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Supreme Court Ruling in Hopcraft v Wrench and Johnson v FirstRand Bank

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A Commission Transparency Reckoning for Financial Services

On 1 August 2025, the Supreme Court handed down its long-awaited judgment in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd* and *Hopcraft & Anor v Close Brothers Ltd* – reported together as [2025] UKSC 33.

The Court dismissed fiduciary duty and bribery claims but upheld a claim for an unfair relationship under section 140A of the Consumer Credit Act 1974. The tipping point, a 55% commission paid by the lender to a dealer, entirely undisclosed and misleading in context.

The FCA has since confirmed that it will consult on a redress scheme under section 404 of FSMA, likely to cover motor finance agreements as far back as 2007 and potentially involving billions of pounds in compensation.

This decision has far-reaching implications for any business model relying on intermediary commissions, including motor finance, asset finance, premium finance, insurance distribution and discretionary wealth services.

The Supreme Court's Decision – Key Points

The Court's ruling is published here. It addressed three appeals involving motor finance agreements arranged by dealers who received commission from lenders. The key findings were:

- **No fiduciary duty:** Dealers were found to be pursuing their own commercial interests. Trust by the consumer was not sufficient to establish a fiduciary relationship.
- **No bribery:** Since there was no fiduciary duty, the commission could not constitute a bribe.

- **Full disclosure is required:** The Court overruled Hurstanger. A vague reference in the small print to "a commission may be paid" was no longer enough. To obtain informed consent, firms must disclose the fact, amount or basis of any commission – and do so prominently, before the contract is signed.
- **Burden of proof:** The burden is on the lender or broker (or their assignee) to prove that full disclosure was made.
- **Section 140A claim upheld:** In Johnson, the Court found that the relationship was unfair due to the size of the commission, the lack of transparency, and the misleading impression that the dealer had surveyed a panel of lenders. The remedy awarded was full repayment of the commission plus interest.

The FCA's Response – A Redress Scheme Is Coming

The FCA issued its formal response here. The FCA has confirmed that:

- It will consult on a consumer redress scheme under section 404 of FSMA.
- The scheme is expected to cover agreements from 2007 onwards, with particular focus on discretionary commission arrangements (DCAs) – which were banned in 2021.
- Redress will be calculated by reference to the amount of commission and the extent of non-disclosure – most awards are expected to be under £950.
- The FCA anticipates launching the scheme in early 2026, following consultation in autumn 2025.
- Affected customers will be able to claim redress without going to court or involving claims management companies.
- The FCA has extended the complaints deadline to December 2025 for relevant agreements.
- During a recent briefing with lenders, the FCA's CEO stated that this should be the last mass redress exercise of its kind and urged firms to cooperate, not litigate.

The FCA's detailed commentary on its approach is also covered here.

Implications Beyond Motor Finance

This decision, and the FCA's response, will have implications for a wide range of business models involving intermediated product sales, including:

- **Asset finance and leasing:** Where vendors or brokers introduce customers to finance and receive commission from the lender, similar three-party dynamics arise. If commission was undisclosed or poorly disclosed, the Hopcraft logic applies.

- **Insurance:** Particularly in cases involving GAP insurance, tyre and alloy cover, or other add-on products. Many of these were sold through dealerships or retailers, with commission arrangements that were never made fully transparent to the consumer.
- **Wealth and advice:** While trail commission has largely ended post-RDR, historic practices may still create risk. Dual remuneration (e.g. client pays a fee, and the adviser also receives a fund-linked commission) will be scrutinised. Where bespoke advice was given and loyalty implied, fiduciary arguments may still arise, especially if disclosure was lacking.
- **Mortgage and premium finance:** Brokers receiving commission from multiple providers will need to evidence that commission disclosures were sufficiently detailed and properly positioned in pre-contract documents. Simple wording buried in terms and conditions will not suffice.

Litigation and Enforcement Risk

The Supreme Court has made clear that unfair relationship claims are fact-sensitive. As a result:

- There will be no global class actions. Group Litigation Orders and representative actions are unlikely to be viable.
- Instead, firms should expect a high volume of individual claims, especially in the county courts.
- Claims will focus on commission size, lack of disclosure, whether customers were misled, and whether relationships were exclusive.
- Legacy portfolio holders, including assignees and securitisation vehicles, may be exposed, particularly where documentation has not been preserved.
- The burden of proof lies with the defendant: if disclosure evidence is missing, you lose.

The expected rise in claims is likely to be driven by claims management companies, with template pleadings and bulk-issued proceedings against lenders and brokers.

What Firms Should Be Doing Now

Firms should be taking urgent action in five key areas:

1. **Review historical commission practices:** Identify high-risk legacy products, distribution channels, and brokers. Focus on relationships involving DCAs, dual remuneration, or add-on products.
2. **Examine disclosure materials:** Assess whether commission was disclosed prominently, clearly, and pre-contract. Pay attention to prominence and accessibility – mere inclusion in standard terms will not protect you.
3. **Preserve evidence:** Ensure systems are in place to locate signed documents, pre-contract information, and key facts on historic disclosures. If your business has acquired portfolios, ensure you have disclosure records or contractual protection.
4. **Engage with the FCA consultation:** The FCA has left open the design of the redress scheme. Firms should participate to ensure the methodology is fair, the cut-off date is appropriate, and the calculation of redress is proportionate.
5. **Prepare for claims:** Review your litigation protocols. Establish which claims are defensible and which should be settled quickly. Budget for resourcing and provisioning.

Final Thoughts

Hopcraft is not just a motor finance case, it’s a judgment about fairness, transparency, and how firms should treat customers when commission is involved.

Any business relying on brokers, introducers or intermediaries should be checking its risk profile now – not just for compliance, but because the redress wave has already begun.

For further information please contact Andrew Wingfield or ukreg@proskauer.com.

View original.

Other Useful Links

Supreme Court full judgment

Supreme Court press summary

FCA redress scheme announcement

FCA commentary on Hopcraft/Johnson/Wrench

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