

# Legal Mortgage Monthly Update

## March 2026

<b>Contents</b>	<p><b>Fairmont Property Developers UK Ltd v Venus Bridging Ltd and others [2025] EWCA Civ 1513</b></p> <p>This case concerned an application by a defaulting mortgagor under s.91 of the Law Property Act 1925 whereby it sought the opportunity to market for sale a commercial warehouse property (“the Property”) over which the mortgagee had appointed receivers (“the Receivers”).</p> <p><b>Alnajjar &amp; Otrs v West One Loan Limited [2023] EWHC 315</b></p> <p>A High Court case concerning a bridging loan and allegations of an unfair relationship under the Consumer Credit Act 1974. The court considered the terms of the lending arrangement, including default interest and fees, and whether they created an unfair relationship, highlighting the scrutiny applied to high-cost short-term lending in property transactions.</p> <p><b>Renters Rights Act</b></p> <p>This new legislation will have serious consequences for the private rental sector.</p>
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<b>Case name</b> <b>Neutral citation</b>	<b>Fairmont Property Developers UK Ltd v Venus Bridging Ltd and others [2025] EWCA Civ 1513</b>
<b>Summary</b>	<p>This case concerned an application by a defaulting mortgagor under s.91 of the Law Property Act 1925 whereby it sought the opportunity to market for sale a commercial warehouse property (“the Property”) over which the mortgagee had appointed receivers (“the Receivers”).</p> <p>Section 91(2) provides the Court with the power, in summary, to direct the sale of mortgaged property “on such terms as it thinks fit”. The Section permits an application to be made by the mortgagee or any person interested in either the mortgage monies or in the right of redemption.</p>

<p><b>Facts</b></p>	<p>The Appellant mortgagor, Fairmont, was the freehold proprietor of industrial warehouses. The property had been let to a commercial tenant. Following the expiry of a bridging loan, the First Respondent Venus, which was the second-ranking mortgagee, appointed the Second and Third Respondents as receivers over the property.</p> <p>In this case, the Receivers had marketed the Property for sale and received bids, but the applicant freeholder (“the Applicant”) sought to restrain the Receivers from selling the Property for a period of 180 days so that the Applicant could adopt a new marketing strategy in the hope of obtaining a higher price than the offers received. It seems that the Applicant was contending for a price almost £2.5m above the Receiver’s marketed price.</p> <p>The Receivers began marketing the property for sale. Fairmont found the minimum sale price to be at a steep discount. Based on previous valuations and market interest, it considered the market value to be substantially higher, entitling it, upon sale, to a large surplus as opposed to a deficit.</p> <p>As a result, Fairmont therefore applied for a Pt 8 claim under section 91 to have conduct of sale itself or, alternatively, for a minimum price to be imposed, contending that Venus could be compensated for any resultant delay in the sale of the property by the rental income received from the tenant and a personal guarantee provided to it by the director.</p>
<p><b>First instance</b></p>	<p>The claim proceeded on an expedited basis. Trower J granted an interim injunction restraining the sale of the property by the Receivers. At the trial of the claim, Saira Salimi, sitting as a deputy High Court Judge, dismissed the claim.</p> <p>The Court concluded that:</p> <ul style="list-style-type: none"> <li>• As per the authority of <i>Toor v State Bank of India</i> [2010] EWHC 1097, s.91 provided an “unfettered discretion to be used judicially”.</li> <li>• However, in the context of commercial property in negative equity, that discretion should be exercised only in exceptional circumstances for the policy reasons identified by Phillips LJ and Millett LJ in <i>Cheltenham &amp; Gloucester v Krausz</i> [1997] 1 WLR 1558 (a case concerning a residential property), namely, <ul style="list-style-type: none"> <li>◦ The risk a mortgagor is simply taking every opportunity to delay putting off the ‘evil day’ of having to vacate their property for a sale (meanwhile, the deficit on the security account increases).</li> <li>◦ The need not to undermine the mortgagee’s entitlement to possession; and</li> <li>◦ That a mortgagee is likely to have a greater incentive to obtain the best price and the quickest sale.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Additionally, courts had to be cautious of enabling a large number of applications under s.91 in respect of commercial property where the mortgagor considering a sale at an undervalue was likely.</li> <li>• In this case, there were no exceptional circumstances warranting the exercise of the discretionary power under s.91: It was an 'ordinary case' of default by the mortgagor where all parties agreed the Property should be sold.</li> <li>• The Receivers had taken steps to market the Property, and as such this was not a case akin to Palk v Mortgage Services Funding Plc [1993] Ch 330, where the mortgagor had no plans to realise its security by a sale.</li> </ul> <p>The Judge went on to note that even if he were wrong about the need for 'exceptional circumstances', all parties agreed there must be identifiable and more than trivial unfairness for the s.91 discretion to be exercised in favour of a mortgagor in a 'negative equity' case. A greater shortfall in a sale was not in itself sufficient unfairness to justify an order under s.91.</p>
<p><b>Decision on appeal</b></p>	<p>Fairmont obtained permission to appeal, and Trower J's injunction was restored.</p> <p>Giving the judgment of the Court of Appeal, Nugee LJ (with whom Asplin and Lewis LJ agreed) upheld the deputy Judge's decision and dismissed the appeal.</p> <p>In reaching its decision the Court of Appeal explored a number of previous decisions, including:</p> <ul style="list-style-type: none"> <li>• Palk v Mortgage Services Funding Plc [1993] Ch 330, section 91, had first been used to order the sale of a residential property at the request of the mortgagor and, despite opposition from the mortgagee, at a price insufficient to redeem the mortgage. The mortgagee in Palk was proposing to hold onto the property until market conditions improved.</li> <li>• Barrett v Halifax Building Society (1996) 28 HLR 634, Evans-Lombe J had gone a step further and ordered the sale of mortgaged property on the application of the mortgagor even though the mortgagee was itself taking steps to sell. At the proposed price, the mortgagee would not have been paid in full.</li> <li>• Cheltenham and Gloucester plc v Krauz [1997] 1 All ER 21 concerned the power of the county court to adjourn mortgage repossession proceedings. The mortgagor was seeking an adjournment in order to make an application under section 91 to have conduct of sale. In obiter dicta on section 91, Philips and Millett LJ (with whom Butler-Sloss LJ agreed) cast doubt on the correctness of Barrett. Millett LJ distinguished Palk as a case where the mortgagee had no wish to realise its security.</li> </ul>

