

**In the High Court of Justice, Queen's Bench Division, Nottingham District Registry**

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Name of man, CLAIMANT (C)

Vs

Name of conveyancing solicitor, DEFENDANT (D1)

Name of second defendant, Name of third defendant, Name of fourth defendant, CO-DEFENDANTS  
(CD)

CLAIM NO. **A01NG541**

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## **STATEMENT OF CASE**

**In support of an application for dismissal of the Defendants' application of 28 November 2014  
have the above referenced negligence claim struck out.**

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Thursday, 19 February 2015

## SKELETON ARGUMENT

### SUMMARY OF THE FACTS

1. The Defendant (D1), Name of conveyancing solicitor, is a solicitor who, in 1994, was employed by the Claimant to provide legal advice in relation to an agreement he was to enter into for a valid future mortgage with the B&B.
2. It transpired that under D's advice and instruction, that mortgage agreement C entered into with the B&B was a *nudum pactum*<sup>1</sup>. Furthermore, it later transpired that the Defendant had materially altered the deed of mortgage after it was executed by C, in accordance with D1's legal advice.<sup>2</sup>
3. When C began to contest the validity of that agreement in 2009, the B&B and its various agents made a series of misrepresentations to Nottingham County Court to cover up the invalidity of the mortgage.
4. This led the Claimant into a long and protracted legal battle which was characterised by a succession of miscarriages of justice.
5. C was unlawfully evicted on 04 November 2010 and had his home of 16 years violently stolen, to be left without legal recourse.
6. Between **03 October 2009 and present**, C has made a series of five applications to the Land Registry for the removal of the charge and/or indemnification pursuant to the losses he has experienced as a direct consequence of entering into the void mortgage under D1's advice. Each was unlawfully rejected, and following the most recent of 06 March, 2013, C decided to seek assistance from D1.
7. On **27 March, 2013**, C wrote to D1 asking him to assist him in making an application for correction of the register and indemnification on C's behalf to the Land Registry. (see paras 97-100, Affidavit of C)

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<sup>1</sup> *Nudum pactum est ubi nulla subest causa praeter conventionem; sed ubi subest causa, fit obligatio, et parit actionem.* A naked contract is where there is no consideration for the agreement;

<sup>2</sup> Land Registration Act 2002 124: Improper alteration of the registers (1) A person commits an offence if he dishonestly induces another—(a) to change the register of title or cautions register, or (b) to authorise the making of such a change. (2) A person commits an offence if he intentionally or recklessly makes an unauthorised change in the register of title or cautions register. (3) A person guilty of an offence under this section is liable—(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine; (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both. (4) **In this section, references to changing the register of title include changing a document referred to in it.**

8. **02 April 2013.** D1 had now twice declined to make the application to make good the losses that C has experienced as a consequence of him entering a void mortgage agreement whilst under D's trusted legal advice.
9. **7 April 2013.** In the light of R's refusal to assist, C reluctantly requested that D provide him with his professional indemnity insurance details.
10. On **11 September 2013**, D1 and Name of second defendant (CD1) were served with a Letter of Claim, accompanying Chronology, Exhibits and Binding Legal Authorities.
11. **17 October 2013**, D1 and Name of second defendant were served "**NOTICE OF NON-RESPONSE and APPOINTMENT OF EXPERT WITNESS**". [The forensic analyst Timothy Madden of Vancouver, B.C.].
12. As demonstrated by the Claimant's own first-hand knowledge of the facts, as contained in his Affidavit, between that time and 08 January 2014, D1 and CD1 engaged in behaviours that led to the reasonable conclusion that the negligence claim was being held back from D's insurers.
13. This resulted in a complaint and formal request for D's PII details being made to the Solicitors' Regulation Authority on **08 November 2013**.
14. Said details had still not been provided by 23 December 2013.
15. On **08 January 2014**, a Letter of Response was finally received but it was not from D. The contents of the Letter were rebutted by C on the basis that its author, a third party intervener, Name of third party interloper, had no first hand knowledge of the facts and, in any event, had made a series of fallacious assertions.
16. On **11 February 2014**, some 5 months after the original Letter of Claim was served on D, Name of fourth defendant (CD3), acting as Claims Handler at RCP solicitors, for & on behalf of Axis Equity Insurance, made contact with C to state that the insurers did not intend to step in and settle the claim, in spite of the proven negligence contained in the Letter of Claim which demonstrated there were no grounds for refusing to compensate C for R's professional negligence and resultant losses.
17. From that time to the present, all defendants have continually acted with wilful negligence by attempting to evade the civil settlement of what is a valid claim.
18. On **16 May 2014**, pursuant to his failure to progress the valid claim, a *Writ of Mandamus* was served on CD3 which he unlawfully ignored.

## **Cause of Action**

19. Contrary to the fallacious application of the D's counsel to have the claim dismissed as being without merit and an extended civil restraining order issued, one that, it is noted, represents nothing less than an attempt to obfuscate the facts of the matter, this is an entirely meritorious claim which rises under the tort of negligence for damages resulting from financial and real property losses experienced by C as a consequence of:
- (i) C entering into a void agreement for a mortgage with the Bradford & Bingley PLC, whilst under the Defendant's professional advice, and,
  - (ii) D1's and the co-defendants' wilful negligence as manifest in their joint and several avoidance of settlement, most possibly in order to keep their insurance premium from rising to a higher rate
20. In other words, there being no justification for non-settlement, it is averred that the named parties have acted with wilful negligence<sup>3</sup>.
21. It is to be noted that, under the "Continuing violations doctrine"<sup>4</sup> there is no applicable time limit in regard to this matter and neither is there any limitation on an act of negligence which resulted in a fraud being committed. In short, C's injury continues as a consequence of the D1's original negligence and the joint and several negligence of the co-defendants.

## **THE ELEMENTS OF THE PROFESSIONAL NEGLIGENCE**

### **22. Did the defendant give the correct legal advice?**

Given that the mortgage palpably falls short of the requirements of the Law of Mortgages, then the answer is self-evidently in the negative.

