Neutral Citation Number: [2026] EWCA Civ 831

Case No: CA-2025-001011

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT KING'S BENCH DIVISION
Mr Justice Ritchie
[2025] EWHC 490 (KB)

On Second Appeal from Birmingham District Registry
HHJ Worster
J30BM090

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2026

Before:
THE PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE COULSON
and
LORD JUSTICE STUART-SMITH

- -

Between:

Black Horse Limited	**Appellant**
- and -	
Stuart Angel & Others	**Respondent**
Close Brothers Limited	**Appellant**
-and-	
Peter Green & Others	**Respondent**
Aldermore Bank PLC	**Appellant**
-and-	
Sean Hallsor & Others	**Respondent**
Volkswagen Financial Services (UK) Limited	**Appellant**
-and-	
Carl Thomas & Others	**Respondent**
Startline Motor Finance Limited	**Appellant**
-and-	
Patrick Giltinane & Others	**Respondent**
(1) Vauxhall Finance PLC	**Appellants**
(2) Stellantis Financial Services UK Limited	

-and-
Andrew Barlow & Others **<u>Respondent</u>**

BMW Financial Services (GB) Limited **<u>Appellant</u>**
-and-
Richard Bateson & Others **<u>Respondent</u>**

Moto NoVo Finance Limited **<u>Appellant</u>**
-and-
Rakab Sharif & Others **<u>Respondent</u>**

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Patrick Goodall KC and Iain MacDonald (instructed by TLT LLP) for the **Appellants: Black Horse Ltd & Close Brothers Ltd**

Iain MacDonald (instructed by DWF LLP) for the **Appellants: Startline MFL**

Matthew Hardwick KC (instructed by Eversheds Sutherland (International) LLP) for the **Appellants: Aldermore Ltd and Motonovo FL**

Simon Popplewell (instructed by Lester Aldridge LLP) for the **Appellants: Volkswagen FSL and BMW FSL**

Lee Finch (instructed by Solaris Law Ltd) for the **Appellants: Vauxhall FP and Stellantis FSL**

David Cavender KC and Jonathan Butters (instructed by Barings Ltd) for the **Respondents**

Hearing dates: 22 & 23 April 2026
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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE COULSON:

1 INTRODUCTION

1. The respondents to this appeal (whom I shall call "the claimants" throughout) number in excess of 5,000. They are individuals who bought motor cars during the last 14 years. The appellants (whom I shall call "the defendants" throughout) are all motor finance companies who provided loans to the claimants in order to help them buy their cars. The claimants claim that, when they entered into credit agreements with the defendants in order to facilitate the purchase of a car, they were unknowingly paying the car dealers a commission. At the heart of these claims is the defendants' alleged failure to make sufficient or any disclosure of that commission arrangement between themselves and the car dealers, by which the dealers could set the interest rates of the credit agreement and received commission in line with that rate. I shall call these "the discretionary commission arrangements".

2. By way of eight claim forms, issued as long ago as 10 November 2022, the claimants brought claims against the eight defendants[1]. The claims are made pursuant to s.140B(1)(a) of the Consumer Credit Act 1974 ("the CCA") for repayment of monies paid by them under the credit agreement, on the basis that the relationship between the claimants and the defendants arising from the particular credit agreement, was unfair. On the assumption that each claim is worth around £1,000, Black Horse Limited faces a potential liability of £1,852,000, while, at the other end of the spectrum, Aldermore Bank Plc faces claims totalling £29,000.

3. The claimants served a single, generic, particulars of claim. This is essentially a 'desktop' pleading, identifying how and why it is said that the failure to disclose the discretionary commission arrangement was a breach of the Financial Conduct Authority's guidelines on consumer credit, known as the Consumer Credit Sourcebook ("CONC"), and meant that every relationship between the claimants and the defendants was unfair. No facts are pleaded. By way of an amended schedule, details were provided by the claimants of the relevant credit agreements into which they entered, and the registration number of their vehicles.

4. The claims were brought in the County Court in Birmingham. They were case managed by His Honour Judge David Worster ("the circuit judge"). It was the claimants' original position that the claims raised a single common issue, namely whether CONC required disclosure of the nature of the discretionary commission arrangements (see [34] of the circuit judge's judgment). It appears that, before or during the hearing before the circuit judge, this was expanded to two questions, namely the potential breach of CONC, and a question about the *principle* of unfairness arising from non-disclosure (see [37]). The claimants wanted these so-called common issues to be determined first, possibly by way of some sort of sampling exercise (although the details of that were as speculative as the generic paeticulars of claim). The defendants opposed this on the basis that a determination of whether or not the failure to disclose gave rise to an unfair relationship in one case was entirely fact specific, and would therefore have no effect on the determination of whether the relationship between the next claimant and the same defendant was unfair

[1] There are 8 live defendants because Vauxhall and Stellantis are, effectively, the same company.

or not. They therefore sought to disaggregate the claims, so that there would be 5,000+ claim forms.

5. The circuit judge, who has extensive experience of these sorts of claims, concluded in June 2023 that the necessary convenience test under CPR 7.3 had not been met, so that it was not appropriate for the 5000+ claimants to pursue their claims by way of multi-claimant claim forms. He disaggregated the claims. He was critical of the common issues suggested by the claimants. In addition, he did not think that the sampling suggested by the claimants was a good way forward, and said instead that the best course was for some of the claims to be pleaded out and tried. He had reached these conclusions on the material before him by way of a draft judgment circulated to the parties. Following the decision of the Divisional Court in *Abbott v Ministry of Defence* [2022] EWHC 1807 (KB) ([2023] 1 WLR4002) ("*Abbott*"), and further submissions from the parties, he rewrote his judgment to reach the same conclusion in September 2023, but this time by reference to the observations of the court in *Abbott.*

6. The claimants appealed. By the time of the appeal before Ritchie J ("the High Court judge"), the Court of Appeal had handed down their judgment in *Morris & Others v Williams & Co Solicitors* [2024] EWCA Civ 376, [2025] Ch 34 ("*Morris*"). In that case, the Court of Appeal held that the test of convenience was very broad and may potentially have been restricted by some of the observations in *Abbott.* The High Court judge concluded that the circuit judge had erred in principle by following *Abbott* and re-exercised the discretion. He found, for a variety of reasons, that the convenience test had been met. He stressed both the existence of what he called "broad common issues" and the importance, in a case of this sort, of some lead cases being tried out in full, because of the likelihood that such a process would lead to widescale settlement. At a consequentials hearing, the High Court judge went on to make case management directions as to pleadings and disclosure.

7. The defendants sought permission to appeal against the orders of the High Court judge. Zacaroli LJ refused permission on three of the four prospective grounds, but concluded that the defendants had a real prospect of successfully showing that the High Court judge had failed to re-exercise the discretion properly. In this way, the case came before this court, with six counsel (including two KCs) representing the defendants, and two counsel representing the claimants. There was a bundle of five lever arch files, in which the documents were somewhat repetitive, and four files of authorities, the vast majority of which were irrelevant.

8. The oral submissions for this second appeal took two days. Much of that time was taken up with argument as to what – if any – common issues the 5,000+ claims might give rise. There was also some discussion about the desirability or otherwise of lead cases. In a case where there are no pleaded factual parameters of any kind, much of that debate was, of necessity, hypothetical. It sometimes seemed that every point was being taken by one side against the other, regardless of significance. Both the circuit judge (at [54]) and the High Court judge (at [11] of his order) complained about the absence of co-operation between the parties. Despite those complaints, what might be called the hardline approach of both sides has also been apparent on this appeal.

9. This case has achieved almost nothing in its three-and-a-half year lifetime, save to run up extravagant costs. This too was the subject of adverse comment by the High Court judge. Apparently, the claimants' costs of the appeal before him were £1.3 million.

The claimants have provided no information as to their costs of the appeal to this court, but it is safe to assume that a similar order of costs has been incurred. Since there are eight defendants and they have chosen to put in five separate skeleton arguments, and instruct separate counsel, I imagine that their costs are at least the same as the claimants, if not higher. Such a level of costs is insupportable, particularly given that the individual claims in this case are likely to be modest (something in the region of £1,000 each).

10. To add further complexities into the mix, there are real restrictions on this court's room for manoeuvre. One is the very limited nature of the appeal, because this court must not trespass into areas covered by the three grounds for which Zacaroli LJ refused permission to appeal. Another is the need for real caution on the part of any appellate court invited to overturn case management decisions taken below. And there is also the claimants' genuine submission that this appeal is existential: that if this court allows the appeal against the decision of the High Court judge, so that the advantages of multi-claimant litigation are removed, the claims would be scattered to County Courts around the country to be pursued individually, where they would be allocated to the small claims track and any legal fees would be paid out of the award of damages. In this way, they say that the reality is that the vast majority of the claimants would simply not wish to, or be unable to afford to, pursue their claims.

11. Two things then are plain. First, in trying to knock this litigation into some sort of shape, you would not choose to be starting from here. Secondly, the procedural history, and the restrictions that I have identified, make this case an unreliable vehicle for any statement of principle or guidance concerning multi-claimant claims.

2 THE BACKGROUND FACTS

12. As noted above, there are eight separate claim forms, each containing numerous individual claims against the same defendant. The number of claimants in each of the claims range from 29 to 1,651. There were a total of about 5,800 claimants although, because it appears that some of these claims have been discontinued, it is not possible to be precise.

