

Legal Mortgage Monthly Update

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Case name Neutral citation	Fairmont Property Developers UK Ltd v Venus Bridging Ltd [2025] EWCA Civ 1513
Legal points	Mortgage enforcement – whether sale by receivers restrainable by application for order for sale under s 91 Law of Property Act 1925
Facts	<p>F defaulted on a mortgage loan from V, secured on an industrial/warehouse building which was let to tenants. V appointed LPA Receivers who marketed the property for sale at offers in excess of £4.75M. F disputed the price and brought an application for an order for sale under s 91 Law of Property Act 1925 and that it be given conduct of the sale for a period.</p> <p>A Deputy High Court Judge dismissed an application by F to adduce expert evidence and went on to dismiss the substantive application, holding that the order should only be made in exceptional circumstances, which did not exist here, that there was no unfairness and no undervalue. F appealed on three grounds:</p> <p>(1) The judge was wrong to conclude that while the mortgagee is actively exercising its power of sale, the court would only exceptionally exercise its discretion under s 91;</p>

	<p>(2) The judge was wrong to hold that F had failed to demonstrate it would suffer unfairness and erred in requiring it to prove on a balance of probabilities that the price at which the Receivers proposed to sell would be an undervalue;</p> <p>(3) The judge was wrong to hold that restraining an imminent sale would cause V prejudice.</p>
Held	<p>(Nugee LJ, with whom Lewis and Asplin LJ agreed): The court reviewed the court's power to order sale under s 91 LPA 1925, referring to the run of cases on it - <i>Palk v Mortgage Services Funding Plc</i> [1993] Ch 330, <i>Barrett v Halifax Building Society</i> (1996) 28 HLR 634; <i>Cheltenham & Gloucester Plc v Krausz</i> [1997] 1 WLR 1558 and <i>GMAC-RFC Ltd v Pearson</i> [2005] EWCA Civ 330 noting that the court had not been shown any decision in which a mortgagor has been given conduct of the sale where the mortgagee wishes to realise its security and is taking active steps to do so.</p> <p>The appeal court would not interfere with the judge's decision to refuse F's application to adduce expert valuation evidence.</p> <p>(1) The authorities do justify the conclusion that there needs to be something out of the ordinary before the court will exercise its discretion under s 91. This justified the judge's conclusion that there must be 'exceptional circumstances'. The judge was right to be cautious about permitting s 91 to be invoked by any mortgagor who asserted that a sale by a mortgagee would be at an undervalue "<i>as I suspect that it is far from uncommon for mortgagors (residential as well as commercial) to believe that a proposed sale by their mortgagee (or receivers) would fail to realise the true value of their properties</i>".</p> <p>(2) The judge was not wrong to say that there must be some identifiable and more than trivial unfairness for the test in <i>Palk</i> to be met, and that was entitled to conclude that F had not established that the proposed sale was likely to be at an undervalue.</p> <p>(3) In the absence of sufficiently manifest unfairness to displace V's rights under the mortgage, the question of prejudice does not in fact arise, but in any event, the judge was not wrong. The receivers had a buyer who was ready to proceed. If the order was made and F was given an opportunity to find a buyer at a higher price, there would be no guarantee the buyer would remain available and there was a real risk the receivers would have to start again.</p> <p>Appeal dismissed.</p>
Comment	<p>Section 91(2) LPA 1925 enables the court, during normal enforcement proceedings, to direct, instead, a sale of the mortgaged property on such terms as it thinks fit – it might for example give conduct to the mortgagor, even if there is likely to be negative equity, but as this case demonstrates, the jurisdiction is an exceptional one and will be sparingly used, especially when the mortgagee is proceeding with normal enforcement action.</p>

