PRESS SUMMARY

Plevin (Respondent) v Paragon Personal Finance Limited (Appellant) [2014] UKSC 61
On appeal from [2013] EWCA Civ 1658

JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Sumption, Lord Carnwath and Lord Hodge

BACKGROUND TO THE APPEAL

Payment protection insurance ("PPI") is sold to borrowers to cover the repayment of specific borrowing on the occurrence of an insured event, such as accidental injury. PPI used to be sold to borrowers as part of a package with the loan itself, with a single premium paid upfront and added to the amount borrowed. A high commission would be paid to intermediaries.

Mrs Plevin took out a personal loan through LLP Processing (UK) Ltd ("LLP"). LLP proposed that she borrow £34,000 from Paragon Personal Finance Ltd ("Paragon"), repayable in instalments over ten years, and that she take out PPI for five years with Norwich Union, Paragon's designated insurer. The PPI premium of £5,780 was payable at the outset and added to the amount of the loan. 71.8% of the premium was taken in commission: LLP retained £1,870 and Paragon retained £2,280. The Financial Industry Standards Association guide which LLP gave to Mrs Plevin told her that "commission is paid by the lending company", but she was not told the amount of the commission or the identity of the recipients.

Sections 140A to 140D of the Consumer Credit Act 1974 apply to Mrs Plevin's loan and PPI. They allow a court to reopen a credit agreement which is unfair because of any of the terms of the agreement or a related agreement, the way in which the creditor has exercised or enforced his rights, or "any other thing done (or not done) by, or on behalf of, the creditor" (s 140A(1)(c)). Mrs Plevin argues that the relationship between herself and Paragon was unfair under s 140A(1)(c) because of (i) the non-disclosure of the commissions and (ii) the failure of anyone involved to advise on the suitability of the PPI for her needs. Insofar as LLP committed these defaults, she says it did so "on behalf of" Paragon.

The Insurance Conduct of Business Rules ("ICOB Rules") are the statutory rules which regulate the insurance industry. They do not require insurance intermediaries to disclose commissions to their customers. They do require an insurance intermediary which makes a "personal recommendation" to a customer to buy an insurance contract to take reasonable steps to ensure that the recommendation is suitable for the customer's demands and needs.

Both the Manchester County Court and the Court of Appeal held that the non-disclosure of the commission by LLP and Paragon and the failure by Paragon to assess the suitability of PPI for Mrs Plevin did not make the relationship unfair, because they were bound to do so by *Harrison v Black Horse Ltd* [2012] Lloyd's Rep IR 521, where the presence or absence of a regulatory duty under the ICOB Rules had been treated as conclusive. The Court of Appeal in this case also held that LLP's failure to conduct a needs assessment of Mrs Plevin, in breach of the ICOB Rules, was something done "by or on behalf of" Paragon which made its relationship with Mrs Plevin unfair.

JUDGMENT

The Supreme Court unanimously dismisses the appeal, but for reasons different from those given by the Court of Appeal. Lord Sumption delivers the sole judgment. He holds that the non-disclosure of the amount of commissions and the identity of the recipients did make Mrs Plevin's relationship with Paragon unfair under s 140A(1)(c) of the Consumer Credit Act 1974, but the failure to conduct a needs assessment of Mrs Plevin did not. The case is remitted to the Manchester County Court to decide what if any relief under s 140B should be ordered unless that can be agreed.

REASONS FOR THE JUDGMENT

The non-disclosure of the commissions

- The Court of Appeal's decision in *Harrison v Black Horse Ltd* [2012] Lloyd's Rep IR 521 was wrong. The ICOB Rules are hard-edged, imposing a minimum standard of conduct applicable in a wide range of situations and providing for damages in the event of breach, whereas s 140A of the Consumer Credit Act 1974 introduces a broader test of fairness which is a matter for the court's judgment and which potentially takes into account a much wider range of factors. They are asking different questions **[14-17]**.
- Applying s 140A, Lord Sumption concludes that the non-disclosure of the commissions did make the relationship between Paragon and Mrs Plevin unfair. At some point, the commissions may become so large that the relationship cannot be regarded as fair if the customer is kept in ignorance. This case lay far beyond the tipping point. Mrs Plevin would have questioned whether the PPI represented value for money if she had been aware of the commission amounts and might not have taken out PPI at all **[18]**. This unfairness was the responsibility of Paragon, the only party which knew the size of both commissions **[19-20]**.

Failure to assess the suitability of PPI insurance for Mrs Plevin's needs

- Paragon's own failure to conduct their own needs assessment of Mrs Plevin did not make its relationship with her unfair. The absence of a regulatory duty under the ICOB Rules was not conclusive, but it was highly relevant: Paragon could not reasonably be expected to perform a duty which the relevant statutory code assigned to someone else, namely LLP **[26]**.
- LLP's failure to conduct a needs assessment of Mrs Plevin could not be treated as something done "by or on behalf of" Paragon, because LLP was not acting as Paragon's agent. The ordinary and natural meaning of the words "on behalf of" imports agency, and that is how the courts have ordinarily construed them. Nothing in this case demands a broader interpretation. The phrase "by or on behalf of" suggests that the act or omission must be done by the creditor itself, or by someone else whose acts and omissions engage the creditor's responsibility as if the creditor had done or not done it itself. Further, the Consumer Credit Act 1974 makes extensive use of the technique of imputing responsibility to the creditor for the acts or omissions of other parties who are not (or not necessarily) the creditor's agents, including in s 140A(3), and when it does so, it does so in clear terms. Finally, there would be no coherent criteria for determining what connection other than agency would be required between the creditor and the acts or omissions causing the unfairness **[27-34]**.

References in square brackets are to paragraphs in the judgment

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.shtml