His Lordship stated that Palk did not support acceding to an application by a mortgagor under section 91 where the mortgagee was actively realising its security and, in any event, where there would be insufficient equity to repay the mortgagee in full.

Nugee LJ in *Fairmont* emphasised English law's reluctance to interfere with the essentially contractual scheme of a mortgage: [39]. 'Unusual' or 'exceptional' circumstances would be needed, especially where the mortgagee (unlike in *Palk*) is actively seeking to realise its security: [40], [44]. He also rejected *Fairmont*'s submission that when the risk of a possible sale at an undervalue and its consequences were weighed against the potential prejudices (or lack thereof) to *Venus*, the court would be justified in giving it conduct of the sale. Nugee LJ held that before the court could engage in such weighing-up exercise, it had to have a 'substantial reason' to interfere with the mortgagee's rights under the mortgage: [52].

Adopting Sir Donald Nicholls V-C's terminology in *Palk*, in order to justify the court's intervention, *Fairmont* had to show that 'leaving the Receivers to conduct the sale would be demonstrably or manifestly unfair': [53]. 'What was required was a likelihood of a sale at an undervalue. That did not require [the deputy judge] to find what the actual value was, but it did require her to be satisfied that a sale by the Receivers was likely to realise too low a price': *Ibid*. Because *Fairmont* was held at most to have shown a possibility that the proposed sale would be at an undervalue, the high threshold for the court's intervention had not been met.

Although a mortgage is a complex bundle of contractual and equitable rights and obligations, authority stretching as far back as *Warner v Jacob* (1882) 20 ChD 220 and more recently, *Silven Properties Ltd v RBS* [2004] 1 WLR 997, has emphasised that the discretion that a mortgagee has in exercising its powers to enforce the security is subject to only limited and well-defined fetters. *Fairmont* reaffirms English law's reluctance to interfere with the exercise of those powers.

