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Paul & Susannah Evans v NRAM PLC
Chief Land Registrar intervening
A3/2015/2002

Article by David Bowden

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Paul & Susannah Evans v NRAM PLC - A3/2015/2002

Executive speed read summary

The Court of Appeal has heard an appeal in this case on 2 points. The lender did not check its systems properly and in error cancelled its charge with HM Land Registry. When the error came to light it applied for rectification. HHJ Milwyn Jarman QC sitting in the High Court granted this on 29 May 2015. The borrowers sought permission to appeal which was granted by Sir Timothy Lloyd granted at an oral permission hearing on 9 May 2016. The Court of Appeal has now heard argument on these 2 points. Firstly, a novel point under the Land Registration Act 2002 as to whether the lender caused or substantially contributed to the mistake so that the register at HMLR should not be rectified. The Chief Land Registrar intervened and submitted that the word 'mistake' in the LRA should be narrowly interpreted so that the lender and not it should be liable for any losses flowing from the lender's error. Secondly, whether the reporting of the arrears by the lender to credit reference agencies following a discharge from bankruptcy meets the data quality principle. If it does not, the amount of any damages due to the borrowers under the Data Protection Act 1998. Judgement was reserved.

Paul Morgan Evans and Susannah Janes Evans v. NRAM PLC [formerly Northern Rock (Asset Management) PLC]
The Chief Land Registrar - intervening
A3/2015/2002 10 May 2017
Court of Appeal, Civil Division (Lords Justices Kitchin, David Richards and Henderson)

What are the facts of the case?

In November 2004 Mr & Mrs Evans borrowed £197,000 from Northern Rock to buy their family home in Neath. This loan was secured by a legal mortgage over the property and registered at HM Land Registry. They were also given a further loan of £21,400 by the lender but this was not secured by mortgage but was regulated by the Consumer Credit Act 1974 ('CCA'). The product was the 'Together' mortgage.

In November 2005 the borrowing was re-structured. The lender treated £213,128 as secured and £22,311 as unsecured but CCA regulated. No new mortgage deed was signed. The borrowers were allowed to have the mortgage on an interest only basis which reduced their monthly payments. The lender gave the borrowing a new account number in November 2005.

In August 2014 solicitors for the borrowers wrote to the lender saying they were advised the mortgage was still registered with HMLR even though the 2004 mortgage had been redeemed. Without checking properly (or at all), the lender issued form e-DS1 to HMLR. This then discharged its security meaning that all the outstanding borrowing was now unsecured.

Under which route did the Evans proceed for personal insolvency? What are its consequences?

Mr Evans entered into an IVA on 6 March 2007. NRAM's unsecured loan was included in this (but not as is usual the secured loan). Mr Evans defaulted on his IVA, it was terminated and he was made bankrupt on 1 October 2007. Following the changes made by the Enterprise Act 2002, Mr Evans was discharged from his bankruptcy 1 year later in October 2008.

Mrs Evans proposed an IVA which the lender rejected at a creditor's meeting. The lender obtained a county court judgment against Mrs Evans for the sum due under its unsecured loan. The lender obtained a charging order on 20 February 2007 over Mrs Evans' interest in the property and protected this by registering a restriction in relation to the charging order at HMLR. Mrs Evans was declared bankrupt in on 31 January 2007. Again Mrs Evans was released from her bankruptcy a year later at the beginning of 2008.

In August 2007 Mr & Mrs Evans executed assignments of their beneficial interests in their home to their respective mothers for £1. The Official Receiver examined this, decided that due to the arrears there was no equity in the property and concluded that this was not a transaction at an undervalue under sections 339 or 423 of the Insolvency Act 1986.

In relation to the unsecured loan, following Mr Evans' release from his bankruptcy the lender was not able to recover anything else. As to Mrs Evans, even following her release from bankruptcy the lender could rely on its charging order were there any equity in the property.

In relation to the mortgage, this was not included in the IVA. On the basis that the lender retained a valid charge, then the lender could rely on its charge and seek to enforce it by obtaining possession and selling the property. The borrowers would remain liable to the lender under the terms of the mortgage for any shortfall and this would not be affected by the insolvency (be it IVA or bankruptcy).

What relief did the lender seek in the court case?
The lender then brought a court claim seeking these declarations:

- The mortgage was still subsisting as security for the 2004 loan,
- The HMLR discharge of mortgage be set aside, and
- The Register at HMLR to be rectified.

