IN THE LEICESTER COUNTY COURT Case No. 9NN02070

[TRANSFERRED FROM NORTHAMPTON]

B E T W E E N :-

IAN WOLLERTON Claimant

-and-

BLACK HORSE LIMITED Defendants

JUDGMENT

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1. On 27th September 2005 the Claimant, who is by occupation a self-employed fabricator and welder in his late 50's, signed a fixed-sum loan agreement regulated by the Consumer Credit Act 1974 in order to raise a personal loan of £17,385 from the Defendants, who are the personal lending arm (and a subsidiary) of Lloyds TSB. The loan was to be repayable over 5 years by instalments of £344.01 per month.

2. In addition the Claimant (on the face of it) signed up to a Payment Protection Insurance plan at a premium of £3,601.08, which was added to the loan and gave rise to additional monthly repayments of £71.26, payable over the same 5-year period as the loan. The premium for the Payment Protection Insurance plan – and the monthly payments in respect of it – came to about 20% of the value of the loan and the monthly loan repayments respectively.

3. By his Particulars of Claim the Claimant contends that the Agreement is unenforceable against him in consequence of the provisions of the Consumer Credit Act 1974, and Regulations made thereunder. His principal contention is that he (the Claimant) was not in fact given the option of taking out Payment Protection Insurance, but that so far as he was concerned he was required to do so, and that it thereby became a condition of the loan agreement that he did

so, which (he contends) renders the contract unenforceable by the Defendants, since payment of the premium became a "charge for credit" within the meaning of the relevant Regulations. There are one or two other issues raised in the Particulars of Claim, but those are not pursued today.

4. The relevant sections of the Act are sections 61, 65, and 127 (plus sections 135 and 136) and the relevant Regulations are the Consumer Credit (Agreements) Regulations 1983, and the Consumer Credit (Total Charge for Credit) Regulations 1980. In addition I have been referred by counsel to the decision of the Court of Appeal in Wilson v. First County Trust Limited (2001) QB 407, in which the relevant law is considered. However, for reasons which I shall come back to below, I need do no more than allude to the Wilson case, and put on record that I have read the judgments.

5. The Defendants duly served a Defence and Counterclaim, in which they denied the Claimant's contentions, and by way of Counterclaim they alleged that the borrower (i.e. the Claimant, although they call him the Defendant) defaulted in payment of the instalments due under the Agreement, and that after service of a Notice of Default they terminated the agreement by letter dated 15th May 2009. On that basis they Counterclaim the sum of £8,384.32, plus either contractual or statutory interest, in the Court's discretion. The Claimant joined issue on the Defence in a Reply, and he denied the Counterclaim.

6. There was a Request for Further Information of the Particulars of Claim and Answers thereto, but that took the Claimant's case no further.

7. So far as the Claimant's primary contention is concerned, I do not (as foreshadowed in paragraph 4 above) have to construe the law which is applicable (which is itself both complex and convoluted), because it is agreed by counsel on both sides that if it was a condition of the contract that the Claimant entered into the Payment Protection Insurance plan – i.e. a condition which the Claimant had no option but to accept – then the contract is wholly unenforceable by the Defendants. If on the other hand the Claimant was made

overtly aware of the Payment Protection Plan by the Defendants, and voluntarily subscribed to it as an optional add-on to his loan, then the contract is prima facie enforceable.

8. The Claimant then makes a secondary case in the alternative. As a result of amendments made to the 1974 Act by the Consumer Credit Act 2007 (which are retrospective), he contends under the new sections 140A and 140B that the terms of the contract relating to the Payment Protection Plan placed an excessive and unfair burden on him, and he invites the Court on that basis to re-open the contract and to do the best it can to render the terms fair.

9. Dealing with the Claimant's primary contention first, it seems to me that the issue is essentially one of fact.

10. In his witness statement to the Court (which he verified at the start of his oral evidence) Mr. Wollerton stated that he required a personal loan because he wanted to exchange his car for a newer larger model. The car which he wanted to trade in was a Peugeot 206 Cabriolet (as he told me in his oral evidence) and the newer larger car was a Toyota 4×4. He had entered into a previous loan agreement with the Defendants to acquire the Peugeot (see p.148), and the natural thing seemed to be once again to borrow the surplus that was required from the Defendants, not least because a good chunk of the new loan was required to discharge the outstanding balance of the previous loan. He told me that he rang the Defendants from the office of the dealer as soon as he had agreed terms with him, and that he spoke to a man: according to the Claimant it was definitely a man, not a woman, that he spoke to. This will become relevant later.