13. Using the claim form of Mr Stuart Angel against Black Horse as an example, the claim form is in the following terms:

> "Brief details of claim:
>
> Pursuant to s.140B(1)(a) of the Consumer Credit Act, each of the Claimants claims an order for repayment of monies paid by them under a motor vehicle finance agreement on the basis that the relationship between them and the Defendant arising from the relevant credit agreement was unfair to them because of things done and/or not done by the Defendant and/or by the relevant motor dealer on the Defendant's behalf, in particular their failure to make sufficient disclosure, and the Defendant's failure to take reasonable steps to ensure that the dealer made sufficient disclosure regarding the commission arrangement between them, contrary to the FCA's Consumer Credit

> sourcebook, together with interest under such section or under s.69 of the County Courts Act 1984.
>
> Value
>
> The Claimants claim, by their multi-claimant action, repayment of monies in excess of £200,000".

14. In January 2023, the claimants served generic particulars of claim in each of the eight actions. I have described these as 'desktop' pleadings because they contain no facts or specific details. Instead, they refer generally to the existence of credit agreements between the claimants and the defendants, and the probable separate agreements between the defendants and the car dealers, acting as agents/brokers. The claimants allege that these brokerage agreements were discretionary commission arrangements, by which the brokers could set the cost of credit between parameters, and would receive remuneration in line with the rate set. The particulars refer to consumer credit rules and guidance, whether issued by the Office of Fair Trading ("OFT") or the Financial Conduct Authority ("FCA"), extant during the dates specified in the schedule. They allege that the defendants failed to ensure their brokers complied with CONC by disclosing the nature of these discretionary commission arrangements, which were not justified based on the extra work undertaken by the brokers, and affected the impartiality of the brokers. The heart of those claims is what is said to be the unfair relationship between claimants and defendants within the meaning of s.140A, based on the claimants' lack of knowledge of the discretionary commissions. As Mr Goodall put it, "each claim is tied to the claimants' knowledge". The claims span lengthy periods: to take two examples, the claims against Black Horse span 11 years, and the claims against Close Brothers span 13 years.

15. The service of the generic particulars of claim was ordered by the circuit judge at the first hearing before him on 17 November 2022. At the same hearing, he disapplied Practice Direction 49C, which is the PD that applies to claims based on unfair relationships under the CCA.

16. Thereafter, there were a number of further hearings before the circuit judge in which, amongst other things, he ordered the claimants to amend the schedules (which originally just contained the claimants' names and addresses) so that they also included the date of the credit agreements, the agreement numbers, the identity of the vehicles, whether they were regulated by the CCA, and the dates of birth of the claimants. There was a separate dispute about jurisdiction which took up much time, but which is irrelevant for the purposes of this appeal.

17. Following a hearing before the circuit judge on 15 February 2023, he ordered the claimants to provide detailed proposals for sampling cases, to include the criteria for the selection of sample cases, which cohorts it was proposed samples should be taken from, and how the samples were to be chosen. I do not consider that the claimants' sampling proposals, which run to 18 pages, comply with the circuit judge's directions. They read instead like a skeleton argument. They are short of what I would regard as the appropriate specificity, because of the absence of any pleaded facts. Moreover, at paragraph 9 of the proposals, the claimants tie their proposed sampling to their alleged common issue, namely whether the relevant regulatory regime (CONC) required disclosure of the nature of the discretionary commission arrangement. I shall call this

"the CONC point". At the hearing in May 2023, the circuit judge rejected the submission that this was a common issue or was of any utility (see paragraphs 22 and 23 below).

18. I note two further points about the claimants' sampling proposals. The first is the surprising emphasis on the defendants doing most of the work. One example of this attitude is at paragraph 14, where the claimants say that the defendants "should ensure that their sample cases reflected the variety of types of such arrangements". It is, in my experience, unusual for *claimants* to be requiring the court to direct that the *defendants* provide proper samples, without any input from them. I also note that parts of the proposal were wholly inconsistent with the case now advanced by the claimants. For example, at paragraph 16 it was said that the amount of commission "is not material to the claim as pleaded". That is completely contrary to Mr Cavender KC's oral submissions to this court, which included the proposition that the amount of the undisclosed commission could, absent a strong countervailing factor, without more justify a finding of unfairness.

19. On 5 May 2023, the matter came before the circuit judge for the fifth time. That was the hearing to decide if the claims could remain the subject of one claim form against each defendant. On 12 June 2023, the circuit judge circulated a draft judgment which concluded that the claims made in the eight claim forms could not be conveniently disposed of in the same proceedings. He therefore concluded that there should be 5,000+ separate claim forms, thereby finding for the defendants on what he called "the severance issue". Four days later, the Divisional Court handed down their decision in *Abbott* and the parties made further submissions to the judge. The circuit judge's final judgment was dated 8 September 2023.

3 THE JUDGMENT OF THE CIRCUIT JUDGE

20. The issue before the circuit judge on 5 May 2023 was whether, under CPR 7.3, the claimants could use a single claim form "to start all claims which can be conveniently disposed of in the same proceedings". Having addressed *Abbott*, the judge's consideration of the issues started at [33]. He identified the very limited common issue that the claimants had advanced, namely the CONC point [34]. During the hearing, it appears that this morphed into a rather different question at [37], namely whether a breach of CONC arising from the non-disclosure of the discretionary commission arrangement may, in principle, give rise to a finding of unfairness under s.140A of the Act. I shall call this the "unfairness in principle" point.

21. The circuit judge noted at [36] that the claimants had acknowledged that a determination in one case, that the failure to disclose the nature of the discretionary commission arrangement between dealer and defendant gave rise to an unfair relationship between the relevant claimant and the defendant, would not give rise to a binding precedent that the relationship between other claimants and the same defendant was unfair.

22. The circuit judge did not regard the determination of the two issues in each individual case as a difficult matter. On the CONC point, for example, he referred to his own decision in *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ([2020] CTLC 161) ("*Kerrigan*") at [190], where he said that "given the burden of proof, when the rules are breached in a substantive way, it is likely to be difficult for

the defendant to show that the relationship was fair". But despite that observation, he questioned, at [39], the utility of a generic determination of an issue such as this. He also made the point that the question of unfairness would turn on a wide range of factors. Counsel for one of the defendants, Mr Finch, had identified 18 such variable factors in his skeleton argument, and those have been referred to in the subsequent submissions as the "Finch factors".

23. Accordingly, the circuit judge concluded at [44] that he was not satisfied that "there were common issues of sufficient significance that their determination would constitute real progress towards the final determination of each claim in a set of claims". That was a direct citation of the test in *Abbott*.

24. He then went on to deal with the question of case management. Having considered the parties' positions, and having had regard to the authorities, the circuit judge concluded (independently of the severance issue) that, in this case, the process of the identification and trial of "lead cases" was unlikely to save time or cost [52]. He expressed his concern that the "superstructure" which was apparently needed to identify suitable sample cases was adding to the complexity of the litigation, rather than assisting in its resolution. At [53], he said that he had been left wondering whether "it would not be quicker and simpler to determine the issue Mr Clark [for the claimants] had identified by hearing a handful of claims on the fast track…it was a reflection of my view that the issues which might need exploration and decision did not require a complex sampling process, but could be achieved by using the ordinary processes of litigation. That is still my view, and appears to me to be the better way forward". He went on to say at [54] that the burden was on the claimants to propose a workable, proportionate and fair sampling regime sufficiently early on (preferably prior to issue) so that the defendants can see from the start what was proposed. The claimants failed to do that, and as the circuit judge put it, they "did not fully think through what was being proposed and have been playing catch up" [54]. He concluded at [55] that he was not in favour of a formalised sampling process.

25. Accordingly, almost a year on from the commencement of the claim, the stage was set for the disaggregation of the 5,000+ claims, and the ordinary pleading out of the individual claims.

4 THE JUDGMENT OF THE HIGH COURT JUDGE

26. Before the appeal against the circuit judge's order was heard, the Court of Appeal handed down judgment in *Morris*. I address that case in more detail in the next section of the judgment. But for present purposes, I focus only on the passages in which the Master of the Rolls concluded that the test in *Abbott* was too restrictive. He said:

> "49. I turn next to the question of whether any of the three tests promulgated in *Abbott* are correct. I have described the three tests as the real progress test, the real significance test and the test that requires that the determination of common issues in a claim by multiple claimants under 19.1 would bind all parties. I do not think any of these tests is appropriate to exclude cases from the ambit of 19.1. It seems to me that 19.1 and 7.3 must be construed as meaning 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.

> There is no exclusionary rule of real progress, real significance or otherwise. The court will determine what is convenient according to the facts of every case…
>
> 56. I should also make clear that I am not saying that the matters considered in *Abbott* were irrelevant to the question of whether it was convenient in that case to dispose of those claims in the same set of proceedings. Many matters will be relevant to that question. But the matters that are most relevant to the ultimate question of convenience will vary across the wide spectrum of cases that have been and will in the future be brought under 19.1. This court would not wish to confine the discretion of judges in deciding that question under rules that are written in plain English."

27. Before the High Court judge, the claimants modified what they said were the common issues. It appears that they submitted that there were three common issues: the CONC point; a version of the previously rejected point as to "unfairness in principle"; and a new point about whether the car dealers were the agents of (or brokers for) the defendants. I shall call this "the s.56 point". In response, the defendants maintained their stance that there were no common issues, because each case would turn on its own facts.

28. Having set out in some detail the law, and the parties' submissions, the High Court judge began his analysis at [71]. He concluded that the circuit judge had applied *Abbott*; that *Abbott* had been overturned by *Morris*; and that, as a result, the approach taken by the circuit judge could not stand. He therefore concluded that he was entitled to re-exercise the discretion.