### **23. Was there a duty of care?**

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<sup>3</sup> [The Crown Prosecution Service states that "*the wilful neglect or misconduct can be the result of a positive act or failure to act.*" [http://www.cps.gov.uk/legal/l\\_to\\_o/misconduct\\_in\\_public\\_office/](http://www.cps.gov.uk/legal/l_to_o/misconduct_in_public_office/)]

<sup>4</sup> "In tort law, if a defendant commits a series of illegal acts against another person, or, in criminal law, if someone commits a continuing crime [...] over a long period of time, which can be charged as a single offense, the period of limitation may begin to run from the last act in the series." [https://en.wikipedia.org/wiki/Statute\\_of\\_limitations](https://en.wikipedia.org/wiki/Statute_of_limitations)

The facts of the Witness Statement and the Exhibits demonstrate that Name of conveyancing solicitor was employed to provide C with the correct legal advice, from which it naturally follows that there was a duty of care.

**24. Was there a breach?**

The facts of the forensic analysis of the documentation demonstrate that the mortgage agreement was void at law and , therefore, there was a breach of his duty in so far as D1 failed to reasonably advice C of those void elements and the other devices being deceptively employed at the time of the alleged mortgage creation, as identified and explained in the witness testimony of Timothy Madden (See Exhibit S) .

**25. Were losses incurred as a consequence of the advice D1 gave and would the Claimant have suffered these losses if he had not signed the deed?**

Had those elements and devices been explained by D1 to C, it is averred he would not have entered into an agreement that was demonstrably criminal. The negligent omission of those elements and devices led to the payments being made to the Bradford and Bingley over the years of the alleged mortgage. Had it been a valid mortgage, there would have been no basis for C to challenge it, which would not have given rise to what transpired after the issuance of the void order of 26/08/09 and the ensuing losses would not have risen. D1's advice was that the mortgage was lawful when the facts show the opposite to be the case and, unfortunately, this directly resulted in the losses experienced by C, *ab initio*.

**26. Was there any gain by D1 because of the breach?**

As he himself admitted by email on 07 April 2013, D1 was simultaneously being paid by the B&B, a fact which also demonstrates a clear conflict of interest.

**27. As to proximate cause - was there any action by C which resulted in the losses?**

None other than him taking the advice of D1 to be good counsel. From the outset, C acted entirely under the legal instruction of his friend and solicitor, Name of conveyancing solicitor. After all, C implicitly entrusted him to make sure the law was applied.

**28. Should the Claimant have continued to pay the B&B?**

It is plain to state there would have been nothing to pay had the law been applied.

## **THE CENTRAL ISSUES BEFORE THE HIGH COURT**

The central issues for the court to decide in this case are:

- (i) Whether D gave the correct legal advice in advising the Claimant to enter an on-its-face criminal legal mortgage.
- (ii) Whether the Defendant gave the correct legal advice in advising C to sign documents that stated a fictitious and plainly illegal consideration from the other party, contrary to the most basic laws of accounting.
- (iii) Whether D solicited, or even allowed, C to sign a document claiming to be a security, when he did not have the necessary proprietary interest to do so and which is on its face and by express terms a wager – racketeering by definition.
- (iv) Whether the nature of D's failure to point out the blatant legal and equitable discrepancies in the mortgage agreement was fraud<sup>5</sup> or mistake.
- (v) Whether the Defendants' joint and several negligence was wilful.
- (vi) Whether Name of conveyancing solicitor, Name of second defendant and Name of third defendant of Name of defendant's firm, Nottingham are attempting to avoid having to pay an excess on their insurance policy which may well be in excess of what the claimant is claiming in this case.
- (vii) Whether or not D and/or his insurers are jointly liable or just one of them.

## **THE DEFENDANTS' POSITION**

- 31. None of the Defendants has provided a witness statement in defence of the Particulars of Claim as served on each on 03 November 2015. Neither have they offered any substantive defence to the allegations of negligence as established by the private record of the parties.
- 32. Contrary to the fact that no hearsay evidence is admissible in this matter, the defendants are acting in bad faith by seeking to mislead the court by falsely attempting to rely upon third party 'testimony' and an incurably void order.

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<sup>5</sup> **Fraud Act 2006 S.4:** "Fraud by abuse of position" is defined as a case where a person occupies a position where they are expected to safeguard the financial interests of another person, and abuses that position; this includes cases where the abuse consisted of an omission rather than an overt act."

33. As demonstrated by the Letter of Reply dated 08 January 2014 from the third party intervener, Name of third party interloper, it appears the Ds are basically taking the immoral and fallacious stance that the Claimant was the '*architect of his own misfortune*' because the miscarriage of justice he received and the resultant losses were a consequence of him challenging the bank to prove the agreement was valid and that it had loaned him the funds rather than the factual source of the issue: namely D1's negligence. Such obfuscation of the issues is akin to stating, '*never mind the fact that it was the negligent advice of the defendant that led him into entering an on-its-face void mortgage agreement, he got the railroading he deserved for having the temerity to challenge the purported mortgagee to prove its losses and provide a lawful agreement.*'
34. It is also indicative of the levels of the Ds' desperation to cover up the facts. As manifest in their actions, the defendants are falsely seeking to rely upon the void court order of HHJ Richard Inglis [see AFFIDAVIT, 26 August, 2009].
35. By refusing to admit the proven facts of the matter, as revealed by the *prima facie* evidence of the referenced exhibits, the defendants have shown themselves to be in deep denial of the truth, even when those facts are so forcefully established by the forensic analysis of the expert witness, Timothy Madden and the claimant himself. [Exhibit S].
36. Consequently, they have offered no defence to the fact that the purported mortgage was a legal nullity, that it failed to comply with sections 1(3) and 2 of the 1989 Act; and none of the terms contained in any of the documents concerned were enforceable under the provisions of section 5(1) of the Unfair Terms in Consumer Contracts 1999, since they were all imposed upon the claimant by the Bank without fair, open and reasonable discussion and negotiation, to the obvious detriment of the Claimant and to the unfair advantage of the Bank.
37. Neither is there is any defence to the material defects of the mortgage agreement, the various aspects of the swindle, the illusory consideration, the real accounting behind the matter, the hidden loan fees, insurance anomalies, the negligent instruction of D1 that C enter into a wager [racketeering, by definition], the material alteration of an incomplete mortgage deed, the hidden fees, the criminal interest rates at work, the nature of credit extension as opposed to actual loans, the Orwellian doublespeak of the Consumer Credit Act and the refusal of defendant Name of fourth defendant, claims handler, to obey the *Writ of Mandamus*.
38. On 25 November 2014, in complete denial of the facts and just before the deadline for the defendants to submit their defences, the second third party intervener by the name of Name of 2nd third party interloper, filed an application to have the claim struck out as being without merit. When the Claimant informed them by notice [EXHIBIT Q] that he would immediately withdraw the claim in the event that they were able to prove there was ever a valid mortgage

and that no losses had been resultant from the Claimant entering the void agreement under the advice of D1, Name of conveyancing solicitor, they fell silent.

