



Legal Mortgage Monthly Update

September 2026

Contents	Estate of Lindsay (deceased) v Outlook Finance Ltd Court of Appeal (Civil Division) [2026] EWCA Civ 1005 The Court of Appeal considers when a judgement obtained by fraud can be set aside against a party who was not themselves involved in the fraud, providing useful guidance on fraudulent evidence, innocent parties and the circumstances in which previous judgements may be reopened. Nuray Houssein v London Credit Limited [2026] EWCA Civ 830 The Court of Appeal considers what is required to stop interest running on a secured loan without actual repayment, providing useful guidance on the defence of tender and the distinction between an offer to refinance and an offer to repay. Together Commercial Finance Limited and ors v Slack and anor [2026] EWHC 732 (Comm). This case considers the interaction between LPA receivership and a mental health crisis moratorium, examining whether the protections provided by the Debt Respite Scheme can prevent receivers from selling a secured property to recover a company's outstanding debt.
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Case name Neutral citation	Estate of Lindsay (deceased) v Outlook Finance Ltd Court of Appeal (Civil Division) [2026] EWCA Civ 1005
Summary	A case which examines the availability of fraud to set aside a judgement procured by fraudulent means. The respondents were dairy farmers with farms in Scotland and Cumbria. Financial difficulties led them to obtain loans from the first defendant

	secured by a charge on the farms and certain livestock. The first defendant alleged defaults on the loan and appointed the second defendant (the appellant) as LPA receiver in relation to the farm in Cumbria and as agent to take possession of the livestock. The appellant took possession of the farm in Cumbria and certain livestock, plant and machinery. The farm was sold on. The respondents challenged the appellant's appointment, contending that a sale and leaseback agreement had been entered into with the wrong entity; and that the first defendant's director and controlling mind had breached an oral agreement and other assurances said to create a waiver, estoppel or collateral contract.
First instance decision	The judge gave judgment for the first defendant and decided that it was not necessary to determine the claim against the appellant. All the claims were dismissed. The respondents applied to have the judgment and consequential orders set aside, arguing it had been obtained by fraud on the part of the director. They relied on evidence not available to them at the original trial which showed the documents at the original trial were tainted with fraud. They sought a retrial. The judge found in favour of the respondents: [2025] EWHC 3100 (KB); [2025] EGCS 195. The appellant appealed.
On Appeal	Held: The appeal was dismissed. (1) The issue on appeal was whether the judge was wrong to hold that the equitable jurisdiction to set aside a judgment procured by fraud of one person extended to setting aside the judgment as against a non-fraudulent party to the original proceedings. The court rejected the appellant's contention that it was impermissible to set aside the judgment against him where fraud was not alleged against him, irrespective of what might have been proved against the first defendant. First, in order to set aside a judgment on the grounds it had been procured by fraud, it was necessary to show the fraudulent evidence was that of the party against whom the judgment was to be set aside. Second, fraudulent evidence given by a witness for a party was not enough, unless the witness's evidence was vital to the party's case and the witness was an integral part of the litigation team.

Third, in some circumstances, it was appropriate to treat the fraud of party A as that of party B, for example because the two parties adopted a common cause in the proceedings and party B adopted the fraudulent evidence of party A for his own benefit (albeit without knowing it was fraudulent), in which case the judgment might also be set aside against party B.

This third proposition applied to the facts of the present case. The claim against the appellant depended on the proposition that the first defendant was not entitled to enforce the charge. That was an issue that arose between the respondents and the first defendant, on which the appellant had no separate position of his own. His case was parasitic in that respect on that of the first defendant. The fraud of the first defendant's director caused the court to be misled into dismissing the claim against the first defendant, and for that reason alone the court also dismissed the claim against the appellant. The respondents and the appellant were both innocent of the director's fraud, but the appellant had in fact, albeit unknowingly, reaped the benefit of it. Those circumstances made it appropriate to regard the director's fraudulent evidence as that of the appellant, notwithstanding that he was ignorant of its fraudulent nature.

As a result, the judge was correct to set aside the judgment against the appellant.

A claim to set aside a judgment on the grounds it was obtained by fraud was a substantive cause of action. In that respect, it differed from the principle that a party was precluded from raising in subsequent proceedings matters which were not, but could and should have been, raised in the earlier proceedings: see *Henderson v Henderson* (1843) 3 Hare 100.

The action to set aside a judgment for fraud and the Henderson principle had the same policy objective and the same preclusive effect, but the former was a substantive cause of action, while the latter was better analysed as part of the juridically distinct but overlapping principle which empowered the court to restrain abuses of its process, a concept which informed the exercise of the court's procedural powers: *Takhar v Gracefield Developments Ltd* [2019] EGLR 19 considered.

These two principles required proof of different things: one required proof of fraud and materiality see *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] EWCA 328; [2013] CLC 596); the other would require an investigation of the extent to which the new claim could and should have been brought in the earlier proceedings. Abuse of process nevertheless remained relevant in the context of actions to set aside a judgment for fraud.