The judgment still leaves the door open for the court's intervention under section 91, notwithstanding the mortgagee's opposition or its actively taking steps to enforce its security. Sufficiently exceptional circumstances need to exist. As recognised by the Court, one such exceptional circumstance could be the likelihood of sale at a discount leading to manifest or substantial unfairness to the mortgagor.

A mortgagee or his receiver is under an equitable duty, if he decides to sell the mortgaged property, '... to take reasonable precautions to obtain the "fair" or the "true market" value of or the "proper price" for the mortgaged property at the date of the sale, and not ... the date of the decision to sell':

	<p>per Lightman J in <i>Silven Properties</i> at [19]. Breach of such duty can sound in an account (i.e., damages) at the suit of the mortgagor. The threatened breach of such duty should in principle be capable of being restrained by a quia timet injunction.</p> <p>In some circumstances, a threatened sale at an undervalue would not be in breach of the equitable duty described above but would still amount to manifest unfairness to the mortgagor, justifying the court’s intervention under section 91. Also, the remedies available under section 91 are more flexible than a mere injunction restraining sale, and the court can have regard to a wider set of circumstances in such an application.</p> <p>It is important to be aware that even if a mortgagor succeeds in establishing potential unfairness that meets the high threshold for intervention under section 91, the court could still decline to make an order in its favour. As Sir Michael Kerr stated in <i>Palk</i> at 343G, if the prospects between the mortgagor and mortgagee are fairly evenly balanced, the mortgagee’s wishes should be given preference.</p>
<b>Comment</b>	<p>This is a useful case for practitioners, demonstrating that the seemingly ‘unfettered’ discretion in s.91 will in fact be sparingly exercised by the Court, which must be cautious of ‘opening the floodgates’ in every case where the mortgagor considers there is a risk of sale at an undervalue.</p>

<p><b>Case name</b> <b>Neutral citation</b></p>	<p><b>Alnajjar &amp; Otrs v West One Loan Limited</b> <b>[2023] EWHC 315.</b></p>
<b>Facts</b>	<p>Although not a recent case, <i>Alnajjar</i> explores the interesting concept of marshalling, which, as you will recall, involves the following:</p> <p>"A principle for doing equity between two or more creditors, each of whom is owed debts by the same debtor, but one of whom can enforce his claim against more than one security or fund, and the other can resort to only one. It gives the latter an equity to require that the first creditor satisfy himself (or be treated as having satisfied himself) so far as is possible out of the security or fund to which the latter has no claim." - Lord Hoffman in <i>re Bank of Credit and Commerce International SA (No. 8)</i> [1998] AC 214, 230–231.</p> <p>The decision in this case was a spin-off of various disputes and enforcement</p>