39. Accordingly, on 22 December 2014, the defendants were served a NOTICE TO ADMIT FACTS under CPR 32.18 [EXHIBIT R]. Not one of those facts has been rebutted. The silence of the respondents to the notice was lawfully taken as acquiescence to the facts as expressed there and herein.

### **THE APPLICABLE LAW**

#### **Incurably Void Mortgage over Address of stolen home**

40. Firstly, the court is reminded that the claimant has twice served Notice of the Void Order of Judge Richard Inglis (26/08/09) on HHJ Nigel Godsmark, the senior judge at Nottingham County Court, and is seeking for that order to be set aside on the basis that the purported charge over Address of stolen home [Exhibit C] was illegal and void *ab initio*, along with the Power of Attorney which allegedly arose out of it, for the following reasons:

41. Upon inspection of Exhibit C, it becomes immediately clear that the purported disposition was a legal nullity and void *ab initio*, on the grounds that:

(a) It is self-evident that C did not have the necessary proprietary interest in the house at the time he executed the deed; and,

(b) it was incomplete at the moment of execution (it did not include all the terms and conditions, agreed and signed by both parties) by C and therefore not properly delivered as a deed, rendering it void at law under section 52(1) of the **Law of Property Act 1925**. None of which was brought to C's attention by D1.

42. In support of these points, the claimant relies upon:

(a) the reasoning given in **Scott v Southern Pacific Mortgages & Others [2014] UKSC 52**, which confirmed in the Supreme Court that a mortgagor does not have the right to grant an interest over a property before it has actually been acquired by him; and,

(b) That of Underhill J in **Mercury Tax Group v HMRC [2008]**, and the decision of the Land Registry Adjudicator in the Garguilo case, which affirmed the learned judge's decision [see Binding Legal Precedents].



43. Furthermore, as stated by expert witness, Tim Madden on page 2 of his forensic analysis of the void mortgage and agreement, Exhibit S, *“the approach taken (by the Defendants) in fact is materially illogical and contrary to the obviously material principle of law and logic, emphasised by the English Courts in Armstrong v. Armstrong and Warner, for example, that if it is alleged that a given nominal contract is unlawful or illegal, then neither the Courts nor the parties may place material reliance on any actual or constructive disclaimer to the contrary in the nominal documentation prepared by or on behalf of the parties themselves.”* In support of which, the Claimant will be relying upon **Armstrong v. Armstrong and Warner** ([1834] 3 Milne & K. 64)

### **The Section 1(3) Argument**

44. Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 provides that: “An instrument is validly executed as a deed by an individual if, and only if, (a) it is signed – (i) by him in the presence of a witness who attests his signature.”
45. It was affirmed by the Land Registry Adjudicator in **Garguilo v Jon Howard Gershinson & Anr** [2012] EWLandRA 2011\_0377 (06 January 2012), that the word *it* in this section must refer back to the deed; in other words, the entire document and not merely the execution pages or any other page, as per the rules regarding the strict formalities for the execution and delivery of deeds described by Underhill J in **R [Mercury Tax Group] v HMRC** [2008].
46. By **section 52(1) Law of Property Act 1925**, all conveyances of land are void for the purpose of creating a legal estate in land unless they are properly made by deed. In accordance with the judgment in *Mercury*, in which a purported deed was void as they were not properly made and delivered as deeds; on the basis that it does not comply with section 1(3) of the 1989 Act, the claimant submits that the purported charge over Address of stolen home is/was unquestionably illegal and void on the same ground.
47. Underhill J stated: *“I accept that the flaws on which HMRC rely are essentially formal. But I see nothing wrong in applying a strict test of formality to the validity of the agreements with which we are concerned in this case. The entire raison d’être is to create – and demonstrably to create – a series of formal legal relationships: if they do not do that, they do nothing.”*
48. The Adjudicator in *Garguilo* therefore found that section 1(3) clearly provides that the signature and attestation must form part of the physical instrument at the moment of signing. The policy argument is that the signature should reflect the proper agreement at the time of execution. It was therefore held that if the signature is obtained separately from the attestation and/or from other documents that purportedly make up the deed, the maker of a disposition cannot be sure of the terms of the deed and the risk of fraud or mistake remains. It therefore follows that, unlike

mortgage contracts, charges purporting to operate as deeds must include all their terms and conditions in a single document at the moment of signature. In any event, in this matter, the mortgage offer, the deed and any ensuing agreement were void on the basis that each component rendered the entire agreement and registration a demonstrably fraudulent event.

49. The question must always be whether a valid signature page and other relevant pages formed part of the same complete physical document at the time of execution. That will be a question of fact in each case. Estoppel was raised by the respondents in opposition to these points. However, it was held that the lack of a (valid) signature could not be cured by raising estoppel as a defence.
  
50. This point is confirmed by principles at the heart of the judgment of Lady Justice Arden in **Herbert -v- Doyle** (October 2010): “... *In my judgment, there is a common thread running through the speeches of Lord Scott and Lord Walker. Applying what Lord Walker said in relation to proprietary estoppel also to constructive trust, that common thread is that, if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property ... neither party can rely on constructive trust as a means of enforcing their original agreement. In other words, at least in those situations, if their agreement (which does not comply with section 2(1)) is incomplete, they cannot utilise the doctrine of proprietary estoppel or the doctrine of constructive trust to make their agreement binding on the other party by virtue of section 2(5) of the 1989 Act ...*” (para #57).
  
