

Legal Mortgage Monthly Update October 2026

Contents	**Bank of Scotland plc v Waugh & Others [2014] EWHC 2117 (Ch)** An old case providing a useful reminder as to what the status of a lender is when a mortgage deed is not executed or a mortgage offer is not signed.

Case Name **Neutral Citation**	Bank of Scotland plc v Waugh & Others [2014] EWHC 2117 (Ch)
Summary	The High Court was asked to consider the consequences of a number of defects in the creation of a mortgage, including an incorrectly identified borrower, an offer letter signed only by the borrower and a mortgage deed which had not been properly witnessed or attested. The case provides a useful reminder of the distinction between the formalities required to create a contract, those required to create a legal mortgage and the separate significance of registration at HM Land Registry.
Facts	The borrower was a trust which had not been incorporated. Its trustees were individuals, one of whom, Mr Waugh, dealt with the matter on behalf of the trust and subsequently challenged the validity of the mortgage. The bank sought to enforce lending made to the trust. Mr Waugh argued that there was no binding contract arising from the relevant facility letter and that an earlier deed, which purported to create an all monies charge over the property, was ineffective. There were a number of defects. The facility letter had been addressed to and signed by the individual trustees but had not been signed by the bank.

	The earlier mortgage deed, which had been entered into in connection with previous lending, identified the borrower as a trust company which did not exist. Although the deed had been signed by the bank and the individual trustees, none of the signatures had been witnessed or attested as required by section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989. Despite these defects, the deed had been registered as a charge against the trust's interest in the property. Mr Waugh therefore sought rectification of the register to remove the charge. The bank applied for summary judgment.
Legal Framework	The court considered the different statutory requirements governing transactions involving land. Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 deals with the formalities required for contracts disposing of an interest in land. Different requirements apply to the actual disposition of a legal or equitable interest in land under the Law of Property Act 1925 and the 1989 Act. The Land Registration Act 2002 also has an important role to play. In particular, Section 51 provides that registration of a charge against a registered title can give it the status of a binding legal charge notwithstanding defects which might otherwise prevent it taking effect as a legal charge. The distinction is important. A defect in the document creating a mortgage does not necessarily mean that the lender has no enforceable loan agreement or that registration of the charge can simply be ignored.
Decision	The court rejected the argument that the bank's money claim was defeated by the defects in the facility letter. Although the facility letter had not been signed by the bank, the bank's claim was a claim for repayment of money advanced under the loan agreement. It was not a claim seeking to enforce a contract disposing of an interest in land. Consequently, the formalities imposed by Section 2 of the 1989 Act did not apply to that money claim. The position regarding the mortgage deed was more complicated. The court accepted that the deed had not been validly executed and therefore did not, of itself, create a legal mortgage. However, Section 51 of the Land Registration Act 2002 meant that, whilst the charge remained

	registered, the trust's interest in the property was subject to a binding registered legal charge. The court recognised that rectification of the register would alter the position going forward. However, until rectification had actually taken place, both parties were entitled to rely upon the register as it stood. The bank also argued that the trustees were estopped from relying upon the defective execution of the deed because all parties had proceeded on the basis that it was valid. In considering this argument, the court examined the decisions in Shah v Shah [2001] EWCA Civ 527 and Briggs v Gleeds [2014] EWHC 1178 (Ch). The court endorsed the distinction drawn in Briggs v Gleeds between defects which are not apparent on the face of a document and defects which are obvious from the document itself. In this case, the absence of witnessing and attestation was apparent on the face of the mortgage deed. The trustees were therefore not estopped from relying upon the defective execution.
Outcome	The court reached three important conclusions: • The bank had no difficulty pursuing its money claim. The defects in the mortgage documentation did not provide a defence to the claim for repayment of the loan. • The mortgage deed had not been validly executed and did not itself create a legal charge, although it did give rise to an equitable charge. • Pending determination of the application to rectify the register, the property remained subject to a registered legal charge.
The Practical Lesson	The case is a useful reminder that the validity of a loan agreement, the effectiveness of a mortgage deed and the status of a registered charge are three separate questions. A lender may still have an enforceable personal claim against a borrower even where the security documentation is defective. Equally, a defect in the execution of a mortgage deed does not necessarily mean that a registered charge can be disregarded.

	For conveyancers, the message is straightforward: the execution formalities matter. Identifying the correct borrower, ensuring that the deed is properly executed and witnessed, and checking that the registration accurately reflects the transaction are not administrative formalities which can safely be overlooked. The fact that a defective mortgage deed has been registered may have significant consequences. As this case demonstrates, registration can provide a lender with protection which the underlying document, considered in isolation, would not have provided. A defective mortgage deed may not be a valid legal charge, but that does not necessarily mean the lender is left without security.



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