What did the HHJ Milwyn Jarman QC below rule?
In a judgment dated 29 May 2015 delivered at the end of a 2 day trial, Judge Jarman granted the lender the relief it sought. Judge Jarman was not satisfied with the answers to the questions Mr Evans gave in cross-examination as to the circumstances in which the August 2014 letter came to be written. The lender did not allege fraud but Judge Jarman said Mr Evans' evidence '*about how this came about remains unsatisfactory'* and was '*evasive, muddled, unclear and satisfactory*'. Mrs Evans did not give evidence. The Evans had no legal representation at the trial. Judge Jarman also dismissed the Evans counterclaim against the lender for damages under the Data Protection Act 1998 ('DPA').

On what basis was permission granted for an appeal?
The Evans then sought permission for an appeal to the Court of Appeal. They obtained representation from Mr Stephen Schaw Miller of New Square Chambers, 12 New Square at an oral permission hearing before Sir Timothy Lloyd on 29 June 2016. The Evans were permitted to amend their Grounds of Appeal to argue these 2 points:

- LRA Schedule 4 para 3 (2) (a) and meaning of '*substantially contributed to'*, and
- Damages under DPA 1998 section 13.

Who acted in this case in the Court of Appeal?
In relation to the 1st point, a skeleton argument was settled for Mr & Mrs Evans by Mr Martin Hutchings QC of Wilberforce Chambers. Mr Evans presented the case for both appellants relying on this skeleton argument. Miss Nicole Sandells of 4 New Square acted for the lender at trial and continued to represent the lender on this appeal. Mr Nicholas Trompeter of Selbourne Chambers was instructed by the Government Legal Department to represent the Chief Land Registrar.

What were the grounds of appeal?
There were only 2 grounds of appeal:

- What does '*substantially contributed to'* mean in Schedule 4 para 3(2)(a) of the Land Registration Act 2002?
- What damages (if any) are due under section 13 of the Data Protection Act 1998?

What is the basis of the appeal in relation to the Land Registration Act 2002?
Sir Timothy Lloyd said this was a novel point that had not been considered by a court let alone an appeal court before. Schedule 4 para 3 (2) (a) of the LRA permits a court to order that the HMLR register be amended to correct a mistake. However, the LRA says that no such order can be made where a lender has by '*lack of proper care caused or substantially contributed to the mistake'*.

The LRA also says that if in any proceedings the court has power to make an order '*it must do so, unless there are exceptional circumstances which justify it not doing so*'. The Evans say Judge Jarman did not address this point properly. The Evans say that the August 2014 solicitor's letter contained all the information the lender needed. The Evans say it was the lender's mistake that it did not check properly and the HMLR entry cancellation was caused by the lender's mistake and not theirs.

What is the basis of the appeal in relation to the Data Protection Act 1998?
The Evans say that the lender continues to report their account to the 3 credit reference agencies ('CRAs') and that the arrears and payment history on both the secured and unsecured loan is shown on their credit files. In relation to the unsecured loan, the Evans say that following the release from their bankruptcy there is nothing more legally due to the lender. The Evans say that their credit files should reflect this but they do not. The Evans rely on the 4th data protection principle that '*personal data shall be*

accurate and, where necessary, kept up to date'. Sir Timothy Lloyd felt that Judge Jarman did not deal with this properly because his view of Mr Evans' evidence clouded his judgment.

If there is any breach of the data quality principle (and this is not clear because full evidence on this was not before Judge Jarman and the Evans' application to adduce fresh evidence on the point was refused), then this engages s13 of the DPA which provides that an '*individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage.'*

What submissions did Mr& Mrs Evans as appellants make?
For the appeal, Mr Evans produced a copy of an email to his solicitor which had not previously been disclosed at trial. On its face, that email shows that he did quote both account numbers to his solicitor. The submission based on this email is that it was his solicitor (and not him) who had failed to quote the later new 2006 account number.

These are the summary of the written submissions made by the Evans. They submitted that

- The judge below was wrong to conclude that the Evans and their solicitors had shown a lack of care (by quoting the account number for the 2004 loan rather than the new number given in 2005) that substantially contributed to the mistake,
- The Evans' solicitors owed no duty of care to correctly identify the account number(s),
- The lender cancelled the charge not the Evans,
- The lender has since changed its procedures on this,
- The judge below omitted the word '*substantially*' in his judgement and misdirected himself when interpreting Schedule 4 para 3 (2) (a) of the LRA which requires that not only a contribution to the mistake but that this contribution has to be substantial,
- The lender below had to concede it could not show that the Evans had caused the mistake at HMLR, and
- The evidence below showed the lender continuing to provide data to CRAs including defaults and late payment entries even though the Evans are no longer personally liable for these debts following their discharge from their respective insolvencies. This amounts to a breach of the DPA 1998.

