Press Summary

1 August 2025

Hopcraft and another (Respondents) *v* Close Brothers Limited (Appellant); Johnson (Respondent) *v* FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant); Wrench (Respondent) *v* FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant)

[2025] UKSC 33

On appeal from [2024] EWCA Civ 1282

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Briggs and Lord Hamblen

Background to the Appeal

These three conjoined appeals concern the payment of commission by finance lenders to motor dealers in connection with the provision of finance for the hire purchase of cars, where that commission is either not disclosed, or only partly disclosed, to the hirers of the cars. Although the individual sums at stake in these appeals are modest, the fact that the transactions in issue are of an extremely widely used type (most cars are bought on credit), and that non-disclosure, or partial disclosure, of such commission is very widespread, means that the outcome of these appeals is of major significance for lenders, motor dealers and the many people who obtain cars in this way.

In the typical transaction of this kind, a person visits a dealer, chooses a car, and agrees a price with the dealer. The dealer obtains an offer of finance from a finance company on hire purchase terms. This is presented to the customer by the dealer, acting for that purpose on behalf of the lender.

In each case under appeal, the dealer made a profit on the sale of the car but, crucially, also received a commission from the lender for introducing the business to it. There was either no disclosure to the customer of the existence of the commission or partial disclosure to the effect that a commission (of unspecified amount) might be paid.

Each of the customers brought proceedings against the lenders, claiming that the commissions amounted to bribes, or to secret profits received by the dealers as fiduciaries. A fiduciary is someone who has undertaken to act for or on behalf of another in circumstances which give rise to an obligation of single-minded loyalty, to the exclusion of the fiduciary's own interests.

The customers each claimed payment of an amount equivalent to the commissions from the lenders under the tort of bribery. Two of them claimed, in the alternative, compensation from the lenders in equity for dishonest assistance in the dealers' receipt of secret profits. Each of the customers also attempted to re-open their hire-purchase agreements under section 140A of the Consumer Credit Act 1974 ("**CCA**") on the basis that they gave rise to an unfair relationship. Only Mr Johnson's CCA claim survived for determination by the Supreme Court.

In Mr Wrench's case, his claims were successful before a District Judge at first instance but a Circuit Judge allowed the lender's appeal. Mr Johnson's claims were unsuccessful at first instance, as well as on first appeal, except for his claim under the CCA which was remitted to a District Judge for reconsideration. The Court of Appeal subsequently granted permission for a second appeal in both cases. The Hopcrafts' claims were unsuccessful at first instance and their first appeal to a Circuit Judge was then transferred to the Court of Appeal. The customers were all successful in the Court of Appeal either on the basis of the tort of bribery or on the basis of the lenders' dishonest assistance in the dealers' breach of fiduciary duty. Mr Johnson was also successful in his claim under the CCA. The lenders now appeal to the Supreme Court.

Judgment

The Supreme Court holds that the customers' claims against the lenders in equity and in tort cannot succeed. The lenders' appeals in the Hopcraft and Wrench cases, and in the Johnson case so far as it was based on tort or equity, are therefore allowed. On the other hand, the Court holds that Mr Johnson is entitled to succeed in his claim under section 140A of the CCA, but for reasons that differ from those given by the Court of Appeal.

Reasons for the Judgment

(i) The claims in equity

It is commonly said that the distinguishing obligation of a fiduciary is a duty of single-minded loyalty to the person for whom they act (their principal). Fiduciaries must not, therefore, profit from their position as a fiduciary or put themselves in a position where they will have a conflict of interest (in each case unless their principal gives fully informed consent) **[88]-[89]**. At the same time, it is possible for a single fiduciary to have multiple principals with competing interests, and to have to exercise a power or discretion which will benefit some over others, for example as does the trustee of a discretionary trust: in those circumstances, that duty will be fulfilled if the fiduciary exercises that power in a disinterested way **[91]**.