51. The claimant submits that, whilst Arden LJ is dealing with the section 2(1) point, her observation that estoppel cannot be utilised to make an incomplete agreement binding on the other party, can also be applied to an improperly delivered mortgage deed, in which case the intended mortgagor is incapable of feeding the estoppel, without which no Legal Mortgage is created.
  
52. The foregoing was affirmed by way of **Bank of Scotland Plc v Waugh and Others [2014] All ER (D) 217 (Jul)** in which the High Court declared that the mortgagor is not estopped from relying upon the defects of the deed of mortgage, a ruling by which the Court is bound.
  
53. Significantly too, in **Scott v Southern Pacific Mortgages & Others [2014] UKSC 52**. It was confirmed in the Supreme Court that, contrary to the advice D gave him, a mortgagor does not have the right to grant an interest over a property before it has actually been acquired by him. Thus, D1’s advice was illegal.

### **The Section 2 Argument & Binding authorities.**

Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and its “merciless” effects have been discussed at length in the following cases, upon which the claimant relies in this application to have the defendant’s application struck out:

**United Bank of Kuwait v Sahib [1996];**  
**Murray v Guinness [1998];**  
**Herbert v Doyle [2010];**  
**Helden v Strathmore [2011];**  
**Keay & Keay v Morris Homes [2012];**  
**Bank of Scotland Plc v Waugh and Others [2014].**

54. **United Bank of Kuwait v Sahib [1996]**: an equitable mortgage cannot arise without a valid and enforceable mortgage contract which complies with the provisions of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989; a mortgage contract must be signed by or on behalf of each party to the contract to have any legal effect.

55. Sir Gavin Lightman's verdict in **Murray v Guinness** in 1998 affirmed the reasoning of Gibson LJ in Sahib by ruling that a purported equitable mortgage document fell foul of s.2 of the 1989 Act because the plaintiff was not a signatory and the document could therefore have no legal effect, which the Claimant in this case is arguing on the ground that the purported contract upon which the B&B relied since the outset of this matter [Exhibit B, the Facility Letter/Offer of ‘Advance’] is not signed by a representative of the bank, in breach of s.2(3), which clearly states:

*“The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.”*

56. **Helden v Strathmore [2011]**: section 1 applies to mortgage deeds; section 2 applies to mortgage contracts; a contract for a mortgage in the future is caught by section 2; [the Facility Letter is such a contract, since it pertains explicitly to the granting of a mortgage over a property which was not yet in the possession of the mortgagor.]

57. **Mercury Tax Group v HMRC**: if a purported deed fails to comply with the formalities prescribed by section 1(3) of the 1989 Act, it does nothing; no part of a deed can be added subsequent to its execution [including the signatures of the mortgagor and the witnesses attesting to those signatures, as well as the date of execution, without rendering it void ab initio].

58. **Keay v Morris Homes** [2012]: a void mortgage document is incapable of maturing into a valid and legally enforceable one by way of part-performance; which necessarily means that the illegal charge over Address of stolen home is incapable of maturing from a void and illegal charge deed [by way of the invalid execution of a purported legal mortgage], to a valid and legally enforceable mortgage contract, capable of giving rise to an equitable mortgage.
59. **MacFoy v United Africa Co. Ltd.** [1961]: something cannot be founded on nothing; which means that it is a legal and equitable impossibility for a void charge document, which was clearly intended to operate as a legal mortgage, to be resurrected as a valid and legally enforceable anything.
59. **Bank of Scotland Plc v Waugh and Others** [2014]: the mortgagor is not estopped from relying on the defects in the Deed of Mortgage.

#### **Unfair Terms in Consumer Contracts Regulations 1999**

60. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. (2) A term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term. [...] (5) Schedule 2 to these Regulations contains an indicative and non-exhaustive list of the terms which may be regarded as unfair.
61. The 1999 Regulations apply to unfair terms in contracts concluded between a seller or a supplier and a consumer. The Regulations apply to contracts relating to land. Charges are therefore caught by the Regulations if they are entered into between a seller/supplier and a consumer. The Regulations apply to contractual terms which have not been individually negotiated. A seller or supplier means any natural or legal person who, in contracts covered by the Regulations, is acting for purposes relating to his trade, business or profession.
62. For the purposes of these regulations, consumer means any natural person acting for purposes outside his trade, business or profession. Since the Claimant qualifies as a natural person acting outside of his trade, business or profession, by participating, whether knowingly or unknowingly, in the business of banking and mortgage-backed securities, the 1999 Regulations apply to the charges which arose out of any purported mortgage contract with the Bank.

63. In **Director General of Fair Trading v First National Bank plc** [2001] UKHL 52, [2002] 1 AC 481 at 494, [2001] 2 All ER (Comm) 1000, Lord Bingham of Cornhill referred to the regulations in these terms: *“The requirement of significant imbalance is met if a term is so weighted in favour of the supplier as to tilt the parties' rights and obligations under the contract significantly in his favour. This may be by granting to the supplier of a beneficial option or power, or by the imposing on the consumer of a disadvantageous burden or risk or duty . . . . The requirement of good faith in this context is one of fair and open dealing. Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. Appropriate prominence should be given to terms which might operate disadvantageously to the customer. Fair dealing requires that a supplier should not, whether deliberately or unconsciously, take advantage of the consumer's necessity, indigence, lack of experience, unfamiliarity with the subject matter of the contract, weak bargaining position, or any other factor listed in or analogous to those listed in Schedule 2 to the Regulations . . . . It looks to good standards of commercial morality and practice.”*

In relation to the purported charge over Address of stolen home, as procured by D1 for the B&B, the claimant submits that:

64. The terms contained in the purported charge by way of Legal Mortgage are manifestly deceptive (see Exhibit S), were not individually negotiated between the parties, thereby causing significant imbalance in the parties' rights and obligations, contrary to the Bank's duty of good faith and to the obvious detriment of the claimant;
65. The claimant was induced and misled by the negligent legal advice of D1 into unwittingly granting an equitable charge in the absence of a valid mortgage contract and without the proprietary interest required to dispose of such an interest at the time when the document was executed, as is the common practice of the entire mortgage industry. Thus, D's advice to execute the mortgage deed prior to completion of the sale and purchase, was entirely illegal.
66. Within the terms of the purported mortgage, an irrevocable power of attorney was allegedly granted by the claimant, enabling the Bank to create, sign and/or execute in his name, any documents or instruments they deemed necessary to protect the Bank's *“secured interests”*, effectively allowing the Bank to unilaterally alter the terms of the mortgage without disclosure to the mortgagor, which can only be regarded as a definitively unconscionable term.
67. All of the void terms (see Exhibit S) were drafted in advance by the Bank without full disclosure or fair and open negotiation, thereby preventing the claimant from having full cognisance of those terms or influencing the substance of their content, all of which clearly comprises unfair treatment under section 5(1), (2) and Schedule 2 of the 1999 Regulations, none

of which was explained to him at the time by D1 - in which case, all of those terms are rendered unenforceable in any event.