29. The High Court judge then went on to identify what he called "broad common issues". He analysed those at [72]-[75]. As to the CONC point, he said that this was a broad common issue, although he qualified that by adding, "but standing back it will have within it many common sub-issues as the claims go forward". As to the second, namely the "unfairness in principle" point, he agreed with the circuit judge at [73] that it was "unachievable, and not a valid decision for a judge to make, to decide questions of unfairness 'in principle'". At [75] he agreed that the s.56 point was a broad common issue.

30. At [76] the High Court judge said this:

> "76. The decision which the Appellants really challenge is the Judge's determination of the insignificance or limited effect which decisions on the broad common issues in lead cases would likely have had on the following cases. The whole premise is based on an assumption relating to what will happen going forwards…"

This rather muddled two concepts: the identification of common issues, on the one hand, and the trying out of lead cases, on the other. As we have seen, this confusion had originated in the claimants' original sampling proposals. But they are, in truth, very different things. In proceedings with multiple claimants, a court can try common issues, on assumed facts, which may determine – either in a binding or at least in a persuasive way – various relatively high level points of principle. Taking lead cases usually means the opposite: a trial through to a conclusion of certain sample or lead cases, so that the granular results in those cases can be extrapolated across a much wider cohort of claims.

31. However, the High Court judge clearly had the latter methodology well in mind during the remainder of his judgment. At [77], under the heading "hypothetical", the judge explored the likely consequences of taking lead cases and addressing the issues that they were likely to raise. The material in this paragraph was not the subject of any oral submissions: it was entirely the judge's own work. He said this:

> "77. Let us look for instance at the omnibus claim form in *Angel*. There are 1,379 other Claimants and one Defendant, *Black Horse*, which has not disclosed how many brokerage agreements were involved. I do not assume that there were 1,379 different brokerage agreements. This cohort may involve say 100 or 500 claims relating to one specific *Black Horse* brokerage agreement with one specific information leaflet given to consumers by dealers/brokers. Or if we took the percentages in evidence from one of the Respondents, 54% of the brokerage agreements are admitted as paying DC. Setting aside what was said by the dealers/brokers verbally, the lead cases could provide the Court's rulings on: the interpretation of the wording of the DC brokerage the main agreement and the leaflet; whether actual disclosure of any commission was provided by these documents (is it a "may pay commission" clause? Or is it silent?); whether disclosure of the DC was provided in the documents; the precise scale of the interest rate discretion spread (who knows? 0.25% or 15%); the relative size of the commission to the size of the loan; interpretation of CONC; whether the documents breached CONC; interpretation of the scope of CONC and whether a S.56 CCA agency liability is to be imposed on the lender. The rulings could also determine those matters in the context of risky borrowers with a poor credit history (under 560/1000) and cast iron borrowers with a good credit history (over 961/1000). On those documents, those decisions will provide powerful persuasive guidance in the following claims where the same brokerage agreement and leaflet were used. Certainly, the decisions will not fully determine whether there was an unfair relationship in the following cases, but I do not understand why they would not be persuasive, perhaps very persuasive. The range of Claimant circumstances and of remedies granted would also emerge on those issues…. I am not setting out rules or even suggested rules. I am setting out foreseeable options for convenient case management. Omnibus claim management of that cohort will potentially reduce 500 or 100 CMCs and trials to perhaps a just a few."

32. At [82], the High Court judge concluded that the circuit judge had been wrong because his approach had "rested on the *Abbott* test and it did not take into account the early stage of the claim and the likely future range of more precise common issues. What was needed was to compare omnibus lead case decisions with decisions of deputy district judges if the cases are separated." Thereafter, from [83] onwards the judge identified further reasons which he said had led him to exercise his discretion afresh in favour of the claimants.

33. The High Court judge's conclusions as to convenience are to be found at [89]. He took into account a total of nine separate factors in order to reach a conclusion as to convenience. They were:

(i) Whether there were multiple claimants suing the same defendant or multiple defendants;

(ii) The number of claimants;

(iii) Whether the claims related to the same matters or different matters;

(iv) Whether the claims involved the same causes of action;

(v) Whether the issues as set out in the generic particulars of claim are common issues;

(vi) Whether the case specific claims and defences raised common issues of law or fact;

(vii) Whether decisions in lead or test cases will be significant for the disposal of following cases so that they will either bind the parties (issue estoppel) or be persuasive in the disposal of issues in the following cases (for example, breach of regulatory guidance, agency liability, interpretation of brokerage agreements, the very clear case point, or more generally: breach of duty, breach, liability, causational quantum);

(viii) Whether the overriding objective is better met by a single or separate claim forms, taking into account: the requirement to deal with cases justly and at proportionate cost, seeking to ensure equal footing, full participation, saving expense, proportionality to the sums involved, the complexity, the importance of the case and the financial positions of the parties whilst allocating an appropriate share of the court's resources and enforcing compliance with the rules;

(ix) Whether all or some of the claims will more conveniently be disposed of together.

He found that, on analysis, the vast majority of these factors pointed towards the convenience test under r.7.3 having been met here.

34. On behalf of the claimants, Mr Cavender made the valid point that none of these specific factors identified by the High Court judge are the subject of complaint, either as factors to be taken into account when considering convenience, or by reference to the judge's conclusions on which way each factor pointed.

35. In a subsequent order dated 17 April 2025, following a consequentials hearing, the High Court judge gave case management directions. He had originally floated those at [93] of his substantive judgment. Although not originally sought by the claimants, the defendants had the opportunity to address those proposed directions at the consequentials hearing. The High Court judge was unmoved by their opposition and made detailed directions along the lines he had originally proposed. The directions required generic defences from the defendants. They also imposed significant disclosure obligations on the defendants, in particular the provision of the

discretionary commission arrangements – which are also referred to as brokerage agreements – which the claimants said that they had not yet seen.

36. On 3 June 2025, Zacaroli LJ granted the limited permission to appeal to which I have referred. He dismissed grounds 1, 2 and 3, concluding, amongst other things, that Ritchie J had been unarguably correct to say that HHJ Worster applied the test in *Abbott* which was disapproved in *Morris* and so was entitled to remake the decision. However, he granted permission to appeal on ground 4 in the following terms:

> "**Ground 4**. (permission granted) Under this ground, the appellants challenge the judge's exercise of discretion overall under Rule 7.3 and his case management decision to order disclosure against the appellants in respect of all claims… Having reached this stage of the analysis, the appellants have a high burden to overcome, because this is an appeal against a case management decision. That is so even in relation to the case management directions (as opposed to the conclusion on Rule 7.3) where the second appeals test is inapplicable. Notwithstanding the high hurdle, the possibility that the judge erred in principle is just about sufficiently arguable (particularly as regards the suitability of Rule 7.3 in relation to causes of action which are highly fact dependent and the imposition of significant disclosure burdens on defendants across all claims notwithstanding the likelihood that a much smaller number will be proceeded with to trial). Of greater significance is the fact that this is a question on which judges dealing with case management of these claims (of which there are already a large number, and that number is likely to increase) take differing views on the question (c.f. the decision of HHJ Kelly in *Abernethy v Barclays Bank* [2025] EWCC 1). This ground raises matters of principle and practice upon which guidance from the Court of Appeal would be useful."

4 THE APPLICABLE LAW

4.1 Procedure

(a) The Civil Procedure Rules

37. Rule 7.3 is in these terms:

> "**Right to use one claim form to start two or more claims**
>
> **7.3** A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings."

38. Part 19 is headed 'Parties and Group Litigation'. Rule 19.1 provides:

> "**Parties – general**
>
> **19.1** Any number of claimants or defendants may be joined as parties to a claim."

39. Rules 19.8-19.20 are concerned with Representative Actions. Rules 19.21-19.26 are concerned with Group Litigation. Those possible methods of dealing with multi-claimant claims are not available in the small claims track, to which these claims will otherwise be allocated. Moreover, no-one has suggested that either of these routes are available in this case anyway. The point of mentioning them is to note that the CPR does provide bespoke ways of dealing with multi-claimant claim forms that do not involve r.7.3, and which can be an effective method of achieving access to justice.

(b) The Principal Authorities

40. In *Abbott*, there were over 3,500 claimants bringing claims in negligence in breach of statutory duty arising from noise-induced hearing loss. The Master had concluded that it was impermissible under Parts 7 and 19 for the claimants to bring their claims by a single claim form and ordered each claimant, apart from the first claimant, to issue a new claim form. That decision was overturned by the Divisional Court. The key paragraphs of the judgment of Andrew Baker J in that case are as follows:

> "73 Expressing that affirmatively, in terms of what CPR 7.3 required, the sense is that the level of commonality had to be such that all claims would be resolved, or all but resolved, by the determination of the 16 lead cases. In my view, CPR 7.3 neither states nor implies such a test. If there are likely to be common issues of sufficient significance that their determination would constitute real progress towards the final determination of each claim in a set of claims, that could be enough for a conclusion that common disposal rather than separate disposal of that set of claims would be convenient.
>
> …
>
> 77. If the commonality across the claims cohort were very limited, there might not be that convenience after all. But in that case also, it would be difficult to see why trying lead cases would result in findings that might even have persuasive significance to any real extent for other cases in the cohort. Thus, the MoD's acceptance that the approach now approved by Garnham J is not merely good case management, to avoid the parties having to deal with a huge practical burden of litigating thousands of claims simultaneously, but rather there is enough commonality for the content of whatever may be decided in 8 lead claims, if selected well, to be of real significance for all the rest, to my mind concedes the convenience of common disposal, whereby it will be put beyond argument that the significance in question has the character of findings that bind and not merely findings that may have a persuasive impact."

