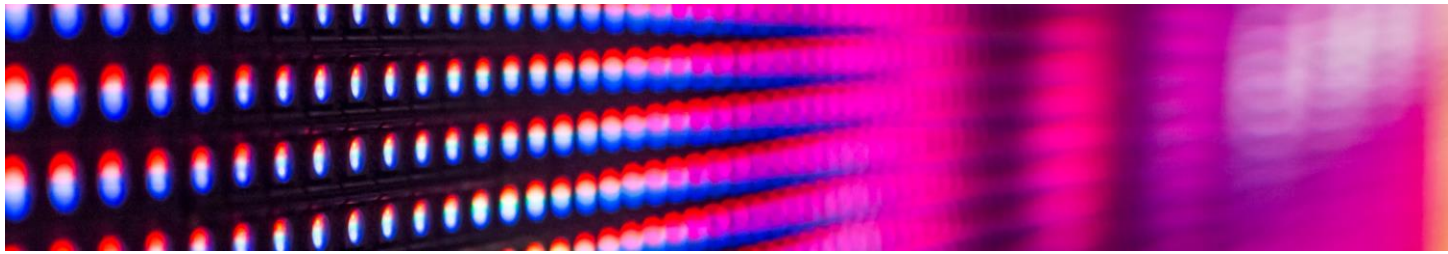
Linklaters

Divided loyalties: the Supreme Court on motor finance commission disclosures

August 2025



In a hotly-anticipated unanimous judgment, the Supreme Court overturned the Court of Appeal's decision in three appeals (*Johnson v FirstRand Bank, Wrench v FirstRand Bank* and *Hopcraft v Close Brothers Limited)*, finding that car dealers, when acting as credit brokers for customers to obtain finance to buy a car, do not owe fiduciary duties to their customers.

The Supreme Court emphasised the commercial interest of the dealers in such transactions, and the lack of any undertaking to set such interests aside (such an undertaking being necessary for a fiduciary duty to arise). The claims against the lenders for bribery and dishonest assistance have failed as a result.

In one of the cases only (Johnson), the Supreme Court considered whether the relationship between the customer and lender was unfair within the meaning of section 140A of the Consumer Credit Act 1974 (CCA) and found on the facts of that case that it was. The Supreme Court reiterated that any unfairness assessment is highly fact-sensitive and requires an overall balancing of all relevant factors. It declined to set out a universal test but agreed the non-exhaustive list of five factors that the FCA had put forward would normally be relevant. In this case, the significant size of the commission relative to the total charge for credit, taken with the false impression given as to the broker's role because of the non-disclosure of a commercial tie between broker and lender, combined to make the relationship unfair. The remedy awarded was payment of the full commission amount to the customer, plus interest from the date of the credit agreement.

The FCA published a short statement welcoming the Supreme Court's clarification of the law, and since confirmed that it will consult on an industry wide redress scheme for motor finance, launching its consultation by early October 2025.

The Treasury has indicated that it recognises the issues this case has highlighted, and it is working with regulators and the industry "to understand the impact for both firms and consumers".

Despite the helpful clarifications contained in the judgment regarding the duties owed by credit brokers, the unfair relationship decision reaffirms that assessments of unfairness will continue to be fact-dependent and require determination on a case-by-case basis by the Court in the exercise of its broad discretion and powers to remedy unfairness, and provides limited guidance on how that exercise should be approached.

In this note …

1. Fiduciary duties, the tort of bribery, and lender liability

2. Unfair relationships: s.140A of the CCA

3. FCA redress consultation and other next steps

4. Contact us

1. Fiduciary duties, the tort of bribery, and lender liability

The Supreme Court held that motor dealers acting as credit brokers in these typical tripartite transactions did not owe customers a fiduciary duty. The dealers did not undertake (expressly or implicitly) to act with single-minded loyalty or to put aside their own commercial interests. Rather, all parties engaged at arm's length in pursuit of their own objectives. In civil bribery cases, no liability can arise in the absence of a fiduciary duty of loyalty owed by the recipient of the payment to the claimant. As a result, payment of commission in each of the cases before the Court could not be a "bribe" because a fiduciary relationship did not exist between the dealer and the customer.