### **Fraud Upon the Court**

68. In seeking to falsely rely upon the void order of HHJ Inglis, ignoring the on-its-face evidence of Name of conveyancing solicitor's negligence and the ensuing and continuing losses to the Claimant and making an entirely unmeritorious application to have the negligence claim struck out, the Defendants lay themselves open to the allegation of fomenting a deliberate misrepresentation upon the court in order to avoid paying out on damages.
69. **Russell LJ in *In re Barrell Enterprises*** [1973] 1 WLR 19 (see the passages of the judgment at pp 23H-24A and 24E-F.) considered whether he had had jurisdiction to reopen the case on the ground of fresh evidence. He observed, at pp 24-25: "*We are reluctant to find carried forward into this century procedures which were devised for review or rehearing or new trial at a time when the Court of Appeal did not exist. We can accept without difficulty the notion that if a judgment has been obtained by fraud an action can be brought to set it aside.*"
70. The earliest and perhaps the most important case is ***Flower v Lloyd* 6 Ch D 297**. The issue before the court was whether the claimant in that action was entitled by motion to apply for leave for the rehearing of an appeal because of the "subsequent discovery of facts which show or tend to show that the order of the Court of Appeal was obtained by a fraud practised on the court below": p 299. Jessel MR stated, at p 299: "*If there were no other remedy I should be disposed to think that the relief now asked ought to be granted, for I should be slow to believe that there were no means whatever of rectifying such a miscarriage if it took place; but I am satisfied that there is another remedy.*" The learned Master of the Rolls then went on to point out that where a fraud has been practised on a court it is possible to bring a fresh action to impeach the original decree and obtain justice by so doing if the fraud is established to have occurred.
71. Furthermore, the Supreme Court Practice (1970), p 327, also states that "*If a judgment or order has been obtained by fraud or where evidence which could not possibly have been adduced at the original hearing is forthcoming, a fresh action will lie to impeach the original judgment.*" It therefore appears self-evident that a fresh action lies to impeach Judge Inglis' decision on the ground that it was obtained by the frauds of the agents representing the B&B.
72. Once fraud is proved, "*it vitiates judgments, contracts and all transactions whatsoever.*" The claimant relies upon *Lazarus Estates* in support of this point, in which Lord Denning also said: "*No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by*

*fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, Collins v Blantern (1767) (2 Wils. KB 342), as to judgments, Duchess of Kingston's Case (1776) (1 Leach 146), and, as to contracts, Master v Miller (1791) (4 Term Rep 320)'.*

73. Lord Parker LJ also observed in the same case that fraud vitiates all transactions known to the law of however high a degree of solemnity, which must necessarily include all documents which are registered under the protection of the Land Registry, all mortgages and deeds of appointment.
74. In the light of the foregoing, the Claimant is entitled to have the void order of 26/08/09 set aside on the basis that the B&B's solicitors initiated a fraudulent claim against him by way of their misrepresentations to the court that the mortgage was valid when the opposite was the case. Having been prey once before to the false machinations of the legal profession when it comes to matters involving the racketeering practices of the City of London's unrestrained financial trickery, the Claimant will not accept any similar attempts at misrepresentation and obfuscation in this matter.

#### **THE ACTS OF PROFESSIONAL NEGLIGENCE.**

75. In the event the matter goes to trial, the Claimant, by way of his own and the expert witness' forensic analysis of the documentation (Exhibit S) will be taking the Court through the mechanics of the 'Great British Mortgage Swindle', thereby demonstrating for the public record, the racketeering practices of the banks and associated misrepresentations and negligent omissions of the Defendant and the entire conveyancing industry of these lands.
76. In the light of which, and the fact that the County Court and all interested parties have been served notice that, in accord with the lawful maxim, *Nemo iudex in causa sua* (literally, *no-one should be a judge in his own cause*), any appointed judge will be required to have never worked in the conveyancing industry in any capacity as it would fatally compromise his position as an impartial arbiter of the truth of this matter.]
77. In **Bolitho v City and Hackney Health Authority**, 1997, Lord Browne-Wilkinson restricted the boundaries of Bolam, stating,

(1) *"The court should not accept a defence argument as being 'reasonable', 'respectable' or 'responsible' without first assessing whether such opinion is susceptible to logical analysis"* .

As stated by the expert witness in Exhibit S,

*“Given the nature of the allegations in the present action, it is logically improper to take the writings as anything other than collateral evidence of the wrongful acts alleged. The nominal writings, for example, expressly state that the parties agree to ignore any illegality in the transaction and or the written evidence of it.*

*By direct analogy it is like alleging that a given apparent currency-note is a counterfeit-in-law, and the Court responding that such cannot be raised as an issue in civil court because there is micro-print on the writing that states that all holders agree that the writing is valid and enforceable as currency even if it is a counterfeit.” (page 3)*

78. The Claimant argues, therefore, that the Defendants’ position is fallacious in that it is attempting to obfuscate the proven flaws in the purported mortgage agreement.

79. The fatal entrapment into the criminal agreement took place under D's attendance and care between **1 June** and **22 August, 1994** and was engineered by way of the well-oiled combination of fraudulent financial inducement and woefully negligent legal advice (both of which exculpate the claimant) (See Affidavit of C).