11. The Claimant's evidence was that the man he spoke to asked for his full name and address, his date of birth, whether he was employed or self-employed, and to state his approximate earnings. He said that at no point during the call was Payment Protection Insurance mentioned to him, although he accepted in cross-examination that he was asked by the agent whether he

was in good health or had had any recent illnesses – which he had (namely two hernia repairs) and as I understand his evidence he duly so informed the agent.

12. There are two points in the evidence which I should turn to at this stage in parenthesis. The first concerns the previous agreement regarding the Peugeot which is at p.148 in the bundle and which was taken out in July 2003. It is worthy of note that under "Payment Protection Plan" half-way down the left hand side of that document the word "None" has been entered in the space provided, but there is no evidence before me as to how that word came to be entered or whether Payment Protection Insurance was ever raised by the Defendants on that occasion: the Claimant says it was not. By contrast, at p.150 there appears a document for yet another previous loan which the Claimant and his wife jointly took out in May 2003 in order to re-furbish their kitchen. On that occasion there was a PPI add-on, but when cross-examined about it the Claimant maintained that he was again unaware of it, and that he had never been invited to enter into a PPI agreement (either voluntarily or at all) when raising loans from the Defendants.

13. The second matter which I raise in parenthesis at this stage is that according to the Defendants' only witness – Mrs. Alison Rees, a team leader in the Defendants' Sales Call Centre in Cardiff, who accepted that she had no personal acquaintance with this transaction – there was a script concerning PPI which the agent should have used in discussion with any customer applying for a loan over the phone. At p.95 in the bundle there appears a copy of a script which was current in 2006. Mrs. Rees says that the sales script for 2005 was withdrawn and that she had been unable to obtain a copy of it (which seemed to me to be remarkable). However, be that as it may, part-way through the 2006 script, the agent in the call centre should have taken the customer through a Demands and Needs questionnaire, which it is said appears at p.188 in the bundle and bears the serial number of the particular loan agreement with which I am concerned. The point made by the defence is that insofar as this document exists, it must follow on the balance of probabilities that the Claimant was indeed taken through the sales script (albeit the 2005 version) because the answers recorded on p.188 are seemingly correct, including the Claimant's age,

his employment status and the fact that he had undergone medical treatment in the recent past.

14. However, the Claimant's evidence (and the submissions of his counsel) were to the contrary. The Defendants already knew his age and employment status from previous agreements, including the Peugeot agreement to which he had expressly referred the Defendants for the reason I have given (namely that the bulk of the new loan for the Toyota was required to pay off the outstanding debt under that agreement). It may be of significance that the Claimant's name was mis-spelt on the agreement as it had been on the Peugeot agreement, which suggests a degree of "borrowing" from one document to another. However that may be, it is alleged by the Claimant and submitted by his counsel, Mr. Salter, that the Answers to Questions 6 and 7 on the Demands and Needs questionnaire were probably the result of reasonable conjecture or assumption by the agent, but in any event were not authorised by the Claimant, and as for Question 9, the Claimant accepted that he was asked by the agent whether he had had any recent illnesses and answered him in the affirmative. The answer entered under Question 8 was, however, wrong: the Claimant's evidence was that he did have sickness cover, critical illness cover, and life cover elsewhere, and had done for 30 years, and on day two of the trial he produced documents which he had fetched from home overnight to prove it. I did not examine them for myself, because Mr. Goodbody (counsel for the Defendants) did so and declared himself satisfied that they would have provided a measure of cover in the event of hospitalisation, critical illness, or death.

15. The documents at pp.95 and 188 of the bundle did not therefore necessarily undermine the Claimant's evidence. Moreover the fact that the Defendants' 2005 sales script was withdrawn and replaced by a new version suggests to me that some changes were made to it, but I do not know what changes. Whether I accept the Claimant's evidence as a whole, however, is something that I will have to come back to below.

