Neutral Citation Number: [2025] EWCC 1

Case No: K01BM729

IN THE COUNTY COURT AT BIRMINGHAM

Birmingham Civil and Family Justice Centre
The Priory Courts
33 Bull Street
Birmingham B4 6DR

Date: 7 January 2025

Before :

HHJ EMMA KELLY

- -

Between :

JAMES WILLIAM STEWART ABERNETHY AND OTHERS **Claimants**

- and –

(1) BARCLAYS BANK UK PLC
(2) HSBC UK BANK PLC
(3) BANK OF SCOTLAND PLC
(4) BLACK HORSE LIMITED
(5) LLOYDS BANK PLC
(6) MBNA LIMITED
(7) SANTANDER CARDS UK LIMITED
(8) SANTANDER UK PLC **Defendants**

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Hodge Malek KC, Alexander Hutton KC, Max Malin KC, Andrew Clark, and **Anna Dannreuther** (instructed by **Harcus Parker Limited**) for the **Claimants**
Laura John KC and **Samuel Ritchie** (instructed by **Simmons & Simmons LLP**) for the **First Defendant**
Richard Handyside KC and **Gillian Hughes** (instructed by **Eversheds Sutherland)** for the **Second Defendant**
Simon Salzedo KC and **Lee Finch** (instructed by **TLT LLP**) for the **Third to Sixth Defendants**
Peter de Verneuil Smith KC and **Paul Bonner Hughes** (instructed by **TLT LLP**) for the **Seventh and Eighth Defendants**

Andrew Settle solicitor for non-party claimant firm **Sandstone Legal Limited**
John Taylor KC (instructed by **Pinsent Masons LLP**) for non-party defendants **Royal Bank of Scotland plc** and **National Westminster Bank plc**
Giles Robertson (instructed by **Hogan Lovells International LLP**) for non-party defendants **Canada Square Operations Limited** and **Citi Financial Europe Limited**

Hearing dates: 7th, 8th, 9th October 2024

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APPROVED JUDGMENT

HHJ EMMA KELLY :

1. This judgment concerns the claimants' application, dated 29 September 2023, for a Group Litigation Order ('GLO' and 'the GLO Application'). The GLO Application is opposed by all of the defendants.

Background

2. Harcus Parker Limited ('HP') act for the claimants and numerous other individuals who wish to bring claims against various financial institutions in respect of Payment Protection Insurance ('PPI') policies that were sold in circumstances where the financial institution received a commission funded by policy premiums the customer paid. This type of claim is often referred to as a '*Plevin* claim' following the Supreme Court's decision in *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61 ('*Plevin*').

3. The index claim is referred to as 'the Abernethy claim'. Multiple claimants are named in a single claim form of which Mr James Abernethy is the first so named. The precise number of claimants has evolved as HP amended the claim form multiple times before service, adding more claimants and discontinuing some claims, but now stands at around 3,420. A single claim form by which multiple claimants bring separate claims will be referred to in this judgment as an 'omnibus' claim form. The eight defendants are various financial institutions that sold PPI policies.

4. Generic particulars of claim have been served. Each claimant asserts that their relationship with a given defendant was unfair for the purposes of s.140A of the Consumer Credit Act 1974 ('CCA 1974') and seeks relief under s.140B(1). Some of the claimants also pursue a claim for damages under s.138D of the Financial Services and Markets Act 2000 ('FSMA 2000') for alleged breach of rule 1.4.1 of the Dispute Resolution: Complaints ('DISP') Financial Conduct Authority ('FCA') Handbook, relating to how redress payments were calculated.

5. HP has issued three further omnibus claim forms in the County Court at Birmingham against the same eight defendants under claim numbers K02BM662 – 'the Allen claim', L00BM886 – 'the Adamczyk claim', and L01BM788 – 'the Abbott claim'. All are *Plevin* claims and rely on the same causes of action. HP calculates that there are now 14,599 claimants across the Abernethy, Adamczyk, Allen, and Abbott claims (together 'the A claims'). The GLO application has only been made in the Abernethy claim but the claimants' intention is that, in due course, a GLO cover all of the A claims and future *Plevin* claims, and certain other extant *Plevin* claims, against the eight defendants.

6. HP has also issued three further *Plevin* claims on omnibus claim forms, again in the County Court at Birmingham, against financial institutions other than the defendants under claim numbers K02BM274 - 'the Beale claim' against 26 defendants, L00BM316 – 'the Brabham claim' against 21 defendants and L01BM194 – 'the Baker claim' against 21 defendants (together 'the B claims'). There is overlap between the identities of the defendants to the B claims, most of whom find themselves a party in all three claims. Although the B claims

involve more defendants, the claimants' skeleton argument, at para. 12, states that the A claims represent about 88% of HP's issued *Plevin* claims with the B claims covering the remaining 12%.

7. It is apparent from the claimants' skeleton argument that HP is reserving its position as to how best to proceed in respect of *Plevin* claims against other defendants. No application has been made to date to join the B claims to any GLO. HP has however at times suggested in correspondence with the defendants to the B claims that a GLO should extend to *Plevin* claims against other defendants too.

8. By order dated 7 February 2024, detailed directions were given, in a form agreed between the claimants and defendants, for the service of the GLO Application and filing and serving of evidence. The GLO Application has been served on all law firms that HP knew acted for claimants in *Plevin* claims and all potential defendant financial institutions that are not defendants to the Abernethy claim. A timetable was set for the parties to exchange evidence and for interested non-parties to indicate any intention to participate in the hearing of the GLO Application and/or to file and serve evidence. Several interested non-parties have participated in the GLO Application to varying degrees.

Overview of the issues before the court

9. The claimants' primary position is that a GLO should be granted and applied to all *Plevin* claims raising the GLO issues against one or more of the defendants. The claimants' list of GLO issues is lengthy. A copy is attached to this judgment at Appendix 1. The claimants' draft form of GLO envisages all relevant future claims being entered on a group register, and extant claims entering the group register after a transitional period. The claimants envisage a small number of test cases, no more than 20, could be used to resolve all the GLO issues in a single 4-week trial.

10. The claimants' position has developed since the issue of the GLO Application. Their alternative position is that should the court not be persuaded of the merits of a GLO, some other form of collective case management should be ordered. They have in mind cherry-picking some of the features of the draft GLO to allow the GLO issues to be determined in a trial of test cases.

11. The defendants oppose a GLO or any other form of collective case management. They submit that the claimants should not be permitted to proceed by way of an omnibus claim form. The defendants ask the court to order 'disaggregation', by which they mean that each of the claimants, other than Mr Abernethy himself, should be ordered to issue a separate claim form within a period of 3 months. The deemed date of issue of the separate claim form would remain that of the Abernethy claim form. The defendants submit that a failure to comply should result in the striking out of the defaulting individual claimant's claim.

12. Neither the claimants' proposed alternative collective case management order nor the defendants' requested order is the subject of formal application notices. However, all parties agree that it is appropriate for the court to determine those issues, if they become relevant.

The evidence

13. The court has been provided with a voluminous and frankly disproportionate amount of documentation. The hearing bundle extends to around 13,000 pages, with an authorities' bundle of some 3,500 pages.

14. The claimants rely on the following witness evidence:

    (1) Damon Parker, a solicitor and director of HP, by four statements dated 29 September 2023, 28 December 2023, 21 June 2024, and 1 October 2024.

    (2) Daniel Kerrigan, a chartered legal executive and director of HP, by statement dated 26 January 2024.

    (3) Laurent Gerard Jeanmart, the chairman and co-founder of Katch Investment Group ('Katch'), by statement dated 1 October 2024. Katch is the funder of the *Plevin* claims issued by HP.

15. The defendants rely on the following evidence in opposition:

    (1) Robert Allen, a solicitor and partner at Simmons & Simmons LLP, on behalf of the first defendant, by statement dated 3 May 2024.

    (2) Tony Ward, the senior operations and legal support manager for the second defendant, by statement dated 3 May 2024.

    (3) Alanna Tregear, a solicitor and partner at TLT LLP, on behalf of the third to sixth defendants (all part of Lloyds Banking Group), by statement dated 3 May 2024.

    (4) Richard Ellis, a design and delivery project manager at the fifth defendant, on behalf of the third to sixth defendants, by statement dated 3 May 2024.

    (5) Richard Slater, a senior manager at the eighth defendant, on behalf of the seventh and eighth defendants (together 'Santander'), by statement dated 29 April 2024.

    (6) Stephen Walpole, a solicitor and partner at TLT LLP, on behalf of the seventh and eighth defendants, by statement dated 5 September 2024.

16. Several claimant law firms that have acted, do act, or may in the future act for other claimants bringing *Plevin* claims indicated an intention to participate in the GLO Application and served written evidence. Most relied only on written evidence but Mr Settle also made oral submissions at the hearing. Evidence was served from:

    (1) Steven McGarry, a director of Cheval Legal Limited ('Cheval'), by statement dated 14 March 2024. Mr McGarry describes Cheval as "the main claimant law firm in the *Plevin* field". Cheval opposes the making

of a GLO but advocates for the use of omnibus claim forms against individual defendants.

(2) Negar Yazdani, the managing partner of BlackLion Law LLP ('BlackLion'), by statement dated 14 March 2024. BlackLion also opposes the making of a GLO and advocates the use of individual claims, or omnibus claim forms whereby claims with very similar issues against one defendant only be grouped together.

(3) Kavon Hussain, the managing partner of Consumer Rights Solicitors ('CRS'), by statement dated 30 September 2024. CRS is neutral regards the GLO Application although Mr Hussain notes that he "does not see why it would not be possible to test the variables through a limited number of test cases".

(4) Andrew Settle, the managing director of Sandstone Legal Limited, ('Sandstone'), by statement dated 1 October 2024. Sandstone supports the GLO Application or, in the alternative, some other form of collective case management.

17. Eight non-party potential defendant financial institutions gave notice of their intention to participate and served witness evidence. All eight are defendants in the B claims. All oppose the GLO Application or any other form of collective case management order. The court has written evidence from:

(1) Andrew Connelly, the head of consumer affairs at Shop Direct Finance Company Limited ('Shop Direct'), by statement dated 22 May 2024.

(2) Diane Leonard, a senior PPI manager at Marks and Spencer Financial Services PLC ('M&S'), by statement dated 23 May 2024.

(3) David Carson, the company secretary and director of legal and regulatory affairs at Creation Financial Services Limited, by statement dated 24 May 2024.

(4) Jonathan Steed, solicitor and assistant general counsel at Capital One (Europe) PLC, by statement dated 24 May 2024.

(5) Joanne Gillies, a partner at Pinsent Masons LLP, on behalf of The Royal Bank of Scotland PLC ('RBS') and National Westminster PLC ('Natwest'), by statement dated 24 May 2024.

(6) Victor Fornasier, a partner at Hogan Lovells International LLP, on behalf of both Canada Square Operations Limited ('Canada Square') and Citi Financial Europe Limited ('Citi'), by statement dated 24 May 2024.

18. Of the eight non-party potential defendants, RBS, Natwest, Canada Square, and Citi also made oral submissions at the hearing.

19. The court has skeleton arguments from all the parties and Sandstone, Canada Square/Citi, and RBS/Natwest. The use of the word 'skeleton' is a misnomer, with some representatives being more culpable than others of written verbosity.

The defendants, in addition to preparing individual skeleton arguments, produced a 'common submissions' document. They also divided up their oral submissions to try to avoid duplication.

20. This judgment necessarily cannot refer to the details of all the documents and submissions nor all the authorities referred to. The court has however taken those matters into account but, for reasons of proportionality, this judgment focuses on the most salient points.

GLO legal framework

21. Civil Procedure Rule ('CPR') 19.21 – 19.26 and Practice Direction 19B provide the procedural framework for the making and operation of a GLO.

22. By CPR 19.21 a GLO is defined as "an order made under rule 19.22 to provide for the case management of claims which give rise to common or related issues of fact or law (the "GLO issues")."

23. By CPR 19.22(1):

> "The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues. The multiple parties may be claimants or defendants.
>
> (Practice Direction 19B provides the procedure for applying for a GLO where the multiple parties are claimants.)"

24. PD19B, para. 3.2 requires an applicant to file the following in support of an application:

> "(1) a summary of the nature of the litigation;
>
> (2) the number and nature of claims already issued;
>
> (3) the number of parties likely to be involved;
>
> (4) the common issues of fact or law (the "GLO issues") that are likely to arise in the litigation; and
>
> (5) whether there are any matters that distinguish smaller groups of claims within the wider group."

25. The effect of a GLO is significant. By CPR 19.23:

> "(1) Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues–
>
> (a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and

> (b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register."

26. If a GLO is to be made, various procedural requirements must be complied with. By CPR 19.22(2) the GLO must:

> "(a) contain directions about the establishment of a register (the "group register") on which the claims managed under the GLO will be entered;
>
> (b) specify the GLO issues which will identify the claims to be managed as a group under the GLO;
>
> (c) specify the court (the "management court") which will manage the claims on the group register;
>
> (d) be made … in the County Court with the consent of the Head of Civil Justice. Such consent will be sought by the court to which the application for the GLO is made."

27. The CPR thus envisages a three-stage consideration to determining an application for a GLO:

(1) A requirement that claims have 'common or related issues of law or fact'.

(2) A requirement that 'there are or are likely to be a number of claims' giving rise to those common or related issues of law or fact.

(3) If the jurisdictional threshold in (i) and (ii) is met, a consideration as to whether to exercise the court's discretionary power to make a GLO.

28. The jurisdictional threshold must be satisfied for the court to contemplate exercising its discretion to make a GLO (per Jackson LJ in *Austin v Miller Argent (South Wales) Limited* [2011] EWCA Civ 298 ('*Austin*') at [35], and applied in *Tongue v Bayer Public Limited Company* [2023] EWHC 1792 (KB) ('*Tongue*') at [10]). The discretion is to be exercised in accordance with the overriding objective (per Asplin J in *Manning & Napier Fund v Tesco* [2017] EWHC 2203 (Ch) at [49] and *Tongue* at [15]).