The Evans also seek an indemnity under schedule 8 of the LRA from the Chief Land Registrar for the mistake in the event that the lender is held not to be liable for that mistake.

What submissions did the lender NRAM as respondent make?
Very broadly the receiving party submitted that the court below came to the right conclusion on this for the reasons which Judge Jarman gave. This was expanded into these submissions:

- Its security at HMLR had been released in error,
- The mortgage remains live because no permission to appeal was granted in relation to setting aside the e-DS1,
- Rectification of the Land Registry under the LRA requires both the correction of a mistake and a prejudicial impact on a title,
- There are no potentially adverse interests on the Land Register,
- It would be unjust to the lender not to rectify its entry at the Land Registry,
- If the Land Register is not rectified the Evans will be unjustly enriched at the lender's expense by having converted their secured loan into an unsecured one,
- The judge below rightly concluded that the Evans had caused or substantially contributed to the mistake by a lack of proper care,
- Whether under schedule 4 or 8 of the LRA, the correct date to use is the date when it is established that the removal was a mistake rather than the date the registration was erroneously removed,
- Judge Jarman's order below was an order altering the Land Register under schedule 4 of the LRA,
- Re-registration of the lender's charge will cause the Evans no loss,
- The Evans have no grounds for claiming indemnity from the Chief Land Registrar, and
- Nothing in the data provided by the lender to the CRAs is wrong. The CRA data correctly shows that the Evans continue to be personally liable under the 2 secured loans. No data is supplied in relation to any unsecured loans.

What submissions did the Chief Land Registrar make?
Lord Justice Patten granted an order on 6 December 2016 permitting the Chief Land Registrar to intervene in relation to a point in relation to the rectification of the Land Register and to make submissions on whether there had been a '*mistake*' under the LRA or not. In outline these are the intervenor's submissions:

- This is not a case of '*rectification*' within Schedule 4 of the LRA at all involving a '*mistake*' which falls to be corrected. There is no '*mistake*' as defined in the LRA at all,
- '*Rectification*' in schedule 4 of the LRA has a narrow technical meaning,
- The reference to '*rectification*' under schedule 4 is an alteration which involves the correction of a '*mistake*' and which prejudicially affects the title of a registered proprietor,
- Under paragraph 3 of schedule 4, if a registered proprietor of an estate in in possession of land, then no rectification order can be made without that proprietor's consent unless either the applicant has by lack of proper care '*caused or substantially contributed to the mistake'* or it would be unjust for the alteration not to be made,
- Where the Land Register is rectified then this is capable of giving rise to an indemnity against the Chief Land Registrar under schedule 8 of the LRA,
- There is no definition of '*mistake*' in the LRA 2002,
- Registration of a voidable disposition before it is avoided is not a mistake,
- A voidable disposition is valid until it is rescinded,
- An entry at HMLR of a valid disposition cannot be categorized as a mistake,
- Schedule 4 of the LRA is concerned only with correcting mistakes **in** the Land Register. It is not concerned with correcting an equitable mistake which occurs **off** the Land Register,
- As paragraph 3 of Schedule 4 does not apply, the court is not required to consider whether the exception for unjustness is engaged at all,
- The judge below fell into error because following the rescission of the e-DS1 the court was only enjoined to make an order under 2(1)(b) of Schedule 4 to bring the Land Register '*up to date'*. This is what actually happened here,
- The subsequent rescission of the e-DS1 cannot convert retrospectively the earlier deletion of the lender's charge into a '*mistake*' under schedule 4 of the LRA, and
- Even if this is a case of rectification the judge below was correct to find the Evans substantially contributed to the error. This finding cannot be interfered with on appeal.

Were any new points advanced at this appeal hearing?
Yes.

The intervenor expanded its written case. It said that all the authorities on mistake had a common thread where each forms a point in time where the Land Registrar makes or deletes an entry in the Land Register. The Court of Appeal was taken to the relevant parts of the judgements in *Pearson*, *Norwich & Peterborough v. Steed* and *Sainsbury's v. Olympia Homes*. As time was short counsel referred the court to relevant sections in 10 other judgments. Counsel for the intervenor submitted that if the Court of Appeal was not with him on his submission that rectification did not apply, then the case should be remitted to a chancery master for further directions.