Case name Neutral citation	Drewe v Drewe [2025] UKFT 01080 (PC) Esmaili v Zubairi [2025] UKFT 01300 (PC) Edmunds v Unicam Holdings LLC [2025] UKFT 01301 (PC)
Legal points	First-tier Tribunal (Land Registration) – applications - jurisdiction
Facts and Decision	<p>Drewe (not a mortgage case) concerned a family property dispute in which a grandmother transferred a property to her grandson B, bypassing B's mother, S who applied to HMLR to enter a Restriction on the title on the basis that B had signed a Deed of Trust, which B disputed. That application was referred to the First-tier Tribunal, with directions for expert handwriting evidence. B also claimed in the alternative that the Deed of Trust should be set aside for undue influence.</p> <p>The Tribunal heard lay witness evidence, some related Court of Protection evidence, and considered the expert handwriting evidence and concluded that B did sign the Deed of Trust. The Tribunal then went on to consider the substantive law of undue influence and concluded (a) there was a relationship giving rise to a presumption of undue influence; the execution of the Deed of Trust called for an explanation; but on the facts, the presumption was not rebutted – S failed to show that the Deed was the result of B's full, free and informed thought. The Tribunal accordingly concluded that the Deed of Trust should be set aside on the ground of undue influence, and S's application for a restriction was refused (with no order as to costs).</p> <p>In Esmaili (a mortgage case), the respondent Z, and her husband, were formerly the joint registered proprietors of a property. The applicant E claimed to have lent them sums of money secured by two registered charges in Form CH1 - one entered into while they were the joint registered proprietors and one after, following a purported transfer in Form TR1 from Z's husband to her (for nil consideration) which led to the registration in Z's sole name. Z's case was that she knew nothing about the charges and did not sign them. She applied to HMLR to have them removed. No objection was received from E at the time, so the charges were removed. E subsequently applied for a Unilateral Notice and for alteration of the register to reinstate the charges.</p> <p>The Tribunal reviewed the procedural requirements and the substantive law of mortgages both as to sham and forgery, and also as to the scope for alteration of the register under Sched 4 LRA 2002. It then considered the witness evidence (described as a full-frontal attack on E's credibility) and expert handwriting evidence, and concluded that Z did not sign either of the charges but that the first charge was validly entered into by Z's husband at a time when they were joint owners, so that it charged his interest. Since Z took the transfer for nil consideration, and did not have the protection of s 29(1) LRA 2002 she took subject to that charge so that there would be alteration of the register to reinstate the charge.</p>

	<p>In Edmunds (also a mortgage case), E's husband obtained a loan from U secured by a registered charge over property of which he was, at the time, the sole registered proprietor. In subsequent proceedings, the court declared that the husband held the property on trust for himself and E in equal shares and that E's interest was an overriding interest. Husband was subsequently declared bankrupt and his trustee accepted a payment from E in settlement of his interest in the property. He then entered a series of transactions (i) he applied for alteration of the register to remove the charge (and without objection HMLR removed it), (ii) he then entered into a TR1 to transfer his interest in the property to E, and she was registered as the proprietor, and (iii) U applied for a Unilateral Notice to protect its charge which E disputed and the application was referred to the First-tier Tribunal.</p> <p>Having considered the rules on priority and reviewing the evidence, the Tribunal concluded that there was nothing untoward in the removal of U's charge; E took a registrable disposition for valuable consideration; the effect was that, as against E, the unregistered charge has been "destroyed" (referring to <i>Ruoff & Roper: Registered Conveyancing</i>) and there was no interest to protect by notice. The application for registration of a Unilateral Notice in favour of U, the lender, would therefore be cancelled.</p>
Comment	<p>We don't often report on First-tier Tribunal decisions – there are a lot of them, and they cover a whole range of procedural and substantive issues arising (usually) out of disputed applications for registration.</p> <p>Objections to applications to HMLR are dealt with in s 73 LRA 2002 with the jurisdiction of the First-tier Tribunal (Land Registration) being set out in s 108 LRA 2002 (formerly the Adjudicator). HMLR practice and procedure on objections to registration is set out in HMLR Practice Guide 37 with guidance on costs of disputed applications in HMLR Practice Guide 38. For detailed commentary on practice and procedure on referral to the First-tier Tribunal, see <i>Ruoff & Roper: Registered Conveyancing, Vol 2, para 48.004</i> etc and for the particular jurisdiction of the Tribunal, see para 48.016.</p> <p>Note that in <i>Drewe</i>, the Tribunal acknowledged that it had the jurisdiction of the High Court to rectify or aside certain documents on an application made for that purpose under s 108(2) LRA 2002. The application to rectify or set aside documents is in Form T410.</p> <p>More generally, First Tier Tribunal Property Chamber rules, practice directions and practice statement are here. For a short guide for users, see Form T412. Other Tribunal Forms are here. A link to Land Registration decisions on Gov.uk is here. They are available on Bailii and the National Archives.</p>