41. In *Morris*, there were 134 claimants who were investors in one of more of nine development projects promoted by the same company who had each been advised by the defendant solicitors as to the potential investment. The defendant's application to strike out the single claim form failed and the appeal against that decision was dismissed. I have already set out at paragraph 26 above the key paragraphs in the judgment of the Master of the Rolls to the effect that the exclusionary tests in *Abbott* were inappropriate when considering the ambit of r.19.1.

42. Amongst other conclusions in *Morris* that may be relevant to the present case are the following:

(i) At [8], the Master of the Rolls referred to the old RSC Order 15 Rule 4, which allowed multiple claimants where, amongst other things, there was "some common question of law or fact".

(ii) At [30], he agreed with the conclusion in *Abbott* that r.19.1 meant that any number of claimants could be joined as parties to a set of proceedings commenced by a single claim form.

(iii) At [31], he agreed with the analysis in *Abbott* that r.7.3 did not require "a single final trial hearing to be possible or practical".

(iv) At [48], he agreed with the analysis in *Abbott* that the court did not need to define the meaning of a simple English word such as "conveniently". The question was rather: in what circumstances can multiple claims be conveniently disposed of in the same proceedings?

(v) At [51], he said:

> "51. I accept that multiple claims will probably be capable of being conveniently disposed of in the same proceedings where common issues will bind all or most of the claimants (see [31], [33] and [35] above), but I do not think that is currently a requirement of the CPR. Nor, therefore, is it the correct test. 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. The case management tools of ordering lead claims and more than one trial, whether of preliminary issues or otherwise, are very much part of proceedings brought by multiple claimants under 19.1. Lead claims are often chosen specifically to resolve specific issues that arise in claims made by some claimants and not others. The current CPR does not restrict the flexibility of 19.1 and 7.3 by imposing a requirement that one or more issues has to be common to or bind all or even most of the other parties. As I said at [8] above, however, I would think it very useful if the CPRC were to consider whether it would have been better and clearer if a requirement for common issues of the kind found in O15 r4 had been carried over into the CPR."

43. What I think the High Court judge in the present case may have overlooked is what the Master of the Rolls said about the result in *Abbott.* His views at [56], [57] and [62] were clear: *Abbott* was only wrong because it sought, at least potentially, to exclude other factors that may be relevant to the test of convenience. In my view, that meant that it was not enough for the High Court judge in the present case simply to say that the circuit judge had followed *Abbott* and was therefore wrong in principle; instead, he needed to see if the circuit judge had wrongly excluded any factors that were relevant to the test of convenience. At a cursory glance, it is difficult to see what he may have excluded. But that is now water under the bridge, because that argument formed ground 1 of the application for permission to appeal in this case, and the defendants did not get permission to pursue it. So this court must assume that the

High Court judge was entitled to re-exercise the discretion. The only issue now is whether, in undertaking that task, he went wrong. As Zacaroli LJ correctly pointed out, that is a high hurdle for the defendants to surmount.

(c) Other Authorities

44. We were referred to a large number of first instance decisions where, in some situations, single claim forms have been permitted in multi-claimant cases, and other examples where they have not. These included *Adams v Ministry of Defence* [2024] EWHC 1966 (KB), *Abernethy v Barclays Bank UK PLC* [2025] EWCC 1, *Kerrigan* and *Tew v BoS (Shared Appreciation Mortgages) No 1 PLC* [2010] EWHC 203 (Ch). I have, with respect, derived little assistance from the parties' attempts to draw analogies with those cases. That is because, as Dingemans LJ succinctly put it in *Abbott* at [89]:

> "…the fact that different answers have been given in different sets of proceedings to the question whether claims can 'be conveniently disposed of in the same proceedings' is unsurprising. This is because the question is fact-specific to the claimants and the claim form."

45. By way of example, *Adams* and *Abernethy* were cases where, on the facts, the r.7.3 test was not made out; *Kerrigan* and *Tew* were cases where it was (or would have been). They are all different on their facts, and are nothing more than examples of the application of the same principles to different facts. So by way of example, in *Adams* the cases had already been disaggregated and there was an issue with CE File that does not arise here. In *Abernethy* there were multiple defendants as well as multiple claimants. In *Kerrigan*, the circuit judge in the present case dealt with sample cases because of the benefits which he identified at [3] of his judgment in that case. It appears that there was a much greater degree of co-operation between the parties than has been apparent here. Although *Tew* was a GLO case, that made no difference to the outcome because Mann J still had to look for common issues and/or the utility of lead cases. He was able to identify a clear way through by the taking of lead cases [34] and the identification of other, more technical, "central" and "specific" issues for the GLO. I also note in passing that, at [27], he said that unfairness could not be looked at without considering personal circumstances. All these cases were very interesting, but I found them of no real help in deciding this appeal.

(d) Summary of Applicable Principles re r.7.3

46. I would summarise the principles applicable to a consideration of the convenience (or otherwise) of a multi-party claim form under r.7.3 as follows:

(i) The rule provides that multiple claimants may use a single claim form, but the burden of demonstrating convenience is on the claimants: *Abbott* at [66].

(ii) The test of convenience requires no elaboration because, as per *Morris* at [48] and [56], the word "conveniently" is a simple English word carrying its usual meaning and many matters may be relevant to the question.

(iii) One indication of convenience may be if there are common issues of law and fact: *Morris* at [48]. Multi-claimant proceedings will probably satisfy the convenience test if there are common issues which will bind all or most of the claimants, but that is not the only factor: [51].

(iv) What matters is whether a multi-party claim form is *a* convenient means by which the proceedings may be disposed of, not *the most* convenient way. That is the only possible interpretation of the words of r.7.3 and was not in issue on the appeal.

(v) Rule 7.3 requires that common disposal, rather than separate disposal, would be convenient, although that does not require a single final trial hearing to be possible or practicable: *Abbott* at [53] and [63]-[66]; *Morris* at [30]-[31]. As Mr Finch realistically accepted during his oral submissions, the test does not mean that all the claims have to reach the same point at the same time.

(vi) The test of convenience has to be considered by reference to the interests of all parties, and the court and the court system: *Adams* at [18] and [22].

47. I would note one point in Andrew Baker J's judgment in *Abbott* which may be controversial. He said that it would not suffice to meet the r.7.3 test merely because it is convenient for the claims to be case-managed together: [51] and [66]-[67]. That may be right as far as it goes but, to the extent that this observation may be relied on in other cases to say that case-management is irrelevant to convenient disposal, I would disagree. In my view, the test of whether "all claims…can be conveniently disposed of in the same proceedings" must involve a consideration of any case management tools available to the court that may help towards the convenient disposal of multi-claimant claims; 'disposal' must encompass the journey as well as the destination. That is a point to which I return at paragraphs 63 - 67 below.

4.2 Sections 140A and 140B of the CCA

48. Sections 140A and 140B provide as follows:

> "**140A Unfair relationships between creditors and debtors**
>
> (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—
>
> (a) any of the terms of the agreement or of any related agreement;
>
> (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
>
> (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).
>
> (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).
>
> **140B Powers of court in relation to unfair relationships**

(1) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

…

(4) An application under subsection (2)(a) may only be made—

(a) in England and Wales, to the county court…"

49. These provisions need to be read alongside the minimum standard set out in CONC (as per Lord Sumption in *Plevin*, cited below at paragraph 52). The CONC rules dating from 28 January 2021 are set out at length at paragraph 20 of the judgment of the High Court judge and I do not repeat them all here. I note that earlier iterations of these rules are in a different form. For present purposes, it is necessary to set out only the key current rules:

"CONC 1.2.2R

A firm must:

(1) ensure that its employees and agents comply with CONC; and

(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC…

CONC 4.5.3R

A credit broker must prominently[2] disclose to a customer in good time before a credit agreement or a consumer hire agreement is entered into, the existence and nature of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party, where

[2] I note that this word did not feature in the text until the most recent edition.

the existence or amount of the commission, fee or other remuneration could actually or potentially:

(1) affect the impartiality of the credit broker in recommending the credit agreement or the consumer hire agreement; or

(2) if made known to the customer, have a material impact on the customer's transactional decision to enter into the credit agreement or the consumer hire agreement…

CONC 4.5.4R

At the request of the customer, a credit broker must disclose to the customer, in good time before a regulated credit agreement or a regulated consumer hire agreement is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party."

50. An issue that may arise is whether the car dealers were the agents and/or the credit brokers acting on behalf of the defendants as referred to in the CONC rules. Agency is also covered by s.56 of the CCA, which provides:

"(1) In this Act "antecedent negotiations" means any negotiations with the debtor or hirer—

(a) conducted by the creditor or owner in relation to the making of any regulated agreement, or

(b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or

(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c), and "negotiator" means the person by whom negotiations are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity."

51. There have been numerous judgments which have stressed the broad nature of ss.140A and 140B, and the fact-specific focus of any inquiry into the fairness or otherwise of the relationship. It is sufficient to confine myself to three Supreme Court authorities.

52. *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61; [2014] 1 WLR 4222 ("*Plevin*") was a case about PPI commission. Lord Sumption referred to s.140A and said at [10] that it was "deliberately framed in wide terms". He went on to say in the same paragraph that:

> "… 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. Some general points may, however, be made. First, what must be unfair is the relationship between the debtor and the creditor. In a case like the present one, where the terms themselves are not intrinsically unfair, this will often be because the relationship is so one-sided as substantially to limit the debtor's ability to choose. Secondly, although the court is concerned with hardship to the debtor, subsection 140A(2) envisages that matters relating to the creditor or the debtor may also be relevant. There may be features of the transaction which operate harshly against the debtor but it does not necessarily follow that the relationship is unfair. These features may be required in order to protect what the court regards as a legitimate interest of the creditor. Thirdly, the alleged unfairness must arise from one of the three categories of cause listed at sub paras (a) to (c). Fourthly, the great majority of relationships between commercial lenders and private borrowers are probably characterised by large differences of financial knowledge and expertise. It is an inherently unequal relationship. But it cannot have been Parliament's intention that the generality of such relationships should be liable to be reopened for that reason alone."