Was there a Respondent's Notice?
Yes.

The lender issued a Respondent's Notice seeking to uphold the order of Judge Jarman below on these 2 alternative grounds, namely that:

- it would for any other reason be unjust for the alteration not to be made, and
- it was not necessary or appropriate to rectify the land register because it was not being altered to correct a mistake.

Are there any prior authorities of any relevance on these issues?
There have been a number of cases on DPA s13 and the appropriate level of compensation usually fixing it the low hundreds of £ and no more. However the hurdle the Evans face is showing there is a breach of the data quality principle in the first case. Even in the case of an unenforceable credit agreement, data can still be recorded with CRAs. The 4th data protection principle has the important qualification '*where necessary'* and the Evans will need to convince the court that it was 'necessary' for the CRA records to be updated in the manner they claim. Even if a breach is made out, the Evans will need to be able to

prove that any CRA reporting has been legally causative of any loss they claim. If they have other debts, then this is by no means certain that the NRAM records are the cause of any loss.

What authorities were referred to in oral argument?
These authorities are relevant in this case:

Norwich and Peterborough Building Society v. Steed **[1993] Ch 116** (Court of Appeal - Purchas, Butler-Sloss and Scott LJJ)
Although a court had a discretion to order rectification of the register on the grounds set out in section 82(1)(a) - (h) of the LRA 1925 , this section did not contain a general power allowing the court to order rectification of the register in any case in which it thought it just and equitable to do so. Since the defendant no longer alleged fraud and his claim of non est factum had failed, his claim did not come within s.82(1). The court had no discretion under the section to order rectification of the register of charges

Sainsbury's Supermarkets Ltd v. Olympia Homes Ltd **[2005] EWHC 1235** (High Court, Chancery division, Mann J)
The effect of s.123A of the LRA 1925 and r.317 of the LRR 1925, was that by virtue of the cancellation of Mr Hughes' application for first registration, the legal estate reverted to British Gas which held it on trust for Mr Hughes who thereafter had an equitable interest only. The charging order on its terms charged such interest as Mr Hughes had in the property and was an equitable charge over an equitable interest. The Land Registry made a mistake in registering Olympia with title absolute because Olympia did not acquire the legal freehold. The land was in the possession of Olympia for the purposes of para.3(2) of Sch.4 to the LRA 2002. Although Olympia did not contribute to that mistake by lack of proper care, an order for rectification should nevertheless be made because it would be unjust not to do so for other reasons. At all material times, both before and after completion, Olympia believed that it was going to have to make land available for the roundabout without payment, and did not think it was purchasing free from the option rights. Were the register not to be rectified then Olympia would have acquired a potentially very significant windfall. It would be in a position which no-one ever contemplated they would be in and which it ought not to have been in.

Baxter v. Mannion **[2011] EWCA Civ 120** (Court of Appeal - Mummery, Jacob & Tomlinson LJJ)
A registration obtained (whether fraudulently or not) by a person not entitled to apply for it was a mistake and putting the register back in the condition it had been prior to the application was the 'correction of a mistake' within the meaning of paragraphs 1 and 5(a) of Schedule 4 of the LRA 2002. Where a person who had not been in adverse possession of the land for the requisite period had procured his registration as proprietor under paragraph 4 of Schedule 6 HMLC on the application of the person who had previously been registered as proprietor, could rectify the register notwithstanding that there had been no official or procedural error in the course of the examination of the application.

Garwood v. Bank of Scotland Plc **[2013] EWHC 415 (Ch)** (High Court, Chancery, Norris J)
The definitions in the mortgage conditions identified the relevant advance by reference to the loan made on the property subject to the charge and not by reference to a transaction number. The mortgage debt was the sum offered in the offer letter referring to a flat. A reasonable person would understand that a mistake had been made by the person noting the administrative reference and understanding that this was mortgage of the flat to secure the monies advanced for the purpose of acquiring an interest in that flat. Whatever the 2004 charge was intended to achieve, it in fact achieved a charge registered against the whole of the land in the title (that is. against the whole of the freehold in the building). There had been a mistake. The buyer knew that it was discharging the 2004 charge as security for the June 2004 loan but did not know that it was releasing its only security for the July 2004 loan. To invoke the equitable jurisdiction to set aside a voluntary disposition for mistake, there had to be a mistake of sufficient gravity either as to the legal effect of the disposition or as to an existing fact which was basic to the transaction.

