HMCTS

Leeds Combined Court Centre

The Courthouse

Leeds

LS1 3BG

BOS v Michaels 4PA41550

Schedule of contents

Mr Paul Michaels
Mrs Charlotte Michaels
Low Newbiggin Estate
Aislaby
Whitby
North Yorkshire
YO21 1TQ

For the attention of HHJ Raeside

HMCTS
Leeds Combined Court Centre
The Courthouse
Leeds
LS1 3BG

Dated 25th September 2017.

BOS v Michaels 4PA41550

The court order dated 3 August 2017 requests that the defendants set out their grounds for the appeal of Judge Raeside decision. The defendants are perplexed as to why the court has requested their grounds for appeal, in advance of the formal handing down the decision.

The Court and the UK judicial system, and specifically the Leeds Combined court, has heard many claims been brought by and against the Bank of Scotland (BOS) and other Lloyds Banking Group Members (LBG). The House of Lords report, commissioned by the Parliamentary commission on banking standards entitled, "An Accident waiting to happen" - The failure of HBOS, (See Appendix 'C' Pages 30-121) found the Bank of Scotland guilty in the highest degree of misconduct. The report which is attached to this letter for the courts reference, proved beyond all reasonable doubt that during the period January to April 2007, (the time that BOS alleged to have loaned the defendants circa £2.3m, for which the defendants provided £4m of property and £3.5 of equity as security), the Bank of Scotland was itself insolvent. So how could the bank have loaned the defendants any money?

The defendants have become aware of similar cases which are being fought against the bank, where the cases have been or are in the process of being settled. Given the events and the defendants dissatisfaction at the process for which they find themselves a victim, they have reported this matter to the City of London Police and further the National Fraud Intelligence Bureau. The NFIB, has taken a statement from the defendants. They have further written to Eversheds Sutherland CEO's Mr Lee Ranson and Mr Brian Hughes alerting them to pending charges of 'aiding and abetting' the Bank of Scotland, and others, if they are found to have knowingly and willingly engaged and advised their clients with the knowledge that the Bank of Scotland has acted fraudulently. Proof of their involvement in any such settlements with BOS or other banks or

banking related crime, would cause this claim or action. If the defendants had tried to ‘steal’ a parties property through a legal court process, when they had not offered a ‘lawful’ or legitimate loan, then they would be open to the charge of Fraud.

For the record the Bank of Scotland is in possession of a ‘Promissory Note’ as supplied by the defendant. This ‘Financial instrument’ has been executed lawfully and was drawn up and presented in the format that is acceptable to the bank. The defendants position is that the acceptance of this promissory note could bring an end to this matter save for damages and costs to be agreed. For the bank to refuse the Promissory note to terminate the mortgage contract, it must start a separate claim through the courts outlining the reason why it has not accepted one of its own financial instruments as settlement of the alleged debt. The defendants make this claim with the knowledge that it is ‘financial instruments’ such as the promissory note provided, that has underpinned and formed the very basis the ‘fractional’ global banking operating system, for the past 146 years. The difference is, that the promissory note provided is asset backed by means of the defendants property.

For the courts record and in order that their decision is fully informed the defendants will give a summary of how the Banking system has and still currently works ;

The Bank of Scotland used our signature on the mortgage document 'The contract' as security to create a loan note which availed itself from ever providing any real money or anything other than a loan note requiring 25 years of interest payments from the defendants. The standard practice is then for the bank to sell on the loan note through one of its associate 'Special Purpose Vehicle', 'SPV' companies such as Arkle Master Issuer PLC, which 'may' then be sold on multiple times as a method of raising cash from investors and depositors through other investment arms directly or indirectly owned by Lloyds Banking Group, such as the Bank of New York Mellon PLC, or Bloomberg group. All these companies are owned by Lloyds Banking PLC. (See Appendix A Page 14)

Here is the relevant section of Carmel Butler's Memorandum taken from the www.Parliament.uk website and headed CONSUMER AND TAX PAYER (See Appendix 'B' Pages 17-29)

"|Let us be clear that the reason for today's injection is the lack of openness and honesty by the banks on the amount of bad debts that they have on their books|"
JOHN McFALL MP[105]

5. The Committee has rightly been concerned to elicit a reason for banks failure to pass on the Bank of England interest rate cuts to borrowers and yet, do pass on the interest rate cuts to the savers[106]. The answer to the question is simple. The banks have passed the interest rate cuts to the savers because the banks have the power to set the interest rate for the savers. Conversely, the banks do not have the power to pass the interest rate cuts to the borrower.

6. This is because, the banks have sold the mortgage contracts to the SPVs and it is the SPVs alone, that have the contractual power

to determine the borrowers interest rates. Consequently, it is the SPVs that decide whether or not to pass on the interest rate cuts. It is the SPVs that have decided not to pass on the interest rate cuts.

7. This fact is evidenced by the various and respective Prospectuses that the SPVs file at the UK Listing Authority. In general, the bank that originates the loans will make a True Sale[107] of the mortgages to the SPV which means the contractual power to set the borrower's interest rate is vested in the SPV.