29. The identification of common or related issues of law or fact is not to be confused with the issues that ultimately need to be determined to decide the litigation. It is only once the scope of the GLO is defined, being based on the common elements of the litigation that make up the GLO issues, that the court will decide how to determine the litigation. (Per Mann J in *Tew & others v BoS (Shared Appreciation Mortgages) No 1 plc & others* [2010] EWHC 203 (Ch) ('*Tew*') at [16].) In *Moon v Link Fund Solutions* [2022] EWHC 3344 (Ch) at [43] Trower J agreed with the approach in *Tew* and noted that the GLO issues: "should reflect and encompass the actual issues which are to be adjudicated, without pre-judging the answer to the questions the court is required to resolve".

30. Both the claimants' and defendants' submissions made detailed reference to *Tew* with each side contending it supported their position as to the merits or otherwise of a GLO. *Tew* concerned claims challenging the fairness of the contractual terms and relationship in the context of shared appreciation mortgages. The claims were brought under the Unfair Terms on Consumer Contracts Regulations 1994 ('the 1994 Regulations') and s.140A-140C of the CCA 1974. Over 100 claims had been commenced and there were as many as "another couple of hundred claimants who wished to make claims" if a GLO was granted. The case came before Mann J on the defendants' appeal against the making of a GLO. By the time of the appeal, the claimants no longer sought to uphold the principal provision of the GLO (which sought to determine whether fairness could be assessed by reference only to common circumstances at the exclusion of individual circumstances) and instead sought to redefine its terms. Mann J at [21] recognised that it was not open for the parties to manipulate the alleged common or related issues:

> "…The adjudication of the claimants' various claims raises the issues that it raises, not the issues that the claimants would like to say that it raises, or only the issues that they would like to have adjudicated. I must form a view of the extent to which any given issue will arise. It does not cease to arise merely because the claimants would like to run the case without it. True it is that the manner in which the claimants' Particulars of Claim are formulated relies on the sort of common issues (basically on the bank's side of the transaction) that I have referred to above, and that they do not go into the circumstances of individual transactions. However, that does not mean that the individual circumstances will not be an issue in these claims. It can be safely predicted, on the basis of the evidence and submissions before me, that if the claims were pleaded out the banks' Defences would take the point that the actual circumstances rendered the relevant terms, or the relationship, fair because, for example, the claimant in question had sufficient understanding, and the transaction made personal sense for that individual. That those circumstances are capable of being relevant is, in my view, quite plain from the wording of the legislation…"

31. Mann J agreed that the claimants' concession as to their previous formulation of the GLO issues was appropriate. He concluded at [34] that there was one plain common issue as to the effect of regulation 3 of the 1994 Regulations. That point was not controversial. He noted that, if the banks succeeded on that issue, no further questions of fairness would fall to be decided under the 1994 Regulations. If the banks failed, questions of fairness would arise under the 1994 Regulations and, in any event, under the CCA 1974. He noted:

> "… Fairness questions can best be tackled by taking lead cases, or test cases (depending on one's preferred terminology). Sample cases can be taken which represent various parts of the spectrum. Technically speaking the actual findings of unfairness in those cases will not bind other litigants, whether under a GLO or not, but they will doubtless provide guidance for the disposition of a lot, if not all, the other cases…"

32. He concluded at [36] that it was appropriate to grant a GLO noting such an order would automatically bind all participants on the genuinely common issues and would control other claims. At [37] he accepted there were "related issues of fact there if they are not common" and proposed directions that the regulation 3 point 'possibly' be taken as a preliminary issue, and that there be a trial of lead cases on fairness.

33. The purpose of test cases was considered in *Lancaster v Peacock QC* [2020] EWHC 1231 (Ch) by Fancourt J and Master Kaye at [2] – [3] in the following terms:

> "2. The purpose of taking sample claimants is twofold. First, to ensure that issues that are common to all the claimants' claims can be decided in such a way as to bind them all; and, second, to decide other factual and legal issues where the decision will not necessarily bind other claimants but is likely to give a very clear indication of the way that their cases too will be decided if tried, with the expected consequence that the parties will then be able to settle the remaining claims.
>
> 3. It is not, of course, necessary to have very many sample claimants in order to decide common issues. The purpose of a broader selection of sample claimants, beyond what is needed to try the common issues, is to generate sufficiently broad guidance for the likely disposal of all the other claims, whose particular facts will vary, while at the same time not overcomplicating or encumbering or significantly adding to the cost of the trial."

Are there common or related issues of law or fact?

34. The parties disagree as to whether the claims pass through the required jurisdictional gateway of having common or related issues of law or fact.

35. The claimants submit that each claimant relies on the same essential factual case, namely that in purchasing PPI, the relevant defendant's non-disclosure of a substantial level of commission caused the relationship under a credit agreement to be unfair and each claimant seeks the same primary remedy and/or largely the same alternative remedies. The claimants submit that their 18 GLO issues, as per Appendix 1, are common issues that can be broken down into four main categories: tipping point issues, quantum, compromise, and limitation. Issues 1-6 are said to be generic issues that will apply to all claims, whilst issues 7-18 will apply to some of the claims only.

36. The defendants do not accept that there is sufficient commonality of fact or law to pass the jurisdictional hurdle. They submit that an analysis of the claimants' proposed GLO issues demonstrates that the issues posed are either fact-specific, requiring individualised assessment, and/or are not issues that fall to be determined in the claims and/or are not common or related issues to all claims and in any event could be adequately addressed outside a GLO.

37. All parties made submissions as to each proposed GLO issue. I am cognisant of the need to avoid straying into the error of conflating the identification of any

GLO issues with what would be the subsequent stage of determining the issues required to decide the cases. However, as Mann J recognised in *Tew*, it is necessary for the court to form some view as to the extent to which the issues are likely to arise. This step is required to check whether the GLO issues advanced by the claimants are indeed common or related issues of law or fact, as opposed to a 'wish list' of issues the claimants would like determined but which do not properly arise. It is not the function of the court hearing an application for a GLO to express a view, let alone determine, those issues. At this stage, the court simply needs to assess whether the issues are likely to arise such that they can be said to be common or related issues of law or fact.

Issues (1)-(3) - Unfairness

38. Issues (1)-(3) all relate to the alleged unfairness of the relationship. The full wording appears in Appendix 1 but the issues can be summarised as:

(1) Was the relationship unfair to the claimant at the end thereof or, if the relationship is continuing, at the date of trial?

(2) Is there a universal 'tipping point' beyond which the amount of undisclosed commission (expressed as a % of PPI premium(s)) is so large that the relationship is unfair regardless of other considerations?

(3) Is there a universal 'tipping point' beyond which the amount of undisclosed commission is so large that the evidential burden on the defendant will not be discharged unless exceptional circumstances are shown and, if so: (a) what is that tipping point; and, (b) what circumstances would be capable of being 'exceptional' for these purposes?

39. The claimants contend there is a universal tipping point. Their primary position is that anything beyond that will be unfair regardless of other considerations i.e. issue (2). Their alternative position is that anything beyond a tipping point will be unfair unless the defendant shows 'exceptional circumstances' i.e. issue (3). The claimants envisage the court determining both the tipping point and what is meant by exceptional circumstances. The claimants submit that identifying a fixed percentage tipping point binding across all cases within the GLO will set out parameters for resolving the non-test cases.

40. The defendants submit that issues (1)-(3) cannot be common issues as they disregard the statutory test to be applied under s.140A and the approach taken by the Supreme Court in *Plevin* and in subsequent cases, which requires a multi-faceted fact-specific approach to the assessment of unfairness. In other words, the defendants contend that the claimants are trying to do that which was identified as impermissible in *Tew*, namely the cherry-picking of issues the claimants would like to have adjudicated rather than the issues that actually arise.

41. S.140A of the CCA governs the determination of the fairness of a relationship between a creditor and a debtor. By s.140A(2):

> "In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor)."

42. In *Plevin* the Supreme Court discussed the correct approach to s.140A. At [10]:

> "Section 140A is deliberately framed in wide terms with very little in the way of guidance about the criteria for its application, such as is to be found in other provisions of the Act conferring discretionary powers on the courts. It is not possible to state a precise or universal test for its application, which must depend on the court's judgment of all the relevant facts…

43. At [17] of *Plevin*, in the context of discussing the relevance of breach of the Insurance Conduct of Business Rules ('ICOB rules') to the concept of fairness under s.140A, the court observed:

> "…the standard of fairness in a debtor-creditor relationship is a matter for the court, on which it must make its own assessment. Most of the ICOB rules, including those relating to the disclosure of commission, impose hard-edged requirements, whereas the question of fairness involves a large element of forensic judgment. It follows that the question whether the debtor-creditor relationship is fair cannot be the same as the question whether the creditor has complied with the ICOB rules, and the facts which may be relevant to answer it are manifestly different. An altogether wider range of considerations may be relevant to the fairness of the relationship, most of which would not be relevant to the application of the rules. They include the characteristics of the borrower, her sophistication or vulnerability, the facts which she could reasonably be expected to know or assume, the range of choices available to her, and the degree to which the creditor was or should have been aware of these matters."

44. The Supreme Court recognised at [18] that: "…at some point commissions may become so large that the relationship cannot be regarded as fair if the customer is kept in ignorance. At what point is difficult to say, but wherever the tipping point may lie the commissions paid in this case are a long way beyond it." The Supreme Court concluded that Mrs Plevin's relationship, which involved payment of commission amounting to 71.8% of her premiums, was unfair although the question of what, if any, relief was appropriate was remitted to the County Court.

45. The Supreme Court was again tasked with considering PPI claims in *Smith v Royal Bank of Scotland plc* [2023] UKSC 34. The Court once more emphasised the breadth of the required assessment. It was expressed at [22] in the following terms:

> "A third point which is apparent on the face of the provisions is the breadth and open-ended nature of the assessment required by section 140A. The court is not left entirely at large, as subsection (1) requires the court to decide whether the relationship is unfair to the debtor

> because of one or more of three specified matters. These three possible causes of unfairness are, however, extremely broad… It would be hard to cast the possible causes of unfairness more broadly than this. What is more, subsection (2) makes it clear that there is no restriction on the matters to which the court may have regard in deciding whether the relationship is unfair to the debtor, provided only that the court thinks them relevant. Subsection (2) also makes it clear that, if any matter is thought relevant, the court not only can but must have regard to it."

46. The effect of the decisions in *Plevin* and *Smith* were reviewed by the Court of Appeal in the recent co-joined appeals of *Self v Santander Cards UK Limited* and *Harrop v Skipton Building Society* ('*Self*') [2024] EWCA Civ 1106 where Stuart-Smith LJ concluded at [56]:

> "It follows that application of sections 140A and 140B is bound to be fact-sensitive: even in a world of widespread mis-selling and unfairness, this is not a jurisdiction where, on its proper analysis and application, a single pre-determined criterion will always determine the question of unfairness; nor will one size of remedy fit all cases where the relationship is found to be unfair. It is easy to conceive of cases where allowing a full refund of all premiums (including commissions and profit share) together with interest would be to do more than was required to remedy the causes of the identified unfairness. It is equally easy to conceive of cases where anything short of a full refund will fail to remedy them. That is why the Supreme Court in *Plevin* while being clear that the commissions paid in that case were a long way beyond the tipping point, were equally clear that the case had to be remitted to the County Court to decide what if any relief under section 140B should be ordered unless that could be agreed."

47. The claimants' proposed issue (1), the fairness of the relationship, is undoubtedly an issue that will arise in all *Plevin* claims under s.140A of the CCA 1974. At a superficial level, it could therefore be said that there are common issues of law. However, in my judgment, CPR 19.21 requires something more than a very high-level, generalised assessment of commonality. It must be remembered that CPR 19.23(1)(a) intends that a judgment or order bind other cases on the group register unless the court orders otherwise. Applying a very high-level assessment of commonality would result in an outcome whereby, notwithstanding a GLO order, the court would find itself in the position of having to order that the default provision of CPR 19.23(1)(a) did not apply because the cases required fact-sensitive assessments. By analogy, it would be perverse for multiple claims brought against eight different highway authorities under s.41 of the Highways Act 1980 in respect of tripping accidents in factually distinct circumstances to be said to give rise to GLO issues. It would plainly be recognised that there was not the commonality of fact notwithstanding that superficially there was commonality of law insofar as the claimants all relied on the same cause of action. The difficulty with the claimants' formulation of issue (1) as a common issue is that it is at odds with

the express wording of s.140A and the approach to assessing unfairness required by the decisions in *Plevin*, *Smith,* and *Self.* I am not therefore persuaded that the issue of law is sufficiently common or related such that it amounts to a GLO issue so as to satisfy the jurisdictional requirement.

48. The claimants' issues (2) and (3) are even more problematic. These issues are well within the forbidden territory Mann J identified in *Tew*, being issues the claimants would like to say arise or have determined, but ones which are not the actual issues. I can understand why the claimants would like a single tipping point to be identified; it would provide a one-factor, simple (and thus cheap) means of determining which cases pass and which fail the fairness test. The difficulty is that the approach ignores the statutory test under s.140A and the multi-factorial approach that is required. Issues (2) and (3) fall into the same difficulties Mann J identified with the principal original GLO issue in *Tew* in that they shut out individual circumstances from the scope of the litigation. *Tew* was decided before *Plevin*, *Smith*, and *Self*, but those subsequent decisions only further reinforce the inappropriateness of seeking to determine fairness by reference to a single factor only. I am not therefore persuaded that issues (2) or (3) properly arise such that they could be considered common or related issues of fact or law.

Issues (4)-(6) - Remedy

49. Issues (4) and (5) seek a determination as to the appropriate default remedy following a finding of unfairness. Issue (6) seeks a determination of the approach to be taken to calculating interest.

50. The claimants submit that issues (4)-(6) are common issues of law to all the claimants. They point out that the Supreme Court in *Plevin* did not resolve the question as to the appropriate remedy, as they remitted the determination of what, if any, relief was appropriate to the County Court. The claimants submit that post-*Plevin* cases in the County Court have produced conflicting and/or inconsistent decisions as to the appropriate remedy. Issue (6) is said to be a common issue of law in circumstances where, it is submitted, the court must consider only a claimant's general rather than particular attributes when assessing the appropriate interest rate. The claimants rely on *Carrasco v Johnson* [2018] EWCA Civ 87 ('*Carrasco*') at [17(2)] in that regard. The claimants submit that the court would be able to give guidance as to interest calculation principles to be applied in all *Plevin* claims.