53. In addition, at [17] of his judgment in *Plevin*, Lord Sumption said that the regulatory code, in that instance the ICOB rules, was evidence as to the applicable standard, but was not determinative of the question posed by ss.140A and 140B which was concerned with the question of whether the creditor's relationship with the debtor was unfair. Lord Sumption said that that was "manifestly different".

54. *Smith v Royal Bank of Scotland* [2023] UKSC 34; [2024] AC 955 was concerned with undisclosed commission payments on PPI policy premiums. The particular issue there concerned limitation. Lord Leggatt said at [22] that something that was apparent on the face of the provisions was the breadth and open-ended nature of the assessment required by s.140A, and that although the court was not left entirely at large, the three possible causes of unfairness at subsection (1) were "extremely broad". He said "it would be hard to cast the possible causes of unfairness more broadly than this."

55. Finally, there is the more recent case of *Johnson*, decided along with *Hopcraft & Anr v Close Brothers Limited* [2025] UKSC 33; [2025] 3 WLR 423 ("*Johnson*"). Mr Johnson's case involved two different commission rates. In a judgment of the court, reference was again made to "a very broad range of factors" at [297]. The analysis of the claim in *Johnson* begins at [292]. The court referred at [319] to the factors identified by the FCA as relevant factors pointing towards unfairness, which included "the nature of the commission (because, for example, a discretionary commission may create incentives to charge a higher interest rate)".

56. The court went on to decide that, in Mr Johnson's case, the relationship was unfair. This was not a lengthy or difficult exercise, the judgment at [336] referring to Mr Johnson being "commercially unsophisticated" and observing that "a customer would not expect that a commission of this size would be payable…". A reference in a standard term was held to be insufficient disclosure [320]. At [337], the court explained why it was convenient and appropriate for the Supreme Court to decide these points rather than remitting it. In that context, the judgment noted that "the

many thousands of pending complaints and claims would be aided by an authoritative ruling by this court".

57. So there can be no doubt that s.140A requires what Mr Goodall called a broad and holistic enquiry, with no limit on the factors that may be relevant to the question of the fairness of the relationship. The terms of the credit agreement, the size of the undisclosed commission, whether there has been a breach of CONC: all these may be factors in the assessment, but no more than that. And this wide range of factors may also be relevant to the issue of the precise remedy awarded to a successful claimant, which should approximate, as closely as possible, to the overall position that would have applied had the matters giving rise to the perceived unfairness not taken place: *Farol Holdings Ltd and others v Clydesdale Bank PLC* [2024] EWHC 593 (Ch) at [767]. Mr Goodall's skeleton argument at paragraph 22 gives some examples of the wide range of quasi-causation issues that may arise in different claims.

5 THE PARTIES' APPEAL SUBMISSIONS IN OUTLINE

58. The defendants' central submissions in support of their appeal take their cue from the authorities at paragraphs 52-56 above. They say that each of these claims will involve a wide and fact-sensitive inquiry which will focus on the fairness of the relationship, not the credit agreement. That necessarily involves a balancing exercise, taking into account all relevant factors. As the authorities make plain, that is a manifestly different exercise to working out whether or not the defendants have complied with any regulatory rules. As HHJ Waksman QC (as he then was) noted in *Harrison v Black Horse Ltd* [2011] Lloyd's Rep IR 455, a decision on one unfair relationship is unlikely to be determinative of another. And even if the court concluded that the relationship was unfair, the question of the appropriate remedy in any given case was, again, entirely dictated by the facts of the individual case.

59. Accordingly, the defendants submit that the High Court judge erred in the re-exercise of the court's discretion. They say that there are, and can be, no common issues in claims of this sort, and a process of sampling or the taking of lead cases and trying them to a final result will not get round the problem that every case is different.

60. The claimants do not dispute that, in principle, each claim would require an individual assessment. But they say that, in all the circumstances, it is convenient for these claims to be case managed together, and disposed of together, rather than scattered to the four corners of the country. They stress the commercial value of decisions across a range of factual circumstances, which could then guide all parties to a sensible resolution of the claims.

61. I do not think I was alone in detecting a clear change of emphasis in the presentation of the claimants' position on this appeal. Whilst they maintain their stance that there are some common issues which could be usefully determined, the emphasis at the appeal hearing was on the identification of lead cases which, having been determined, could then lead to the commercial settlement of numerous other claims with the same or very similar fact patterns. That shift in emphasis, from common issues to lead cases, is of significance, as I explore below.

62. Furthermore, the claimants now emphasise the point that the business of choosing lead cases is currently stymied by the defendants' failure to provide disclosure of the

discretionary commission arrangements. Early on in his submissions, Mr Cavender said that it was impossible to undertake the sampling exercise until the claimants knew what the interest rate was over the basic rate that represented the dealer's commission. That was a new emphasis; moreover, as explained in paragraphs 79-81 below, it was not an entirely accurate submission.

6 SOME GENERAL CONSIDERATIONS

6.1 Rule 7.3 and Case Management

63. The parties in this appeal have spent a good deal of time and effort arguing about whether or not there should be one claim form to cover all the claims against one defendant, or whether there should be separate claim forms. Whilst that is the ultimate issue for the court, I consider that it is, on its own, too narrow a question. What really mattered before the judges below, and what matters now, is not whether there is one claim form or thousands of separate claim forms, but whether there is a suitable way of managing these claims through to convenient disposal, after taking into account the interests of all parties, and the resources of the court.

64. That is not an issue that depends on the number of individual claim forms: it is much more concerned with case management and convenient disposal. If an appropriate way can be found of managing these claims through to their convenient disposal, which saved time and costs, and which would promote consistency of decision and allow proper access to justice, then the test under r.7.3 will have been made out.

65. During the appeal hearing, the defendants stressed that what mattered was only the convenient final disposal of the case. That was in support of their argument that, since each of these cases required a separate factual assessment, these claims could never be conveniently disposed of other than by way of separate claim forms and separate trials. If right, it was a simple and complete answer to the r.7.3 question.

66. However, in my judgment, the submission is wrong in principle: see paragraph 47 above. The expression "conveniently disposed of" must encompass the court's case management powers along the way, so as to lead to such a convenient disposal. It cannot be right to ignore the case management powers that a court has to manage a case from start to finish, so as to give rise to the convenient disposal of that case. The defendants' argument, if taken to its logical conclusion, would mean that, if some claims could not be disposed of together – because, for instance, findings in one could not be binding in another – then the test at r.7.3 would never be made out. That is far too narrow an approach to the words in r.7.3.

67. In my view, the possibility of efficient case management of multi-claimant claims is clearly relevant to the r.7.3 question. It cannot be excluded because, as per *Morris*, any such exclusion would be wrong in principle. Equally, it is not necessarily determinative: it is just one of a number of relevant factors to be taken into account when considering the convenience test.

6.2 The Unhappy State Of This Litigation

68. There are various features of these claims which are irreconcilable, and these may in turn have led the parties to adopt extreme positions. It is a remarkable thing that so

much effort and expense has been incurred in respect of claims that have barely got going.

69. The most significant feature is the juxtaposition between, on the one hand, the potentially extensive nature of the exercise that requires the court, in every case, to evaluate and reach a conclusion on the unfair nature of the relationship between the parties and, on the other, the disproportionate costs and court resources that are required to complete such an exercise.

70. As to the potentially detailed nature of the inquiry, the remarks of HHJ Gosnell in *Young v Santander Consumer (UK) PLC* (2023 unreported) are salutary: that was an appeal in a discretionary commission case where the claimant recovered £1,174.50 and the appeal bundle ran to 794 pages. The exercise envisaged in *Plevin* and *Johnson* is potentially very wide ranging, so it cannot be dismissed as something that can be done in 10 minutes. Although the circuit judge was, I think, right to say that a trial of a single claim would not be a complex exercise for a judge in the county court, it will still take time. And the more individual claims there are in the judge's list, the greater the time it will take for all those claims to be resolved.

71. Yet set against that, there is the modest amount of most of these claims. They are likely to be worth no more than £1,000 each. In those circumstances, the costs of preparation of 5000+ individual trials allocated to the small claims courts around the country would be out of all proportion to the amounts to be recovered. On the face of it, that in-built lack of proportionality ought to have had both parties baying for the determination of common issues (if possible) and lead cases (in any event). Yet the defendants have set their face against these possibilities, and appear to want to incur such disproportionate costs. Why?

72. The only plausible answer must lie in the commercial advantage to them of separate determinations. If there are 5000+ separate claims then, in theory, they would have to be determined by 5000+ separate hearings. Given the disproportionate nature of the costs, that is most unlikely to happen. It will be the individual claimants who fall away, because they lack the financial resources of the defendants (as the High Court judge said at [89](viii), "there is an imbalance of financial power between individual claimants and the defendants"). It also suits the defendants for there to be separate claims because the stronger claims can be settled and the less strong claims can be run into the ground.

