Legal Mortgage Monthly Update
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Contents	**Boult v Together Personal Finance Ltd [2026] EWHC 809 (Ch)** A legal charge was held to be void after it was materially altered following execution without the borrower’s knowledge or consent, reaffirming the continued application of the rule in Pigot’s Case. **Ainscough v Ainscough & Anor [2020] EWHC 2909 (Ch)** An interesting older case where the High Court confirmed that a party cannot relitigate a Land Registry decision through court proceedings where the proper remedy was judicial review. **Kiko UK Ltd v Jamino Ltd & Anor [2026] EWCA Civ 513 (30 April 2026)** The Court of Appeal confirmed that a parent company was not liable for inducing a breach of contract where it had acted to protect its own legitimate commercial interests rather than intentionally procuring the breach.

Case name **Neutral citation**	Boult v Together Personal Finance Ltd [2026] EWHC 809 (Ch) (02 April 2026)
Facts	Mr Justice Michael Green said it was ‘somewhat extraordinary’ that a solicitor had changed the legal charge to include another property without the consent of the owner or their own client. The court heard that Myranna Boult had wanted to repay the existing borrowing secured against her house in 2018 and took out a bridging loan with her house - but expressly not the neighbouring field - as security. Boult first discovered the field had been wrongly included in the charge when she attended her solicitor's and she declined to sign the documents. She then returned the following day and signed a legal charge that was only over the house.

An unidentified individual from Priority Law, solicitors for the lender, then added in the deed that the field was included with the house as security for the loan. That amended legal charge was registered at HM Land Registry, with Boult having no idea this had happened.

The charge on the field was removed a few months later, but the loan was never repaid, and the lender issued possession proceedings.

Boult relied on the 400-year-old rule in Pigot's Case to say that the legal charge was void and of no effect because of the unauthorised amendment. At first instance, His Honour Judge Porter-Bryant decided the amendment to the legal charge was an 'innocent mistake' or 'administrative error' that was therefore outside the rule in Pigot's Case. Boult appealed, submitting that the post-execution alteration of the deed was a 'material alteration' that should render the whole thing void.

Mr Justice Michael Green said the judge appeared to have found that the alteration was deliberate and intentional, but also the result of a mistaken belief that the parties had agreed the charge would cover the house and field.

He added: 'I do find it somewhat extraordinary that a solicitor would just amend a signed legal charge in that way, without going back to the appellant, the chargor, and making sure that this was what had been agreed. I would imagine that such an alteration would normally be initialled by the parties at least. One can well see that if instruments like this can be altered in such a way, without going back to the other party, that it would be ripe for fraudulent conduct of the type that the rule in Pigot's Case is designed to prevent.'

Whether or not the solicitor was acting under a mistaken belief about what the legal charge was to cover, Green said they deliberately added a new property to the deed after it had been signed by Boult and without checking with her, or seemingly their client, that this was what was agreed. They then made it potentially enforceable against the field by registering it against the field's title number.

He concluded that the judge had therefore been wrong to hold that the alteration was both deliberate and an innocent mistake, and set aside the possession order.

Case name **Neutral citation**	Ainscough v (1) Ainscough (2) Bank of Scotland Plc [2020] EWHC 2909 (Ch)
Facts	The claim arose out of a family dispute between two brothers which had lasted for many decades. In 1978, the claimant, John Ainscough ("John") had purchased a property in Liverpool ("the Property") for the sum of £4,000 with the benefit of a 100% interest-only mortgage from Liverpool City Council. By the late 1990s, however, John and his family had begun to experience financial difficulties. As a result, John came to an agreement with his brother and the first defendant, Christopher Ainscough ("Christopher") to transfer the Property into Christopher's sole name. John contended that the transfer was merely "surety" for a loan of £7,000 (or so) to provide him with some immediate financial assistance; Christopher's case was that he purchased the freehold title outright for the sum of £10,000. It was common ground that the mortgage over the Property was discharged at this point. The parties later fell into dispute when Christopher refused to re-convey the freehold title to the Property in exchange for repayment of the alleged loan, with accrued interest, in 2006. By this time, Christopher was demanding £35,000 for a transfer of the Property, which he viewed as 50% of the market value of the Property, although his demand was later reduced to £32,500. John was only prepared to pay £17,000, which he viewed as representing the original sum borrowed, plus a generous amount of interest. Whatever the parties' differences, it was clear on the evidence that, by a further conveyance dated 28 June 2006, the Property had been transferred into John and Christopher's joint names for nil consideration. The conveyance included a declaration that they would thereafter hold the Property on trust for each as tenants in common in equal shares. No reason was suggested at trial for declaring this transfer void or otherwise having it set aside, and both brothers admitted at trial to having signed it. In August 2006, John was sentenced to twelve months' imprisonment for drug offences. On 3 November 2006, however, a purported transfer was executed transferring the Property from John and Christopher's joint names into the sole name of John's son, Joseph Ainscough ("Joseph"). On 12 February 2007, around the time John was released from prison, the Property was mortgaged to the Birmingham Midshires for the sum of approximately £56,000. Many years later, in the course of a visit to HM Land Registry's offices, John claimed to have discovered that his signature had been forged. In March 2015, John therefore applied to the Land Registrar for rectification of the title register to remove Joseph as the registered proprietor. He also sought the