51. The defendants submit that issues (4) and (5) are a further attempt by the claimants to dress up individual issues as common issues. The defendants point to the court's wide discretion under s.140B to determine the appropriate remedy, relying on *Smith* at [25]. They submit that the claimants' approach would deprive the court of the ability to look at individual circumstances, an approach rejected by Mann J in *Tew*. The defendants do not accept inconsistency in County Court decision-making as to remedy, with any differences in solutions being inherent to the application of a wide discretion taking into account individual circumstances. The defendants submit that the claimants' approach is wrong as one cannot replace the application of discretion with a categorisation of default remedy. The defendants contend that individual claimants often make

critical admissions during cross-examination, such as acceptance of some level of commission, which can impact the appropriate remedy. The defendants equally reject issue (6) as being a common or related issue of law. They do not accept there is any uncertainty as to the legal principles to be applied following *Carrasco.* The defendants argue that an assessment of a claimant's general attributes may include questions such as a claimant's wider borrowing and investing activity, business activities, and financial sophistication; matters which may change over the course of the debtor-creditor relationship. They accuse the claimants of trying to repackage a discretionary issue as a common or related issue of law.

52. As I have already noted, the notion as to what is a common or related issue of law is a wide one. At a very generalised level, the question as to the appropriate s.140B remedy may be said to be common or related between all of the claimants. However, it is difficult to accept that issues (4) and (5) would arise as common or related issues in the manner the claimants envisage. The claimants' clear intention behind issues (4) and (5), rather as with issues (2) and (3), is that they seek a 'one size fits all' approach to *Plevin* claims. In *Smith,* Lord Leggatt at [25] described the approach to determining the remedy under s.140B in the following terms:

> "…the legislation also gives the court…the broadest possible remedial discretion in deciding what order, if any, to make under section 140B. Section 140B gives the court an extensive menu of options from which to select but says nothing at all about how this selection may or should be made. On the face of the legislation the court's discretion is entirely unfettered…"

53. The very fact that the Supreme Court in *Plevin* remitted the question of remedy to the County Court exemplifies the need for a fact-specific determination when exercising the court's discretion under s.140B. The exercise of conducting test cases on issues (4) and (5) could only determine the appropriate remedy in the particular test cases. Every other claim would still require an individual assessment of its facts. A failure to allow that would fetter the court's discretion, which the legislation does not permit. I thus conclude that issues (4) and (5) are not common or related issues that are likely to arise in these claims. They are issues the claimants would like to be raised rather than issues that actually arise.

54. All parties agree that *Carrasco* provides guidance on the correct approach to the exercise of the court's discretion when determining the appropriate rate of interest. At [17] Hamblen LJ held:

> "The guidance to be derived from these cases includes the following:
>
> (1) Interest is awarded to compensate claimants for being kept out of money which ought to have been paid to them rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money.
>
> (2) This is a question to be approached broadly. The court will consider the position of persons with the claimants' general attributes,

> but will not have regard to claimants' particular attributes or any special position in which they may have been.
>
> …
>
> (5) Many claimants will not fall clearly into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between those two rates."

55. The defendants' submission that there is no uncertainty as to the law relating to issue (6), such that it cannot be said that there are any common or related issues of law, is too simplistic an analysis. *Carrasco* requires the court to consider claimants' general as opposed to particular attributes. Generalisation of approach lends itself more readily to there being commonality between claims. In my judgment, there are common or at least related issues of law in these claims as to what general attributes may inform the approach to assessing interest in *Plevin* claims. For example, whether those general attributes should include the sorts of matters identified by the defendants such as financial sophistication or a claimant's other business activity. What does not arise as a GLO issue, lest it be argued by the claimants, is that issue (6) could provide a fixed percentage point answer to the question of interest in all *Plevin* claims. There would still need to be an exercise of discretion in individual cases. I thus accept that issue (6) passes the jurisdictional gateway. Whether it is appropriate to make a GLO is another matter.

Issues 7-8 - Reconstruction of the running account

56. Issues (7) and (8) are said by the claimants to relate to those claims where there was 'running account' credit, being an account with a series of ongoing debits and credits such as is seen, for example, in the operation of a credit card. The claimants submit that there are common issues of law as to the principles to be applied to the process of account reconstruction, following the removal of PPI premiums, in respect of the application of interest, fees, and charges. The claimants submit that a GLO would allow these principles to be determined with the benefit of expert evidence rather than, as happens in low-value claims, claimants finding they have no choice but to accept a defendant's reconstruction method.

57. The defendants are critical of the claimants' failure to identify how many claims would give rise to issue (7) or (8) considerations. They do not accept issues (7) or (8) give rise to common or related issues of law in circumstances where, they submit, there is already clarity as to the legal principles to be applied when determining remedy as a result of the guidance in *Smith* at [25]. That is, a need to remove unfairness and to reverse any damaging financial consequences. Secondly, the defendants submit that account reconstruction is part of the wider holistic approach required under s.140B and needs to take account of individual issues of fact such as any debt that has been written off or other wider financial benefits a claimant received.

58. The claimants' failure to provide the court with any details at all as to how many of the issued claims give rise to running account issues is very unsatisfactory. It is thus impossible to assess the extent of any alleged commonality.

59. The effect of s.140B (as explained in *Smith*) is that the court has "the broadest possible discretion" as to the appropriate remedy. It is thus difficult to see how issues (7) and (8) could be appropriate common issues of law. The appropriate method of account reconstruction in claim X, may not be appropriate in claim Y. For example, removing unfairness suffered by an individual who has received significant financial benefits, such as the writing off of debt or the application of generous payment allocation rules, may require a different method of account reconstruction to the case of an individual who had not received those benefits. In my judgment, at its highest, issues (7) and (8) could only arise as related issues of law at the most generic level. A finding of account reconstruction in one running account case may inform the approach in other running account cases, but it is unlikely to bind other cases in the default manner envisaged by CPR 19.23(1)(a). The lack of binding application is not in itself fatal to the jurisdictional gateway, but it will undoubtedly be a relevant factor when considering the exercise of the court's discretion.

Issues (9)–(14) - Compromise

60. Issues (9)-(14) relate to those cases where a redress payment has been made to a claimant such that a defendant argues the dispute has been compromised in such a way that any unfairness has been negated.

61. In the time between the drafting of the claimants' primary skeleton argument and their skeleton argument in reply, the Court of Appeal handed down judgment in *Self*. The claimants submit that the decision in *Self* illustrates the need for test cases as the Court of Appeal's decision only resolved one type of case. The claimants contend there are common issues of law across sub-groups of claims involving the same issues as to potential compromise. i.e. issue (9). In oral submissions, the claimants told the court that *"that there is limited number of different wordings that were being used by different banks".*

62. The claimants submit that once the court has set the parameters for determining the appropriate remedy (issues (4) and (5)), the court will be able to determine issue (10), namely whether a redress offer was assessed fairly. They submit that this could be done without any determination being substantially dependent on individual facts. If issue (10) is determined in favour of the claimants, the claimants would want questions as to whether any settlement was vitiated by common mistake or rescinded for misrepresentation determined (issue (11)). It is submitted that, whilst the precise wording of offers will have differed, the commonality of the fact an offer was made, and its amount referrable to the FCA rules, is enough to render this a common or related issue.

63. The claimants' issue (12) is based on a submission that standard forms of wording used by the defendants would enable the court to determine common issues as to any unfairness notwithstanding apparent settlement based on a failure to assess the level of redress fairly and/or a lack of clarity in the making of redress offer.

64. The claimants submit that a further consequence of a finding that redress payments were not assessed fairly (issue (10)) would be that common issues of law as to claims for breach of duty under the FSMA 2000 and for breach of contractual warranty should be determined as issue (13). The claimants acknowledge that issue (13) is parasitic on issue (10). They further acknowledge that a breach of warranty claim has not been pleaded in the generic particulars of claim but submit 'it might be included' in further generic particulars of claim and may apply in other claims not yet issued.

65. The claimants' issue (14) only becomes relevant if the claimants succeed in combinations of issues (9) – (13). They seek a determination of the principles to be applied to the giving of credit in respect of different elements of a redress payment. Again, it is said that such principles can be applied in a common way across those cases falling within the same parameters.

66. The defendants do not accept that any of the compromise issues encapsulated by issues (9)-(14) can be said to be common or related issues of law. They are highly critical of what they say is a failure on the claimants' part to adduce any evidence as to the number of cases in which these issues arise or as to the different permutations of compromise.

67. The defendants submit that issue (9), namely the circumstances which give rise to a binding settlement, is incapable of being a common issue as the question can only be determined by reference to the specific facts of each case. It is submitted that determination would require consideration of multiple variables including the precise wording of any letters of complaint, responses, and offers; consideration as to whether a claimant was acting in person or had legal assistance from a solicitor or claims management company at the time; and whether the complaint had been made through the Financial Ombudsman Service. The defendants also point to the relevance of the subjective understanding of the individual when determining issues of compromise, as identified in *Self* at [106], [108] and [114]. The defendants submit that the requirement for fact-sensitive assessments on questions of compromise fatally undermines the claimants' arguments on commonality in respect of issues (10)-(14).

68. For reasons discussed above, the defendants do not accept issues (4) and (5), as to remedy, are GLO issues and highlight the claimants' concession that issue (10) is dependent on the court determining general principles as to the appropriate remedy. In the absence of such a determination, the defendants submit that issue (10) cannot stand. They likewise highlight the parasitic nature of issues (13) and (14) on other compromise issues.

69. The absence of any evidence from the claimants as to the volume of cases likely affected by compromise issues, let alone as to the main permutations of the circumstances of potential compromises, reveals a concerning lack of analysis by the claimants as to the detail of the extant claims. This mirrors the lack of evidence as to the prevalence and type of running account issues arising in these claims. I recognise that the claim has only reached the stage of service of generic particulars of claim, and no defences have yet been served to raise compromise as an issue. Nonetheless, one would have thought that a prudent legal

representative would have assessed the likely issues and merits of each claim prior to issue, including taking instructions as to the circumstances of the receipt of any redress payments. The evidence before the court from the defendants suggests that a high proportion of the claims are likely to involve one or more of the compromise issues. For example, Mr Allen, for the first defendant, states that 85% of the *Plevin* claims issued against the first defendant in the last year involved claimants who had already received redress payments. [At [3.17] of his statement.]

70. An analysis of the terms of correspondence will be key to determining issues of compromise. [*Self* at [101] and [108].] The claimants' submission that there are limited numbers of differently worded compromise-related documentation is not supported by any evidence and I do not accept that is likely to be an accurate submission. There are 8 defendants to the Abernethy claim. Each sold a variety of different PPI products at different times. They each communicated with customers over redress payments in different circumstances, including adopting different approaches at different times and making payments in different ways. For example, Mr Allen states that the wording of letters sent changed over time and depended on factors such as the type of product, the involvement of claims management companies, and whether the agreement was still active. Mr Ford, for the second defendant, identifies the varying nature of the wording of documents leading to redress payments being made. There are likely to be large numbers of permutations of circumstances leading to alleged compromises. Even if, which is not apparent on the face of the evidence, it was possible to identify common categories of claims that had led to redress payments following the exchange of the same correspondence, that would be to ignore the subjective understanding of the parties. *Self* at [114] highlights the relevance of subjective belief to the issue of compromise.

71. In short, I am not persuaded that issues (9)-(14) are likely to arise in the context of a GLO as common or related issues of law. Once again, the issues are ones the claimants would like to arise to enable a broad brush approach to be taken to the claims but such is not compatible with the requirement for an individualised assessment.

Issues (15)-(17) – Limitation

72. Issues (15) and (16) concern whether the acceptance and payment of a redress payment amount to a linked transaction within the meaning of s.19(1)(c)(ii) of the CCA 1974 and, if so, what that means for calculating the applicable limitation period. Issue (17) seeks a determination as to the circumstances in which a claimant could, with reasonable diligence, have discovered concealment by a relevant defendant.

73. The claimants submit that issues (15) and (16) are common issues of law that apply to all cases where there has been a redress payment and in which more than 6 years have passed since the credit agreement was completed.

74. The claimants' skeleton argument justifies the inclusion of issue (17) as a common issue of fact (not law) on the basis that defendants often rely on a combination of newspaper reports, law reports, and official documents to argue

that a claimant could have discovered the concealed facts with reasonable diligence. In oral submissions, the claimants submitted that defendants often put the same material before the court each time. The claimants conceded in oral submissions that issue (17) may not be ideal for a GLO issue and "is more difficult than the others".

75. The defendants accept that issues (15) and (16) are common issues of law applying to an unidentified subset of the claims. They are critical as to the claimants' lack of evidence as to the size of the subset. They submit that it would be disproportionate and unnecessary to establish the structure of a GLO when the issue could be determined on appeal, as and when it arises.

76. The defendants do not accept that issue (17) gives rise to any common or related issues of law or fact. They note that the burden of establishing reasonable diligence rests on a claimant: *Paragon Finance v Thakerar* [1999] 1 All ER 400 at [418]. They submit that an assessment of reasonable diligence requires an individual analysis of what someone in the position of the claimant would have done, and what the claimant actually did. The defendants rely on the approach of Males J at [47] – [48] in *OT Computers Ltd v Infineon Technologies AG* [2021] EWCA Civ 501:

> "47. Second, although the question what reasonable diligence requires may have to be asked at two distinct stages, (1) whether there is anything to put the claimant on notice of a need to investigate and (2) what a reasonably diligent investigation would then reveal, there is a single statutory issue, which is whether the claimant could with reasonable diligence have discovered (in this case) the concealment. Although some of the cases have spoken in terms of reasonable diligence only being required once the claimant is on notice that there is something to investigate (the "trigger"), it is more accurate to say that the requirement of reasonable diligence applies throughout. At the first stage the claimant must be reasonably attentive so that he becomes aware (or is treated as becoming aware) of the things which a reasonably attentive person in his position would learn. At the second stage, he is taken to know those things which a reasonably diligent investigation would then reveal. Both questions are questions of fact and will depend on the evidence. To that extent, an element of uncertainty is inherent in the section.
>
> 48. Third, while the use of the words "could with reasonable diligence" make clear that the question is objective, in the sense that the section is concerned with what the claimant could have learned and not merely with what he did in fact learn, the question remains what the claimant (or in the terminology of the section, "the plaintiff") could have learned if he had exercised such reasonable diligence. That must refer to the actual claimant, in this case OTC, and not to some hypothetical claimant."