73. This court must have regard to that commercial reality. That dictates that the most practical way in which the court can achieve at least a measure of justice for the claimants in this case is by efficiently case-managing their claims to a convenient disposal. The defendants' opposition to that outcome is commercially understandable, but for the reasons set out in greater detail below, ultimately unrealistic.

74. That said, I consider that there have been procedural failures in this case which have caused the delays and excessive costs to date and led, in part, to the parties' polarised positions. At least two of them are the responsibility of the claimants. They should be set out, if only to correct the impression erroneously given by the High Court judge that everything was the fault of the defendants.

75. First, there is the claimants' failure to plead out in full any of the 5,000+ claims. Practice Direction 49C, at paragraph 5.3, requires that, in a CCA claim, the particulars of claim are to be served with the claim form. That did not happen here. Together with the claim form, they comprise the statement of case. The first requirement of a statement of case is, of course, that it sets out the basic elements of the claimant's claim so that the defendants know the case they have to meet: see r.16.4(1). Since this is a claim for repayment under statute, an individual claimant would ordinarily need to identify the basic building blocks of their claim such as the date of the CCA; the terms that did not reveal the discretionary commission either at all or only in part; whether the claimant did not know about the discretionary commission; and the facts relied on to say that the relationship was unfair.

76. Those basic building blocks are absent here. This appears to be because the claimants' solicitors relied on the fact that these were "omnibus" claims, and so assumed that, somehow, the ordinary requirements of a statement of case were inapplicable, and that they did not need to comply with PD 49C. I consider that that was an erroneous assumption. In the present case, all there was at the time of the issue of the claim form in November 2022 was a list of the claimants in alphabetical order (albeit that it was alphabetical by reference to their first names rather than their surnames) and their addresses, and no particulars of claim. Even now, there is not a single claim that has been properly or fully pleaded out. The mere fact that there are 5,000+ claimants is not a reason to justify the absence of a proper pleading, of the sort that would be required if there was just one claimant.

77. I accept that at the first case management hearing, the application of PD 49C was suspended, so that the claimants are entitled to say that they were not in breach of a court order in failing to provide any individual particulars of claim. But that misses the point. This is not an application for relief from sanctions. This is a case where 5,000+ claimants needed the assistance of the court from the outset, to be allowed to bring their claims in the particular way they wanted, namely by using a multi-claimant claim form per defendant. I would therefore have expected the claimants to provide as much information as they could about the individual claims, in order to assist their position when the court considered the convenience test under r.7.3, and grappled with the proper case management of these claims. To provide no information at all about the basic facts of any of these claims was a spectacular own goal, because (amongst other things) it meant that the claimants were depriving themselves of one way of showing that there were common issues of fact and law and/or demonstrating the utility of determining lead cases.

78. Secondly, perhaps to make up for the absence of any fully pleaded claims, the claimants sought to persuade the judges below that there was a "single simple premise" that underlay all of the claims and that gave rise to a common issue that should be tried. The CONC point was a common issue but, on its own, was too slender a thread on which to hang the entire convenience test. The 'unfairness in principle' point was just wrong. The s.56 point arose late. There is a definite sense of the claimants thrashing about, trying to find any issues which could be tried which avoided any investigation of any facts.

79. That then highlights what might have been a more promising avenue for the claimants, namely the absence of detail in respect of the commissions paid. That information was in the peculiar knowledge of the defendants. It appears that the

claimants made applications for pre-action disclosure from BMW and Volkswagen. These were settled by consent orders by which BMW and Volkswagen agreed to provide information concerning "the commission amounts paid by them to the credit intermediaries involved in arranging the motor vehicle finance" and "whether a DIC [Difference In Charge], scaled or fixed model" was used.

80. Similar information was provided by another defendant, Startline, in answer to a Part 18 request. As Mr MacDonald pointed out, following the disclosure of this information, the 178 claims originally identified against Startline fell to 66. In other words, two thirds of the claims against them had not been properly brought in the first place because they were not cases of discretionary commission. Extrapolated across all the claimants, that would have radically altered the face of this litigation. Even with this information, I note the claimants have still not pleaded out any individual claims against Startline, BMW or Volkswagen.

81. Other defendants have replied to similar Part 18 requests, but it appears that some have not. If a defendant had provided answers to these reasonable and proportionate requests, the claimants would have no basis for saying that they could not plead out the claims against that defendant, because they would have had the relevant information as to the undisclosed commission. If a defendant has not provided the information, it has given the claimants a potential justification for the failure to plead out any claims against that defendant.

82. With those general observations in mind, I turn to the specific matters raised on appeal.

7. DISCUSSION

7.1 The Limited Scope of the Appeal

83. As noted above, there are two important restrictions that limit the scope of this court's inquiry on appeal.

84. First, since permission to appeal on ground 1 – that the judge mischaracterised the nature of the circuit judge's approach to rule 7.3 by reference to *Abbott* – is not open to the defendants, and grounds 2 and 3 were also turned down, we have only to consider whether the judge was wrong in the re-exercise of his discretion. There are no other wider points in play.

85. Secondly, because this is an appeal against a case management decision of a High Court judge, the defendants face a high hurdle. In general terms, this court should only interfere with that decision where it has concluded that the judge "has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible": see *Tanfern Limited v Cameron-Macdonald (Practice Note)* [2000] 1 WLR 1311 at [32]. Putting the point another way, this court "does not carry out a balancing task afresh, but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines

the cogency of the conclusion": see *Re Sprintroom Limited* [2019] EWCA Civ 932 ([2019] 2 BCLC 617) at [76].

86. These restrictions mean that the result of this appeal cannot easily be extrapolated into setting out any new or wider principles to be followed in other cases where the r.7.3 point has arisen. It is very much a decision on its own facts, primarily because it is subject to these important limitations.

7.2 The Exercise of Discretion: Unfairness In Principle or By Way Of Presumption

87. It is worth starting with the question of unfairness. The circuit judge decided that, since the unfair nature of the relationship would differ in every case, it was impossible to identify a common issue that could deal with unfairness in principle. The High Court judge agreed with that at [73]. I agree with it too. To that extent, therefore, the High Court judge was wrong to identify as part of the common issues exercise what he called cases where there was *a very clear case of unfairness*: see [28], [29], [32] and [79]. He appears in these passages to indicate that there may be cases where the size of the commission alone would justify a finding of unfairness. I consider that that is wrong in principle: it is contrary to [326] in *Johnson*, which reiterated that the size of the commission alone will not equate to unfairness. It is simply a relevant factor: see [319]. I consider that Mr Goodall is probably right to say that in this particular area of law, there may well be no such thing as a "very clear case" or "tipping point case".

88. However, despite the High Court judge's comments to this effect, it does not seem to me that he took this point any further. His main focus was on whether there were common issues of law and fact, and whether the hearing of lead cases was a convenient way of disposing of the claims. Thus the "very clear case" point, although wrong, did not go to the heart of the judge's judgment.

89. Some of Mr Cavender's submissions at the hearing seemed to be endeavouring to open up this point again. He argued that a large undisclosed commission would *prima facie* indicate unfairness, and that unless there was some strong countervailing factor, unfairness would result from any undisclosed commission. He said it was difficult to see how a large undisclosed commission could ever be justified. That was consistent with another of his submissions, to the effect that a large undisclosed commission would "poison the well" unless there was a strong countervailing factor.

90. I reject those submissions. They appeared to be part and parcel of the claimants' continuing attempt to tilt what is supposed to be a level playing field, where everything is potentially relevant, towards some sort of presumption of an unfair relationship. It is simply not appropriate for the court to give undue weight to any one particular factor over another: it is for the court to evaluate all relevant factors in order to come to a conclusion as to the nature of the relationship.

91. For completeness, I consider that, in any event, this argument was not technically open to the claimants on appeal, because there is no Respondent's Notice on this point. It is also contrary to the Supreme Court (and other authorities) which have repeatedly set their face against any sort of presumption or modification to the principle that unfairness is an entirely fact-specific inquiry. Accordingly, to the extent that there is any doubt about it, I repeat what both judges below said, that there can be

no question of any common issue that directly addresses the issue of unfair relationships without regard to the facts.

7.3 The Exercise of Discretion: Common Issues

7.3.1 The Proper Approach

92. In principle, I am in no doubt that a common issue of law or fact does not mean that a decision on that issue must bind everyone in a multi-claimant claim: see paragraph 46(iii) above. Commonality of issue is different to whether the result of an issue will be binding on everyone. That can also be seen in the authorities on the point. In *Morris*, the common issues included matters that were clearly fact-specific, such as reliance and the precise terms of the retainer by each claimant. In *Abbott*, the common issues included matters that were inevitably going to vary from case to case, such as the different guidance documents about military noise exposure issued to different claimants at different times. In the Post Office litigation before Fraser J (as he then was), perhaps the best example in recent times of how the resolution of common issues can unlock the door to major settlement, the terms of the contracts between the Post Office and the managers varied, and the basis of the individual claims was very different. More broadly, in group litigation under Part 19 and Practice Direction 19B, different claims can be determined in different courts, which again reflects the fact that there will almost always be individual elements of multi-claimant claims, even where there are also common issues of law and fact.

93. If too narrow an approach is taken to "common issues of law and fact", then it would allow defendants to claims which are fact-sensitive always to defeat a multiple-claimant claim form, on the basis that each claim calls for a separate factual assessment. Again, that cannot be right. If the claims are very similar in nature, if they arise from the same statutory provisions, and if they give rise to the same general issues (even if factual circumstances might vary from case to case), then there are likely to be common issues of law and fact: they simply require, in the final act, separate evaluation.