Fiduciary duties are recognised in equity in certain well-established relationships like trustee/beneficiary and director/company **[78]**. However, the categories of fiduciary relationships are not closed **[83]** and may arise outside such established relationships on an ad hoc basis where, viewed objectively, a person acts so as to bring himself or herself under such obligations **[87], [93]**. 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 he or she knows or ought to appreciate that this carries with it the expectation that he or she will act with loyalty to that other in that regard **[96], [100]**.

In a commercial context, the court must consider with care the terms of any contract between the parties and the broader factual background in order to ascertain whether such an undertaking has been made **[101]**. In general, it is normally inappropriate to expect a commercial party to subordinate its own interests. In particular, a commercial transaction in which one party has a financial interest, known or apparent to the other party, in bringing the transaction into fruition, is not one in which an undertaking of single-minded loyalty and altruism can readily be implied **[110]**.

(ii) The claims in the tort of bribery

For the purposes of the law of torts (civil wrongs), a bribe or "secret commission" is a payment made by a person to an agent (or other fiduciary) that is known to be acting as the agent of the other person with whom he or she is dealing, without that other party's knowledge and consent **[126]**

The Court rejects the lenders' submission that the tort of bribery should be abolished. While the origins of the law of bribery lie in equity and not at common law, the common law tort of bribery has become well-established. In addition, the tort is committed by the briber for which he or she can be pursued as a primary wrongdoer rather than as an accessory to an equitable wrong committed by the dealer. The strict remedies available once the tort has been established reflect the need to deter behaviour that would be destructive of commercial relations **[140]-[156]**.

A fiduciary relationship can exist where the fiduciary is under a duty to provide information, advice or recommendations on a disinterested basis **[164]**. That duty flows from the fiduciary capacity in which the person is acting. It does not flow from the mere fact that he or she was in a position to influence or affect another person's decision. 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. This avoids the remedial difficulties that would arise if payments to non-fiduciaries could also constitute a bribe **[184]-[188]**. As such, a purely contractual duty to give disinterested advice, for example, would not be sufficient in itself to engage the tort of bribery as distinct from other torts which serve to ensure that there is no lacuna in the law **[201], [204], [206]**. The Court of Appeal in *Wood v Commercial First Business Ltd* [2022] Ch 123 was therefore wrong to hold that a fiduciary relationship is unnecessary **[199], [202], [207]**.

A fiduciary's liability to account for profits made in breach of his duties can be avoided if full disclosure (of all material facts) is made and the principal gives his or her fully informed consent **[210]-[211]**. What amounts to full disclosure will depend on the circumstances **[214], [216]**. The same requirement of disclosure applies for the purposes of the common law of bribery as in equity **[222]**, and the Court of Appeal in *Hurstanger v Wilson* [2007] 1 WLR 2351 was wrong to hold otherwise **[225]**. Absent disclosure of all material facts and the existence of the principal's fully informed consent, the briber is liable for the amount of any bribe paid **[229]-[236]**.

(iii) The statutory and regulatory context

The statutory and regulatory rules which govern the behaviour of car dealers and lenders are an important part of the context in which contention that the dealers were and are under fiduciary duties needs to be assessed **[242], [266]**. The deemed statutory agency between dealer and lender, first established in section 10(2) of the Hire Purchase Act 1964 (now reflected in section 56(2) of the CCA), suggests that the realities of the typical dealer-lender-customer hire purchase negotiation do not place the dealer in the position of undertaking a duty of single-minded loyalty to the customer **[250]**. Furthermore, 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 **[256], [261], [263]**. It is clear therefore that the regulatory regime is not premised on car dealers (when acting as credit brokers) having the obligations of a fiduciary **[265]**.