77. The failure of the claimants to identify the approximate number of claims in which issues (15) and (16) are likely to arise is unhelpful. However, the defendants' evidence makes it clear that, in many instances, PPI products have

not been sold for many years meaning that limitation lines of defence are likely to be commonplace. It is thus safe to conclude that there are very likely to be cases where a claimant may wish to run the alternative 'linked transaction' limitation argument envisaged by issues (15) and (16). There is no dispute between the parties that these are common issues of law. In my judgment, there is nothing in the wording of CPR 19.21 or 19.22(1) that requires the common issue to apply to all the claims as opposed to a sub-set. Whilst every case in the cohort needs to share commonality in at least one regard with other cases, it would undermine the utility of the GLO procedure if all claims had to have all of the same common issues. Accordingly, the claimants satisfy the first jurisdictional gateway as to issues (15) and (16).

78. Issue (17) is a different matter. The claimants' concession as to the difficulty in including a determination of reasonable diligence as a common or related issue is telling. There is no sensible basis upon which it can be asserted that this issue is one of common or related fact. Even if a given defendant relies on similar factual evidence, authorities such as *OT Computers* make it clear that reference has to be made to the actual not hypothetical claimant. A consistent theme of the defendants' evidence is that claimant witness statements in *Plevin* claims are often formulaic and do not withstand the rigours of cross-examination. What a claimant does or does not say in cross-examination is likely to have a significant bearing on the court's finding as to whether a claimant acted with reasonable diligence. I am not therefore persuaded that issue (17) is one that is likely to arise as a common or related issue of fact such that the matter could properly be included as a GLO issue.

Issue 18 – Assignment

79. Issue (18) seeks a determination as to the correct identity of the defendant to a claim where there has been an assignment or novation of a credit agreement, and as to the date time starts running for limitation purposes.

80. The claimants submit that assignments of credit agreements are relatively common. In oral submissions, the claimants clarified that this issue applies to the first and seventh defendants only. The claimants contend that the identification of the correct defendant, and the date time started running for limitation purposes, are pure questions of law that will not require individualised assessments.

81. The defendants are again critical of the claimants' lack of attempt to identify how many cases this issue is said to be common to. They submit that whether there has been an assignment or novation, and when time starts to run, are questions of fact as to which settled principles of law can be applied. In some of the defendants' skeleton arguments, it was asserted that the claimants had not pleaded this issue in the generic particulars of claim.

82. I am satisfied that the generic particulars of claim make it clear that some of the claims involve assigned credit agreements. See, for example, para. 3 and 15 of the pleading. However, it is once again unsatisfactory that the claimants cannot assist the court with the extent of commonality for what it accepted is only a subset of these claims. It now appears the issue only relates to two of the

defendants. The statement of Mr Slater, at para. 22 – 25, addresses assignment-related issues in respect of the seventh defendant's sale of PPI. The issues as to assignment and assessment of the date that time starts running for limitation purposes are likely to be common issues specific to a particular defendant and a series of PPI agreements. It is most unlikely that there would have been an assignment of one agreement only. The common issues are likely to be both ones of fact (as to the assignment terms) and law (as to the principles governing assignment and limitation.) I am therefore persuaded that issue (18) is capable of being a GLO issue.

Summary of position regarding common or related issues of law or fact

83. The claimants' approach as to alleged common or related issues of law or fact is far too generalised and often strays into the forbidden territory of identifying issues they would like to have determined as opposed to issues that are likely to actually arise. The following issues do however give rise to common or related issues of law or fact such that the first jurisdictional threshold is met:

(1) Issue (6): Principles to the calculation of interest – limited to general attributes which may inform the approach to assessing interest in *Plevin* claims.

(2) Issues (7)-(8): Running account.

(3) Issues (15)-(16): Linked transactions and limitation.

(4) Issue (18): Assignment.

Are there or are there likely to be a number of claims?

84. The likely volume of claims is a controversial topic. The defendants and non-party potential defendant financial institutions are exercised about what they say is an exaggeration by the claimants as to likely claim numbers. However, the jurisdictional gateway imposed by CPR 19.22(1) requiring there to be 'a number of claims giving rise to the GLO issues' is not an onerous one. Whilst a GLO can cover many hundreds of thousands of claims, the *Pan-NOx Emissions* litigation being a current high-profile example, a GLO can be appropriate on much more modest numbers. The GLO in *Tew* was made when over 100 claims had been commenced and as many as a couple of hundred more were anticipated. In *Austin* there were 549 prospective claimants, and in *Tongue* approximately 200 claimants.

85. The Abernethy claim form includes claims on behalf of around 3,420 claimants. [Mr Parker's statement of 21 June 2024 at para. 93.1.] The A claims as a whole are said to encompass 14,599 claimants. The claimants submit there are more claims against these defendants to come. Of the issues identified in paragraph 83 above as passing the jurisdictional threshold, it is not possible on the evidence to determine approximately how many claims are likely to give rise to each of those issues. However, issue (6) would apply to any successful claim in which an interest payment was being considered. The claimants' failure to provide any breakdown as to the prevalence of the issues means that it is not

possible to determine approximate numbers or percentages of cases that are likely to give rise to issues (7), (8), (15), (16) or (18). However, the high volume of claims already issued, and the absence of evidence to the effect that those issues are ones which rarely arise, makes it probable there are already 'a number of claims' giving rise to five aforementioned issues. I am therefore satisfied that there is a sufficient number of *Plevin* claims to make it appropriate to proceed to the consideration of the discretionary stage of the exercise. The defendants' concerns as to the likely volume of future claims will be a relevant consideration at that stage.

Exercise the court's discretionary power to make a GLO

86. The court's discretion is to be exercised in accordance with the overriding objective. That involves dealing with cases justly and at proportionate cost. CPR 1.1(2) defines dealing with a case justly and at proportionate cost as including, so far as is practicable:

> "(a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
>
> (b) saving expense;
>
> (c) dealing with the case in ways which are proportionate–
>
> (i) to the amount of money involved;
>
> (ii) to the importance of the case;
>
> (iii) to the complexity of the issues; and
>
> (iv) to the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously and fairly;
>
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;
>
> (f) promoting or using alternative dispute resolution;
>
> (g) enforcing compliance with rules, practice directions and orders."

87. The claimants, supported by Sandstone, contend that the balancing exercise between individual claims and collective case management "comes down very heavily in favour of collective case management". In oral submissions, the claimants summarised the benefits of a GLO in the following way:

(1) A GLO provides a structure for the efficient and consistent determination of what amounts to thousands of claims.

(2) The use of test cases will provide a binding framework and likely lead to the remainder of cases being determined with far less cost and generally without the need for trials.

(3) A GLO will provide consistency and ensure decisions are binding across the board.

(4) A GLO will enable the claims to be funded and properly argued using experienced counsel and, where necessary, expert evidence.

(5) A GLO will make it possible for low-value claims under £1,000 to be funded.

(6) A GLO will enable claims to be dealt with at a lower cost than on an individual basis.

(7) A GLO will enable claims to be dealt with more efficiently and quickly.

88. The defendants and non-party potential defendant financial institutions do not accept any of the above propositions and argue to the contrary. They also question the experience of HP in conducting group *Plevin* litigation and the adequacy of the claimants' funding provision.

89. There are a number of key topics, relevant to the exercise of discretion, that can conveniently be summarised as follows:

(1) The volume of claims and impact on the courts.

(2) The extent to which test cases would produce binding decisions and/or guidance, and the implications for the determination of non-test case claims.

(3) Timeliness of the disposal of claims.

(4) Comparative costs.

(5) Access to justice.

(6) Adequacy of claimant funding.

(7) Suitability of HP as lead claimant solicitors.

(8) The views of non-parties.

<u>The volume of claims and impact on the courts.</u>

90. As previously discussed, there are approximately 14,599 claimants in the A claims. Mr Parker provides evidence as to how many *Plevin* claims HP and other claimant law firms are likely to bring:

(1) In his statement of 29 September 2023, he explains that HP is acting for around 350,000 individuals, which he expects to translate into around 90,000 claims "although it is hard to predict how these will be distributed amongst defendant lenders". In addition, there would be claims arising from clients of other firms. He believes the defendants account for around 60% of the PPI market. HP made a Freedom of Information Act request of HMCTS which revealed that approximately 56,000 PPI claims were issued between October 2020 and March 2022.

(2) In his statement of 21 June 2024, he maintains the view that there are likely to be around 90,000 claims from the clients for whom HP acts. He states that HP is now acting for 472,909 claims of which he expected "a significant percentage" to have eligible claims.

(3) In his statement of 1 October 2024, he identifies a further 12,000 claims brought by Elaine Masters, a trustee of various Individual Voluntary Arrangement trusts, of which 5,117 related to the defendants. Ms Masters is a single claimant in the A claims thus, when her 5,117 claims are added to those of the other 14,598 claimants, the total claims against the defendants increases to 19,716. He explains that HP has around 310,000 Data Subject Access Requests ('DSARs') outstanding, with more expected, of which he expects around 10% to result in claims. He notes that even if only 5% resulted in claims, that would still add a further 15,000 claims to the total. He is critical of the defendants' response times to DSARs. Mr Parker states that a claims management company, Harrington Jones Limited ('HJ'), has approached HP recently. HJ represents clients with over 65,000 claims (84% of which are said to relate to the defendants) who will bring claims if a GLO is made. Mr Parker states that HP is undertaking an advertising campaign, which will increase the number of claims further. He maintains his opinion that his earlier estimate of 90,000 is accurate and the total number of claims could be higher.

91. Mr Hussain of CRS states that his firm acts for 3,550 clients with *Plevin* claims, some of which are against the defendants. Mr Settle of Sandstone states that his firm has around 27,506 claims, which would be added to a GLO register.

92. The defendants are sceptical as to the likely figures, largely borne of their belief that HP has not screened clients to see if they have viable claims. For example,

(1) Mr Allen states that the first defendant received DSARs from HP in names such as Darth Vadar, Michael Mouse, and Donald Duck. Mr Ford provides evidence that of 34,916 potential claimant names provided by HP to the second defendant, only around 17% were customers who had taken out a PPI policy. Mr Ford accepts that the checks were carried out using an automated tool, but asserts that the margin of error is only around 5%. Mr Slater reports the eighth defendant receiving 40,115 DSARs from HP, including ones in the names of Donald Duck, Adolf Hitler, and Rishi Sunak. He notes others had dates of birth suggesting individuals were over 100 years old. Mr Slater draws the court's attention to HP's website advertising the claim and requiring potential claimants to provide only very basic information to "join the claim". It is not proportionate for this judgment to detail the evidence of all those

defendants or non-party potential defendants who comment on this issue and suffices to note that the evidence of Ms Tregear on behalf of the third to sixth defendants, Mr Connolly of Shop Direct, Ms Leonard of M&S and Ms Gillies on behalf of RBS and Natwest express similar concerns about the accuracy of data provided by HP.

(2) The defendants believe that the conversion rate from DSAR to claim will be lower than the 10% or even 5% suggested by Mr Parker. Mr Ford's evidence is that the conversion rate from PPI DSAR to issued claim against the second defendant peaked in 2019 at 2.67%, decreased by 2023 to 0.07%, with an average conversion rate over the last 6 years of 1.3%.

(3) The defendants submit that the proposed terms of the claimants' draft GLO order evidence of what they say is a lack of vetting by HP of the cogency of claims. Para. 30-33 of the claimants' draft order envisage a claimant providing their name and address in a schedule of information with the onus then being on the relevant defendant to provide details of the credit agreement, product type, commissions, any redress payments, and net commission retained.

(4) The defendants believe that general trends indicate a reduction in the volume of *Plevin* claims since a peak in 2021. Mr Allen states that the first defendant has received fewer claims in the last year and views the peak as being in 2021.

(5) The defendants submit that many issued *Plevin* claims are subsequently discontinued or otherwise do not proceed to trial. Mr Allen's evidence is that of 4,171 *Plevin* claims issued against the first defendant in 2023, 66% were discontinued, 26% settled and only 8% required a trial.

93. In my judgment, some caution needs to be applied to the claimants' evidence as to the likely number of claims. The original GLO application envisaged a GLO covering *Plevin* claims against all financial institutions. It is no doubt for that reason that much of the claimants' evidence addresses the total likely number of claims rather than the likely number against the eight defendants only. By the time of the hearing of the GLO Application, the claimants were only seeking a GLO against the named defendants, albeit HP reserved its position as to what future steps to take in respect of claims against the other financial institutions.

94. I share the defendants' concerns as to the accuracy of Mr Parker's predictions of claim numbers. As already touched on, it became apparent during the hearing that HP has made no meaningful effort to triage the issued claims to identify what issues arise in which subsets of cases. That chimes with the experience of the defendants and other financial institutions as to the poor quality of data received from HP and the very low conversion rates from DSAR to issued claims in the *Plevin* market generally. It is not appropriate for a GLO, nor indeed an omnibus claim form, to be used as a metaphorical 'dumping' of claims at the doors of the court and of defendants. Claimant solicitors should evaluate the merits of individual claims and likely issues arising before issuing claims rather than putting the onus on defendants to construct the claim for them.

95. Notwithstanding my concerns about the reliability of Mr Parker's predictions, it is nonetheless apparent that there are already thousands of claims issued against the defendants and a likelihood that many more will follow both from HP and other claimant law firms. The current and likely future volume of the claims, even if HP's claims never reach as high as 90,000, is a factor that militates towards the grant of a GLO.

