

FIRSTRAND LIMITED

(Incorporated in the Republic of South Africa)

(Registration number: 1966/010753/06)

JSE ordinary share code: FSR

ISIN: ZAE000066304

NSX ordinary share code: FST

LEI: 529900XYOP8CUZU7R671

(FirstRand or the group)

### **Voluntary announcement: Judgement from UK Court of Appeal on motor commission cases**

FirstRand informs its shareholders that today the UK Court of Appeal published a judgement on two cases (Wrench and Johnson) relating to motor finance agreements that form part of the MotoNovo back book that resides in the London branch.

#### **Previous disclosures from FirstRand on this matter**

- The UK's Financial Conduct Authority (FCA) is reviewing the historical use of discretionary commission arrangements and sales by the mainstream lenders in the UK motor finance market. Most of the vehicle loans originated within the scope of the FCA review reside in the London branch. The FCA has indicated next steps in the process will be communicated in May 2025.
- In the meantime, claims relating to commission arrangements continue to be heard in the UK county courts, in the main instituted by claimant law firms (CLF's). London branch has been successful in defending the large majority of these claims at trial, as the courts consistently found that commission payment disclosures met regulatory and legal requirements and finance arrangements with customers were fair.
- The group continues to believe that its historical practices were compliant with the law and regulations in place at the time. However, the group has also acknowledged that uncertainty persists whilst the FCA process runs its course and legal risk remains as individual cases continue to be tested and taken on appeal. This uncertainty was a contributing factor to the group's decision to raise a pre-tax accounting provision of R3.0 billion for the year to 30 June 2024.

#### **Background to the cases relating to the judgement published today**

Following losses in the lower courts, Messrs Wrench and Johnson, through their CLF's, appealed their cases to the UK Court of Appeal.

In both the Wrench and Johnson matters, the finance agreements signed by the customers disclosed that commission may be payable to the motor dealer in the terms and conditions. The group believes this was in compliance with legal and regulatory requirements at the time.

#### **The judgement**

In the Wrench matter, even though the payment of a commission was disclosed in London branch's terms and conditions, and London branch had imposed contractual obligations on the dealer to disclose the commission to the customer, the court found that this was still inadequate to ensure the customer was aware that a commission was paid.

In the Johnson matter, it was accepted that London branch had disclosed commission would be paid to the motor dealer. However, the court found that the disclosure was inadequate for Mr Johnson to give informed consent and should have gone further, and beyond regulatory requirements.

The judgement also states that the judges in the lower courts were wrong to find that the motor dealers have no fiduciary duty of loyalty to their customers.

### **FirstRand's position**

FirstRand is concerned by the judgement and does not agree with its findings.

The UK Court of Appeal found that London branch intentionally included the commission disclosure in the terms and conditions in a way that it would be unnoticeable to the customer and appears to have taken steps not to make the customer aware of the commission.

FirstRand believes that the commission disclosures in both the Wrench and Johnson agreements were in accordance with all legal and regulatory requirements. The court however found that disclosure should have gone beyond that.

FirstRand also does not agree with the judgement's finding that motor dealers owe a fiduciary duty to a customer (like a trustee or a director of a company might do). Lenders and motor dealers have always operated on the basis that the dealer functions on an arm's length basis and has a primary objective to sell a motor vehicle, and therefore does not owe a duty of loyalty to the customer.

This judgement finds that a fiduciary duty suddenly and retrospectively now likely applies to all providers of credit at point of sale which has far-reaching and materially negative implications for the motor finance industry and broader consumer finance sectors in the UK. Given the importance of this issue, FirstRand believes these matters should now be heard by the UK Supreme Court which only considers matters of law with wider public importance.

FirstRand has therefore immediately sought permission to appeal to the UK's Supreme Court on the following grounds (amongst others):

- Motor dealers do not owe customers fiduciary duties or any other duty around providing advice, recommendation, or information on an impartial basis.
- When lenders make disclosures regarding the possibility of payment of commission in the terms and conditions of their finance agreements signed by the customer, it cannot be said that the commission has been hidden or kept secret.

FirstRand has engaged with its regulators in both the UK and South Africa to explain its legal position and its view on the far-reaching negative consequences of this judgement. The group will continue to defend its position and undertake to update shareholders as and when it is able to provide further clarity.

Issued by FirstRand Investor Relations: [sam.moss@firstrand.co.za](mailto:sam.moss@firstrand.co.za)

Sandton  
25 October 2024

Sponsor  
Rand Merchant Bank (a division of FirstRand Bank Limited)