

29 October 2024

S&U plc
("S&U" or "the Group")

Update on Advantage Finance Limited

S&U, the specialist motor and property financier, today notes the recent Court of Appeal decisions on Johnson and Wrench v Firststrand Bank Limited and Hopcraft v Close Brothers Limited, the implications of which it is considering. These decisions provide guidance for lower courts on the subject of commissions disclosure in the financial services industry. They unexpectedly overturned hitherto received judicial positions on the duties of motor dealers, credit brokers and lenders to disclose and obtain consent for the payment of commission. The Group also notes the intention of those companies to appeal those decisions to the UK Supreme Court.

The Court of Appeal decisions set a higher bar for the disclosure of, and consent to, the existence, nature, and quantum of any commission paid than that required by current FCA rules, as adhered to by regulated motor finance firms including the Group's motor finance subsidiary Advantage Finance Limited ("Advantage Finance"). However, the Court of Appeal recognised the 'tensions' between previous lower court judgements on the extent of commission disclosure in the cases of 'Hurstanger' and 'Wood'. It therefore called for 'a definitive announcement to be made by the Supreme Court about the circumstances in which the payment of a commission will give rise to a liability on the part of the payer.' It is therefore unsurprising that it is the intention of the companies involved to appeal the judgement to the UK Supreme Court.

In the meantime, S&U notes that these decisions do not specifically relate to 'difference in charges' models of commission (currently the subject of an FCA review) in which Advantage Finance has never been engaged.

Given the Court of Appeal's judgement and its implications for the whole of the financial services industry, S&U is aware that it has been the subject of urgent discussions between the FLA, the FCA and the Government, and looks for an expeditious resolution to the issue.

The Group will update the market, if and as appropriate.

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