interest, the disclosure of information and the avoidance of conflicts of interest. As the parties in these claims (i.e. customer, dealer and lender) were engaged at arm's length, neither they nor any onlooker could reasonably think that any participant was doing anything other than considering their own interests. At no point did the dealer give any express undertaking or assurance to the customer that, in finding a suitable credit deal, it was putting aside its own commercial interest as a seller. The dealer was therefore not an agent for the customer in the negotiation of the finance package with the lender, but was simply undertaking an intermediary activity and did not have the authority to enter into legal relations on the customer's behalf.

*“The dealers in the present cases were not subject to any fiduciary duty towards their customers,” the judgment stated. “We conclude that, to the extent that the Court of Appeal’s judgment and the respondents’ case depends upon the recognition of a fiduciary obligation of undivided loyalty on the part of the dealer when selecting and negotiating a finance package for the customer, they are wrong.”*

### A partial win?

While the Supreme Court drastically narrowed the scope of people who can claim compensation, there is still a route to redress for consumers who were treated unfairly. Judges upheld the claim in *Johnson v FirstRand Bank Limited*, ruling that the relationship between claimant Marcus Johnson and lender, MotoNovo, was “unfair”. The higher commissions paid by the lender (in this case being 23% of the advance of credit and 55% of the total charge for credit) along with a failure to disclose the relationship between it and the car dealer, and the commercial sophistication of the customer were, cumulatively, considered “unfair” under the Consumer Credit Act (CCA). The Supreme Court ordered FirstRand to pay the commission amount to Mr Johnson with interest.

The unfair relationship test under section 140A of the Consumer Credit Act 1974 allows courts to consider a wide range of factors and is inherently fact specific. A lack of commission disclosure—or only partial disclosure—does not, on its own, automatically render the relationship between lender and borrower unfair. Instead, it is one element to be weighed as part of a broader assessment. This approach, confirmed by the Court, should assist lenders, as it ought to deter large volumes of claims that do not engage with the specific circumstances, and merits, of individual cases.

### Conclusion

The ruling brings much-needed clarity and relief to lenders following a shock Court of Appeal ruling last October which, said analysts, could have resulted in a £50bn compensation bill for the industry. Major banks including Lloyds Banking Group, the UK’s largest car finance provider through its Black Horse division, set aside billions to fund a possible compensation rush. The ruling has drastically reduced compensation costs for lenders, while limiting the potential spill over into other sectors, including the home loans market.

Rosling King partner Kate Rigby said the ruling was pivotal for lenders, many of which had been left in a state of limbo by the CoA ruling. *“The threat of a tsunami of claims against lenders has been significantly reduced by the Supreme Court ruling,”* Rigby said. *“This decision sets a new precedent for all lenders, not just in the motor finance world. It will give lenders the confidence they need to continue investing in their markets.”*

For further information, please contact [Kate Rigby](#) or the Partner with whom you usually deal.