94. On a common sense view, this is a situation where:

(a) The CCA is relevant to every claim;

(b) The CONC is relevant to every claim (at least after 2014);

(c) The fact of a discretionary commission is relevant to every claim;

(d) The failure to disclose that arrangement commission in whole or in part to the claimant is relevant to every claim. Indeed, as Mr Goodall noted when referring to the generic particulars of claim, each of the pleaded causes of action "are tied to the claimant's knowledge".

95. In those circumstances, it is, I think, difficult to say that these claims do not involve common issues of law and fact. So, to the extent that the existence of common issues is relevant to convenience, I consider that the factors noted above are relevant to the test under r.7.3.

7.3.2 The Two Common Issues Identified Below

96. The High Court judge found that there were two broad common issues: namely i) the breach of the CONC rules (to all intents and purposes, the CONC point) at [72]; and ii) the s.56/agency point, whether it arose for decision under s.56 or under CONC 1.2.2R at [72] and [74]. I accept that his introduction of the word "broad" highlighted what Mr Goodall called "a lack of precision", but I do not think it possible to say that he was wrong to find that these were common issues. Unless formally admitted by the defendants in all 5,000+ claims, they may arise in every case. Putting the point another way, it cannot be shown that the High Court judge was wrong to decide the common issues debate in the way he did. It seems to me that he had the principles summarised in paragraphs 46 and 47 above well in mind.

97. The defendants say that the CONC point has been authoritatively determined by Kerr J in *R (Clydesdale Financial Service Limited) v Financial Ombudsman Service Limited* [2014] EWHC 3237 (Admin); [2025] Bus LR 1323. In that case, at [194] the judge found that CONC 4.5.3R was wide enough to require, in some cases, disclosure of more than the bare fact that commission, a fee or other remuneration would be, or could be, payable. As to the agency point, the defendants point to the concession in their skeleton arguments for the appeal that s.56 applies.

98. In my view, neither of the defendants' arguments surmounted the high hurdle required to overturn a case management decision (see paragraph 85 above). As to the CONC point, Kerr J in *Clydesdale* plainly did not reach a determinative and binding decision either on the meaning of CONC 4.5.3R or its application across the board. The highest that Kerr J put it was that CONC 4.5.3R would apply "in some cases" [194] so that, in those cases, more than the disclosure of the bare facts was necessary. But he deliberately left the position open-ended. In other words, if there are thousands of these claims round the country, rather than being dealt with by a single judge, it would be open to a defendant to argue, in every case, that Kerr J's finding did not apply on the facts. That is particularly so when one considers that *Clydesdale* was a JR appeal, so the result was predicated on Kerr J's conclusion that "it was open to the ombudsman to find…" rather than any sort of definitive statement of the law.

99. Moreover, the fact that there are many claims where CONC did not apply at all (because they arose when the OFT were responsible for regulation, before CONC) is nothing to the point: there are numerous claims where CONC is relevant, so a decision on the CONC point could be determinative of those issues in those claims. In any event, the claimants have now proposed to deal only with claims made after 2014 (i.e., when CONC applied).

100. I should add that it is doubtful whether the argument is even open to the defendants. The argument that this point was determined finally in *Clydesdale* was advanced, albeit in slightly different terms, in ground 2 of their prospective appeal, for which permission to appeal was refused.

101. Of course, the determination of the CONC issue is not determinative of whether or not the relationship was unfair. But that misses the point. *Morris* suggests that the court may be assisted in deciding convenience by reference to common issues of law and fact. This would be such a common issue. A decision on such an issue is not required to be determinative of the entire claim.

102. The defendants' argument as to the section 56/agency point was even less strong. The judgment in *Clydesdale* at [314] – [364] is not determinative on this issue any more than it is on the CONC point, for the same reasons. The fact that the point has no application to unregulated agents may mean that the point is immaterial to those claims but, as above, it still leaves many claims to which it will apply. Agency was an issue before the High Court judge. Although the defendants have sought to draw the sting from that particular issue by making a belated concession in the skeleton arguments for the appeal, that cannot possibly mean that, at a time when no such concession was made, the High Court judge failed to exercise his discretion properly. In any event, I would not be prepared to conclude that this issue no longer arose until at least some of the claims and defences on the facts had been fully pleaded out.

7.3.3 The Finch Factors

103. An issue that arose directly on the appeal was the defendants' complaint that the High Court judge at [63] had misused the so-called "Finch factors" as demonstrating the existence of "common factual preliminary issues", whereas the Finch factors had been relied on by the defendants as a non-exhaustive list of variables which pointed the other way. In my view, this criticism was misplaced. The High Court judge was not suggesting that these were not variables that might arise in the individual cases. But what he plainly had in mind was that one or two or three of the same variables may arise in a good many of the claims, and that two or three others may arise in another group of claims, and so on. Therefore, they would be common issues within those groups of claims. That seems to me to be a reasonable assessment. They are variables, as Mr Finch correctly submitted: but, taking one of them at random as an example, (namely "whether the claimant should otherwise have been aware of a potential for a commission"), that is likely to be an issue which arises in numerous individual claims. To that extent, it will be a common issue.

104. Accordingly, I disagree that the judge misused the Finch factors. Instead he demonstrated that, across 5000+ claims, one or more of those factors is likely to arise repeatedly so therefore, to that extent, it is likely to be a common issue.

105. I should add that, on this question of common issues, I derived little assistance from the FCA scheme for compensation, on which the claimants relied at the hearing. It is a separate scheme, which operates on the basis (which the law does not) that non-disclosure of the commission creates a rebuttable presumption of an entitlement to compensation. But I do acknowledge that the FCA scheme refers to the existence of discretionary commission arrangements as "widespread" and "regular", the point I made in paragraphs 94 and 95 above.

7.3.4 Summary on Common Issues

106. I am perhaps a little more sceptical about the utility of the common issues identified by the High Court judge. But my own view is immaterial. I cannot say that he was wrong, in the exercise of his discretion, to reach the conclusion that there are some common issues here, and that that was a relevant factor in any consideration of convenient disposal under r.7.3.

7.4 The Exercise of Discretion: Lead Cases

7.4.1 The Proper Approach

107. In most types of multi-claimant case or group litigation case, lead cases will usually be identified (see, by way of example, *Lancaster v Peacock* [2020] EWHC 1231 (Ch) and *Various SAM Borrowers v BOS (Shared Appreciation Mortgages) No 1 PLC and Others* [2022] EWHC 2594 (Ch)) ([2022] Costs LR 1715). The advantages of adopting such a course were succinctly summarised in their judgment in *Lancaster* by Fancourt J and Master Kaye:

> "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."

108. Following the trial of lead cases, there will be a range of results, and those results can be extrapolated across the other claims so as to give rise to clear dividing lines as to those which will succeed and those which will not. Settlement can then take place. Moreover, that is true whether the decisions in the lead cases are on points of law which bind everyone (the construction of a contract, say, or the existence of a duty of care) or are simply authoritative determinations of a particular fact pattern or patterns.

109. There has been clear confusion in this case between the determination of common issues, on the one hand, and the trial of lead cases, on the other. The practical difficulty with the latter as a way forward here was the absence of any properly pleaded claims on the facts. That in turn has meant that any proposals as to sampling/lead cases have been speculative. The circuit judge was right to criticise the claimants' solicitors for "playing catch-up" throughout this process, but that perhaps obscured the possibility that lead cases were a good way through the morass of the individual claims in this case.

7.4.2 The High Court Judge's Approach

110. The High Court judge was persuaded that lead cases were the way forward. His overall approach, as exemplified by [77], was that the determination of lead cases ought to lead to the convenient disposal of most if not all of these claims. He was sure that the persuasive effect of the findings in a range of lead cases would lead to widespread settlement.

111. Mr Hardwick was particularly critical of the High Court judge's judgment on this point. He said that, of the seven potential issues identified in that paragraph, five of them had never been identified by the parties. He also made the point that to say that

the amount of commission was a factor was contrary to the way in which the claimants had put their own case.

112. On that latter point, I consider that to be a matter of forensics rather than substance. It is true that it is contrary to how the claimants have put their case in the past, but it is how they put their case now: by the time of the hearing before this court, it was their case that the amount of commission may matter very much in any determination of the fairness or otherwise of the relationships between the parties.

113. As to the wider point about [77], I think Mr Hardwick missed the point of the judge's analysis. What he was doing was identifying the sorts of issues which, if there were lead cases, might be determined and which, if they were, might be persuasive, "perhaps very persuasive" in respect of other claims. All that the High Court judge was doing in this passage was identifying some likely issues that might arise on the facts, and how and why they might arise in a sufficient number of claims to make their determination, in a proper sample of lead cases, a convenient way of disposing of the litigation.

114. There was a criticism that the High Court judge failed to deal with the circuit judge's criticisms of the sampling process offered by the claimants and his conclusion that it might be quicker and simpler to determine the issue the claimants' then counsel had identified by hearing a handful of claims in the County Court.

115. There are two answers to that. First, given that the High Court judge was re-exercising the discretion, he was entitled, in so doing, to set aside all the circuit judge's conclusions. Secondly, whilst I can see there was force in the circuit judge's views at the time, those stemmed from the claimants' failure to identify a proper sampling exercise. In my view, that has now been superseded by subsequent events.

7.4.3 'Binding' versus 'Persuasive' Results

116. The defendants argued that the trial of lead cases would not take the parties any further forward because, since every relationship is fact-sensitive, the result in one case will not bind the result in another. If one is looking at it through the prism of achieving a binding result, that may well be right. But that is not the test of convenience. Assuming that lead cases have been carefully chosen to illustrate the extreme fact patterns of undisclosed commission in these claims (along with, as Mr Cavender put it, those in the middle), then the results would inevitably be commercially persuasive, and therefore will have a direct effect on the settlement of the other claims.