16. Having dealt with his initial conversation with the Defendants' agent by telephone from the car dealer's office (which appears from the documents to

have taken place on 26th September 2005), Mr. Wollerton went on to deal with the events of the next day. He said that he had arranged to go into the Defendants' Wakefield branch on that day to sign the agreement, and he duly did so. He said that he went in with his wife and young grandson, who was then aged 5. After a few minutes wait a female adviser came out of the interior office and presented him with the top copy of the agreement which he was asked to sign. There was no discussion as to the detailed terms of the agreement save that he was told what the monthly instalments were and the duration of the agreement. He said there was no mention of insurance cover. He was not told or invited to read through the agreement but was simply told to fill in his name and date of birth in a box, and to sign it, and to sign in two other places also, and if one looks at p.122 one finds that he signed in the box provided for the borrower, that he entered his name and date of birth in an inappropriate place (intended for the name and date of birth of a joint borrower, if any) and that he signed the box for PPI – but did not tick the box stating that he wished to exercise the option to take out PPI – and finally he signed the form at the bottom in a place which was also inappropriate as it was intended for the signature of acceptance on behalf of the Defendants.

17. The Claimant was cross-examined on the basis that he had not signed the agreement at p.122 in the Wakefield branch at all, but that he had received it through the post at home together with pp.124 and 125 (relating to the PPI add-on) and that he had ample time to read them at leisure. However he denied that, and re-affirmed that he had gone into the Wakefield branch by arrangement, where he was told to fill in his name and date of birth by the lady adviser and was also told where else to sign. His wife and grandson were with him: his wife is a sub-postmistress and it was her half-day, her half-day being Tuesdays. In the course of his cross-examination Mr. Goodbody for the Defendants scrolled back through his Blackberry and confirmed that 27th September 2005 (the date of the Claimant's signature) was in fact a Tuesday. The Claimant agreed that he subsequently received a copy of the agreement at pp.122/3 by post, but he did not remember receiving pp.124/5, which it was put to him would have been in the same envelope.

18. The Claimant was further cross-examined on the Letter before Action at p.160, of which he accepted that he had received and read a copy. The bulk of the letter is expressed in technical statutory language, but the Claimant accepted that paragraph 1(i) on p.162 is not correct: he accepted that no one stated or implied that he had to enter into PPI to obtain the loan – PPI was never even mentioned.

19. The Claimant's wife gave evidence on day 2 of the trial without having made a witness statement but with the consent of Mr. Goodbody. She was referred to her husband's witness statement and by way of evidence in chief she verified paragraph 9 on p.52. She said she was present with her husband and grandson when her husband signed the agreement at p.122 in the Wakefield branch.

20. When cross-examined she said that she had only been into the Wakefield branch twice, once to raise a loan for the kitchen and once for the Toyota. She said that on the day in question (27.09.05) they were going shopping with their grandson, and that one of their calls was to Lloyds TSB. They had to wait for a few minutes and were offered a coffee before a female adviser appeared and produced the paperwork. She did not leave the Claimant to read it whilst they had their coffee, but simply said sign here, here and here. She said the document was <u>not</u> signed at home, and that they had gone out shopping because it was a Tuesday, and was her half-day at the post office; she had been a sub-postmistress for 8 years.

21. Before I leave the Claimant's case, I should advert to a sequence of evidence in his witness statement, which – though in a sense self-serving – was not challenged, and if I accept it, it was potentially quite potent. In his paragraph 5 on p.51 the Claimant said that if he had known he had sickness cover under a PPI agreement with the Defendants there were multiple occasions during the currency of the loan when he would have claimed on it. In 2006 he had to have an operation on his knee which resulted in a loss of earnings; in 2007 he had to have an operation for piles, followed by an operation for the removal of a bunion, resulting in a total of 9 weeks loss of

earnings; in 2008 he had successive operations for total knee replacements, resulting in 6 months loss of work, and in 2008 he also lost work because he broke a finger, which required surgery. The point made by the Claimant is that whilst he was off work he would undoubtedly have claimed on the PPI if he had known it was in existence, since although he had claimed on his other insurances, it was a struggle for him to keep up the payments on the Black Horse loan and he had had to dip into his savings to do so. Ultimately of course he was compelled by force of circumstances to default (which is why we are here); in addition he maintains that when he received a call from the Defendants' collection agent (who was called Daniel), Daniel suggested that he request a payment holiday: he did not suggest that the Claimant should make a claim under the PPI, of which the Claimant says that even then he was unaware.

22. As I have already indicated, that is a fairly potent point, and it was not challenged by Mr. Goodbody, who could really only have done so if he had evidence that the Claimant had either made a claim or enquired of the Defendants as to whether he might make a claim, but there was no record of anything of the kind.