96. The courts are however used to dealing with high volumes of *Plevin* claims. Around 56,000 claims were issued between October 2020 and March 2022. There is a degree of consensus between the parties that historically only around 8% of *Plevin* claims require a final hearing. Virtually all of these claims are on the small claims track. The parties' evidence includes examples of how different County Court hearing centres list these small claims. Many courts have adopted some form of block listing, cognisant of the fact that not many of the claims require a contested hearing. The determination of around 20,000 claims (rounding up Mr Parker's 19,716) across the A claims, let alone the B claims and any future claims, would undoubtedly put a strain on the court system if all were litigated simultaneously. However, parties are required under CPR 1.3 to help the court further the overriding objective, which includes allotting an appropriate share of the court's resources, while taking into account the needs of other cases and dealing with cases expeditiously and fairly. The warehousing of claims by HP with a view to unleashing them into the court system at the same time risks undermining the overriding objective. It would be inappropriate if an implied threat to overwhelm the court system were to be a valid reason for granting a GLO, if the claims were otherwise unsuited to that form of case management.

<u>The extent to which test cases would produce binding decisions or guidance, and the implications for the determination of non-test case claims.</u>

97. The claimants' position as to how they foresee a GLO operating has evolved. In his first statement, Mr Parker envisages the court making a finding as to the tipping point percentage that would bind all cases. All the remaining cases would then be categorised as successes or failures such that "all that would remain would be the requirement to calculate quantum". He moots the possibility of the court appointing "an Assessor pursuant to CPR 35.15 purely for the purposes of drawing in account details and calculating compensation in accordance with its judgment as to how damages should be calculated". He also refers to having explored the use of an AI tool to calculate PPI losses using Optical Character Recognition software to read financial information.

98. By the time of the hearing of the GLO Application, the claimants recognised that "decisions in test cases in fairness (or otherwise) of the relationship, between the parties, while fact-dependent and so not strictly binding, will, in the words of Mann J in *Tew* quoted at paragraph 71.6 above, *'doubtless provide guidance for the disposition of a lot, if not all, the other cases*.'" The claimants submit that County Court decision-making in *Plevin* claims has been inconsistent whereas determining test cases under a GLO would provide consistent outcomes. The claimants envisage test cases being selected after defences have been filed. In oral submissions, the claimants submit that the number of test cases would be no more than 20. Indeed, Mr Malek told the court

he thought the required figure of test cases would be substantially less than 20. In answer to a question I asked as to the practicalities of the regime for dealing with the remaining cases, Mr Hutton stated there would be 'a process'. He referenced a claims handling agreement in the British Coal respiratory disease litigation. The claimants do not envisage the remaining claims being dispersed to a claimant's home court but rather remaining at the managing court. They no longer suggest that an assessor or AI tool would be used to determine quantum.

99. The defendants are highly critical of what they submit is an underdeveloped proposal that rests on meaningless high-level statements and provides no detail as to the intended structure for determining the claims within a GLO. They submit that the court can have no confidence that 20 test cases would be sufficient absent any explanation from the claimants as to how that figure is calculated. They also point to a lack of clarity as to how test cases would be selected from tens of thousands of threatened claims. The defendants do not accept that test cases will result in binding decisions that can be applied to the remaining cases. They submit that the process of extrapolating any guidance from the test cases would be difficult and controversial and of limited assistance to the remaining claims, which would still need to be determined on their own facts. They do not accept the court could outsource judicial discretion in assessing fairness to an AI tool or assessor.

100. The claimants' submissions were predicated on the court accepting that all the draft GLO issues passed the jurisdictional hurdle imposed by CPR 19.21. The effect of my earlier finding is that only some of the proposed issues can truly be said to be GLO issues. However, that does not mean that the court would be precluded from considering other issues by way of test cases under the umbrella of a GLO. Indeed, the utility of test cases being used as a means of giving guidance on fairness issues notwithstanding that the decisions would not be binding on other cases was recognised by Mann J in *Tew*. The court will not determine the minutiae as to how a GLO will operate when considering whether a GLO is, in principle, appropriate. However, when considering whether to exercise the discretionary power to grant a GLO, it is necessary to give some consideration to the likely practicalities of the operation of a GLO to assess the likely advantages against any disadvantages.

101. I am troubled by the claimants' high-level assertions as to how they foresee a GLO operating. Their submissions on this topic are singularly lacking in detailed explanation. If all 18 draft GLO issues were included, whether as strict GLO issues or as a basis for test cases to provide guidance, it is impossible to accept the claimants' submission that a maximum of only 20 cases would suffice. Firstly, the claimants have offered no detailed rationale for their calculation. Secondly, there are self-evidently multiple permutations to be considered. There are eight defendants and 18 headline issues (with various sub-issues). Some issues involve further variables. For example, issues relating to compromise involve eight defendants each using multiple variations of redress correspondence over the years, relating to different products, with redress payments made in different ways. Whilst some claims will undoubtedly touch on multiple issues, it is easy to see how a comprehensive assessment of the issues would require far more than 20 test cases. The more test cases that are

required, the longer and more expensive the process of identifying and then hearing the test cases.

102. One then has to consider what happens after the trial of the test cases. The claimants are sensible to abandon Mr Parker's suggestion that the remaining claims could be disposed of by an assessor or use of AI. Mr Parker's approach appears to proceed immediately to determining quantum without determining the niceties of liability; a hurdle made all the more difficult in light of the limitation and compromise lines of defence likely to arise in many of the claims. Furthermore, the approach flies in the face of s.140B, which requires the appropriate remedy to be determined by the application of a wide judicial discretion. Using an assessor or AI to produce a formulaic assessment of damages is the antithesis of applying a wide discretion.

103. If test cases will not bind, or at least provide a very clear indication as to how to resolve the remaining claims (per *Lancaster*), there will be limited utility in granting a GLO. In *Arif v Berkeley Burke SIPP Administration Limited* [2017] EWHC 3108 (Comm) HHJ Russen KC at [24] expressed the balancing exercise in the following terms:

> "…Expressing the point quite loosely, one would have thought that the greater the preponderance of common or related issues over claimant-specific ones, the greater the chance of a GLO being made; if only because of the greater likelihood of a significant saving of court time and cost if more decisions can be made at the group level which will bind claimants across the board. Conversely, it seems to me that there will be cases where an initial attraction to a GLO, created by the presence of numerous litigants, may quickly be dispelled by the realisation that the sum of the separate parts (the individual circumstances pertaining to each litigant) far exceeds, in terms of demand upon litigation resources, the value of a decision on the points which unite them…"

104. For the reasons discussed above, it is only issues (15), (16), and (18) that are likely to be capable of producing decisions in the test cases that could bind an as yet unidentified subset of the claims in which those issues also arose. Those issues would not resolve those claims in their entirety. Including issues (6), (7), and (8) in test cases would provide guidance as to how to approach aspects of the remaining cases but, again, would not resolve all aspects of the remaining claims. In my judgment, there would only be utility in the making of a GLO if all or at least some of the other issues, such as fairness, remedy, compromise, and limitation, could be included as test cases to provide a very clear indication to assist with the determination of the remaining claims. Mann J's conclusion in *Tew* was that the guidance to be derived from determining a range of test cases on the issue of unfairness, taken together with the common issue under regulation 3 of the 1994 Regulations, warranted the making of a GLO. The legal landscape regarding thousands of *Plevin* claims reaching the courts in 2024 is however rather different from the circumstances of *Tew*. Firstly, there is no truly common issue of the kind seen in *Tew* (which had the Regulation 3 issue) that could determine the outcome of any of the remaining claims in their entirety. Secondly, there is no evidence that a small number of test cases, particularly as

few as 20, could provide a very clear indication to guide the resolution of the remaining claims. Thirdly, this is not a new or developing area of law. Thousands of *Plevin* claims have been litigated since the Supreme Court's decision a decade ago. There are multiple decisions of the County Court to draw on, plus the decisions in *Smith* and more recently in *Self*. I am not persuaded that the claimants have made out their allegation that there is widespread inconsistent judicial decision-making in *Plevin* claims, as opposed to differences of outcome borne out of the application of a test that requires an individualised assessment of each case. Fourthly, the fact-specific nature of issues relating to fairness, remedy, compromise, and limitation diminishes the ability of test cases to provide clear guidance. Unlike in *Tew*, many of these claims will have issues relating to limitation or compromise, in addition to the question of fairness. There is a real risk that the 8% of claims that currently require a final hearing would still require a final hearing even if a modest number of test cases were tried.

105. In short, this is the claimants' application yet they have not provided the court, nor defendants, with the details that would be required to establish why they consider a modest number of test cases would provide binding decisions or at least clear guidance to assist in the resolution of the remaining claims. This factor militates strongly against the granting of a GLO.

Timeliness of the disposal of claims.

106. The claimants submit that the claims as a whole are likely to be resolved more quickly under a GLO than via the County Court hearing individual claims. In the claimants' skeleton argument in reply, they describe what they say will be "massive time saving for both the courts and the parties". Mr Malek pointed out that the GLO process will lead to more settlements of claims. The claimants' timetable predicts a trial of the test cases occurring in the Autumn of 2025.

107. The defendants submit that a GLO would impart significant delay to the resolution of these claims with it likely taking years to identify and try test cases and deal with appeals, following which there would still be a need to determine all of the remaining claims individually. The defendants' evidence is that current disposal rates for individual claims are satisfactory. Mr Ford states that the average disposal time of *Plevin* claims issued against the second defendant in 2023 was 195 days from issue to final hearing, reduced from 291 days in 2022. Mr Ellis states that the average time from service of the claim to conclusion of *Plevin* claims against the third to sixth defendants during 2021- 2023 was within 12 months. Ms Yazdani, of non-party claimant law firm BlackLion, states that the average time from issue to final hearing is now around six months. The likelihood of increased delay is one of the reasons BlackLion opposes a GLO. BlackLion's internal data recorded average issue to final hearing times of 353 days in 2021 and 2022, 228 days in 2023, and 129 days in the first quarter of 2024.

108. The data before the court suggests that *Plevin* claims are now proceeding through the court system much more quickly than in previous years; likely a combination of reduced volumes of new claims, the diminishing impact of the backlogs generated by the Covid pandemic, and streamlined listing policies. It

is however inevitable that a sudden release of large volumes of individual claims into the court system in short order will increase waiting times, assuming the claims are proceeded with. Equally, the making of a GLO would increase the time it takes to deal with *Plevin* claims from the current 6-month average suggested by Ms Yazdani. The progress of the claims under a GLO would likely be slow. It took a year from the issue of the GLO Application to the hearing of the same. The number of parties and non-parties involved, and the need to try to identify the best common dates of availability, imparted delay into the process. I do not share the claimants' optimism that a 4-week trial of test cases will necessarily take place by the Autumn of 2025. To date, the claimants have only prepared generic particulars of claim. Nothing is known about the details of any of these claims. The process of identifying test cases is likely to be complex, controversial, and require disclosure. One can readily foresee the court having to make determinations as to the identity of test cases in the absence of agreement. A 4-week trial would inevitably lead to a reserved judgment. Once judgment is handed down, progress would likely stall whilst any appeals are resolved. There will remain thousands of remaining claims that require individual determination. The reality is that whether a GLO is granted or not, the issue of thousands of claims within a short period will mean it takes longer for the body of claims as a whole to be disposed of. I have grave reservations as to whether a GLO would provide for improved timeliness.

Comparative costs.

109. The parties have endeavoured to analyse the comparative costs between the claims proceeding under a GLO or other form of collective case management, and them proceeding as individual claims.

110. The claimants' skeleton argument submits that collective case management will result in "huge savings for both sides as well as for the court". They rely on the analysis provided by Mr Parker in his first witness statement:

(1) Running cases on an individual basis

Mr Parker estimates it will cost in excess of £600 million for claimant law firms to run 90,000 *Plevin* cases to final hearing on an individual basis based on an average per claim of around £6,666. He accepts that not all claims will require a final hearing and assumes 10% will go to trial (i.e. at a cost of £60 million). Mr Parker notes there will then be some expenditure on the remaining 90% of cases. He estimates the overall costs would likely exceed £100 million. He concludes that the defendants' costs would at least match those of the claimants.

(2) Running cases under a GLO

Mr Parker assumes a combined costs budget of £10 million for the defendants to deal with the trial of the test cases. He estimates the cost of calculating damages through an AI tool to be a further £4.9 million (£70 per claim assuming 70,000 claims needed assessing) plus a further £10 million to resolve any remaining issues. He concludes that the

defendants' overall costs would be in the region of £25 million or around £278 per claim.

111. In oral submissions, Mr Hutton addressed the defendants' evidence as to the costs of litigating *Plevin* claims individually. He invites the court to assume an average cost of £3,000 per claimant and £4,000 per defendant per claim for cases proceeding to a final hearing. If one assumes 8% (or 7,200) of 90,000 claims go to trial, that would amount to claimants' costs of £21.6 million and defendants' costs of £28.8 million. He invites the court to assume the remaining 82,800 would cost an average of £2,000 per defendant per claim equating to a further £165.6 million bringing the overall defendants' costs to £194 million. Assuming the claimant would incur costs of £1,500 per remaining claim, would amount to a further £124.2 million, plus £21.6 million for the test cases, bringing the claimants' overall costs to around £145.8 million. He thus submits that the likely total cost of disposing of 90,000 *Plevin* claims on an individual basis would be around £340 million.

112. Mr Hutton acknowledges that whilst there can be debate about how much it would cost under a GLO or other form of collective case management order, the question is not answerable with a specific figure. He invites the court to take judicial notice that if all or the majority of the claimants' GLO issues are answered, the overall costs would be a fraction of £340 million. He submits that active costs management under a GLO will assist in controlling the costs.