80. With due regard to the work of the Internationally-regarded Forensic Analyst and duly appointed expert witness in this matter, Timothy Madden and other researchers, it is now clear that the 'mortgage' contained, at a minimum, six primary and positive criminal devices which D, a licensed solicitor, negligently failed to identify and bring to C's attention. These were, without limitation :

**A. False receipt and false declaration of ownership;**

**B. Fictitious consideration;**

**C. Bait and switch;**

**D. Loan fees concealed by omission;**

**E. Wagering provisions;**

**F. Illegality disclaimers.**

81. All of which gives rise to the question, *'Why would any competent lawyer solicit, or even allow, his client and friend to sign documents that stated a fictitious and plainly illegal consideration from the other party, contrary to the most basic laws of accounting?'*

82. Regrettably, this had the effect of C being duped into entering an entirely criminal enterprise, whilst under D1’s care and attendance, the ultimate consequence of which was so iniquitous for him 16 years later when his home was unlawfully and violently stolen.



83. At no point throughout his negligent counsel did D1 disclose the referenced *Law of Mortgages* nor explain to C how and why the Deed of Mortgage was a false instrument. Had he reasonably done so, C would simply not have executed and delivered said deed as it would, in an instant, have been glaringly clear that *"It was simply a lie put to paper."* (Tim Madden).
84. Indeed, why would any competent lawyer solicit, or even allow, a party to sign a receipt for money received without even asking if the statement is true? Would it have been unreasonable to have expressed it thus? *"Oh before you sign that, Mike, I need to ask, have you in fact received the £34,150 or whatever Principal Amount that the document claims to have already been paid to you by the B&B?"*
85. Could he not have said, *"Hey, Mike, listen. Are you in fact the beneficial owner of the property? If so, then why do you want the loan? I thought that you said that you wanted the loan so that you can buy the house, yet here you are swearing under penalty of perjury that you already own it, and that such ownership is already registered? You know you cannot legally sign a receipt until the purported loan has been made?"*
86. What was really going on, of course, was that D was acting carelessly and with misrepresentation of his role to C as he was simultaneously in the employ of the B&B who paid him for his role in procuring the valuable negotiable instrument for them. Therefore, D1 benefitted financially by being paid by the B&B for the procurement of the hypothecated future earnings of C in the shape of the cash asset, the incomplete Deed of Mortgage, he carelessly advised C to execute. When we focus on Tim Madden's amplification of the wider picture the answer becomes clear to the point of transparency:

*"It is about regularising or systemically involving the equity fraud victim as particeps criminis (partner in crime) as an estoppel of the victim's equitable rights, so that the bank can trade globally in the falsified documents... ."*

*"Metaphorically, the banker arrives at the transaction with empty pockets – he brings nothing and contributes nothing that he does not obtain from the nominal borrower – yet he walks away from the transaction as the legal creditor of the nominal borrower, who brings the only thing of equitable substance to the transaction (hypothecation/pledge of their future income) yet walks away the legal debtor of the banker.*

***"The purpose of the solicitor in the transaction is to induce the nominal borrower to commit a strict liability statutory offence so as to forfeit their capacity to sue the bank in equity for the bank's fraud. This in turn allows the bank to ignore its own criminal act and to capitalize the gain from the fraud without having to set aside a contingency on its accounting books." (Exhibit G, "It's Criminal By Design")***

87. Regarding the culpability of D1, we have this salient question, as posited by Tim Madden in his report on the void mortgage as created under D1's "care" and "attendance":

*"What kind of solicitor advises a financial institution to obtain an apparent right of property in a legal security while expressly disavowing any liability in exchange? What part of the wager-equation do they not understand: Conveyance of property by delivery + chance event to determine legal ownership = wager."*

(Exhibit S, p22)

#### THE FINANCIAL CONSEQUENCES OF D'S NEGLIGENCE.

88. As a consequence of D's explicit negligence, the Bank was able to leverage moneys on the back of the valuable security/cash asset<sup>6</sup> it had obtained possession and ownership of from C by way of D's negligent omissions.

89. For fourteen and a half years, it used the void agreement and counterfeit deed of charge to unjustly enrich itself through the extraction of moneys of exchange from C's sweat equity to the total of £67,474 on a debt that, as a matter of accounting fact, did not exist.

90. Thus, the Bank unjustly enriched itself over and over at C's expense until there came a point when, having, in good faith, paid them around twice the value of the illusory loan, C, becoming increasingly aware of the criminal deception, acted in equity and morality and stopped paying them when the CEO, Richard Pym, was unable to provide, under the Bankers' Books Evidence Act and UK GAAP, the accounting of the alleged loan. All too soon, the B&B revealed themselves to be the racketeers they are and this resulted, inevitably, in C being unlawfully evicted, incurring substantial legal costs and experiencing real property loss.

91. In the light of the foregoing, it must be concluded that D's self-professed "care" and "attendance upon" C "in order to **explain all documentation**" [Exhibit E ] was negligent and may well stand as a *prima facie* contravention of sections 2,3 and 4 of the Fraud Act 2006.

92. Wherefore, but for the defendant's carelessness the claimant would not have suffered any loss. D's professional negligence and misrepresentations caused C the following losses, the damages for which are claimed by way of D's professional indemnity insurance:

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<sup>6</sup> THE DEED OF MORTGAGE was entered as an asset on the B&B's accounts: "4.6 Assets are defined as follows: Assets are rights or other access to future economic benefits controlled by an entity as a result of past transactions or events."

4.23 "Liabilities are defined as follows: Liabilities are obligations of an entity to transfer economic benefits as a result of past transactions or events."

4.24 "For there to be a liability there must be an obligation that might result in the transfer of economic benefits." BY INSERTING THE DISCLAIMERS, THE B&B INCURRED NO LIABILITY. From <http://fre.org.uk/Our-Work/Publications/ASB/UITF-Abstract-36-Contracts-for-sales-of-capacity/Statement-of-Principles-for-Financial-Reporting.aspx>

93. A) Illegal mortgage payments of £67,747 to *BRADFORD AND BINGLEY PLC*, from *1 September 1994 to 6 January 2009*.

- B) Real loss of property - his home of 16 years which had a market value of £110,000 at the time of its theft.
- C) Two thirds of legal costs claimed by B&B since initiation of its invalid claim in July 2009, which as of October 27 2010 stood at £75,000.
- D) Living costs (accommodation, bills etc) incurred at £500 per month since 04 November 2010 to present.