23. When the Claimant closed his case the Defendants called Mrs. Alison Rees, who as I have indicated above was and is a Team Leader in the Defendants' Sales Call Centre in Cardiff. Mrs. Rees had no direct involvement in the grant of the Claimant's loan in September 2005. She could only give evidence of the Defendants' system in such cases, and comment on the documents that survive, and by that means invite me to infer that the system was duly followed in this instance.

24. In a supplementary witness statement filed and served on day 2 of the case (to be found at pp.121A and B) Mrs. Rees stated that if you look at the diary archive relating to this case starting at p.136 in the bundle, (beginning at the bottom of the column on each page of the journal and working upwards) you find that at 11.26 a.m. on 26.09.05, a loan proposal was received "in branch" – although in this context "branch" apparently means "Call Centre branch". Mrs.

Rees says in her supplementary witness statement that the operation ID "PCMF116" relates to a call centre operator called Sarah Halsey who was based at Cockfosters. However, Mrs. Rees says that Sarah Halsey is no longer employed by the Defendants and that the Cockfosters branch of the call centre has closed down. She also said in cross-examination that no attempt had been made by the Defendants to find her, and that in fact Miss Halsey's reference number may have been different in 2005 from the number verified by Mrs. Rees when she made her enquiries more recently. The net result is

(i) That Miss Halsey was not called as a witness to give direct evidence as to the matters in issue;

(ii) That no recordings of the telephone calls between Miss Halsey (if it were her) and the Claimant were produced;

(iii) That no document was produced to verify that Miss Halsey's cipher in 2005 or at any other time was PCMF116 (notwithstanding that Mrs. Rees said she "knew" that PCMF116 was Miss Halsey's code number: if she "knew" that for a fact, she must have ascertained it from some record – whenever dated – but none was produced). It is fair to say that Mrs. Rees had mentioned Miss Halsey's name twice (out of the blue) in paragraphs 10 and 11 of her primary witness statement, dated October 2009, but even so, no documents were produced before the trial in February 2010.

25. In her supplementary witness statement Mrs. Rees goes on to say that the prefix 614 to the Agreement at p.122 denotes that it was centrally fulfilled which (she says) means that it was "completed" by the Sales Call Centre, whereas (she says) the "previous" agreement is prefixed "397", which signifies that it was "completed" at the Wakefield branch.

26. I found Mrs. Rees' evidence to be confusing on this point, for two reasons:

(i) When she referred to the "previous" agreement, I had understood her to mean the Peugeot loan, but the Peugeot loan is actually prefixed "568" – see p.148 top right. On the other hand the kitchen loan at p.150 is prefixed 397; but then:-

(ii) It all depends what Mrs. Rees means by "completed". It is perfectly clear to me that Mr. and Mrs. Wollerton (if I accept their evidence) simply went into the Wakefield branch of Lloyds TSB on 27th September 2005 to enable Mr. Wollerton to sign the offer of loan, which was then processed (and no doubt therefore "completed") centrally and not at the Wakefield branch: see e.g. the entry on p.141 dated 26.09.05 timed at 1318 hours ("Print first copy centrally") and the entry on p.147 dated 28.09.05 @ 1318 hours in similar terms. It is hardly surprising therefore that the agreement bears the 614 prefix, and not the Wakefield branch prefix, since it is likely that the Wakefield branch was simply used as a conduit.

27. In so far as necessary in order to complete the history, I refer to paragraph 11 of Mrs. Rees' primary witness statement in which she refers to the log of contacts between Black Horse and the Claimant, which are reproduced at pp.136-147, and which start with the "proposal received in branch" at 11.26 on 26.09.05. As I read the log, the next salient entry after that is: p.141 26.09.05 13.17 hours: "Manager's decision accept." Then at the top of p.141 one finds the entry timed at one minute later: "Print first copy centrally."

28. In paragraph 11 of her primary witness statement at p.58, Mrs. Rees says in terms: "The deal was accepted with proof of address requested and document sent to customer." It is perfectly true that there was some delay whilst Mr. Wollerton traced up-to-date utility bills verifying his then address (see e.g. p.143, entry timed at 1401 hours, p.144 entries timed at 0934 and 0955) but whereas Mrs. Rees says in her witness statement "document sent to customer" (i.e. on 26.09.05), there is no evidence whatsoever in the log to substantiate that: quite the contrary. If what Mrs. Rees says in her paragraph 11 were true, it would strongly support the defence case that the Claimant had ample time to read the documents at leisure at home, and could not have failed

to realise that he was being invited to sign up as a volunteer to a Payment Protection Insurance plan. But if the Defendants had sent the draft agreement to the Claimant's home, it would surely have been recorded either on p.141 after "Manager's Decision Accept" or on the bottom half of p.142.

