

**Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers Limited [2024] EWCA Civ 1292 ('the Judgment')**

**Rental sector specific FAQs**

**Important Information**

*This note (the “FAQ note”) is intended solely as a summary of responses to some of the frequently asked questions identified by the BVRLA in respect of the Judgment. The purpose of this FAQ note is to provide high-level generic information in light of the Judgment. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright1 entity on the points of law discussed, or as to the application of the Judgment to the circumstances of any person.*

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**1 Does the *Hopcraft* judgment have any relevance to the vehicle rental sector, or not?**

- 1.1 Yes.
- 1.2 The Judgment is given in relation to English common law and it has application across sectors. It is not a Judgment concerned with the interpretation of specific regulatory rules.
- 1.3 The Judgment relates to the law relating to the payment and receipt of commissions (or other benefits) by a product provider to a broker/intermediary, where that broker or intermediary owes a 'disinterested' duty or a 'fiduciary' duty to the end customer.
- 1.4 Although the Judgment concerns arrangements between motor finance providers, motor dealers (acting as credit brokers) and the end customers (as borrowers under credit agreements with the motor finance providers), the law on which the Judgment is based is applicable across sectors.
- 1.5 Where vehicle rental agreements are sold or distributed through brokers or intermediaries to end customers, the Judgment has relevance and potential application depending on the facts of the

particular distribution model. The Judgment will be particularly relevant to those market participants in the vehicle rental sector involved in distribution chains that include intermediaries or brokers who act in a similar capacity to the motor dealers in *Hopcraft*; but it is likely to have broader application to other intermediated sales channels.

- 1.6 The Judgment is unlikely to have any relevance or application to 'direct distribution' models, i.e. where there are no intermediaries or brokers involved in the customer journey.

## **2 Is the *Hopcraft* judgment only relevant to vehicle rental companies when they work with intermediaries to acquire customers?**

- 2.1 No.
- 2.2 In addition to the circumstances described at 1 above (where the vehicle rental company is a 'product provider' and may work with brokers or intermediaries to sell/distribute the vehicle rental 'product'), it is also possible that a vehicle rental company is itself an intermediary, in connection with the sale/distribution of other products or services which are provided to the end customer by third parties.
- 2.3 Depending on the product or service being sold/distributed by the vehicle rental company (e.g. an insurance product), there are likely to be other laws and regulatory requirements applicable to that activity which may impact the application of *Hopcraft*.

## **3 Would all customers using price comparison websites be considered 'sophisticated' customers (for the purposes of the Judgment)?**

- 3.1 No, not necessarily.
- 3.2 In fact, in one of the cases (*Johnson*) the claimant had already sought to obtain finance from a third party for the purchase of the car, and had therefore conducted some market investigation for finance products. The Court still concluded, however that in Mr. Johnson's case (as with the other claimants), there was an element of vulnerability arising from his inability to purchase the vehicle with his own cash resources, and was reliant on credit to do so.