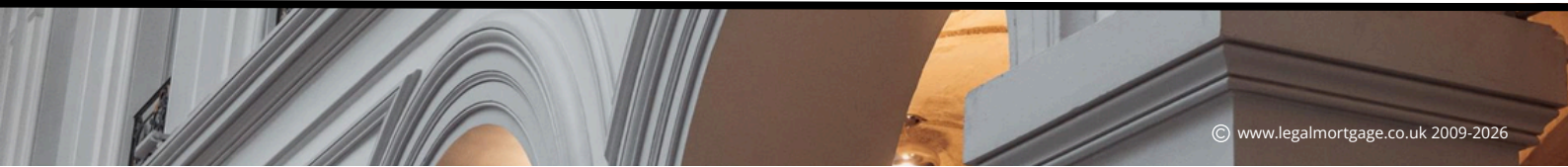
	<p>actions taken by claimants to a partnership claim in which they obtained a substantial amount of money, judgment and declarations of ownership of various companies and properties.</p> <p>After the initial trial, the claimants applied to appoint receivers but very shortly before the hearing of that application, the mortgagee of 3 of the properties, West One Loans appointed its own LPA receivers for alleged default under the mortgages.</p> <p>Subsequently, a compromise agreement was reached by which West One's receivers would sell the properties and account to the claimants for the balance.</p> <p>In the meantime, the claimants obtained a final charging order over the matrimonial home of the defendants, also mortgaged to West One. When West One came to account for the sale proceeds of 3 properties on which a compromise had been reached, it refused to pay over the balance on the basis it wished to apply it to the mortgage on matrimonial home under the doctrine of marshalling. West One had to resort to this argument because it could not point to any cross-collateralisation provisions in the mortgages that would allow it to apply a balance on one mortgage towards another.</p>
<p><b>First instance</b></p>	<p>The Deputy Judge held that the doctrine has no application where the creditor against whom the doctrine is asserted does not have a security interest in the properties but a beneficial, proprietary interest in the proceeds of sale. The only caveat to this was if it was in some way unconscionable for the claimants to assert their proprietary rights to the proceeds, and this was not the case here. The fundamental reason why the claim failed, therefore, was because the claimants were never in the position of a secured creditor vis-à-vis the properties – they were the beneficial owners.</p> <p>This inevitably led to an application to determine which party had the right to the net proceeds. Peter Knox KC, sitting as a Judge of the Chancery Division, agreed with the claimants' primary submission that whatever rights West One might have had over the proceeds from the 3 properties, they were contractually obliged to pay them over to the claimants under the terms of the compromise.</p> <p>But the Deputy Judge went on to consider, if he was wrong about that, the underlying merits of West One's marshalling claim. He had no hesitation in finding that it did not work as a matter of law.</p> <p>The first reason was that the doctrine simply did not operate on the facts of</p>

	<p>the case. The second reason for deciding against West One on the marshalling argument was based on the underlying justification for the doctrine, which was explained by Lord Neuberger in <i>Szepietowski</i> as follows:</p> <p>“The reason is obvious.... [By] compelling [the first creditor with the two securities] to take satisfaction out of one of the funds, no injustice is done to him.... But it is the only way by which [the second creditor with one security] can receive payment. And natural justice requires that one man should not be permitted, from wantonness, or caprice, or rashness, to do an injury to another. In short, we may here apply the common civil maxim 'Sic utere tuo ut alienum non laedas' and, still more emphatically, the Christian maxim 'Do unto others as you would they should do unto you.'”</p> <p>Looking at the relative positions of the claimants and West One, it was clear that justice required the proceeds to be paid over to the claimants. West One’s mortgage over the matrimonial home ranked ahead of the claimant’s charging order, and there was plenty of equity to ensure West One would be paid in full whatever the outcome. In reality, West One simply wanted money in its hands there and now at the expense of the claimants, who would have to go to the trouble and expense of taking possession proceedings to recover money to which it was beneficially entitled. Furthermore, whereas West One had an easy route to possession of the matrimonial home, the claimants’ ability to obtain an outright order for sale was less clear cut.</p> <p>Although the marshalling argument failed on the facts, there are circumstances in which it might have succeeded and, in appropriate cases, could prove decisive in competing claims by creditors to secured assets.</p>
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<p><b>Article Name</b></p>	<p><b>Renters Rights Act</b></p>
<p><b>Key Reforms to the Private Rented Sector (PRS)</b></p>	<p>This new legislation will have serious consequences for the private rental sector.</p> <p>The key features of the legislation are:</p> <p><b>Abolition of ASTs</b></p> <ul style="list-style-type: none"> <li>• Assured shorthold tenancies (ASTs) abolished.</li> <li>• All existing and new tenancies → assured periodic tenancies.</li> <li>• Non-assured tenancies (e.g. holiday lets) unaffected.</li> </ul>