Case name Neutral citation	GR Real S.R.O. v PO and Another [2025] CMLR 40
Legal points	European Court of Justice - acceleration clause – unfair contract terms – extrajudicial enforcement – third party rights acquired - whether court of Member State entitled to intervene
Facts	<p>A Slovakian bank lent money to P & R secured by a mortgage on the family home. Following a delay in payment the bank relied on an acceleration clause to call in the loan, and subsequently sought to sell the property at auction. P & R objected and sought an interim suspension measure (injunction) which was refused. The bank sold the property to G who was registered as the owner. When P & R refused to vacate, G applied for an eviction order, which was dismissed at first instance by the District Court and on appeal to the Regional Court. On a further appeal, the Supreme Court set aside the decisions and directed that the lower courts must take account of G's property rights. The District Court subsequently ordered P & R to vacate but did not order full reimbursement of G's costs. Both parties appealed to the Regional Court.</p> <p>The Regional Court considered that the central issue was whether the provisions of EU law on consumer protection apply in a situation in which the auction was held despite the fact that the consumers sought judicial protection. Although there was a principle of legal certainty and the need to protect a bidder in good faith, the circumstances surrounding the acquisition of the property were 'troubling'. The Regional Court referred the matter to the European Court of Justice.</p>
Held	<p>(1) It was solely for the national court before which the dispute had been brought to give a ruling concerning the interpretation of EU law.</p> <p>(2) The national court should assess of its own motion whether a contract term (the acceleration clause) was unfair and not binding on the consumer.</p> <p>(3) In the absence of harmonisation of enforcement proceedings, the rights granted to consumers were governed by Member States' internal legal order.</p> <p>(4) To ensure the effectiveness of protection measures, the court emphasised the need to adopt interim measures enabling suspension or prevention of unlawful enforcement proceedings, particularly so in cases of mortgage enforcement proceedings which could lead to eviction from the family home.</p> <p>(5) It was not possible to rely on EU Directive 93/13 (unfair terms in consumer contracts directive) where there was no corroborating evidence of an unfair term in a mortgage loan which had been the subject of extrajudicial enforcement.</p>

	<p>(6) The [relevant Articles and Directives] could not usefully be relied on in a dispute which did not concern mortgage enforcement but the protection of rights derived from title lawfully acquired by the seller in a sale by auction. To allow the mortgagor to set up defences founded on the loan agreement against the transferee would be liable to affect legal certainty. Further, where mortgage enforcement proceedings had ended and ownership rights in property had been transferred to a third party a court could no longer examine the unfairness of the contract terms in order to annul the transfer. However, where the dispute also concerned the conditions under which the enforcement proceedings had led to the transfer and thus the lawfulness of the transfer, the position could be distinguished.</p> <p>(7) The question of costs was a matter for the court of the Member State.</p>
Comment	<p>This is a decision of the European Court of Justice (Grand Chamber) concerning the scope for Member States to unravel extra judicial mortgage enforcement (sale by auction) once title had been acquired by a [bona fide] third party purchaser.</p> <p>The case report is fairly lengthy, and invariably loses something in translation, but it essentially concludes that it is for the courts of each Member State to consider whether there is scope to intervene in transactions such as this. It emphasises the particular need for protection in cases involving mortgage enforcement of the family home, and consequently the need for effective interim measures.</p> <p>Coincidentally, this decision was followed by another, similar decision, this time of the European Court of Justice (Fourth Chamber) concerning mortgages and unfair contract terms: <i>RS (G SA and other parties)</i> [2025] 3 CMLR 47 (whether a bankruptcy court responsible for establishing a repayment plan was entitled to determine whether a mortgage contained unfair contract terms). It makes the point that EU Directive 93/13 (unfair terms in consumer contracts directive) is a mandatory provision of equal standing to that of national rules having the character of rules of public policy, but that since EU Law does not harmonise the procedures for examining the unfairness of a contract term, they fall within the Member States domestic legal systems</p>
Publication	<p>Following a curriculum review, the Government plans to introduce mortgages in the national curriculum with effect from September 2028. The aim is to provide students with a practical understanding of financial concepts, including how mortgages work, budgeting and personal finance to ensure that students leave school with a strong foundation in core subjects while also learning about financial literacy.</p> <p>The news hit the headlines on BBC Breakfast on 5th November and has already prompted strong support in media outlets.</p>
Comment	<p>What a brilliant idea! Aspects of financial responsibility, including mortgages, impact large parts of everyday life, and the sooner young people learn about it the better.</p>