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Motor finance commissions: Implications and outcomes

01 August 2025 Jonathan Newbold

The Supreme Court judgment in **Johnson v FirstRand Bank Limited** (London Branch) t/a MotoNovo Finance addresses the lawfulness of undisclosed commissions paid by lenders to motor dealers in car finance transactions. The Supreme Court rejected the Court of Appeal's analysis, concluding that the dealers were not subject to fiduciary duties towards their customers.

Key findings of the Supreme Court judgment

The judgment has significant implications for the motor finance industry and potentially other sectors involving credit brokerage.

Rejection of fiduciary duty

The Supreme Court determined that the dealers in the Johnson case were not subject to fiduciary duties towards their customers. The Court of Appeal had concluded that the dealers incurred both a disinterested duty and a fiduciary duty to their customers when providing a credit brokerage service. However, the Supreme Court found this analysis flawed.

Lord Reed, delivering the judgment, stated: "The typical features of the transactions are incompatible with the recognition of any obligation of undivided or selfless loyalty by the dealer to the customer when sourcing and recommending a suitable credit package" (para 276). The Supreme Court emphasized that the dealers were engaged in arm's length commercial negotiations, pursuing their own interests throughout the transaction.

Disinterested duty and bribery

The Court of Appeal had recognised a "disinterested duty" sufficient to engage the tort of bribery. The Supreme Court rejected this notion, clarifying that the tort of bribery is not engaged by anything other than the receipt of a benefit by a person subject to a fiduciary duty. Lord Reed explained: "We have concluded, contrary to the Court of Appeal's analysis, that the tort of bribery is not engaged by anything other than the receipt of a benefit by a person who is subject to a fiduciary duty to which the beneficiary of that duty has not given fully informed consent" (para 288).

Disclosure and secrecy

The Supreme Court disagreed with the Court of Appeal's approach to disclosure requirements. The Court of Appeal had suggested that partial disclosure could negate secrecy and prevent a finding of bribery. The Supreme Court held that full disclosure of all material facts is necessary to avoid liability for bribery. Lord Reed stated: "Partial disclosure has never been enough, as Tuckey LJ recognized in dealing with the question of equitable relief" (para 226).

Unfair relationship under the Consumer Credit Act

The Supreme Court upheld the finding that the relationship between Mr Johnson and FirstRand was unfair under section 140A of the Consumer Credit Act (CCA). The Court of Appeal had identified several factors contributing to the unfairness, including the size of the commission, the non-disclosure of the commission, and the concealment of the commercial tie between the dealer and FirstRand.

Lord Reed noted: "The relationship between Mr Johnson and FirstRand was unfair within the meaning of section 140A of the CCA, by reason in particular of the size of the commission, the failure to disclose the commission, and the concealment of the commercial tie between the dealer and FirstRand" (para 340).

Implications for other sectors

The Supreme Court's judgment has significant implications for the motor finance industry and potentially other sectors involving intermediated financial services. The rejection of fiduciary duties for dealers in car finance transactions means that similar claims in other sectors may face challenges unless a clear fiduciary relationship can be established.

The judgment reinforces the importance of full disclosure in transactions involving commissions. Businesses in other sectors where fiduciary duties apply must ensure that all material facts are disclosed to avoid liability for bribery. In a consumer credit context, this is of course also necessary to seek to ensure fair relationships under the CCA.

The Supreme Court's emphasis on the arm's length nature of commercial negotiations may influence how courts assess the duties and obligations of intermediaries in various industries.

Conclusion

In conclusion, the Supreme Court's judgment in Johnson v FirstRand Bank Limited provides clarity on the legal standards for fiduciary duties, bribery, and disclosure in car finance transactions, with broader implications for credit brokerage practices across different sectors.

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Contact

Jonathan Newbold

Partner

jonathan.newbold@brownejacobson.com

+44 (0)115 976 6581

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