29. It is not so recorded, and it appears to me therefore that Mrs. Rees' evidence as to what she would have expected to happen did not happen, and that there is no evidence from the defence to contradict the Claimant's evidence that he went into the Wakefield branch of Lloyds TSB on Tuesday 27th September 2005 and signed the draft agreement.

30. The evidence is in fact all one way. The Claimant's evidence (which I am satisfied was uncontrived and unrehearsed) all hangs together with both the calendar and his wife's evidence. For example, the evidence is that Mrs. Wollerton's half-day at the Post Office was Tuesday, and that the day when her husband signed the agreement in the presence of herself and their grandson in the Wakefield branch was 27.09.05, and lo and behold, when it was cross-checked by Mr. Goodbody he found that 27th September 2005 was in fact a Tuesday, which nobody in Court had correlated until that moment.

31. At the conclusion of the evidence counsel for both parties asked for time to reflect before making their submissions and volunteered to deliver written submissions within 10 days, which they duly did. I reserved judgment, and offered to deliver my judgment to the parties in writing with liberty to apply if issues of costs, interest, or the form of the Order arose.

32. Mr. Goodbody, having identified the issues, submitted in writing that the defence evidence at trial – namely evidence of the Defendants' system of conducting their business – was sufficiently robust to establish the defence case, whereas the Claimant's evidence (he submitted) was suspicious in several respects and called for close examination. In summary, he submitted

(i) That the Claimant conceded in cross-examination that when he called the Defendants from the Toyota dealer, there was some discussion

about his health, which suggests that the issue of PPI was raised. (Mr. Goodbody pointed out that the Claimant's concession was made "late" in cross-examination, but of course the fact that it was made when it was, depended upon when he was asked the question).

(ii) That the answers to the Demands and Needs questionnaire at p.188 are prima facie correct, especially the answer to Question 9 about recent medical treatment, which can only have come from the Claimant, and again suggests a discussion about PPI. However the Claimant concedes that he was asked about previous illnesses, but denied that it was in the context of a discussion about PPI. It depends therefore what I make of his evidence.

(iii) That it is unlikely that the Claimant, who alleges that he signed the agreement in the Wakefield branch, was told by the Defendants' adviser to sign the document in the wrong place and to enter his name and date of birth in the wrong place also. Mr. Goodbody then makes a quantum leap and submits that the errors render it more likely that the Claimant was on his own at home (and was therefore unprompted by any adviser in Wakefield) when he signed the agreement. On the other hand it may be, submits Mr. Goodbody, that the Claimant has got himself mixed up with the occasion when he and his wife entered into the joint loan agreement for the kitchen – which <u>was</u> signed at the Wakefield branch. But that depends upon what I make of the evidence of the Claimant and his wife.

(iv) That the Claimant signed the PPI box which expressly states that PPI is optional. However, that submission depends on whether the Claimant ever read or was invited to read the small print in the box: he certainly did not tick the box inviting him to take up the option, whereas one might have expected him to do so, if he had read the small print and wished to take the option up.

(v) Finally Mr. Goodbody submits that the Defendants' agent who drafted the agreement for the Claimant to sign could have had no possible motive for signing up the Claimant falsely as a volunteer to the PPI plan. However, that issue could not be explored at the trial because the Defendants did not call their agent to give evidence, and so regrettably Mr. Goodbody's submission in that regard is based on thin air.

33. Mr. Salter for the Claimant made a number of potent submissions on the facts. He dwelt on the fact that the Claimant made no claims under the PPI policy which he undoubtedly would have done if he had been made aware of its existence: he did, after all, make claims on his other policies when he was out of work through illness. Mr. Salter then submitted that the core parts of the Claimant's evidence were not challenged by the defence, and whereas that was true, and Mr. Goodbody could have questioned the Claimant more thoroughly on the documents, I have to say in fairness to Mr. Goodbody that he was hampered by the fact that he had no direct evidence on the defence side which would have enabled him to challenge the Claimant's core evidence head-on. Mr. Salter then submitted that Mrs. Rees had accepted that although a log was kept of all correspondence and telephone contact between the Defendants and the Claimant, there was no record of a copy of the contract having been sent to him at home for signature (which is true): for my part I take it that internal correspondence (e.g. between the Call Centre and Wakefield) would not have been recorded on the same log, which is the customer contact log. Finally Mr. Salter submitted that although Mrs. Rees conceded that the purpose of recording telephone calls (as the Defendants for the most part did) was to eliminate future disputes, it was ironical that no records had been produced by the Defendants in relation to the making of the contract, whereas abundant records had been produced of calls between the parties after the Claimant had defaulted (see pp.175 and 180-184).