Unless the evidence on the claim of fraud was new (obtained since the

	judgment), the claim was likely to be regarded as abusive unless the claimant was able to show a good reason which had prevented or significantly impeded the use of the evidence in the original action. In the current case, the respondents had framed their claim solely by way of an action to set aside the earlier judgment. The possibility that there might be other routes open to a party seeking to re-open issues determined in previous litigation, which did not involve a new substantive cause of action to set aside the earlier judgment, pointed against applying an overly expansive interpretation of the principles which applied to setting aside a judgment on the grounds of fraud.
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Case name Neutral citation	Nuray Houssein v London Credit Limited [2026] EWCA Civ 830
Summary	The recent case explores Court of Appeal considerations in determining what is necessary to stop interest running on a secured loan short of actual repayment.
Facts	The appellants had obtained finance from the respondent lender, on the basis that they would not occupy the property in question. In fact, they did occupy it, and the lender was fixed with that knowledge by reason of a sham inspection carried out on its behalf. The result of this was that the breach relied upon for enforcement action had been waived. In the course of the dispute leading up to the determination of that state of affairs (which had been the subject of a previous trial), various offers were made by the borrowers to discharge their liabilities by way of alternative finance. At the hearing from which this appeal arose, the court considered

	whether any of those offers were sufficient to stop interest running on the loan by reason of the defence of tender.
Decision on appeal	In dismissing the appeal, the Court determined that none of the offers were sufficient. Lewison LJ, giving the leading judgment, gave a useful analysis of the basis of the defence of tender. On the basis that having finance available from another lender was not the same as having 'cash on the table' which the lender could accept, he explained that offers of refinance are materially different to an offer simply to repay. Additionally, an offer to refinance which the lender 'should' have accepted was not the same as an offer to repay. Newey LJ agreed with Lewison LJ, but queried the position where an offer to refinance is received at a lower interest rate, and that offer is rejected by the existing lender. The case will be of interest to practitioners dealing with refinancing, particularly in high-interest scenarios.

Case name Neutral citation	Together Commercial Finance Limited and ors v Slack and anor [2026] EWHC 732 (Comm).
Summary	Together Commercial Finance Limited lent £2.4m to a company under a commercial loan agreement. The security taken for the loan included a debenture over the company's assets, legal charges over company property and a property at Farley Meadow View, Matlock, owned by the first defendant, as well as personal guarantees. The company defaulted on its obligations, entitling Together to demand immediate repayment of the loan, unpaid interest and costs. In June 2024, the second and third claimants were appointed Law of Property Act receivers of the Matlock property and, as receivers, were entitled to sell the property to reduce company debt. In July 2024, the company went into compulsory liquidation without paying the balance due. Together would likely suffer a substantial loss on its loan. The receivers were in possession of the Matlock property and wished to sell it, marketing it for offers over £450,000.

	In April 2026, the first defendant entered a mental health crisis moratorium under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. Under the regulations, a moratorium prevents a creditor from taking enforcement action, including enforcing a security over a debtor's property, but it only operates in relation to a moratorium debt. The notification to Together of the moratorium asserted that while Matthew Slack was in breathing space, it could not take any action against him for debts due. The receivers sought a declaration that they were entitled to sell the property. By executing the legal charge over the property, Slack covenanted to pay or discharge the company's liabilities under the loan agreement and a debtor-creditor relationship arose between him and Together. The charge was security for payment of the company's liabilities under the loan agreement only – not the first defendant's own indebtedness – and the proceeds of a sale of the property were to be applied to discharge those liabilities. The court was satisfied that the first defendant's indebtedness was a moratorium debt, but the company's indebtedness to Together was not, because it was not incurred by the debtor in relation to whom a moratorium was in place – Slack. As a result, the court made a declaration that a sale of the property by the receivers was not prevented by the regulations and such a sale would not be null and void because of the moratorium and granted summary judgment on the issue.
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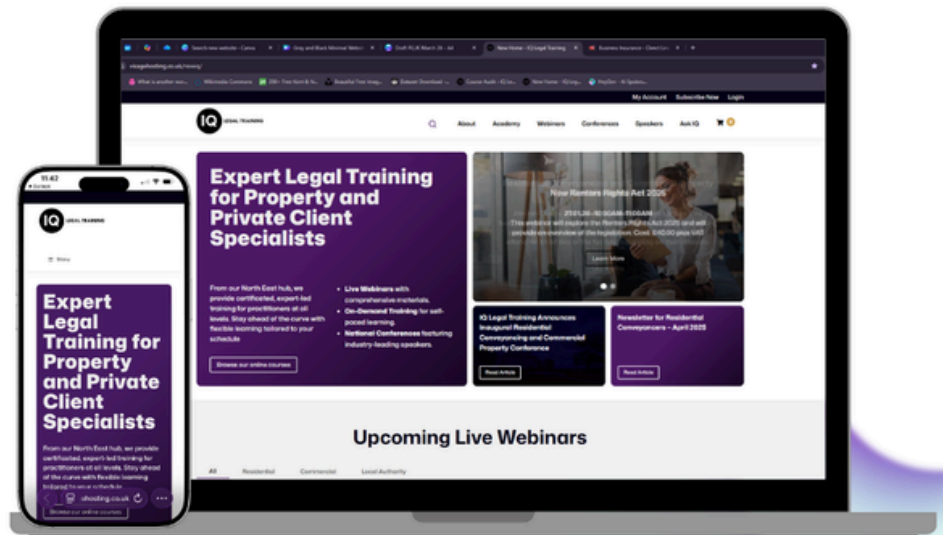
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