(iv) The law applied to the facts

The transactions under review in the present cases had typical features. Each party to each tripartite transaction (customer, dealer and lender) was engaged at arm's length from the other participants in the pursuit of separate objectives. Neither the parties themselves nor any onlooker could reasonably think that any participant was doing anything other than considering

their own interest **[268]**. Furthermore, the dealer was not providing credit brokerage as a distinct and separate service from the sale transaction **[269]**. At no point did the dealer give any kind of express undertaking or assurance to the customer that in finding a suitable credit deal it was putting aside its own commercial interest as seller **[270]**. The dealer was not an agent for the customer in the negotiation of the finance package with the lender. The dealer was undertaking an intermediary activity and did not have the authority to enter into legal relations on the customer's behalf **[271]**.

The Court holds that these typical features of the transactions under review do not give rise to a fiduciary duty sufficient to create liability for bribery either under the common law tort or pursuant to the principles of equity. They are incompatible with the recognition of any obligation of single-minded or selfless loyalty by the dealer to the customer when sourcing and recommending a suitable credit package **[276]**. An offer to find the best deal is not the same as an offer to act altruistically **[281]**. A finance package on acceptable terms was always going to be an integral part of what had to be negotiated to bring the transaction to fruition, and no reasonable onlooker would think that, by offering to find a suitable finance package, the dealer was thereby giving up, rather than continuing to pursue, its own commercial objective of securing a profitable sale **[277], [279]**. Nor is the role of the dealer in selecting and negotiating a suitable finance package for the customer one in relation to which a fiduciary obligation of loyalty can be implied in law or in fact **[282]**. Any element of trust and confidence that the dealer will secure the best available finance package is not of the type where the customer trusts the dealer to act with single-minded loyalty towards the customer, to the exclusion of its own interests **[108], [274], [283]-[284]**. The claims in both equity and the tort of bribery therefore fail **[288]-[289]**.

(v) Mr Johnson's claim under section 140A of the CCA

The Court of Appeal made a number of errors that vitiate its decision on the issue of unfairness under section 140A of the CCA **[316]**. In particular, the Court of Appeal should not have placed any reliance on whether Mr Johnson had made a bad bargain in the sense of paying considerably above the market value of the car: that had not been pleaded, and the discrepancy between the sale price and the market value was not explored at trial **[311]**. The Court of Appeal also made a factual error in assuming that that discrepancy was largely accounted for by the payment of the commission **[312]**. The Supreme Court holds that it should decide the issue of unfairness for itself rather than remit it to a District Judge **[337]**.

The test of unfairness under section 140A of the CCA permits courts to take account of a very broad range of factors and is highly fact-sensitive **[297]**. The mere fact that there has been no disclosure or only partial disclosure of the commission will not necessarily suffice to make the relationship between lender and customer unfair. It is a factor to be taken into account in the overall balancing exercise **[320]**.

The Court considers there are three further relevant factors on the facts of Mr Johnson's case. First, the size of the commission paid by FirstRand (the lender) to the dealer was significant, amounting to 25% of the advance of credit and 55% of the total charge for credit (comprising interest and fees) **[323]**. The fact that the undisclosed commission was so high is a powerful indication that the relationship between Mr Johnson and FirstRand was unfair **[327]**. Secondly, it is highly material that the documents provided to Mr Johnson did not disclose the existence of a commercial tie between FirstRand and the dealer in which FirstRand had a right of first refusal, but instead created the false impression that the dealer was offering "products from a select panel of lenders" and recommending "the Consumer Finance product that best meets your individual requirements" **[333]**. Thirdly, on the other side of the scales is Mr Johnson's failure to read any of the documents provided by the dealer. However, Mr Johnson was commercially unsophisticated and it must be questionable to what extent a lender could

reasonably expect a customer to have read and understood the detail of such documents. Furthermore, no prominence was given to the relevant statements in these documents **[336]**.

For these reasons, the Court holds that the relationship between Mr Johnson and FirstRand was unfair within section 140A of the CCA **[337]** and the commission should be paid to Mr Johnson with appropriate interest **[338]**. The Court substitutes an order in Mr Johnson's favour on different terms from that made by the Court of Appeal **[340]**.

References in square brackets are to paragraphs in the judgment.