removal of the registered charge, which was by now registered in favour of the second defendant ("the Bank").

The assistant land registrar proceeded to raise various detailed requisitions. By letter dated 27 July 2015, however, she explained that, although the Land Registry considered it to be the case that the mortgage constituted a mistake on the register, exceptional circumstances were considered to exist which justified not removing the mortgage from the register. The letter stated:

"The exceptional circumstances would be that you adopted the mortgage by your actions after it was created, even though at the time you may not have understood fully the mechanism whereby your son was able to mortgage the property. You accepted the existence of the mortgage by making mortgage payments for a period of time, and you confirmed the receipt of two lump sums from your son - £1,700 to build a kitchen extension on the property and a further £15,000. These sums appear to derive from the mortgage proceeds and were therefore a benefit that you received under the mortgage. In these circumstances, the Land Registrar would not remove the mortgage from the register."

The assistant land registrar explained that John was at liberty to proceed with his application to rectify the proprietorship register, but that, if he wished to do so, his application would result in both John and Christopher's names being restored to the register as this would reflect the position on the register immediately prior to the purported transfer. John expressly consented to his application being treated on this basis and proceeded to provide a forensic handwriting report which suggested "strong evidence" that the disputed signature on the transfer was not John's and "moderate evidence" that it was in fact Joseph's.

Christopher and Joseph both submitted objections to John's application to alter the title register, but both of these were subsequently rejected as groundless. The second defendant also objected (apparently unaware at the time that the Land Registry had already refused to progress to the application to remove its charge), but later withdrew its objection once it had been explained that its charge would not be removed.

Accordingly, as from 26 March 2015, John and Christopher were restored to the title register as joint proprietors of the Property.

On 13 August 2018, John issued proceedings which formed the current claim, by which he initially sought to have his brother's name removed from the title deeds. After extensive case management, however, it became clear that John was again seeking to have the second defendant's charge removed from the register. Accordingly, the Bank was afforded the opportunity to file a defence, and the claim proceeded to trial.

The Bank defended the proceedings, contending that:

- The claimant's claim was an abuse of process in that it amounted to a collateral attack on the prior decision of the HM Land Registry not to remove the Bank's charge from the register;
- Alternatively, if the proceedings were not an abuse, the presence of the Bank's charge was no longer a mistake on the register because, having given full consideration to the evidence at the time of John's application in March 2015, the assistant land register had decided that exceptional circumstances existed which justified the presence of the Bank's charge on the register;
- Alternatively, if the court was satisfied that the presence of the Bank's charge on the register was a mistake, exceptional circumstances existed which justified the Court's refusal to remove it.

At the outset of the trial, which had initially been listed in the County Court at Liverpool, HHJ Hodge QC identified the first of the Bank's defences set out above as raising a novel point of general public importance and accordingly ordered that the proceedings be transferred to the Chancery Division of the High Court of the court's own motion.

The result is accordingly a binding decision on the status of the Land Registry's decisions, which is likely to be of interest both to the legal profession and to the public in general.

The Court held that, although the substantive doctrine of res judicata only applies to decisions of competent civil courts, subsequent decisions, such as Iberian (UK) Limited v BPB Industries Plc [1997] ICR 164, Re Barings Plc (No.3) [1999] BCC 639 and Kamoka v The Security Service [2017] EWCA Civ 1665 had held that it could nevertheless be an abuse of process to seek to launch a collateral attack on decision of an administrative body acting within its proper powers.

