



# Fiduciary Duties and Bribery in Commercial Relationships – lessons from Car Finance

## Hopcraft v Close Brothers Ltd (and other appeals) [2025] UKSC 33

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Although the judgment on these conjoined appeals arising out of the financing of vehicle purchase was widely reported because of its impact upon the potentially extremely large liabilities of the appellant lenders, there are 2 topics which apply far beyond such cases: (1) what is required to establish a fiduciary relationship between parties to a commercial relationship, and (2) the extent of the tort of bribery.

### 1. Fiduciary relationships in commercial transactions

The Court of Appeal held that the sellers of the cars to the claimants had been the fiduciaries of the buyers. The Supreme Court decided that it had been wrong to do so.

The Supreme Court emphasised that the essential characteristic of a fiduciary relationship is that the fiduciary undertakes to subordinate his own interests to those of another. He undertakes to (and so must) show undivided loyalty to that other and hence may make no profit for himself or any other (unless properly authorised to do so). Proving that such an undertaking has been given (whether explicitly or by implication) requires an objective assessment of the facts, and this will include the context in which the parties are engaging. Where parties are engaged on a commercial transaction it *“is normally inappropriate to expect [one party] to subordinate its own interest to those of another”*.

The Supreme Court accepted the lenders’ submission that even persons who may be reasonably trusted by customers to offer advice about services or goods in which the customer has expressed an interest cannot be taken to have undertaken a fiduciary obligation to the customer. That person has (and should be recognised as) having interests which compete/conflict with those of the customer which exclude any implication of undivided loyalty to the customer (although there might well be other, lesser, duties).

On the facts, the Supreme Court decided that the Court of Appeal’s conclusion that the sellers owed fiduciary duties to the buyers (and hence the receipt by them of commissions from the lenders was an actionable breach of those duties) was wrong. The sellers had at no time undertaken to show undivided loyalty/subordinate their own interests to the buyers. They were at all times commercial counter-parties and had been entitled to act in their own interests.

The judgment is an important reminder that the strictness of the rules which bind fiduciaries (which incentivises claimants to plead them) reflects the rarity of the commercial situations in which they can be expected to apply. The strictness of those rules is fair because they will only apply where the person subject to them has (viewed objectively) undertaken the heavy burden of a

fiduciary. Proving that this has occurred in any commercial setting will require cogent evidence.

## 2. The tort of bribery

One of the lenders argued that the tort itself should be abolished as a “*wrong turn*” which was “*anomalous and unprincipled*”, added nothing to the protections provided by other causes of action. All of these arguments were rejected. By 1956 the tort had been “*too well established to be questioned*” and this had only been reinforced by the numerous subsequent cases in which it had been applied. There was no proper basis to apply the Practice Direction to depart from that approach; the reasons for the law to set out a strict approach to the payment of bribes, including the ability to recover bribes without proof of loss were “*as relevant today as they were at the end of the 19<sup>th</sup> century, if not more so*”. The fact that the payer of a bribe is a primary tortfeasor (as opposed to an accessory to a breach of duty on the part of the recipient) served the same purpose.

However, having roundly endorsed the existence of the tort, the Supreme Court restricted its application to bribes offered to persons who were in a fiduciary relationship. The Court of Appeal had held that such a relationship was not necessary, but the Supreme Court decided that a fiduciary relationship was “*an essential requirement*” of the tort – establishing some lesser duty was insufficient.

The Supreme Court also considered whether “*secrecy*” was required to establish the tort. The Court of Appeal had (in 2007) decided that disclosure that a commission “*might*” be paid meant that “*the secret was out*” and that this negated liability in bribery, although it would not operate as the full disclosure required to obtain the full and informed consent that would absolve a breach of fiduciary duty.

Given its decision that bribery only applies to those under fiduciary duties it may not be surprising that the Supreme Court decided that it was only the type of disclosure that acted as a defence to a breach of fiduciary duty would do. Thus, unless there has been sufficient disclosure to provoke full and informed consent, the tort will be made out.

The final point related to the longstanding approach that, regardless of whether the bribe actually caused any loss, the payer of the bribe is liable to pay the amount of the bribe to the claimant. The law was recognised to be anomalous in this respect, but the need for deterrence, the difficulty in proving the actual consequences of a bribe and the lack of any suggested injustice caused by this approach resulted in the Supreme Court declining to interfere.

The tort is therefore now beyond challenge, but its scope is somewhat narrower than previously thought. Given that it only applies to fiduciaries its utility (ie over and above the accessory liabilities to such breaches) may lie in the ability to recover the bribe regardless of motivation and the causing of loss/profit.

The reduced scope of the tort may mean that where it has to date been used within claims against employees alleged to have taken bribes (who are not of sufficient seniority to be pleaded as fiduciaries), that specific cause of action will fail. However, as noted within the judgment, this will not leave employers devoid of other routes to judgment (egs breach of contract, intentional infliction of harm, conspiracy) although issues of causation of damage may require some attention.



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