117. I therefore reject the suggestion that, merely because the results in lead cases will not be binding (because each case requires a decision on the facts), they are in some way not a convenient solution, and not something that weighs heavily in the balance when considering convenience under r.7.3. Persuasive results in lead cases will be important. I draw some support for that proposition from the decision in *Johnson*. The Supreme Court knew that the result in that case could not be binding on any other claimant, but also knew the value of an authoritative ruling to those with similar claims (see paragraph 56 above). Amongst other things, that explains why the court said at [327] that the amount of the undisclosed commission would have been a major consideration for Mr Johnson "as it would be to any similar customer". As Mr

Goodall accepted in respect of *Johnson*, the result in that case, although not binding, would affect those claims "with similar fact patterns".

118. The fact that lead cases is the obvious and convenient way forward here is therefore a complete answer to the point made by all the defendants (probably best articulated by Mr Hardwick) that the suggestion that you should do anything in this litigation without regard to the individual claims was "fundamentally misconceived". The trial of lead cases would be having regard to the individual claims, albeit in a sensible and managed way.

119. The High Court judge indicated that the determination of his broad common issues, and the determination of lead cases, was likely to lead to mass settlements. Although Mr Goodall criticised that as speculation, I consider that that criticism is unrealistic. If the defendants lose many of the lead cases, they would be acting in a surprisingly uncommercial way if they did not extrapolate the results of those cases when considering other outstanding claims. That is not speculation, but common sense. Even if the claims are, as he repeatedly submitted, fact-sensitive, that does not make the determination of lead cases an irrelevant waste of time.

120. To be fair to Mr Goodall, he was not quite so uncompromising during his oral submissions. He accepted in answer to a question from the court that if, say, 24 cases were decided, then that may lead to the settlement of the remainder - or at least some - of the remaining claims. For the reasons I have already given, I consider that, contrary to his submission, such a possibility is entirely realistic. That is another factor which points towards the convenience test in r.7.3 having been made out.

7.4.4 The Missing Information

121. As to the mechanics of choosing lead cases, I acknowledge that the key element is, of course, the discretionary commission which the defendants paid to the dealers. That discretionary commission, or at least the range, will be apparent from the brokerage agreements, and the amount could be then worked out by reference to the interest identified in the car financing agreements. That explains why the High Court judge ordered the disclosure of these documents, a point to which I return below.

122. If these documents are provided, the ordinary method of choosing lead cases can be undertaken: namely questionnaires to the claimants, a pleading pool, the choosing of lead cases by all sides, and then the pleading out of the lead cases, witness statements and a trial. The detail of all that will be a matter for the case management judge.

7.4.5 Conclusion on Lead Cases

123. For these reasons, it is not arguable that the High Court judge was wrong to exercise his discretion in this way; again he applied the principles summarised in paragraphs 46 and 47 above. Moreover, as I have said, the High Court judge's approach to this issue at [89] was not the subject of any criticism by the defendants. Indeed, for what it is worth, I agree with his analysis that, for the reasons I have noted, the trial of lead cases would plainly be a sensible step, and a clear pointer towards the convenient disposal of the claims under r.7.3.

7.5 The Exercise of Discretion: Remedy

124. There is a complaint by the defendants that the High Court judge said nothing about remedy, save that at [80] he appeared to accept that the remedy would turn on individual facts and matters. This was suggested as an omission from his reasoning.

125. I reject that criticism. Questions of remedy always turn on the individual facts of each case. So, for example, in *Morris*, the amount to be recovered by each individual claimant would plainly vary from one claimant to the next, and would depend on different arguments as to causation and the like. That was manifestly not a reason to find that the convenience test under r.7.3 had not been made out. I consider that the same is true here.

126. Moreover, that is where lead cases can also play a part. If they are correctly chosen, they should produce a range of results, from an extensive remedy in the strongest case to one where there may be no remedy at all. So again the different factors involved on a consideration of remedy are quite capable of being dealt with by proper directions as to lead cases.

7.6 The Exercise of Discretion: The Case Management Directions

127. The first point that arises in relation to the challenge to the High Court judge's case management directions is procedural. The defendants say that the claimants made it plain to the High Court judge that they were happy with the circuit judge's directions (that is to say, the trial of some cases at the outset) and that there was no separate appeal against those directions, even if the appeal on the r.7.3 issue was allowed. Accordingly, I think the suggestion was that the High Court judge was not entitled to make the case management orders that he did.

128. I do not agree with that. The circuit judge was not entirely clear as to whether his case management directions were tied to the severance issue, or whether they applied in any event. Once the High Court judge had decided that the circuit judge had wrongly exercised his discretion and instead concluded that the claim forms could proceed as they were, then it was open to him to make his own case management directions. He had indicated in his judgment what he might do in terms of disclosure and pleadings, but said that the detailed directions would be considered at the consequentials hearing. At that hearing, the claimants pressed for the orders that he had indicated he was minded to make, whilst the defendants sought to have it all referred back to the circuit judge. In view of the delays (regardless of whose fault they were) the High Court judge was entitled to make the orders he did. There was no procedural unfairness.

129. There are two elements to the case management directions ordered by the High Court judge. The first was for the defendants to plead to the generic particulars of claim. The second was for the defendants to provide disclosure of documents, including all the relevant brokerage agreements.

130. Although I am personally more doubtful than the High Court judge that the provision of a generic defence to the particulars of claim will add greatly to the progress of these claims, I again cannot say he was wrong to require such defences to be provided. Moreover, it may well be a useful exercise because it ought, finally, to crystallise any remaining issues (if any) as to CONC and s.56. The defendants claim that this will cost a good deal when measured against the value of the claims. But in my judgment, any such costs are minuscule compared to the costs of producing

5,000+ defences to meet every individual claim. More pertinently, I have concluded that the High Court judge was entitled to order the provision of the generic defences, because it was consistent with the view that he had formed about common issues. It would not therefore be appropriate to interfere with that order.

131. The focus of the disclosure directions was on the provision by the defendants of what were called the brokerage arrangements (i.e., the discretionary commission arrangements). In addition, the High Court judge ordered the disclosure of any credit agreements that the claimants did not have, and any accompanying leaflets which the car dealers gave to the claimants containing information about the finance arrangements in place (which may have referred to the commission).

132. I recognise that the disclosure order will place an additional burden on the defendants. So Mr Popplewell was entitled to point out the potentially time-consuming mechanics of finding the relevant documents. Mr MacDonald was entitled to say that, using Startline again as an example, the total value of the claims against them is £48,000, whilst it will cost £40,000 just to comply with the disclosure order.

133. But neither of those outcomes is a function of the judge's order. They are both a function of the exercise that it would always have been necessary for the defendants to undertake when responding to these claims, however they were formulated, and however many claim forms there were. If the costs are disproportionate, that is because of the value of the claims themselves. That is not an uncommon situation, and it is one where parties like the defendants are well able to take a commercial view of the value of the claims when set against the costs of defending them.

134. As my Lord, Lord Justice Stuart-Smith, put to Mr Goodall, there could have been no objection if every single claimant had sought pre-action disclosure of the discretionary commission arrangements before the proceedings were commenced. Mr Goodall accepted that there could have been no proportionality objection, and although he did not concede that the other elements of r.31.16 would necessarily have been made out in every case, I am satisfied that they would have been. In those circumstances, the fact that such disclosure has been ordered now rather than earlier cannot be a reason to challenge the High Court judge's order.

135. There is an additional point about the disclosure of the leaflets, because the defendants say that this is a particularly onerous burden. But since they may be relevant to the widescale investigation into unfairness which the defendants have emphasised that the court must undertake, it hardly lies in their mouths to complain about the difficulties in disclosing documents that are potentially highly relevant to that exercise. I note that this obligation does not apply to claims which do not involve discretionary commission arrangements, which claims will therefore be discontinued.

136. Finally, the defendants complain about the three month period identified by the High Court judge for the provision of the documents. In my view that cannot be a proper ground of appeal. In the light of the time that has elapsed in this case, three months seems to me to be more than adequate. If particular defendants are in difficulties and need further time then they can apply to the circuit judge or his successor, for an extension of time.

137. For those reasons, I consider that the High Court judge was entitled to make the case management directions that he did. I would remove the stay on those directions.

8. DISPOSAL

138. If my Lords agree, I would dismiss this appeal. I would maintain the orders of the High Court judge, and I would remit the matter to Birmingham County Court for further directions.

139. I would add two things. First, I am acutely aware that the claims in this appeal are, in some respects, the tip of an iceberg and that the court service, and Birmingham County Court in particular, are currently inundated with single claim forms with thousands of claimants. I do not underestimate the huge increase in workload that such multi-claimant claims engender. Moreover, since the effect on court resources is a relevant factor in any test of convenience under r.7.3, it would be useful if the relevant statistics could be compiled by HMCTS. This should include a record of the fee revenue being lost by the adoption of single claim forms in these cases.

140. Secondly, following the Master of the Rolls' indication in *Morris*, I understand that the CPRC decided two years ago that they would not review r.7.3. However, I am aware that, with the vast increase in these types of claims over the intervening period, the possibility of a review is now back on their radar. Knowing the CPRC's thoughtful approach to procedural issues of this kind, I would respectfully observe that this is a topic that is well worth their reconsideration.

LORD JUSTICE STUART-SMITH:

141. I agree.

THE PRESIDENT OF THE FAMILY DIVISION:

142. I also agree.