## CONCLUSION

The essential question at the heart of this matter is simple: **is it not the case that the Defendant gave the Claimant incorrect legal advice?**

94. **The duty of the "reasonable man"**: D1, a solicitor owed a duty of care to his client, C. In the case of a solicitor that duty is set to a higher standard – the "reasonable man" becomes the "reasonable solicitor". The test that the solicitor or adviser is put to, is an objective one. D1 was trusted to know the law and, naturally, as a 'legal professional', it is his duty to know the law. Given the fact that by soliciting clients to enter mortgage agreements that are manifestly iniquitous and void under the Law of Mortgages, the conveyancing profession, *en masse*, has been operating negligently as a consequence of its 'common practice' and without any real understanding of the monetary mechanics behind the formation of mortgages, the question, '*If another lawyer (of equal experience) was put in the same position, would he or she have made the same mistake?*' is rendered moot. This is on the basis that it would be simply illogical to rely upon the fallacy of *common practice* when its pervasiveness leads directly to fraud being committed, as was the case in this matter. In any event, it stands as self-evident that D's advice to execute the charge was illegal, as per **Scott v Southern Pacific Mortgages & Others [2014] UKSC 52** when Lady Hale stated it most plainly: "*The purchaser was not in a position either at the date of exchange of contracts or at any time up until completion of the purchase to confer equitable proprietary*" and "*This case has been decided on the simple basis that the purchaser of land cannot create a proprietary interest in the land, which is capable of being an overriding interest, until his contract has been completed.*" It stands to reason that the same principle applies in this case.

95. In regard to the Bolam test [**Bolam v Friern Hospital Management Committee**] and its applicability to this matter, the Claimant asserts that, notwithstanding the common practice, a ‘reasonable lawyer’ should be aware, *at a minimum*, of the statutory Law of Mortgages, what constitutes a lawful contract, what are unconscionable terms and conditions, and, of course, be capable of bringing to his client’s attention the blatantly false components of a void Deed of Mortgage, as identified by the expert witness, Tim Madden (see Exhibit S) and the Claimant’s Witness Statement.
96. All of the evidence and points of law demonstrate emphatically that D1 was negligent from the outset by carelessly advising C to do something that he would never have done were it not for that advice, without which no losses would have occurred. By advising C to mislead the Land Registry into believing he had signed the Deed of Mortgage on a different day to that claimed, C became an unwitting *particeps criminis* with the bank. On that basis alone, D1’s advice was self-evidently incorrect/illegal and was the factual cause of said losses. As per the Judgment of Lord Hoffman within **Banque Bruxelles Lambert v Eagle Star Insurance Co**, D1 is liable in so far as the injury to C was caused directly as a consequence of him entering into an unlawful mortgage whilst within the scope of D1’s so-called professional advice.
97. With regard to question of foreseeability, the claimant’s loss most clearly was a foreseeable consequence of the defendant’s breach of duty on the basis that the **Law of Property (Miscellaneous Provisions) Act 1989** was enacted in order to prevent such losses. In that sense, the losses were reasonably foreseeable by way of the Law Commission’s recommendations and thus must be deemed recoverable. (See Witness Statement of Claimant and Hansard speech by Lord Mackay, paras 3-8). Prior to its enactment on 28 September, 1989, **Wednesday 12 July 1989** ~ An article in the **Law Society’s ‘Law Gazette’** addressed the changes to the Law of Mortgages:
98. "... **First**, all contracts for the sale or other disposition of an interest in land will have to be in writing; it will not be possible to have an oral contract evidenced in writing. The danger of inadvertently creating a s.40 memorandum (for example, by a solicitor's letter) is therefore removed. Solicitors could therefore discontinue the practice of making pre-contract correspondence 'subject to contract'. As has just been mentioned, there is no need to prevent the letter being evidence of an oral agreement and although contracts could still be created by correspondence, a solicitor has no implied authority to sign a contract on behalf of a client. **Secondly**, the signatures of all parties must be present; s.40 lacked this element of mutuality. **Thirdly**, non-compliance with the rule will make the contract void rather than unenforceable, as under s.40 ...". <http://www.lawgazette.co.uk/news/property-points>

It is averred that a ‘reasonable lawyer’ would most certainly have known of the basic requirements of a lawful contract and the fact that the in-house newspaper of the BAR members, *the Law Gazette*

published the above in its own pages, thereby circulating the requirements to its readers who have, incredible as it may seem, somehow been ignoring it for over 25 years, is a telling indictment of the entire conveyancing industry which is, *ipso facto*, complicit in the ‘great British mortgage swindle’ as perpetrated on the people of these lands.

103. BREACH: D1 manifestly failed to make sure the agreement and all its constituent parts were lawful. *Why did he solicit C to sign a document that on its face is a wager, which is, as Tim Madden states, the very definition of racketeering?* It is entirely reasonable to expect one’s legal advisor to know the law, given C was entirely reliant upon D1 to foresee the potential losses.

104. LOSS: *But for the defendant's negligence, would the claimant have suffered a loss?* If D1 had adhered to the Law of Mortgages and brought to C’s attention the material defects of the Deed of Mortgage, which, in Tim Madden’s words is “*A lie put to paper*”, no alleged debt would have been incurred on the basis he would not entered into any agreement with the B&B, no payments would have been made under a void contract, his house would not have been stolen, there would have been no subsequent housing costs incurred and neither would he have incurred legal costs. The Court is invited to take note that damages for professional negligence are supposed to put the injured in party in the position they would have been had the negligence not occurred.

105. Wherefore, the Defendants’ application should be struck out the grounds that:

(A) It is demonstrably in denial of the material facts of D1’s incorrect legal advice which led C to enter into the void mortgage.

(B) The carelessness of the Defendant is demonstrated by way of his proven omissions and failures to adequately explain the documentation and ensure the law was applied correctly, when as confirmed by Exhibit E, D1’s invoice, this is just what he was being paid for.