113. The defendants do not accept the claimants' analysis that a GLO or other form of collective case management would result in costs savings. In summary, they submit that the superstructure of a GLO would involve very substantial additional costs leading to a trial of test cases that would not produce finality, such that the costs of determining individual claims would still be incurred. Whilst the defendants do not accept that there will be as many as 90,000 claims, they adopt that figure for the purpose of their submissions for ease of comparison. The defendants and non-parties provide differing average costs of litigating *Plevin* claims on an individual basis. For example, Mr Slater states that the maximum cost of the seventh and eighth defendants defending a *Plevin* claim is now £3,850 plus VAT. The third to sixth defendants suggest taking an average cost to final hearing per claim of £3,000 for claimants and £3,500 for defendants. If 7,200 of 90,000 individual claims proceeded to final hearing, that would cost the claimants a total of £21.6 million and the defendants a total of £25.2 million. The defendants acknowledge that the remaining cases that are discontinued or settled would incur costs but describe this as "a tiny fraction of the costs estimated" in respect of those cases that need a final hearing.

114. Much of the evidence and submissions as to the likely costs of future litigation of litigating these claims, whether under a GLO or individually, are necessarily speculative. I thus approach the figures with caution.

115. The likely cost of the claims proceeding individually can be informed by experience of litigating *Plevin* claims. It is however apparent that different legal representatives spend very different amounts on these claims. Much of that cost will be irrecoverable as many of these claims are allocated to the small claims track. The effect of the oral submissions is that there has been some narrowing

of the disagreement between the parties as to the likely cost per claim. There is a degree of consensus that it is reasonable to adopt £3,000 as the average cost to a claimant to proceed with a claim to a final hearing. There is insufficient evidence to determine whether Mr Hutton's suggested figure of £4,000 per defendant per claim or the third to sixth defendants' suggested figure of £3,500, is more accurate. I propose splitting the difference and assume an average cost of £3,750 per defendant to defend a single claim to a final hearing. There is a broad consensus that around 8% of issued *Plevin* claims require a final hearing. If, which is by no means certain, there were 90,000 claims issued then the 7,200 requiring a final hearing would cost £21.6 million for the claimants and £27 million for the defendants, a total of £48.6 million. There would then remain 82,800 claims. The costs associated with those claims will vary widely. Some may be discontinued at an early stage when costs are minimal, others may settle shortly before the final small claims hearing when significant cost has been incurred. I do not consider that there is sufficient evidence before the court to conclude that either the claimants' submission (that one adopts a figure of 50% of the average costs per claim to trial) or the defendants' submission (that the costs would only be a "tiny fraction" of the costs to trial) is accurate. However, what can be said is that the sheer volume of remaining claims is such that the costs would be very significant. Even if a claimant and defendant between them only spent £1,000 in costs, that would add a further £82.8 million to the cost of litigating the claims individually.

116. The costs of litigating with a GLO are even more uncertain. The making of a GLO commits the parties and the court to very significant expenditure. That expenditure comes in the form of the cost of running the required super-structure around the claims (such as having lead solicitors, establishing and maintaining a group register, advertising, and ascertaining test cases) and the additional costs of a lengthy trial of test cases. On the claimants' case, the latter factor would mean a 4-week multi-party trial of 20 test cases instead of 20 small claims hearings involving one defendant each.

117. The claimants have continued to adopt Mr Parker's original assessment that the defendants' total legal costs would be £25 million under a GLO. The difficulty with this position is that, on the claimants' own case, matters have moved on since Mr Parker's assessment in September 2023. The claimants no longer suggest that quantum will be determined by AI (as to which Mr Parker attributed just £70 per claim) or that the defendants would be obliged to share legal representation. The defendants have been represented by four different legal teams for the GLO Application. If that were replicated for a trial of test cases, the costs of the trial would be significantly more than if there was single representation. The defendants vigorously oppose any suggestion there be single defendant representation, an argument the claimant no longer pursues. The court has extensive costs management powers, which could be used to control the recoverable costs. However, even factoring in the court's control by costs management orders, trying to predict the likely costs to a trial of test cases at this juncture is necessarily speculative. On the claimants' case at its highest, the cost of the initial trial would be not less than £20 million, assuming £10 million for the claimants and the same for the defendants. If, which is likely, the

defendants have at least some separate representation, I anticipate the costs would be higher.

118. The cost of disposing of the remaining claims following a GLO is even more difficult to ascertain. For reasons already discussed, the trial of test cases will not, as the claimants suggest, produce a simple framework into which the remaining cases will slot. There are likely to be many cases requiring individual assessment at trial as to issues of fairness, quantum, limitation, and compromise. The issues that will need determining are essentially the same as the issues that cause current *Plevin* cases to require final hearings. There is thus a real risk that, following a trial of test cases, the percentage continuing to final hearing would remain at around the current 8% with the balance being disposed of by settlement, discontinuance, or strike out. In my judgment, there is a significant risk that the making of a GLO would result in costs of the GLO super-structure and trial of test cases in excess of £20 million, only to find that the majority of the costs of determining the remaining individual claims would still need to be incurred. I am thus not persuaded that the claimants can demonstrate that a GLO would give rise to the "huge savings" promised. At best for the claimants, the costs' implications are very unclear.

Access to justice.

119. The claimants submit that a GLO facilitates access to justice in that it will enable a claimant with a low-value claim, which would be uneconomic to bring as an individual claim, to bring their claim as part of the group. In support of that submission, the claimants rely on evidence that claimant law firms are unwilling to take on low-value claims. Mr Parker states that different claimant law firms have different thresholds below which they will not accept clients, with the lowest threshold he is aware of being £1,000. Mr McGarry of Cheval states that it can be uneconomic for law firms to represent clients in *Plevin* claims as most law firms act on damages based agreements with claims being allocated to the small claims track such that costs are not generally recoverable. Mr Hussain of CRS states that his firm has closed cases worth less than £1,000 because they are uneconomic to run. Mr Settle of Sandstone states that a GLO would allow thousands of potential individuals to have recourse to justice who otherwise may not be able to due to the value of their claim. He notes that Sandstone has around 6,822 viable *Plevin* claims valued at £49.99 to £999.99.

120. The defendants do not accept that would-be *Plevin* claimants are prevented from accessing justice. Mr Allen, for the first defendant, states that his experience is that hundreds of claims worth £1,000 or less have been issued against the first defendant, including more than 150 live claims. Mr Ford, of the second defendant, highlights the findings of the FCA's report *'Payment protection insurance complaints deadline – final report'* which concluded that £38 billion had been paid in redress to the end of 2019 with 70% of the FCA's target audience being aware of the PPI deadline following the conclusion of the FCA's publicity campaign. He states that 21% of *Plevin* claims issued against the second defendant or M&S between 1 January 2022 and 31 December 2023 were valued at less than £1,000. Mr Slater, for the seventh and eighth defendants, states that 10% of all *Plevin* claims brought against those entities since 2019 sought damages of £1,000 or less. Mr Fornasier for Canada Square and Citi

states that 59% of live claims against those entities are valued below £1,000 and 44% of them are below £500 with the lowest value claim being just £28.36. He also states that CLL has brought many claims worth less than £500 including 464 of a total of 521 claims, which have an average value of only £490.

121. The overriding objective makes express reference to ensuring, so far as is reasonably practicable, that parties are on an equal footing. A claimant who cannot obtain professional legal representation to bring their *Plevin* claim is undoubtedly at a disadvantage when faced with a defendant with experienced, professional representation. However, there is clear evidence that significant numbers of represented claimants are bringing *Plevin* claims in respect of low-value claims of £1,000 or less. The position is not as stark as Mr Parker suggests. It is however likely that some would-be claimants will struggle to obtain professional legal representation for low-value *Plevin* claims. A low-value claim funded under a damages based agreement may be unattractive to a claimant law firm unless the claim settles at an early stage before significant costs are incurred. That is not to say that litigants in person cannot access justice; the small claims track procedure is particularly adept at accommodating parties without professional representation. However, the proposed GLO does have advantages for claimants. HP has indicated a willingness to take on all values of *Plevin* claim and has arranged litigation funding to pursue even low-value claims as part of a collective. It appears HP would not be interested in pursuing individual low-value claims outside a GLO or other form of collective case management structure. Whilst recognising the need for litigation to be conducted in a way that accommodates the needs of any claimant who does not have professional representation, the submission made by the claimants is akin to the 'moral blackmail' approach rejected by Mann J in *Tew.* At [31] he rejected any approach that amounted to "one set of parties [dictating] the shape of litigation on the footing that if they do not get that shape then they will not join the game". He concluded that the court would resist such moral blackmail and that principles of access to justice did not require the adoption of the claimants' proposals. Whilst recognising that some would-be *Plevin* claimants may have to act as litigants in person if a GLO is not granted, I do not conclude that such in itself is a good reason to make a GLO if other factors militate against the same.

122. A further issue associated with access to justice arises from the claimants' submission that individual claimants are often prevented from establishing binding precedents in higher courts because defendants 'buy off' problematic appeals. The claimants submit that a GLO would promote access to justice by providing a forum for test cases to be determined, and, if necessary, appeals to occur. I am not persuaded this is a material factor. It is apparent from the various Supreme Court and Court of Appeal decisions in this field that appeals are being pursued. Furthermore, any decision on the trial of test cases would be at County Court level and thus of persuasive rather than binding effect. The ability of a respondent to an appeal to make offers to an appellant to compromise an appeal is an inherent part of the process. Indeed, the Civil Procedure Rules encourage cooperation between the parties and use of ADR. It however remains open for a claimant to refuse to compromise an appeal if they feel so strongly about pursuing a point of principle.

Adequacy of claimant funding.

123. The ability of the claimants to fund group litigation and meet any adverse costs liabilities generated much commentary in the evidence, inter partes correspondence, and skeleton arguments.

124. Mr Parker's third witness statement of 21 June 2024, explains that the claimants' costs are funded by Katch Fund Solutions (Katch), a Luxembourg-based public limited liability company, pursuant to a litigation funding agreement and priorities agreement. Mr Parker states that advice has been taken from leading counsel to ensure the funding arrangement is valid and enforceable following the Supreme Court's decision in *R (on application of PACCAR & ors) v Competition Appeal Tribunal & ors* [2023] UKSC 28. He explains that Katch also provides a £10 million indemnity in respect of the claimants' exposure to any adverse costs orders, which includes anti-avoidance provisions.

125. On 23 September 2024, HP provided the defendants with copies of the litigation funding agreement and priorities agreement, each dated 20 September 2024. By witness statement dated 1 October 2024, prepared after the defendants' skeleton arguments, Mr Jeanmart of Katch provides further details as to the funding position.

126. The claimants recognise that the defendants had raised concerns about the adequacy of the claimants' funding to bring the claims and to cover any adverse orders as to costs. The claimants submit that the disclosure of the funding agreements, coupled with the additional evidence from Mr Jeanmart, now addresses the defendants' concerns.

127. In oral submissions, the defendants accepted that a number of their earlier funding concerns had been addressed. As Ms John put it, she didn't "think funding is the most important issue remaining". The defendants do however still submit that it is impossible to assess whether the level of indemnity cover is sufficient given the lack of clarity as to how the claimants propose to conduct the claims within a GLO. The defendants note that the indemnity position is even less clear should additional defendants be added to any GLO at a later stage. The defendants also question the lack of detail as to assets held by the funder.

128. The availability of adequate funding to pursue group litigation and adequate cover against adverse costs' implications are relevant matters to the exercise of the court's discretion. Although somewhat at the eleventh hour, the claimants have now provided further details of the funding position. Mr Jeanmart's evidence indicates he is aware of the fact that the level of insurance cover may need to be revisited, and he would welcome the certainty costs management would provide. He indicates further insurance capacity will be available to support the indemnity, should it be required. There is no evidence to undermine this latter suggestion. Until there is any costs budgeting, there is inevitably uncertainty as to the appropriate level of indemnity cover but I am satisfied that HP and Mr Jeanmart are alive to the need to ensure an adequate costs indemnity is in place and that there is likely to be the ability to increase the insurance capacity, if need be. The defendants' second point as to the lack of detail of the

assets held by the funder is a generalised complaint and does not point to specific known issues of concern relating to Katch Fund Solutions or the sub-fund Katch Litigation Solutions. Mr Jeanmart states that the precise details of the funding are privileged but confirms that a litigation budget of in excess of £10 million has been agreed and can be revised in the event it is insufficient. Again, there is no direct evidence to gainsay this assertion. As such, Ms John's concession that funding is no longer the most important issue in the consideration of the exercise of the court's discretionary power is a pragmatic one. The claimants have a significant level of funding in place together with an indemnity against adverse costs' implications, with the probable ability to increase the current levels of cover should the need arise. I do not consider funding issues to be a reason not to grant a GLO.

Suitability of HP as lead claimant solicitors.

129. The decisions as to whether it is appropriate to grant a GLO in principle and who the lead claimant solicitors should be are separate matters. The proposal before the court is that HP be the lead claimant solicitor. No other claimant firm is offering to perform that role. The defendants are sceptical of HP's ability to discharge the obligations that would come with that role. The defendants submit that HP has no history of conducting PPI litigation and allege that the true impetus for the GLO Application is to enrich HP and its funder. The seventh and eighth defendants are particularly critical of HP's conduct of the claims to date alleging a failure to conduct due diligence on the claims and to quantify the value of the issued claims, in providing deficient information about claimants, in running a misleading advertising campaign and in proposing a structure that avoids HP having to evaluate their claims and seeks to avoid claimants giving live evidence.

130. The claimants do not accept there is any merit in the defendants' objections to HP. They submit that HP has experience in conducting large-scale litigation, including where there is a GLO or other form of collective case management. The claimants highlight HP's willingness and financial ability to instruct a team of specialist PPI counsel, including those appearing in *Plevin* and *Self*, to provide expertise.

131. It will be apparent from earlier passages of this judgment that I have concerns about the manner in which HP has conducted aspects of this litigation to date. I take the view there has been little attempt to verify the cogency of data supplied to the defendants or to evaluate the issues that will actually arise in individual cases. HP's desire to railroad all claims into a 'one size fits all' framework ignores the realities of the issues that arise for determination in *Plevin* claims. However, if a GLO were to be made, the terms of the order would prescribe the actions HP had to take as lead solicitor. For example, the nature of advertising of the claims and provision of details of the claims would be directed by the court's order and not left to HP's discretion. Whilst HP may not have prior experience of mass PPI litigation, I accept they have experience of group litigation generally and have the funding wherewithal to comply with the terms of a GLO. In short, the fact that HP would be the lead claimant solicitor does not of itself militate against the grant of a GLO if it would otherwise be appropriate to make such an order.