Smeaton v. Equifax PLC **[2013] EWCA Civ 108** (Court of Appeal – Tomlinson, Davis and Jacob LJJ)
The conclusion of the judge below that a borrower's applications for credit had been refused on the sole ground of a bankruptcy entry on his credit file was unsustainable. His file showed numerous items of adverse data apart from the bankruptcy order. The judge's finding that the CRA's alleged breaches of duty caused the borrower loss was also unsustainable. The consequences which it was claimed arose from the alleged breaches of duty were far too remote to give rise to liability under either the DPA or at common law. The judge below had erred in concluding that there was a duty of care in tort which was co-extensive with the duties under the DPA 1998. It would not be fair, just or reasonable to impose such a duty. The judge had erred in concluding that a CRA assumed a responsibility to every member of the public simply by choosing to operate that type of business. Imposing a duty owed to members of the public generally would potentially give rise to an indeterminate liability to an indeterminate class. The DPA provided a detailed code for determining the civil liability of CRAs and other data controllers arising out of the improper data processing.

Walker v. Burton **[2013] EWCA Civ 1228** (Court of Appeal - Mummery, Jackson and McCombe LJJ)
The buyers had been registered as proprietors of a Fell as the result of a mistake, but it was unclear who the true owners should have been but neither possible owner was interested in claiming ownership of the Fell. However the buyers had, following the mistaken registration, taken possession of the Fell, paid for the erection of fences/ gates, and granted grazing rights. The application for registration was governed by Schedule 4 to the LRA 2002. The Deputy Adjudicator had been entitled to conclude that the buyers had not caused or contributed to the mistaken registration by a lack of care on their part. The appeal court could only interfere in that respect if there was a misdirection of law, an error of principle or a decision that no reasonable Adjudicator, properly directing himself, could have reached on the evidence. The burden had been on Walker to show that lack of proper care caused or substantially contributed to the mistaken registration of the Fell. Prior to the application for registration, the buyers had researched the title to the Lordship back to 1836, and it was unreasonable to expect them to have researched the earlier origins of the Lordship beyond that. The application for registration in 2005 had been made in good faith. The Deputy Adjudicator had also been entitled to conclude that it was not unjust to leave the registration of the Fell in the name of the buyers. Whether or not there would be an injustice was an assessment to be made by the fact-finding tribunal in the light of all the relevant data, and an appellate court should not interfere with that assessment unless there had been a self-misdirection of law, or an error of principle, or the assessment was one which no reasonable Adjudicator, properly directing himself, would have made.

Bank of Scotland PLC v. Joseph **[2014] EWCA Civ 28** (Court of Appeal – Patten, Sharp and Jacob LJJ)
Whether a unilateral notice was sufficient to preserve priority in respect of a lender's claim to an unpaid seller's lien was to be determined by the LRA and the Land Registration Rules 2003. If a unilateral notice specified the interest which it sought to protect then it had to do so with as much accuracy as the person responsible for the notice could provide. This was consistent with s.77 of the LRA. It was much less clear that a failure accurately to identify the interest claimed meant that the notice was ineffective to preserve priority.

MacLeod and others v. Gold Harp Properties Ltd **[2014] EWCA Civ 1084** (Court of Appeal - Richards, Sullivan and Underhill LJJ)
The primary effect of LRA paragraph 8, Schedule 4 was to confirm that where a derivative interest was created after an earlier derivative interest had been mistakenly removed from the register (but before that interest had been restored to the register), the power of the court was not limited to restoring the earlier interest to the register. It also extended to changing what would otherwise be the priority between the 2 interests by giving the earlier interest the priority it should have had but for the mistake. The words 'for the future' meant that the beneficiary of the change in priority (being the person whose interest had been restored to the register) could exercise his rights as owner of that interest to the exclusion of the rights of the owner of the competing interest as from the moment that the order was made. However he could not be treated as having been entitled to do so up to that point. An interest created during a period of mistaken deregistration of an earlier interest (to which it would have been subject but for that mistake) could be prejudiced by the reinstatement of the earlier interest.