34. At the end of the day I accept Mr. Salter's submissions on the evidence, and I find myself compelled to reject those made by Mr. Goodbody on behalf of the defence. However, quite apart from counsel's submissions I accept the evidence of the Claimant and his wife both of whom I found to be honest and

truthful witnesses, whereas I felt conversely that Mrs. Rees was struggling to do her best on the material available to her to make a case for the defence.

35. In the upshot my findings are that Mr. Wollerton rang the Defendants from the Toyota dealer's office on 26th September 2005, and spoke to a male agent who agreed to send out a draft contract to the Defendants' Wakefield branch for him to sign the next day. I find that there was no discussion about PPI and that the Claimant did not agree to sign up to any such plan. If it had been put to him, and if the cost of it had been put to him, I think he would almost certainly have declined it in any event, as he already had a measure of sickness cover in place elsewhere. Why the Defendants' agent falsely included PPI cover in the draft agreement which was sent out for the Claimant to sign is a mystery: it may be that the agent forgot to take the Claimant through the hoops (for the Claimant was in something of a hurry to take delivery of his new car before the weekend: see p.143, entry dated 28.09.05 1100 hours), and that the agent included it in the draft after he put the phone down: I simply do not know, and do not need to know. Be that as it may, I find that the Claimant went with his wife and grandson on Mrs. Wollerton's half-day (Tuesday 27th September 2005) and that they called in at the Wakefield branch of Lloyds where a female adviser produced the agreement and asked the Claimant to sign here, here and here, without giving him time or the opportunity to read through the document for himself before doing so. Contrary to Mr. Goodbody's submission no. (iii) summarised above, I think it unlikely that the Claimant was sent the document at home and was able to read it at his leisure, because in that event I think it is unlikely that he would have signed it in the wrong places. I find that although the Claimant received a copy of the agreement at home after the acceptance had been signed by the Defendants, there is no evidence that the Claimant read it even at that stage (because he was not asked the question), but even if he did, it would, I suspect, have been too late to go back on it.

36. In the light of the agreement between counsel as to the relevant law, I repeat that I do not need to construe the Statute or the Regulations. The only issue remaining is an issue of mixed fact and law, namely whether entry into the PPI plan was a condition of the loan, and thus a "charge for credit". In this

context I accept paragraph 6 of Mr. Salter's submissions verbatim. In view of my findings of fact, it must have been a condition, for it was required by the Defendants without discussion or voluntary election, in the same way as the other terms of the agreement were "required" – such as the rate of interest, the APR, the monthly payments, the termination provisions and all the other terms and conditions set out in small print on the back. It was, on my findings of fact, inserted by the Defendants unilaterally, and the Claimant had no choice in the matter.

37. In those circumstances the agreement is wholly unenforceable in law, and I so declare. By the same token I dismiss the Counterclaim.

38. It remains for me to consider the Claimant's alternative case (albeit only briefly) in the event that I am shown to be wrong in arriving at the aforesaid conclusion and making the above Order. If I had had to consider ss.140A and 140B of the 1974 Act as amended, I would have found the terms of the agreement relating to PPI to be manifestly unfair to the Claimant having regard not only to the manner in which they came to be inserted but also the enormity of the premium, which the Claimant was never given the opportunity to consider or reject. I would in those circumstances have struck out the totality of the premium and interest in respect of PPI and declared that that part of the contract was unenforceable, and I would have made provision for the balance of the loan itself (properly so called) to be paid by the instalments provided in the agreement.

39. In view of my principal decision, I consider that costs should follow the event and that the Claimant's costs should be paid by the Defendants to be made the subject of detailed assessment on the standard basis, if not agreed. I will, however, give the parties liberty to apply by means of a telephone conference, if so advised.

ALEXANDER DAWSON
Recorder
26th March 2010

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