

Hope (Hopcraft) V Close Brothers Ltd & Other Consolidation Appeals [2025] Uksc 33 the Uk Supreme Court's Analysis of Contemporary Law on Breach of Fiduciary Duty by Matthew Parish

Matthew Parish

Partner, Intermarium Law Firm, Kyiv, United Kingdom

Corresponding author

Matthew Parish, Partner, Intermarium Law Firm, Kyiv United Kingdom

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Background

The Supreme Court consolidated three appeals

- Hopcraft v Close Brothers Ltd
- Wrench v FirstRand Bank Ltd (trading as MotoNovo Finance)
- Johnson v FirstRand Bank Ltd

All three concerned the widespread practice of car dealers acting as credit brokers and receiving undisclosed commissions from lenders. The claimants argued these arrangements breached fiduciary obligations, constituted bribery or secret commissions, and in Johnson's case, created an unfair relationship under section 140A of the Consumer Credit Act 1974.

At Issue was Whether

- Dealers owed fiduciary or other duties to their customers;
- Lenders were liable in tort (e.g. bribery) or equity (e.g. dishonest assistance)
- Commissions created "unfair" relationships under the CCA 1974.

Supreme Court's Core Findings

No Fiduciary Duty or Disinterested Duty Owed

The central finding of the Court was that car dealers acting as credit brokers do not owe fiduciary duties or a general duty to act disinterestedly in favour of customers. This position reversed the Court of Appeal's novel expansion of fiduciary obligations.

Legal Reasoning

- **Commercial Independence:** Dealers were selling vehicles to consumers and brokering finance as part of that sale, not as independent agents of the borrower.

- **Customer Expectation:** The Court stressed that ordinary consumers would not reasonably expect a dealer to act loyally or selflessly in brokering finance. Rather, it was understood as a commercial transaction.
- **No Trust or Reliance Relationship:** Fiduciary obligations arise only where one party (the principal) places trust and confidence in another (the fiduciary), and the fiduciary is expected to act exclusively in the principal's interests.
- The Court cited precedent that fiduciary duties are "exceptional" in commercial relationships, and that even acting as a broker does not automatically entail loyalty duties.
- **Agency Versus Sales Intermediary:** The Supreme Court drew a strict line between true agency relationships, where a broker is clearly acting for the consumer and has a duty of care and loyalty, and mere introductions or sales arrangements where the broker is also acting for themselves or the lender.

Key Principle Affirmed

"Not all persons who assist others in making financial decisions are fiduciaries. The imposition of such obligations requires a relationship of trust, reliance, and loyalty not merely commercial involvement."

Tort of Bribery and Dishonest Assistance

Having found no fiduciary or equivalent disinterested duty, the Court concluded

- There could be no bribe or secret commission in the legal sense, since these claims depend on breach of fiduciary loyalty.

- No dishonest assistance by the lender, because no primary fiduciary breach existed for them to assist.

The Supreme Court rejected the idea that a new form of fiduciary duty could arise based purely on the appearance of conflict of interest or undeclared commissions.

Unfair Relationship (Section 140A CCA) – Only Johnson Succeeds

In Johnson’s case, where a CCA claim was maintained (in the others it was not), the Supreme Court upheld the Court of Appeal’s finding that the finance relationship was “unfair” due to:

- An exceptionally high commission (55%), which inflated the cost of credit
- The dealer’s exclusive referral arrangement with the lender
- Inadequate disclosure of the commission and the nature of the dealer’s conflict of interest;
- Lack of procedural fairness or clarity.

This outcome demonstrates that even where fiduciary or tort claims fail, statutory protections may still apply under the Consumer Credit Act.

Table 1: Why the Supreme Court Rejected Fiduciary Duties: A Doctrinal Breakdown

Criterion for Fiduciary Duty	Court’s Analysis in <i>Hope v Close Brothers</i>
Existence of trust and confidence	Customers did not place full trust in dealers to act exclusively for them—dealers were acting in self-interest
Loyalty obligation expected by principal	No evidence that customers believed or were led to believe that dealers owed them loyalty
Control over property or decisionmaking	Dealers did not control customer assets or act as formal agents
Exclusive agency	Dealers were not exclusive agents of consumers—they had financial interests aligned with the lenders
Precedent	The Court relied on prior commercial law cases warning against overextension of fiduciary norms

In essence, the Court affirmed the narrow scope of fiduciary law in commercial contexts and warned against retrofitting equity to situations where the remedy lies if anywhere in statute or regulation, not judge-made law.

Regulatory Commentary

Potential FCA and Government Response

The Supreme Court’s refusal to expand fiduciary obligations leaves the door open but only slightly for consumer redress via litigation. However, the judgment may prompt increased regulatory intervention to address the perceived unfairness of secret commission models.

Regulatory Avenues

FCA Rule-making & Enforcement

- The Financial Conduct Authority (FCA) already banned discretionary commission arrangements in motor finance from January 2021, citing systemic conflicts of interest.
- This ruling may prompt the FCA to extend disclosure requirements further for example, mandating
- Full commission transparency at point-of-sale.
- Written acknowledgements from consumers about referral relationships.
- Record-keeping obligations for dealers and lenders.

Industry-Wide Redress Scheme?

- Campaign groups are now calling for a redress scheme akin to PPI (Payment Protection Insurance) for affected motor finance customers.
- The FCA could pressure lenders to voluntarily compensate consumers were
- Commission levels were excessive
- No disclosure was made
- There was no clear commercial rationale for product selection.

Law Commission or Treasury Review

- A statutory review of the Consumer Credit Act 1974 is underway. This judgment strengthens the case for.
- Modernising unfair relationship tests
- Simplifying consumer rights of redress
- Harmonising fiduciary-equivalent protections in certain high-risk sectors (e.g., subprime finance, buy-now-pay-later).

Conclusion

The UK Supreme Court in *Hope v Close Brothers Ltd* [2025] UKSC 33 reaffirmed a restrained and orthodox approach to fiduciary law, avoiding the doctrinal inflation of loyalty obligations in ordinary commercial transactions. While the claimants largely failed, the Court preserved the integrity of the Consumer Credit Act and hinted that regulation not litigation is the primary safeguard against abusive finance practices.

In doing so, the Court has simultaneously clarified the limits of legal duty and spotlighted the urgent need for a more proactive and systematic consumer protection regime one capable of addressing commission opacity, misaligned incentives, and commercial conflicts in modern retail finance.