UK Supreme Court to Review Ruling on Motor Finance Commissions:

Implications for the Automotive sector

Executive Summary

The UK Supreme Court's ruling on undisclosed commissions earned by brokers will significantly impact the automotive sector and lenders. Although banks have been the focus of debate, the decision by His Majesty's Treasury to intervene underscores the government's aim to avoid scenarios limiting car affordability.

The Financial Conduct Authority (FCA) had already flagged harm from discretionary commission models when the Court of Appeal highlighted a broader issue: commissions paid without customers' informed consent. The Supreme Court on 1 April 2025 will assess if car dealers who arrange finance owe a fiduciary duty to buyers and whether undisclosed or partially disclosed commission structures breach that duty.

This article considers the position of the brokers, original equipment manufacturers (OEMs), and their captive finance providers.

A SHIFT IN THE FIDUCIARY LANDSCAPE

The ruling by the Court of Appeal concerning motor finance commissions has immediate implications for the motor finance industry and its participants. The court established that car dealers owe a "disinterested duty" and an "ad hoc fiduciary duty" to their customers, mandating that they must provide transparent information and act with loyalty towards their clients. This ruling signifies a shift in the fiduciary landscape, compelling lenders and brokers to disclose any commissions earned and to secure fully informed consent from borrowers prior to any financial arrangement. This finding goes beyond the regulatory standard that the sector believed it was obliged to meet increasing the stakes for all parties involved in the motor financing value chain. The ramifications may be felt more widely and impact other products and services purchased through credit brokers and other intermediaries, irrespective of the approach of the Supreme Court to this decision after hearing its appeal.

The Supreme Court has scheduled to hear the case from 1 April 2025 after being urged by those seeking legal certainty, including the FCA. The Finance and Leasing Association has warned that if the Supreme Court is unable to find legal nuance, that the Court of Appeal judgment will further reduce lending to people facing economic hardship. This risk, together with the implications for the automotive sector as a whole, has not been lost on the government, with HM Treasury seeking permission to intervene in the case. Historically, the motor finance industry has operated under a variety of commission structures: fixed commissions, commissions that vary with the amount borrowed, and commissions that vary with both the amount borrowed and the interest rate that is agreed. It was the last of these—Discretionary Commission Arrangements (DCAs) that was banned in 2021 and the focus of the FCA review. Given the court's ruling, all commission structures could be deemed to fall foul of the fiduciary duties that are owed. Looking backwards: captive finance providers and the brokers who arranged that finance may need to make provision for significant redress payments. Looking forwards: there is a heightened expectation for transparency in commission arrangements, which could result in lenders reassessing their business models and pricing strategies. The ruling could lead to a reduction in the motor financing options that are available to car buyers as dealers and lenders adjust to the new legal landscape.

IMPACTS FOR LENDERS, BROKERS, AND OEMS

The FCA's concern with DCAs likely stems from the possibility that discretionary commission agreements could have incentivised brokers and dealers to charge customers higher rates of interest than was necessary, and so failing to treat those customers fairly. As part of this review, the FCA has temporarily paused the eight-week period that firms typically have to respond to customer complaints, indicating a recognition of the need for immediate compliance with the court's findings. This pause allows for a thorough assessment of how these practices may have affected consumers and consideration of the potential impact of the decision on customer complaints. The decision may lead to significant regulatory changes in the near future, regardless of whatever view is taken by the Supreme Court.

The impact of the ruling extends to lenders, brokers, and OEMs who may face increased scrutiny and liability as they navigate the newly defined obligations. The ruling has already sparked discussions about the potential for a wave of compensation claims from consumers who believe they have been overcharged due to undisclosed commissions. Complaint processes like these are often overlapping and contradictory for lenders, involving court proceedings, their internal complaints processes, the Financial Ombudsman Service (FOS), and the possibility of managing redress schemes under the oversight of the FCA. Additionally, claims management companies (CMCs) tend to be a significant driver of pursuing such claims and litigation funders are likely to scrutinise them closely, adding further complexity to an already challenging landscape.

Certain lenders with significant exposure to the industry are reported to be particularly vulnerable, with industry experts ranging from investment banks, rating agencies, and legal firms estimating substantial potential payouts in response to these claims. The financial industry is now tasked with reassessing their compliance frameworks and ensuring they meet the newly articulated fiduciary duties established by the court.

As the industry grapples with the implications of the court ruling, the regulatory response is poised to shape the trajectory of motor finance practices significantly. The FCA's ongoing review may lead to the establishment of a multi-billion-pound redress scheme to compensate affected consumers, which would require captive finance providers to set aside significant financial reserves. This development could further put strain on the financial positions of affected captive finance providers, many of which operate as subsidiaries of major automotive manufacturers and are critical to supporting vehicle sales strategies.

Moreover, the automotive sector faces additional challenges as it adapts to the evolving finance landscape. Electric vehicles only accounted for 19.6 of new car sales in 2024, falling short of the 22% required under the Zero Emission Vehicle (ZEV) mandate. This shortfall underscores the challenges that the automotive industry must navigate amidst changing consumer preferences and regulatory pressures. The intervention of HM Treasury in the Supreme Court case highlights a concern that extends beyond car buyers to the manufacturers and ancillary industries who depend on vehicle sales. The stability of the used car market may provide some refuge for manufacturers; however, the ongoing issues related to financing could complicate sales dynamics across the board.

As stakeholders in the motor finance sector confront these new realities, the potential for increased liability and the need for comprehensive policy reviews will be critical. The landscape is shifting, and companies must adopt a proactive approach to compliance and customer engagement to mitigate risks associated with the new court ruling. The full implications of this decision are still unfolding, and it is reasonable to anticipate that the landscape of motor finance will continue to evolve in response to both consumer demands and regulatory expectations.

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