



# Post-Supreme Court Checklist for Dealers: Complying with the New Expectations



## Introduction

The Supreme Court's ruling in *Hopcraft & Others v Close Brothers & FirstRand* has brought welcome clarity – but also renewed scrutiny – for dealerships involved in motor finance.

The Court decisively ruled that **dealers are not fiduciaries** and dismissed bribery-based claims. However, the legal focus has now moved to **unfairness** under Section 140A of the Consumer Credit Act. This means that how you communicate with customers, disclose commission, and describe lender relationships is now more important than ever.

**Dealers are not off the hook – they're now in the spotlight.**

## What Changed – And Why It Matters

Before the Judgment	After the Judgment
Risk centred around <b>secret commissions</b> and fiduciary obligations	These risks are <b>largely closed off</b>
Dealers feared being classed as agents acting solely for the customer	Dealers are now clearly not fiduciaries
Less attention on how commissions are disclosed or explained	Now, <b>legal and regulatory scrutiny has shifted firmly to Section 140A of the Consumer Credit Act</b>
Risk of claims was seen as highly speculative	Complaints are expected <b>to rise rapidly, focused on Section 140A of the Consumer Credit Act</b>

The legal bar has shifted — and the FCA has confirmed it is **actively considering a redress scheme** to address systemic risks.

## At a Glance: Compliance Priorities for Dealers

Area	Key Focus	Red Flags to Avoid
<b>Commission Disclosure</b>	Clearly disclose if you receive commission, the amount (or range), and why it is paid.	✗ Generic phrases like “a commission may be paid” without detail
<b>Impartiality Claims</b>	Be honest about lender panels – don’t claim independence if you are tied to one lender.	✗ Presenting as a broker with a panel while only offering one lender’s products
<b>Customer Communication</b>	Make all communication fair, clear and not misleading.	✗ Rushing customers or burying key terms in lengthy documents
<b>Document Sign-Off</b>	Highlight commission-related terms; allow time to review before signing.	✗ Overloading customers with paperwork and pressuring them to sign
<b>Training &amp; Oversight</b>	Train staff on FCA CONC rules, commission practices and customer fairness.	✗ No record of staff training or commission disclosures
<b>Regulatory Alignment</b>	Be ready to explain your practices under the FCA Consumer Duty and Section 140A.	✗ Assuming no fiduciary duty = no risk

## Dealer Self-Check: Are You Compliant?

Ask yourself:

- Do we **clearly disclose** all commissions in our sales process?
- Are **Suitability Documents** and other forms **accurate and tailored**?
- Have staff been trained on FCA CONC and the implications of this ruling?
- Do we review and **update lender panels or exclusivity arrangements**?
- Are we capturing and evidencing **what was explained to the customer**?
- Have we stress-tested our approach to ensure it is **clear, fair and not misleading**?

If you're unsure or ticking "no" to any of these – it's time to take action.

## What Not to Do

- Don't assume using pre-existing paperwork is safe – several documents cited in the Supreme Court case were found to be **objectively misleading**, even if no one read them.
- Don't rely on customers to "ask for commission details" – **prominence and clarity** matter most.
- Don't assume your processes are fine because "you've had no complaints yet" – that's no defence to an unfair relationship claim.

## Want to Know More?

Auxillias supports lenders and dealers alike with:

- Compliance reviews and audits
- Updated Suitability Documents and templates
- Training materials for sales teams
- Strategic remediation planning and implementation

To speak to our team or arrange a post-judgment compliance review, contact us:



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