Isaaks v. Charlton Triangle Homes Ltd **[2015] EWHC 2611 (Ch)** (High Court, Master Matthews)
Where the Land Registrar was saying that there was no mistake on the register because it faithfully recorded what was on the lease, he was wrong. The lease wrongly described a flat as being on the 3rd floor and the Land Register was equally mistaken in referring to the 3rd floor. The fact that the error was the result of the registrar faithfully copying the contents of the lease did not make it any the less a mistake. The LRA Schedule4 para.2 permitted the court to order alteration of the register for the purpose of correcting a mistake. Upon the court being satisfied that there was a mistake in the register, the rules 126/127 of the LRR 2003 required it to make an order for alteration, unless there were exceptional circumstances or unless the alteration amounted to rectification.

Chief Land Registrar v. Caffrey & Co **[2016] EWHC 161 (Ch)** (High Court, Master Matthews)
In relation to a subrogated claim under LRA section 103, the Land Registry had to show that the solicitors Would, if sued, have been liable in negligence to the lender for culpably allowing themselves to be used as an instrument of fraud against it. The presumptive rule was that a solicitor owed no duty to those whose interests were opposed to those of his clients. There was no reason not to apply that presumption here. The solicitors had not undertaken any duty to the lender to protect its interests or to check the genuineness of documents supplied to them. It was unusual for a person to owe a duty in respect of the acts of third parties.

What interventions did the judges make? What points seemed to be troubling them?
All 3 judges were very interested in this case and they all asked about the same number of questions.

Lord Justice Kitchin was the presiding judge and he pointed out early on to Mr Evans that the finding below in relation to the e-DS1 had not been appealed. He then put the lender's point which was that its charge took effect in equity but it was still a charge. Kitchin LJ then pressed Mr Evans saying that on the rescission of the e-DS1, the lender's charge came back to life but he said the question was whether the Land Register could be changed to reflect that state of affairs. Kitchin LJ noted that the one person in this who did not act carelessly was the Land Registry and queried whether it could be right that it ends up having to pay for the error. Kitchin LJ presciently observed that Judge Jarman did not use the word '*substantially*' but referred only to a mere causing.

Lord Justice David Richards asked Mr Evans whether the prejudicial effect of its title had ever been in issue. David Richards LJ pressed Mr Evans in some detail about the state of knowledge when the August 2014 solicitor's letter was sent. David Richards LJ observed that the Evans remained liable for the personal obligations under their loans until they had been discharged from their bankruptcies. David Richards LJ questioned the lender's counsel as to precisely what information was given to the CRAs as to the settled accounts. David Richards LJ said for rectification to occur the conduct had either to be fraudulent or careless. He also said Mr Evans' recently found email to his solicitor did not help the lender because it showed that he had drawn his solicitor's attention to both account numbers but dismissed some of what Mr Evans now had to say as '*speculation*'. David Richards LJ also queried if the Land Register was being brought up to date whether this was rectification. Towards the end of the hearing, David Richards LJ became frustrated with the lender's counsel requesting that it spelt out whether its case was under (a) [*correcting a mistake*] or (b) [*bringing the register up to date*] of Schedule 4 para 2 of the LRA. The lender's counsel was equivocal on this saying she had to meet 2 different cases on this as there was a convergence between the Evans and the intervener on this.

Recently promoted Lord Justice Henderson categorized the lender's charge as being already dead *'but with a possibility of resurrection*'. Henderson LJ's view was aligned with Judge Jarman with him castigating the 2014 letter as on any view, it was '*thoroughly misleading'*. He also observed that this was a case of a voidable transfer.

What did the Court say about judgment in this case?
At the end of the hearing Lord Justice Kitchin said they would take time to consider this case and would send a draft judgment out to counsel in due course. All 3 judges asked many pertinent questions to both counsel throughout the course of the hearing which lasted more than its allotted 5 hours with the court not rising until after 5pm. Kitchin LJ ordered counsel for the lender to file written submissions by 15 May 2017 responding to the intervenor's point about whether this was a '*mistake*' within schedule 4 of the LRA or not. When these submissions are received the panel will consider whether it wants any additional submissions from the Evans on this issue or not and if so it will make a further order.

The likelihood is that the reserved judgment will be handed down towards the end of July 2017 just before the long summer vacation but in view of the complexity of the LRA issue, this may end up slipping until October 2017.

16 May 2017

David Bowden is a solicitor-advocate and runs David Bowden Law which is authorised and regulated by the Bar Standards Board to provide legal services and conduct litigation. He is the cases editor for the Encyclopedia of Consumer Credit Law. If you need advice or assistance in relation to consumer credit, financial services or litigation he can be contacted at info@DavidBowdenLaw.com or by telephone on (01462) 431444.