The views of non-parties.

132. The views of non-parties are in part encompassed in the aforementioned considerations. However, they merit separate consideration in light of the significant implications for other claimant law firms and potential defendants. At the date of Mr Parker's first witness statement in September 2023, no claimant law firm had indicated an intention to oppose the making of a GLO and three firms had provided informal support via completion of HP's questionnaire. All claimant PPI law firms known to HP have been served with the GLO Application. The position of the claimant law firms who were sufficiently interested to engage in the GLO Application is of note.

(1) Cheval is a major player in the field, having settled nearly 19,663 *Plevin* claims, taken 3,518 to preliminary hearings, 3,777 to trials, and having 5,068 live claims. Cheval does not see the need for a GLO, taking the view that experienced law firms are best placed to decide how to prosecute their claims. Cheval prefers the use of omnibus claim forms targeted at individual defendants with a view to cases providing guidance on issues of fact, as opposed to attempting to provide binding precedent. They note that the firms reported by Mr Parker's first statement to support a GLO have since left the market or were not involved in large-scale *Plevin* litigation. One of the firms entered administration with Cheval taking over the conduct of a large swathe of the book of *Plevin* claims.

(2) BlackLion also opposes the making of a GLO but considers that omnibus claim forms may play a role whereby claims with very similar issues against one defendant are grouped together. Quite apart from asserting that the jurisdictional gateway under CPR 19.21 is not met, they consider that a GLO will lead to delay and increased costs.

(3) CRS remains neutral and neither supports nor opposes the GLO Application.

(4) Sandstone alone provides positive support for a GLO. Sandstone considers that a GLO would facilitate access to justice for individuals with lower-value claims. They believe *Plevin* claims are ripe for determination through the use of test cases to consider factual circumstances. In oral submissions, Mr Settle contemplated the alternative use of omnibus claim forms managed collectively in one court but specific to a single defendant dealing with specific issues.

133. It is apparent that the GLO Application does not have widespread support from other claimant law firms. Some of the reticence is likely to be influenced by commercial considerations borne out of a risk that firms may lose clients to HP. However, concerns as to delay, increased costs, and the lack of utility of test cases chime with the concerns expressed by the defendants.

134. The non-party potential defendants would not, at this stage, be parties to the GLO although HP has not ruled out applying to join the B claims to any GLO in the future. The progress of the B claims has however stalled pending the

outcome of the GLO Application. Moreover, any decisions made on test cases under a GLO would no doubt be prayed in aid of similar issues arising in the B claims. The non-party potential defendants endorse the defendants' submissions in opposing a GLO or any form of collective case management.

(1) Natwest and RBS do not wish to be embroiled in any group litigation. They submit that there are dwindling numbers of claims against them. They are critical of HP's failure to assess the merits of the B claims. They submit that of 100 claims against them in the Beale claim, 14 claimants had no PPI policy, 3 had already received full redress and one claimant was deceased. Of 73 claims in the Brabham claim, 5 claimants had no PPI policy, 2 had received full redress and one was deceased. They are concerned about the cost and delay of a trial of test cases, which they consider would be of limited utility and would not remove the need for an individual assessment of the remaining cases. They are critical of HP's vacillating position as to whether to include some or all of the B claim defendants in a GLO Application.

(2) Canada Square and Citi do not wish to be part of any group litigation either. Each entity no longer trades and exists only to deal with ongoing PPI claims. They submit that the claim numbers against them are small, have declined significantly since a peak in 2021, and they only face around 100 claims across the B claims. They argue that the primary limitation period has expired in every claim against them meaning that the onus will be on every claimant to prove that they can rely on s.32 of the Limitation Act 1980. Their data suggests that high levels of claims against Canada Square and Citi are discontinued (64%), they take more claims to trial (23%) than other lenders, and successfully defend four out of five trials. They see no utility in a trial of test cases which will not obviate the need for individual hearings on limitation to allow for cross-examination of each claimant.

135. Whilst the non-party potential defendants have an obvious commercial incentive not to support a proposal that may encourage more claims, the issues they raise as to the claimants' lack of evaluation of the merits or issues in the claims, diminishing numbers of claims, and need for individualised assessments mirror concerns expressed by the defendants.

Conclusions on the exercise of discretion

136. The exercise of the court's discretion involves weighing multiple factors in a manner consistent with the application of the overriding objective. There are aspects of this litigation rendering the notion of a GLO superficially attractive: there are already very high numbers of issued *Plevin* claims, with more highly likely to follow, brought by a solicitor experienced in group litigation who has arranged funding and instructed an expert team of counsel. However, when one drills down to the detail of the claimants' proposal, multiple matters indicate that a GLO on the application as presented would not further the overriding objective. The claimants' proposal is underdeveloped and reveals a concerning lack of evaluation of the merits and actual issues arising in individual claims, and as to practicalities of the operation of a GLO, particularly as to how a trial

of test cases would work and what would happen to the remainder following the determination of test cases. This gives rise to the following concerns:

(1) The evidence does not establish that a GLO would save expense. The cost of the GLO super-structure, a trial of test cases (which would likely need to be a far greater number than the claimants envisage), and the likelihood that most of the remaining claims would still then require individual assessment risks the overall costs being higher than the claims being pursued on an individual basis.

(2) The trial of test cases as proposed would not yield binding decisions capable of determining the remaining claims. The claimants 'one size fits all' approach ignores the actual legal issues. At its highest, an unidentified subset of the remaining cases would have some issues resolved following a trial of the test cases, but other issues (including key issues of fairness and remedy) would still require individual determination. The scope for test cases to provide guidance is limited given the requirement for fact-sensitive assessments of each case. The limited utility of a trial of test cases would not therefore be a proportionate manner of resolving these claims.

(3) Any suggestion that a trial of test cases be used to prevent defendants from testing the oral evidence of the remaining claimants on issues of limitation, compromise, fairness, and quantum would not be a fair process for defendants. The submission that a GLO is required to ensure fairness to would-be claimants who would struggle to access justice absent a GLO is unpersuasive. Other claimant law firms are active in this market. There is evidence that defendants receive many low-value claims, including from those who have legal representation. Moreover, there is no evidence that individual determination of *Plevin* claims under the small claims track procedure is an unfair process for claimants acting in person.

(4) The GLO process would undoubtedly delay the resolution of many claims and there is a significant risk that the claims as a whole would take longer to determine under a GLO. On the claimants' best-case scenario, there will be a period of over 2 years from the issue of the GLO Application to the conclusion of the trial of test cases. Only then could one begin the lengthy process of making individual determinations in the remaining cases.

(5) The GLO as proposed risks allocating a disproportionate share of the court's resources to these claims to the detriment of other claims. The claimants' proposal does not evidence any saving of resources. Any GLO requires a significant amount of the court's resources but usually produces savings of resources in the longer term. The GLO Application itself generated a vast number of filings and email communications from the nine parties and various non-parties. The proposed four-week trial of test cases would involve a significant amount of the court's resources with limited prospects that such a trial would obviate the need for hearings in the remaining cases.

137. In summary, whilst being satisfied that the claimants pass the required jurisdictional gateway, I am not persuaded that it is appropriate for the court to exercise its discretion to grant a GLO as proposed by the claimants.

The claimants' alternative case for Collective Case Management and the defendants' request for disaggregation

138. The claimants' alternative case is that the court should make an order for collective case management. The defendants object to any form of collective case management and want the court to order each claimant to issue an individual claim form. There is, of course, a middle ground whereby the court could conclude that neither the claimants' alternative proposal or the defendants' proposal for disaggregation were appropriate and some other form of collective case management was preferable.

Legal framework

139. It is helpful at this juncture to consider the legal framework which provides for use of a single claim form for multiple claims.

140. CPR 19.1 provides:

> "Any number of claimants or defendants may be joined as parties to a claim."

141. CPR 7.3 provides:

> "Right to use one claim form to start two or more claims.
>
> A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings."

142. The meaning of CPR 7.3 was considered by Sir Geoffrey Vos MR in *Morris & others v Williams & Co Solicitors* [2024] EWCA Civ 376 ('*Morris*'). In *Morris* the court was concerned with 134 claimants who had issued a professional negligence claim against a firm of solicitors alleging breaches of duty to advise about certain investments. The court considered and rejected the interpretation of CPR 7.3 adopted in *Abbott v Ministry of Defence* [2023] EWHC 1475 (KB). The MR reached the following conclusions:

> "62. I have concluded, as already explained, that *Abbott* was wrong to suggest that 7.3 required the court to apply the real progress test, the real significance test or a requirement that the determination of common issues in a claim by multiple claimants under 19.1 would bind all parties.
>
> 63. 19.1 and 7.3 mean what they say. Any number of claimants or defendants may be joined as parties to proceedings, and claimants may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings. The court will determine what is convenient according to the facts of every case. There is no test beyond the words of rule 7.3, even if it is clear that

> cases within the old O15 r4 and cases where common issues will bind all the claimants will obviously be capable of being conveniently disposed of in the same proceedings."

143. The decision of HHJ Worster in the unreported County Court case of *Angel v Black Horse Limited* ('*Angel*') of 8 September 2023 was referred to in *Morris* and by the parties to the GLO Application. The decision in *Angel* is under appeal, but has not yet been heard. *Angel* involved multiple claimants using single claim forms to bring unfair relationship claims under s.140A of the CCA against a single defendant. The claims arose from motor finance agreements. HHJ Worster, informed by the decision in *Abbott*, concluded that the test of convenience under CPR 7.3 had not been met. In *Morris* the MR at [50] commented on *Angel* in the following terms:

> "50. … All the individual claims demanded a separate evaluation of whether the separate relationship between the claimant and the defendant was unfair within the meaning of section 140A of the Consumer Credit Act 1974 . No joint remedy was sought, and each claim was legally distinct and turned on the particular facts of the case, and a finding in one case would not bind the situation in another (see [19]-[22], [36] and [42] of Judge Worster's decision). The facts are quite different here, where there are common issues as the judge found. It seems likely at least that findings on the common issues the judge identified will apply to, and depending on the precise nature of the issue and any further orders made, bind all the claimants."

144. *Adams v Ministry of Defence* [2024] EWHC 1966, decided after *Morris*, considered whether claims on an omnibus claim form could be conveniently disposed of in the same proceedings. In a joint judgment, Garnham J and Master Davison noted at [16] that whilst the three tests in *Abbott* may be relevant factors to be taken into account as part of the court's broad discretion when determining convenience, they are not mandatory. They also added two further considerations which may be relevant when considering convenience:

> "18. First, convenience is not to be judged exclusively from the perspective of the parties. It seems to us legitimate and appropriate also to take into account the convenience and capacities of the court and the court system. This is indeed mandated by the Overriding Objective contained in CPR r.1 which states that cases are to be dealt with justly and at proportionate cost and that this, by r.1(2)(e), "includes, so far as is practicable – allotting to [each individual case] an appropriate share of the court's resources, while taking into account the need to allot resources to other cases".
>
> 19. Second, the statutory predecessor of CPR r.7.3 was RSC O.15 r.5. That rule was phrased in these terms:
>
> > "(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action…, or if two or more plaintiffs…are parties to the same action, and *it appears to the Court that the joinder of causes of action*

> *or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient*." (Our emphasis)"
>
> The power to order separate trials or make such other order as might be expedient is now contained in the very wide case management powers listed in CPR r.3.1(2) . The point to note is that it was in the direct contemplation of RSC O.15 r.5 and, in our judgment, remains in the contemplation of CPR r.7.3 , that claims that were originally properly joined to one Claim Form may be disaggregated if that has become inconvenient."

The claimants' proposal for collective case management

145. The claimants' alternative collective case management proposal assumes that an omnibus claim form can be used to conveniently dispose of the multiple claims in the same proceedings. I will return to consider CPR 7.3 shortly but will assume for the purpose of considering the claimants' alternative proposal that, in principle, an omnibus claim form is a convenient means of disposal.

146. The claimants provide very little detail as to the precise form of collective case management order they would want in the alternative to a GLO. No alternative draft order is provided. The alternative case was first mooted in Mr Parker's third witness statement of 21 June 2024 where he introduces the alternative proposal for collective case management and envisages the terms of the draft GLO being adapted but does not specify how. Mr Parker considers that binding decisions in test cases could be achieved through a collective case management order across the claim forms issued by HP. The claimants' skeleton argument in reply describes the alternative order sought in the following terms: "…The directions would, in substance, be identical to the GLO in the Draft Directions Order. The only difference would be that such provisions of the GLO that the Court had determined were inappropriate…would be disregarded." In oral submissions, Mr Malek postulated that the court may conclude that there should be collective case management of all the *Plevin* claims brought by HP, leading to a trial of test cases but without the need for a fully-fledged GLO with a group register.

147. The defendants are critical of the claimants' alternative proposal describing it as "inchoate as its proposal for a GLO" and noting the lack of any draft order for them to consider. They submit what they know about the proposal suggests it suffers from all the same issues that render a GLO inappropriate.

148. The claimants' failure to provide an alternative draft order or detailed particulars of their proposed alternative collective case management order is very unsatisfactory and undermines the cogency of their proposal. It is however apparent that the claimants envisage an alternative order adopting the same key features of the GLO, that is, the collective management of all HP *Plevin* claims issued against the defendants leading to a trial of no more than 20 test cases to determine the claimants' draft GLO issues. It is still envisaged that the test case decisions bind the remaining cases (which would need to be specifically ordered

in the absence of a GLO) or at least provide guidance. The only substantive aspects of the GLO the claimants appear to contemplate losing would be the need for a group register (and attendant directions) and the corralling of claims brought by other claimant law firms.