Departing from the Court of Appeal decision in *Wood*,[1] the Supreme Court clarified that the tort of bribery will not be engaged merely because an intermediary is in a position to influence or affect a consumer's decision, or because the intermediary is under a purely contractual duty to give impartial or "disinterested" advice. The existence of such influence or contractual obligation, on its own, does not elevate the relationship to one involving fiduciary duties necessary to trigger liability for bribery.

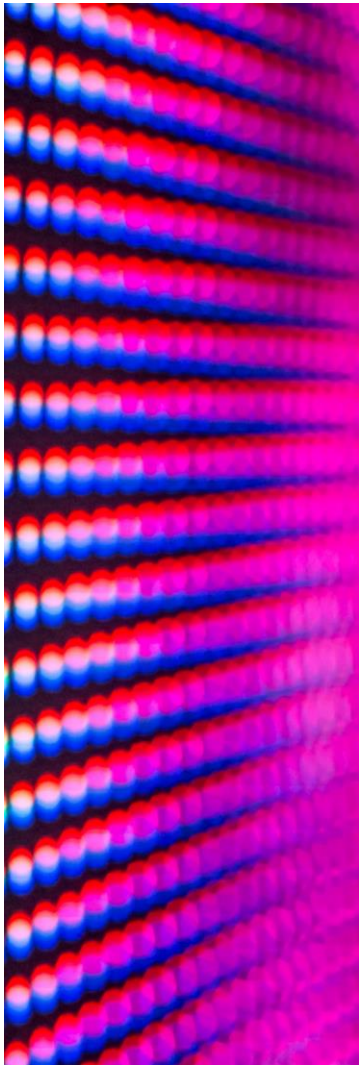
As the Supreme Court found that there was no fiduciary duty owed in these cases, it was not required to determine the follow-on question of what level of disclosure would be required to negative a breach arising from receipt of commission. It nevertheless stated that full disclosure of all material facts must be made. What would amount to material facts will depend on the circumstances of the case, and the Court only made general observations about this rather than binding findings on the facts of the cases before it. The Court suggested that the distinction made in earlier case law that 'partial disclosure' is insufficient to negative a breach of duty but sufficient to negative liability in the tort of bribery is no longer valid and that, depending on the facts of each case, disclosure of all material facts may require more than stating in documentation that a commission might be paid.

The scope of lender liability

In pure breach of fiduciary duty cases, a lender would only be liable as dishonest assistant in the breach and is not liable to account to the customer for the fiduciary's unauthorised profit. It is only liable to account for any profit that it made personally from the breach. Claimants face an additional hurdle in seeking to hold a dishonest assistant liable in that they must prove that the assistant acted dishonestly, a hurdle which the Supreme Court remarked is often fatal to such claims.

By contrast, where the tort of bribery is engaged, the Supreme Court confirmed that a lender would be jointly liable to repay to the customer the commission amount as money had and received.

In both types of claim, if the claimant is claiming that they suffered loss, they need to prove it.



[1] *Wood v Commercial First Business Ltd* [2022] Ch 123.

2. Unfair relationships: s.140A of the CCA

The Supreme Court upheld the finding of an "unfair relationship" between Mr Johnson and FirstRand within section 140A CCA, albeit on different grounds to the Court of Appeal.

The Supreme Court endorsed the guidance laid down in *Plevin*[2] that section 140A confers a wide discretion on the Court and that, when assessing unfairness, all relevant factors (not just those pleaded) must be taken into account, meaning the application of the test of unfairness will continue to be a highly fact-sensitive exercise.

The Supreme Court noted that the following would normally be relevant factors (as a non-exhaustive list):

- the size of the commission relative to the charge for credit;
- the nature of the commission;
- the characteristics of the consumer;
- the extent and manner of the disclosure; and
- compliance with the regulatory rules.