The Court accepted that the collateral attack principle applied to decisions of the Land Registry given its special capacity as the guardian of the land register. The question, as set out in Re Barings, was therefore whether in all the circumstances of the case it would be manifestly unfair to a party to litigation before the court, or would otherwise bring the administration of justice into disrepute among right-thinking people, to allow the claim to proceed.

On the facts, the assistant registrar had refused to remove the Bank's charge from the register pursuant to her statutory power set out in paragraph 6(3) of Schedule 4 to the Land Registration Act 2002. This power had only been exercised after detailed requisitions had been raised from the claimant and a reasoned decision provided. If John had been unhappy with this decision, he had a clear avenue of redress: he could have applied to the High Court for judicial review within three months from the date of the decision. John, however, did not see fit to do so but rather waited three years before issuing his claim in court.

The court accepted that issuing court proceedings to challenge a prior decision of the Land Registry in these circumstances would be an abuse of the court's process. The proper course for John to have taken would have been to apply for judicial review of the Land Registrar's decision immediately after it was made, rather than seeking to have a "second bite at the cherry" three years later. Any other decision would render the strict time limits for issuing judicial review proceedings entirely meaningless.

The court also considered that it would be abusive to seek to challenge the assistant registrar's decision in circumstances where the Bank had withdrawn its objection to John's original application to the Land Registry on the faith of its belief that the Bank's charge was no longer in issue, thereby depriving the Bank of the possibility of continuing with its objection to John's application. Accordingly, the claim was dismissed.

Lest the above was wrong, however, the Court proceeded to consider the underlying substantive arguments relating to the law of land registration. It was common ground that, in circumstances where John's signature had been forged, the court would (absenting the above) normally have power to correct the register, both to remove Joseph's name as the registered proprietor and the Bank's subsequent registered charge from the register.

The Court accepted that this was not an ordinary case. Although the entry of the Bank's charge might originally have been a mistake on the register, this was no longer the case. John had applied for the removal of the Bank's charge and, with full knowledge of the background facts, the assistant registrar had exercised her discretion under paragraph 6(3) of Schedule 4 of the Land Registration Act 2002 not to remove the Bank's charge because of what she considered to be exceptional circumstances. That decision had not been challenged by John. Accordingly, the presence of the Bank's charge on the register was no longer a "mistake" which might fall to be corrected by the Court under the provisions of Schedule 4.

On the assumption that this secondary argument was also wrong, however, the Court proceeded to consider and apply the provisions of Schedule 4 of the Land Registration Act 2002 itself. Assuming that the presence of the Bank's charge was a mistake, the question was, in accordance with paragraph 3(3) of Schedule 4, whether there were exceptional circumstances

	which justified the Court not ordering rectification so as to remove the Bank's charge from the register. The Court accepted that this was not an ordinary case. Although the entry of the Bank's charge might originally have been a mistake on the register, this was no longer the case. John had applied for the removal of the Bank's charge and, with full knowledge of the background facts, the assistant registrar had exercised her discretion under paragraph 6(3) of Schedule 4 of the Land Registration Act 2002 not to remove the Bank's charge because of what she considered to be exceptional circumstances. That decision had not been challenged by John. Accordingly, the presence of the Bank's charge on the register was no longer a "mistake" which might fall to be corrected by the Court under the provisions of Schedule 4. On the assumption that this secondary argument was also wrong, however, the Court proceeded to consider and apply the provisions of Schedule 4 of the Land Registration Act 2002 itself. Assuming that the presence of the Bank's charge was a mistake, the question was, in accordance with paragraph 3(3) of Schedule 4, whether there were exceptional circumstances which justified the Court not ordering rectification so as to remove the Bank's charge from the register. Applying the two-stage test in Paton v Todd [2012] EWHC 1248 (Ch), the Court was satisfied that the circumstances of this case were clearly exceptional. First, this was not a standard in case in which a fraudster forges a transfer, takes out a mortgage over the relevant property and absconds with the proceeds, leaving the property subject to an onerous charge. Rather, in this case, the vast majority of the mortgage monies had been transferred directly from Joseph to John and Christopher, despite the forgery of John's signature. Secondly, John had accepted making payments under the mortgage for a lengthy period without challenging the legality of the mortgage. Thirdly, on the evidence, it was found that John had always been aware of Joseph's intention to take out a mortgage over the Property. Fourthly, this was a case in which John had expressly accepted, in progressing his application to alter the proprietorship register at HM Land Registry in 2015, that the charges register should not be rectified. The Court then considered whether those exceptional circumstances justified non-rectification of the register. If the charge were to be removed, the result would be that the Bank would be left with an unsecured money claim against Joseph only, and, in the course of his closing, John had expressed doubts about Joseph's solvency. By contrast, if the charge remained registered, the position would have been that John and Christopher would have benefited directly from the mortgage advance, but would take the Property free from any encumbrances. This would give rise to