149. The court has very wide case management powers although the discretion must be exercised in a manner that promotes the overriding objective. In my judgment, the vast majority of the concerns with the claimants' GLO proposal summarised in paragraph 136 above are replicated in the claimants' alternative collective case management proposal. Some costs would be saved by the removal of the need to establish and maintain a group register but the significant costs of identifying test cases and running a lengthy, multi-party trial would remain. Timeliness of that process would not be improved to any material extent. The claimants' GLO issues would remain the same meaning that the trial of test cases would have limited utility as a means for disposing of the remaining claims, such that individual assessments would still be required. In short, the disadvantages still very much outweigh the advantages and I am not persuaded that the claimants have demonstrated that their alternative proposal would further the overriding objective.

Use of an omnibus claim form

150. The rejection of the claimants' proposals for a GLO and their alternative form of collective case management order does not, of itself, answer the question as to whether all the claims on the single claim form can be conveniently disposed of in the same proceedings.

151. The claimants submit that the use of an omnibus claim form is plainly convenient having regard to the number of claims arising from essentially the same facts and giving rise to common issues of fact and law. They submit that separating the claims is inherently inefficient and inconvenient with different courts and different judges having to deal with the same or very similar issues without the benefit of binding legal decisions or powerful guidance. They warn the court against ordering disaggregation in circumstances where it could affect the position of other claimant law firms, such as Cheval, who also use omnibus claim forms and had chosen not the attend the hearing. The claimants ask the court to consider the negative consequences of disaggregation, including access to justice issues arising from an inability of claimants to access funding, and well-resourced defendants buying off appeals to avoid adverse decisions. They point to the higher costs of separate claims and duplication of pleadings and individual hearings. The claimants submit that disaggregation of the omnibus claim forms would be inconvenient to the point of absurdity. They submit that "all the claims are identical" and that the effect of disaggregation would be the preparation of around 20,000 near identical particulars of claim, defences, allocation decisions, directions orders and small claims hearings.

152. The defendants submit that the multiple claims cannot be conveniently disposed of in the same proceedings. They submit that:

(1) Trying to proceed against multiple defendants (eight in the A claims and many more in the B claims) in a single claim form is a very unusual form

of collective proceedings. The approach results in increased legal costs, with duplication of legal work being unavoidable and leading to more complex hearings, as evidenced by the hearing of the GLO Application. The defendants cannot be jointly represented, as the claimants now concede, given they are competing commercial entities, face different levels of exposure and different issues, have individual relationships with their regulator which may impact how they handle claims, and will have different views on the tone of documents that go out in their name. The examples of omnibus claim forms in other cases referred to by the claimants are nearly all examples where there was essentially one defendant or close relatives.

(2) For the reasons already identified in respect to the proposed GLO, the lack of significant common issues renders the omnibus claim form inconvenient.

(3) The state of the claimants' evidence means the court cannot conclude that the omnibus claim form is convenient.

153. The defendants do not accept Mr Parker's analysis as to why individual claims are not convenient. They submit that the use of individual claims would not mean that any appeals would be slower, quite the contrary. They see no reason why HP could not select individual claims they believe raise important points and ask the court for permission for expert evidence or a longer listing to explore those matters. They submit that HP has no substantive or procedural right to bring all the claims at one moment of their choosing, accusing HP of warehousing the claims like missiles, all to be released at the same moment.

Discussion

154. The use of omnibus claim forms, whether with or without a GLO, is well-established and can be a convenient means of disposing of multiple claims. Multiple claims usually bring at least some inconveniences. The resources of the parties and court can be stretched trying to deal with multiple claims litigated at the same time. To some extent, the assessment of what is convenient involves trying to reduce the level of inconvenience.

155. The determination of whether all claims can be conveniently disposed of in the same proceedings will turn on the particular circumstances of the claims. The only claim before the court is the Abernethy claim. It is not the other A claims, nor the B claims nor indeed claims brought by any other law firms. The Abernethy claim has some 3420 claimants bringing claims against 8 defendants. The court is faced with assessing the question of convenience based on generic particulars of claim and the evidence before the court in respect of the GLO Application. The difficulty the court faces is that, bar the name and address of each claimant and the identity of the defendant, little more is known about each claim. The claimants' legal representatives have not provided the court or defendants with any analysis of the issues arising in the claims or sampling proposals for test cases. For example, the details of the different PPI products are not known, it is unclear which cases are likely to give rise to compromise arguments arising from receipt of redress payments and in what circumstances,

and it is not known which claims are outside the primary limitation period. The court is faced with a cacophony of claims but no evidence to explain why they could all be conveniently disposed of together.

156. I do not consider the claims as presented can be conveniently disposed of in the same proceedings:

(1) The inclusion of eight defendants, who all sold different PPI products, renders a single set of proceedings anything but convenient in light of the added cost and complexity of multi-defendant litigation. It is of note that Cheval, who is an experienced PPI firm, advocates the use of a separate omnibus claim form against each lender. They clearly recognise the unnecessary complexity of trying to include multiple defendants within a single set of proceedings.

(2) Whilst *Morris* [at 49] makes it clear that there is no requirement to satisfy a test of real progress, real significance or to achieve a process that results in binding decisions, the limited utility of trying test cases (for the reasons already discussed) is a relevant consideration when assessing whether it is convenient for the claims to be disposed of in a single set of proceedings. The added costs, delay, and impact on the court's resources of conducting lead claims only to find that individualised fact-specific assessments are still required do not make for convenient disposal.

(3) Convenience cannot, insofar as the claimants assert that it can, be determined by reference to the claimants' access to funding if other circumstances point to the process not being conducive to convenient disposal in a single set of proceedings.

157. I recognise that it is unattractive for the courts and parties alike to be faced with thousands of individual claims, particularly ones being litigated at the same point in time. That does not however turn an omnibus claim form that does not enable the convenient disposal of claims in the same proceedings into one that does.

158. My conclusion that the multiple claims in the Abernethy claim form cannot be conveniently disposed of in the same proceedings should not be interpreted as a conclusion that omnibus claim forms never have a place in *Plevin* litigation. If claimant legal representatives have undertaken a detailed analysis of their claims, it may be possible to group cases with common themes which would enable claims to be conveniently disposed of together. For example, it may be possible to identify claims against the same defendant which all give rise to likely arguments of compromise based on redress payments made further to the same standard form correspondence. A decision in test cases on whether the standard form wording gives rise to a compromise would provide strong guidance to the other claims. It may be possible to group claims against a single defendant relating to the same PPI product sold on common terms. Whilst individual assessments would still likely be required, it may be convenient to dispose of the claims in a single set of proceedings by determining test cases to guide the outcome of others. When grouping claims, any claimant legal

representative would have to undertake a careful assessment of issues in individual cases, such as fact-specific compromises or limitation, that could undermine the convenience of group disposal. I deliberately emphasise the word 'may' as the aforementioned examples can only be speculative given that the claimants' legal representatives have not produced any evidence of analysis of the issues arising in the Abernethy claims such that it is impossible to say what, if any, common themes emerge.

159. It is not the court's function to advise the claimants as to how to present their claims to the court. The court has to assess what has been presented. In the Abernethy claim, an omnibus claim targeting eight defendants will not enable the multiple claims to be conveniently disposed of in the same proceedings. Whilst one can speculate ways in which it may be possible for an omnibus claim form to enable the convenient disposal of claims, the claimants have not provided the court with evidence as to any viable alternative to disaggregation. I am therefore persuaded that it is appropriate to order disaggregation of the Abernethy claim form. The claimants will be provided with a time to issue individual claim forms whilst preserving the date of issue of the Abernethy claim for limitation purposes. I will hear from the parties in due course as to the appropriate form of order, including the period for the filing of claim forms.

160. In due course, consideration will have to be given as to how best to case manage any large influx of individual *Plevin* claims. The parties should consider the practicalities of determining multiple claims on separate claim forms. There may be utility in identifying claims against the same defendant and/or categorising claims involving the same product and/or similar issues as to compromise based on the same standard form documentation, with a view to cohorts of claims proceeding in the same County Court hearing centre with provision for block listing.

Conclusion

161. The claimants' application for a GLO or proposed alternative form of collective case management will be dismissed.

162. The form of omnibus claim form adopted in the Abernethy claim will not enable the claims to be conveniently disposed of in the same proceedings. Each claimant, save Mr Abernethy, is to file an individual claim form.

163. The preferred process for handing down this judgment was discussed with the parties at the hearing of the GLO Application. To avoid any complications arising from the need for the parties to take instructions from multiple individuals on an embargoed judgment, this judgment is being handed down in an approved form, subject to editorial corrections, at an unattended hearing on 7 January 2025. An attended hearing is listed on 11 February 2025 at 10.30 am.

APPENDIX 1

Claimants' List of GLO Issues

Generic Issues

1. Where Sections 140A-C apply, was the relationship between each Claimant and the relevant Defendant arising from the relevant credit agreement unfair to the Claimant at the end thereof or, if the relationship is continuing, at the date of trial for the purposes of Section 140A as a result of the Defendant's non-disclosure of the amount of commission and profit share (hereafter "commission") referable to the associated policy of PPI?

2. Is there a universal "tipping point" beyond which the amount of undisclosed commission (expressed as a percentage of the premium(s) in respect of the PPI in question) is so large that the relationship is unfair for the purposes of Section 140A, irrespective of any other considerations and, if so, what is that tipping point?

3. Is there a universal "tipping point" beyond which the amount of undisclosed commission (expressed as a percentage of the premiums in respect of the PPI in question) is so large that the evidential burden on the Defendant under s.140B(9) will not be discharged unless exceptional circumstances are shown by the Defendant and, if so:

   3.1 What is that tipping point; and,
   3.2 What circumstances would be capable of being "exceptional" for these purposes?

4. If the Court finds that the relationship in question is unfair for the purposes of Section 140A for such reason, should a Claimant bringing such claim be awarded a remedy under Section 140B and, if so, what is that remedy? In particular, is it repayment of a sum equivalent to:

   4.1 all premiums paid in respect of the PPI and associated interest, together with compensatory interest?
   4.2 all premiums paid in respect of the PPI and associated interest, with credit being given for the assessed benefit to the Claimant of the PPI, together with compensatory interest?
   4.3 all commission deducted in respect of the PPI and associated interest, together with compensatory interest?
   4.4 the amount of commission deducted that exceeded what would have been "fair" and associated interest, together with compensatory interest?
   4.5 A remedy that is none of the above?

5. Should the remedy differ depending on:

   5.1 Whether, had disclosure of the amount of the PPI commission been made, the Claimant would not have purchased the PPI, the Claimant might not have purchased the PPI, or the Claimant would, nonetheless, have purchased the PPI? If so, in what way?

5.2 Other specific matters? If so, which specific matters and in what way?

6. What principles are to be applied to the calculation of compensatory interest awarded as part of such repayment?

Reconstruction of Running Account

7. What principles are to be applied to the calculation of associated interest in circumstances where the PPI premiums have been applied to a running account?

8. What principles are to be applied in respect of fees and charges applied to a running account in consequence of the purchase of the PPI?

Acceptance of DISP redress payment

9. In what circumstances will a redress offer under DISP ("Redress Offer") and a payment made in respect thereof give rise to a binding settlement between the debtor and creditor?

10. Was the amount of the Redress Offer made to relevant Claimants not, in fact, "assess[ed] fairly" for the purposes of DISP 1.4.1 R in that the amount of the Redress Offer undercompensated such Claimants for the loss that they had, in fact, suffered?

11. If so:

11.1 Was any such settlement vitiated by a common mistake, being, the common belief that the Redress Offer in question was "assess[ed] fairly", as required by DISP 1.4.1 R? or,

11.2 Should the contract of settlement be rescinded because of a misrepresentation by the Defendant that the Redress Offer was calculated in accordance with DISP?

12. If a settlement came into effect and such settlement was not vitiated and is not rescinded, can the relationship between that Claimant and the relevant Defendant nevertheless still be unfair after settlement for the purposes of Section 140A, thus, entitling the Claimant under the jurisdiction in *Holyoake v Candy* to obtain a remedy under Section 140B, because:

12.1 The Redress Offer was represented as being made in accordance with DISP, but did not correctly reflect the same, because the amount of the redress was not "assess[ed] fairly", as required by DISP 1.4.1 R; and/or

12.2 the DISP offer was insufficiently clear, for example because disclosure in respect of the PPI commission continued to be inadequate at the time that the offer was accepted?

13. If the answer to Issue 10 is "yes", irrespective of whether any settlement came into effect and/or was so vitiated or is rescinded, are such claimants entitled to

recover as damages the difference between the amount paid and the amount that should have been paid under DISP had the Redress Offer been assessed fairly:

13.1 for breach of statutory duty under s.138D of the Financial Services and Markets Act 2000; or

13.2 for breach of a contractual warranty that the amount to be paid was calculated in accordance with DISP?

14. If, pursuant to the determination of Issues 9-13 above, the amount of any compensation due to relevant Claimants is not limited to the amount of any applicable Redress Offer, what principles are to be applied to the giving of credit in respect of the different elements of any such Redress Offer, i.e. (1) premiums/commission and contractual interest and (2) compensatory interest calculated in accordance with DISP, in awarding a remedy under Section 140B?

Limitation

15. Is the transaction comprised in the payment and acceptance of a DISP redress payment a linked transaction in relation to the relevant credit agreement within the meaning of Section 19(1)(c)(ii) of the Consumer Credit Act 1974 and, therefore, a related agreement within the meaning of Section 140C(4)(b) thereof?

16. If the answer to issue 15 above is "yes", does the limitation period in respect of an application for an order under Section 140B based on the unfairness to the Claimant of the relationship between them and the Defendant arising from a credit agreement taken with such related agreement run from the completion of the linked transaction?

17. When could a Claimant with reasonable diligence have discovered concealment by the relevant Defendant of a fact or facts relevant to the right of action, being the existece of commission, the substantial nature of the PPI commission and the amount of the commission?

Assignment

18. Where there has been an assignment of the benefit of the relevant credit agreement, or a novation of the relevant credit agreement:

18.1 Which of the assignor and assignee or new contracting party and old contracting party is the correct Defendant to the claim and/or to different parts of the claim?

18.2 When did time start to run against the assignor or old contracting party for the purposes of the Limitation Act 1980?