	<p><b>Abolition of s.21 HA 1988</b></p> <ul style="list-style-type: none"> <li>• “No fault” eviction removed.</li> <li>• Landlords must rely on s.8 grounds for possession.</li> <li>• Likely consequence: <ul style="list-style-type: none"> <li>◦ Increased litigation</li> <li>◦ Delay + cost in recovering possession</li> </ul> </li> </ul> <p><b>No minimum term (tenant flexibility)</b></p> <ul style="list-style-type: none"> <li>• Tenants can terminate at any time: <ul style="list-style-type: none"> <li>◦ 2 months’ notice</li> <li>◦ Must expire at end of rental period</li> </ul> </li> <li>• Creates asymmetry (tenant flexibility vs landlord restriction).</li> </ul> <p><b>Rent increases</b></p> <ul style="list-style-type: none"> <li>• Limited to once per year via s.13 notice.</li> <li>• Tenants can challenge via Tribunal: <ul style="list-style-type: none"> <li>◦ No cost risk to tenant</li> <li>◦ Delays implementation</li> <li>◦ Potential downward revision</li> </ul> </li> <li>• Practical effect: suppressed rental growth + increased disputes</li> </ul>
<p><b>Increased Regulatory Burden</b></p>	<p><b>PRS Ombudsman + Database</b></p> <ul style="list-style-type: none"> <li>• Ombudsman: binding resolution of tenant complaints (not reciprocal).</li> <li>• PRS Database: public record of landlord sanctions.</li> <li>• Both: <ul style="list-style-type: none"> <li>◦ Funded by landlords</li> <li>◦ Operate alongside licensing → duplication concerns</li> </ul> </li> </ul> <p><b>Pets</b></p> <ul style="list-style-type: none"> <li>• Tenants can request pets.</li> <li>• Landlords: cannot unreasonably refuse.</li> <li>• No express provision for: <ul style="list-style-type: none"> <li>◦ Pet damage insurance</li> <li>◦ Increased deposits</li> </ul> </li> <li>• Risk shifted towards landlords.</li> </ul> <p><b>Decent Homes Standard + Awaab’s Law</b></p> <ul style="list-style-type: none"> <li>• Extended from social housing → PRS.</li> <li>• Aim: ensure safety and habitability.</li> <li>• Key uncertainty: how standards will be enforced in PRS.</li> </ul> <p><b>Anti-discrimination measures</b></p> <ul style="list-style-type: none"> <li>• Prohibition on refusing tenants:</li> </ul>

	<ul style="list-style-type: none"> <li>○ On benefits</li> <li>○ With children</li> <li>● Conflicting provisions in: <ul style="list-style-type: none"> <li>○ Leases</li> <li>○ Finance documents</li> <li>○ Insurance</li> <li>○ → rendered void</li> </ul> </li> </ul>
<p><b>Impact on Commercial Real Estate Finance</b></p>	<p><b>Lender concerns</b></p> <ul style="list-style-type: none"> <li>● Increased regulation of landlords (borrowers).</li> <li>● Reduced control over possession and asset management.</li> <li>● Longer recovery timelines → increased risk profile.</li> </ul> <p><b>Likely lender responses</b></p> <ul style="list-style-type: none"> <li>● Greater scrutiny of: <ul style="list-style-type: none"> <li>○ Compliance history</li> <li>○ PRS database records</li> </ul> </li> <li>● Pricing + structuring adjustments: <ul style="list-style-type: none"> <li>○ Higher lending costs (especially for non-professional/sanctioned landlords)</li> <li>○ Lower LTV ratios</li> <li>○ Adjusted valuation assumptions (reflecting delays + periodic tenancies)</li> </ul> </li> </ul> <p><b>Changes to finance documentation</b></p> <p>Likely inclusion of:</p> <ul style="list-style-type: none"> <li>● Compliance covenants with statutory regime</li> <li>● Mandatory notification of: <ul style="list-style-type: none"> <li>○ Breaches</li> <li>○ Improvement notices</li> <li>○ Enforcement action</li> </ul> </li> <li>● Annual compliance certifications</li> <li>● Increased: <ul style="list-style-type: none"> <li>○ Debt service reserves</li> <li>○ Capex reserves (for upgrades)</li> </ul> </li> <li>● New events of default, e.g.: <ul style="list-style-type: none"> <li>○ Failure to register (PRS Database/Ombudsman)</li> <li>○ Failure to remedy hazards in time</li> <li>○ Breach of improvement notices</li> </ul> </li> </ul>



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