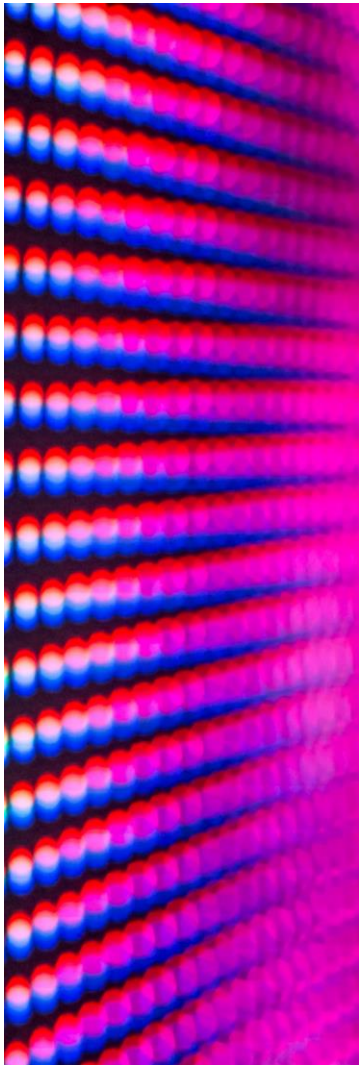
On the facts, Mr Johnson's unfair relationship claim was upheld on three principal grounds:

- **Size of the commission**: The commission paid represented 55% of the total charge for credit. The Supreme Court said that the fact that the undisclosed commission was so high is a "powerful indicator" that the relationship was unfair, and because the customer was unaware of it, he was unable to question it.
- **The commercial tie**: The documents provided to the claimant did not disclose the existence of a commercial tie between the lender and dealer, under which the lender was given a right of first refusal of customers referred to it by the dealer. The documents gave a "false impression" that the dealer selected the most suitable finance offer for the customer's individual requirements from a range of lenders. Instead, the Supreme Court found the dealer made no attempt to be impartial and was simply putting forward the terms offered by the lender and acting in compliance with its undisclosed obligations to the lender.
- **Failure to read documents not sufficient to offset other factors**: Although the claimant failed to read the documents provided to him, the Supreme Court said it was questionable the extent to which a customer could have reasonably been expected to read and understand the detail of such documents, especially where the customer is commercially unsophisticated, would not expect that a commission of this size would be payable and the relevant statements alerting him to the possibility of a commission lacked prominence.

The Supreme Court found that the Court of Appeal should not have given weight to whether the claimant made a "bad bargain", observing that there could be various reasons for paying above market value which do not, in themselves, determine unfairness.

On remedy, the Supreme Court noted that section 140B of the CCA confers wide powers on the courts to grant relief. In this case, the Supreme Court awarded a refund of the commission of £1,650.95, together with interest at an appropriate commercial rate calculated from the date of the credit agreement.

[2] *Plevin v Paragon Personal Finance* [2014] UKSC 61; [2014] 1 WLR 4222.



3. FCA redress consultation and other next steps

FCA to consult on redress scheme

The FCA moved quickly over the weekend to issue an announcement that confirms it will consult on a motor finance industry-wide redress scheme based on unfair relationships, depending on an assessment of the factors identified by the Supreme Court and how these factors interact.

It expects the scheme will cost the industry in the range of £9-18bn, with most individuals receiving a payout of less than £950.

The consultation will propose that the scheme covers discretionary commission arrangements and consult on which non-discretionary arrangements should be included.

The FCA is considering alternatives to the redress methodology applied by the Supreme Court in *Johnson*, and will propose an interest rate based on the base rate plus 1%.

The FCA is still considering what size of commission may point towards unfairness if not disclosed, and whether the scheme should be opt-in or opt-out for consumers.