	a clear windfall. John would have effectively received the release of his brother's 50% interest in the Property together with an extra £16,700 in addition. It went without saying that, but for the Bank's original mortgage advance, neither John nor Christopher would have had access to the funds which they had received in the first place. The Court concluded that there would be no injustice in refusing to rectify the charges register. In any event, the original decision of HM Land Registry was correct in principle and had accorded with the evidence. In light of the consensual transfer of the Property into John and Christopher's joint names in June 2006, John's claim to have the Property registered in his sole name (together with a mirroring counterclaim by Christopher) was also dismissed. This is an important case of general importance to the legal profession and property owners across the country. In the vast majority of applications before the Land Registry, any objection will be submitted to the First-Tier Tribunal (Property Chamber) for a binding determination. In the minority of cases in which the Land Registrar makes a decision of his or her own motion based on the materials before him/her, however, it is now clear that practitioners must act promptly if they are aggrieved by the Land Registrar's decision, by commencing proceedings for judicial review within the three month time-limit. If they fail to take immediate action but choose to issue court proceedings after this period has elapsed, they risk being faced with an application to strike out the proceedings as an abusive collateral attack on the decision of the registrar. In practical terms, practitioners therefore overlook the implications of this decision, which may apply to the full spectrum of property disputes, at their peril. The case also sheds light on cases in which there may originally be a mistake in the register, but where a mistake can subsequently be regularised by a decision of the Land Registry, such that alteration/rectification will no longer be available.
Case name **Neutral citation**	Kiko UK Ltd v Jamino Ltd & Anor [2026] EWCA Civ 513 (30 April 2026)
Facts	The case concerned part of the ground and first floors of 48 Oxford Street, London, W1, let to Kiko for a 10-year term from 2 November 2016. In September 2019, Kiko assigned the lease to Jamino, a wholly-owned subsidiary of Pianoforte. At the same time, Kiko entered into an authorised guarantee agreement with Jamino and the landlord, Pontegadea UK Ltd, by which it promised that Jamino would perform the tenant obligations under

	the lease. Kiko, Jamino and Pianoforte also entered into a guarantee and indemnity agreement (the parent company guarantee or PCG). Under the PCG, Pianoforte covenanted to indemnify Kiko and keep it indemnified from, against or in respect of all or any costs and liabilities arising from: (a) Any failure by Jamino to pay any of the rents reserved by the lease or to observe or perform any of the tenant covenants of the lease; and (b) Any costs and liabilities arising under any AGA. The PCG specifically provided that Pianoforte's liability should not be reduced, discharged or otherwise adversely affected by the disclaimer of Jamino's liability under the lease. Jamino defaulted on rental payments, and in May 2024 it went into creditor's voluntary liquidation. Jamino's interest in the lease was disclaimed in June 2024, but the lease continued to subsist as between Kiko, Pianoforte and Pontegadea (Section 178 of the Insolvency Act 1986). On 15 November 2024, Kiko entered into a new lease as required under the AGA. In the proceedings before the Court, Kiko sought an indemnity from Pianoforte under the PCG. Pianoforte's liability for payments by Kiko to Pontegadea under the AGA prior to 14 November 2024 was not in issue, but Kiko's costs and expenses and the obligation to enter into a new lease were disputed. There were a number of issues before the Court: • While a disclaimer releases the insolvent debtor, it does not release a surety without very clear words. • When interpreting a guarantee, look to its substance and the wider circumstances. • The likely purpose of a parent company guarantee is to protect against the risk of tenant insolvency.