(C) The Defendants cannot rely upon a miscarriage of justice and the frauds of the purported mortgagee, the Bradford and Bingley, as a basis for having the claim struck out.

106. Furthermore, it should be clear by now to the court that HHJ Inglis' order dated 26/08/2009 must be set aside on the ground that the court has the inherent jurisdiction to set aside the judgment, on the basis that it was procured in breach of a Civil Procedure Rule and by the misrepresentations of the B&B, *ab initio*.

107. In the event that the defendants' application be correctly dismissed, and in the absence of a mutually agreed settlement, the claimant requires that the matter be listed, as soon as possible, for full trial by jury (given the negligence of the Defendant Name of conveyancing solicitor led to the Claimant having fraud and theft committed against him, it would be expected that a common law jury of his peers be appointed in order to examine the facts of the matter), with witnesses to include, without limitation, Philip Young, the manager of the Bradford and Bingley at the time of the void mortgage agreement, each defendant, any and all witnesses to the unlawful eviction, a satellite link up to Timothy Madden of Vancouver for his expert testimony, Richard Pym, the CEO of the B&B at the time of the initiation of proceedings, Tom Buckland of DrydensFairfax, agents to the B&B and any and all other relevant parties. By: Name of man, Claimant.

### **DRAFT ORDER**

#### IT IS ORDERED THAT:

1. The Defendants' application is struck out as having no merit.
2. The *Writ of Mandamus* be sealed by the Court and duly served on the Co-defendant, Name of fourth defendant, for and on behalf of Axis Specialty Insurance and, accordingly,
3. The Defendants and their insurers arrange for full and immediate settlement of the professional negligence claim.
4. That all costs be awarded to the Claimant, and, in the absence of mutual settlement,
5. That the matter be listed for trial by jury.

#### IT IS DECLARED THAT:

1. The original charge is void *ab initio* for failing to comply with section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 [*R [Mercury Tax Group] v HMRC and Garguilo*];
2. The "Facility Letter" was unambiguously intended to be a contract for a mortgage to be granted by the Claimant to the Bank in the future; and as such, the Court is bound by *Helden v Strathmore*, to affirm that the document is indeed caught by section 2 of the 1989 Act; and,

3. The "Facility Letter" therefore is void *ab initio* in the absence of the signature of a representative of the Bradford and Bingley and is incapable of being relied upon by any party as a mortgage contract [*United Bank of Kuwait v Sahib, Lloyds v Bryant, Murray v Guinness and Keay v Morris Homes*].
4. The defendants, jointly and severally, are liable for settlement of the professional negligence claim vs Name of conveyancing solicitor.
5. By failing to admit to his negligence and settle the claim without good reason, the Defendant and Co-defendants do not appear before the court with clean hands and are not entitled to seek equitable remedies as a result.
6. The Defendants shall pay the Claimant's housing and legal costs, the latter at 66% of the professional rates charged by the Bradford and Bingley's solicitors, DrydensFairfax LLP, during the course of its legal campaign against him within 28 days of the date of this order. Those rates stood at some £75, 000 as of 27 October 2010.
7. The order of HHJ Inglis of 26/08/09 issued at Nottingham County Court is set aside with immediate effect.
8. Given the inherent dishonesty of the Defendants' willful professional negligence, this is a final decision and permission to appeal is refused as having no reasonable prospect of success.



## TABLE OF EXHIBITS

### Pages

- 3 Exhibit A ~ 'LETTER CONFIRMING CONTRACT' between C and D, 1 June, 1994
- 4. Exhibit B ~ "OFFER OF MORTGAGE ADVANCE" from B&B, 14 June, 1994
- 6. Exhibit B1 ~ 'LETTER FROM D RE. OFFER & INSURANCE', 16 June, 1994
- 7. Exhibit B2 ~ 'LETTER FROM D: INSTRUCTION TO SIGN', 28 July, 1994
- 8. Exhibit C ~ The Void "MORTGAGE DEED" signed by C on or around 28 July 1994, (the date of 08 August, 1994 was inserted by Name of conveyancing solicitor on or around 15 August, 1994).
- 9. Exhibit C1 ~ The Void "MORTGAGE DEED" signed by C on or around 28 July 1994 [LAND REGISTRY OFFICIAL COPY]
- 10. Exhibit D ~ "NOTICE OF COMPLETION OF ADVANCE", 15 August, 1994.
- 11. Exhibit E ~ INVOICE FROM D FOR "PROVISION OF LEGAL SERVICES", 9 August, 1994.

\* Note: Exhibit F ~ 'THE GREAT BRITISH MORTGAGE SWINDLE ' ~ an independently made UK documentary with footage of the unlawful eviction of 4 November 2010.

[www.thegreatbritishmortgageswindle.net](http://www.thegreatbritishmortgageswindle.net)

Exhibit G ~ "IT'S CRIMINAL BY DESIGN" Tim MADDEN, International Forensic Accountant, 12 February, 2010. (separate PDF)

- 12. Exhibit H ~ B&B MORTGAGE TERMS AND CONDITIONS (1992)
- 15. Exhibit I ~ THE VOID ORDER OF HHJ INGLIS 26 August 2009
- 16. Exhibit M ~ email from D declining offer to put right his wrong doing, 02 April 2013.
- 17. Exhibit N - PROOF OF SERVICE: RECEIPT FROM OFFICE OF Name of second defendant, 11 September 2013.
- 18. Exhibit O ~ WRIT OF MANDAMUS, 16 May 2014 served on IB, for and on behalf of Axis Insurance.
- 19. Exhibit P ~ 08 August 2014 ~ NOTICE & DEMAND served on IB, for and on behalf of Axis Insurance.
- 21. Exhibit Q - 1 December 2014 - NOTICE OF MISREPRESENTATION as served on all parties
- 24. Exhibit R - 22 December 2014 - NOTICE TO ADMIT FACTS as served on the Defendants, along with a reminder of the appointment of the forensic analyst Timothy Madden (originally appointed October 2013) and a list of witnesses for the hearing of 23 January 2015.
- 25. \* Note: Exhibit S - 15 January 2015, FORENSIC REPORT by Timothy Madden, separate PDF.