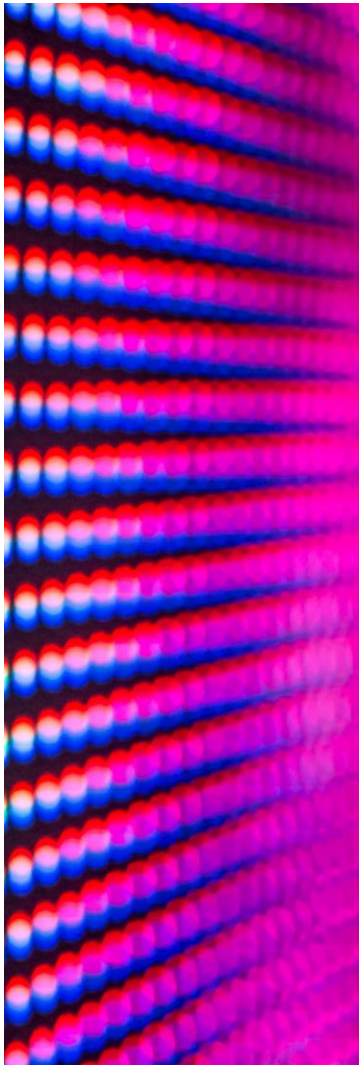
The FCA aims to publish the consultation by early October and for it to be open for six weeks. If a scheme is ultimately introduced, the first payments should be made in 2026.

Other next steps

The decision has been widely welcomed for confirming the motor finance industry view that car dealers did not owe fiduciary duties to their consumers, consistent with the commercial realities of the three-way transaction.

That said, lenders will need to give careful consideration to the unfair relationship aspects of the decision and the implications of that, both for the back book and for their current approaches to disclosures.

Please get in touch with your usual Linklaters contacts to discuss how the judgment's immediate and longer-term implications for motor finance and the wider credit industry are relevant to you.



Contact us



Alex Shopov
Partner, Structured Finance Group, London
Tel: +44 207 456 4442
alexander.shopov@linklaters.com



Andrew Vickery
Partner and Global Head of Finance Division, London
Tel: +44 207 456 4635
andrew.vickery@linklaters.com



Fionnghuala Griggs
Partner, Mainstream Corporate Group, London
Tel: +44 207 456 2595
fionnghuala.griggs@linklaters.com



Ros Gallagher
Partner, Litigation, Arbitration and Investigations Division, London
Tel: +44 207 456 2475
ros.gallagher@linklaters.com



Verity Kemp
Counsel, Financial Regulation Group, London
Tel: +44 207 456 3476
verity.kemp@linklaters.com



Alison Wilson
Partner and Global Head of Litigation, Arbitration and Investigations, London
Tel: +44 207 456 5725
alison.wilson@linklaters.com



Clare McMullen
Partner, Financial Regulation Group, London
Tel: +44 207 456 2129
clare.mcmullen@linklaters.com



Liz Dowd
Partner, Financial Regulation Group, London
Tel: +44 207 456 3409
elizabeth.dowd@linklaters.com



Clare Whittle
Counsel, Financial Regulation Group, London
Tel: +44 207 456 4264
clare.whittle@linklaters.com



Michele Daelemans
Managing Associate, Structured Finance Group, London
Tel: +44 207 456 2286
michele.daelemans@linklaters.com



Andrew Chaplin
Partner, Equity and Debt Markets Group, London
Tel: +44 207 456 2099
andrew.chaplin@linklaters.com



Edward Chan
Partner, Banking Corporate and Structured Lending Group, London
Tel: +44 207 456 4320
edward.chan@linklaters.com



Rebecca Burton
Partner, Litigation, Arbitration and Investigations Division, London
Tel: +44 207 456 5870
rebecca.burton@linklaters.com



Emma Clark
Senior Consultant, Mainstream Corporate Group, London
Tel: +44 207 456 3512
emma.clark@linklaters.com

linklaters.com

This content is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here, please get in touch. © 2025 Linklaters. Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors or registered foreign lawyers. Please refer to www.linklaters.com/regulation for important information on our regulatory position. #3213323308