First Instance	Kiko's claim for those costs was dismissed for three reasons: (1) The disclaimer was not a failure to pay the rent or observe or perform any of the tenant covenants of the lease; (2) Kiko's obligation to enter into the new lease did not arise from a failure by Jamino to perform the lease; and (3) Pianoforte was not in breach, so it was not obliged to indemnify Kiko for its losses. Kiko appealed to the Court of Appeal.
Decision On Appeal	The relevant legal principles before the Court of Appeal were not in dispute. A contract must be interpreted objectively by asking what a reasonable person with all the background knowledge reasonably available to the parties when they entered into the contract would have understood the language of the contract to mean (Financial Conduct Authority v Arch Insurance (UK) Ltd [2021] UKSC 1). Section 178 of the Insolvency Act 1986 provides that a disclaimer operates to determine the rights, interests and liabilities of the company in respect of the property disclaimed, but it does not affect the rights or liabilities of any other person. The release of the insolvent debtor does not discharge a surety from its liabilities to the lessor; otherwise, the object of giving and taking a guarantee would be defeated (Hindcastle Ltd v Barbara Attenborough Associates Ltd [1997] AC 70). While it is possible for parties to agree that a guarantor's liability terminates on disclaimer, very clear words are required to persuade the court that this is in fact what was intended, because insolvency or bankruptcy are precisely the circumstances when the guarantee is likely to become operative (Shaw v Doleman [2009] EWCA Civ 283). The Court of Appeal allowed the appeal, finding that the disclaimer was a failure under the terms of the PCG because it would render Kiko liable under the AGA, which is precisely what it was designed to indemnify Kiko against. The intended purpose of the PCG was to protect Kiko from the risk of Jamino's insolvency. This meant that the judge's interpretation ran contrary to that commercial purpose. The PCG made clear the parties' intention that the disclaimer would not discharge Pianoforte's liability as guarantor. There were no clear words for a finding that the parties agreed that the guarantee should terminate on

	disclaimer. While the disclaimer was not the immediate cause of Kiko entering into the new lease, and the disclaimer was the act of Jamino’s liquidator rather than Jamino itself, in substance, the disclaimer, Jamino’s failure to pay rents and Kiko being required to enter into the new lease were all closely linked. The disclaimer was the reason why Pontegadea required Kiko to enter into the new lease and the sole basis on which it was entitled to do so under the AGA. Kiko’s obligations under the new lease did arise from Jamino’s failure under the PCG. It was decided that the judge had construed the phrase “arising from” too narrowly. Pianoforte was unable to identify any sensible explanation as to why the parties would have agreed that Jamino’s disclaimer of the lease would release Pianoforte from its obligations as guarantor. This decision underlines the importance of interpreting a contract consistent with its commercial purpose and avoiding too narrow a focus on the construction of specific words.

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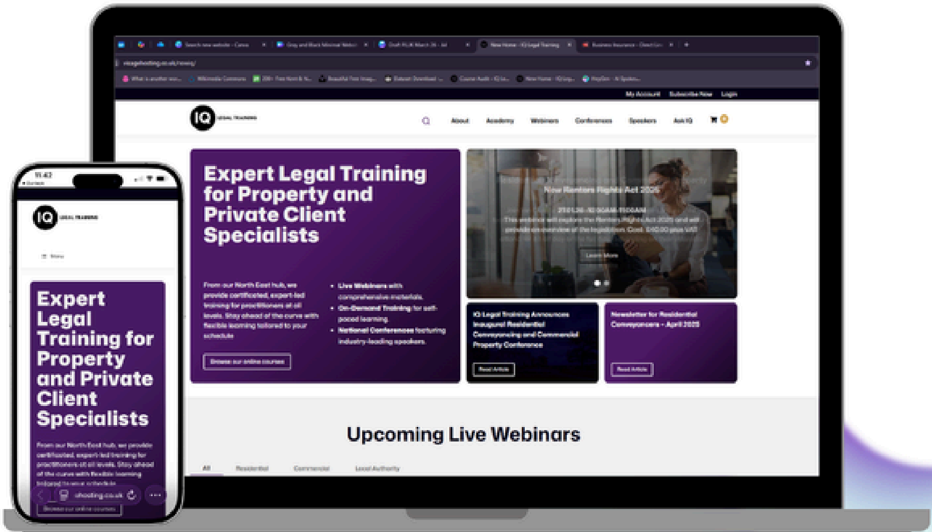

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