8. Following the bank's True Sale of the mortgages, the bank's contractual relationship with the borrower is extinguished. The SPV, as assignee, becomes the party that is in privity of contract with the borrower. However, neither the bank nor the SPV inform the borrower of the SPV's ownership of the mortgage contract.[108] The SPV will remain concealed. The borrower is unlikely to discover the SPV's ownership of their mortgage contract because, following the sale to the SPV, the bank and the SPV enter into a contract wherein, the bank agrees to administrate the mortgages on behalf of the SPV and in return, the SPV remunerates the bank for its administrative services. Consequently, whilst the bank has extinguished all its right and title to the consumer's mortgage contract, the bank's connection to the consumer's mortgage is through its administration agreement with the SPV only. Following these legal manoeuvres: (i) the consumer and the SPV are in privity of contract under the mortgages; (ii) the bank and the SPV are in privity of contract through their administration agreement; and (iii) the world will remain ignorant of these events because, the bank continues to service the loans as if nothing has happened.

The original Mortgage document (which was never provided to the court as evidence) took control over the defendants property by means of a charge which was registered with HM Land registry. For the record The Land Registry is now privately operated on behalf of the UK government. The defendants put up the difference between their previous lenders (Giro-bank commercial lending PLC) loan balance, of £500k and the valuations dated 2006/2007 of c£2.25m, a total of £1.75m equity as ‘collateral’ The loan was applied for, to enable them to achieve their personal and commercial aspirations. The Bank of Scotland is understood to have sold SPV’s relating to all residential mortgages to companies owned by or affiliated to them, many times, before the SPV’s finally withdrew from the market due to the scale of bad debt on the books. However it is alleged that the Banks are still operating SPV’s, in order to keep the book value of the banks cash positive, until they are ready to crash again, outside of the

UK governments watch and financial involvement or interest. Whilst visiting the Bank of England recently, The Queen is understood to have asked the question “what measures are in place to prevent another financial crisis?” Prince Philip asked the question “Is there going to be another crash?”

Following the trial the claimant proceeded with the unlawful registration of a priority charge (floating second charge) on the defendants other properties. Eversheds Sutherland, the banks solicitors whom are advising the bank in this matter has recently confirmed that the priority has been released.

It was Bank of Scotland that registered this possession claim. It was never the defendants intention to bring harm to the bank or the extended Lloyds Banking Group as it was hoped by the defendants, that their commercial relationship with Lloyds, (their bankers for their commercial City of London based business) could be rescued. However Lloyds have refused to assist them even to finance a second hand vehicle which they desperately require due to issues with their existing 13 year old car. Black Horse finance have referred to the historic and inaccurate credit history file, relating to the matter of unlawful and inaccurate £1m judgement, as being outstanding. It is understood that the bank has also caused difficulties for the defendants application for a bridging loan to assist with their financial hardship.

The difficulty for the defendants is this - Their efforts to comply and keep this matter from public view, have been overshadowed by the banks constant re-

fusal to engage, listen or accept the reasonable and commercially sound proposals to secure a resolution. They have never accepted any culpability for their actions. This is why the matter remains unresolved.

Not withstanding the above, The defendants demand that the court dismisses the banks claim for possession order and avails itself of any further participation in the Bank of Scotland's continued Fraudulent actions. It would be a positive step forward if the court gave direction for the Bank of Scotland to enter discussions regarding appropriate compensation, however should it choose not to do so then its process and records may be brought into question by the appropriate authorities either now or at a later date.

Unlawful Process

Both the pre-hearing heard by recorder Walker and the trial were prejudiced and biased.

The defendants do not accept the submitted transcript as a true accurate or fair representation of the facts presented to, and forming the basis of, the court decision.

Middlesborough, Scarborough and Leeds courts' financial and administration departments have all confirmed that The bank of Scotland did not pay the court fee prior to progressing the claim, yet a court stamp appears on the

claim documentation. If the defendant had been the claimant and we had not paid a court fee, we would have never been allowed to bring a claim against the bank.

It is the defendants understanding there is a rule of Law, that no case regarding damages, losses or repossession regarding a mortgage be heard by or enter a court of Law without the original documentation, The Bank of Scotland has NEVER prior to during or post trial provided any original documentation of our alleged mortgage. If this was the defendants bringing a claim for losses damage or repossession, they would have NOT been allowed to continue with the claim without sight or disclosure of the original documentation.

With regards to the original passion claim by the Bank of Scotland, Toby Watkins in his response, put to the bank to the 'strict proof thereof' of the exact amounts that the claimants were claiming were loaned or owed. At no point prior to during or post the trial, has the Bank of Scotland ever provided the claimants or the court specific proof that any money was loaned or the exact amount that is alleged to be owed. It is not permitted in law to simply provide a schedule of unaudited figures in a simple schedule and state "that is the figure". If this was the defendants bringing the charge against a third party the matter would be thrown our of court. The defendants 'mortgage' statements as provide to the claimants have never been justified audited or consistent with what the actual figure is. (See Appendix 'A' Page 16) They appear to pull the figures out of thin air. In one month post the trial the defendants statement

jumped £60k (Sixty Thousand Pounds) allegedly for legal costs yet the court has not awarded costs. The attached statement dated immediately prior to the trial, demonstrates the irregular and irrational accounting by the bank.

This case was passed across to the chancery division due to the scale of the sums involved. The defendants are investigating the lawful or legal jurisdiction of the Leeds combined court and or Judge Raeside to hear or act in this case.

This entire process appears to be a complete farce and has demonstrated no respect for our natural human or birth rights as real people and once proud and self made business persons and citizens of the United Kingdom of Great Britain.

Not once did the court question the fact that the defendants credit history, asset base and business plans, must have been exemplary for the Bank of Scotland to allegedly loan £2.3m. It is the banks credibility that is in question, as it was not the defendants actions that was the cause or effect of the global financial crisis.

The court heard that there was a sudden and dramatic decline in the defendants credit rating which the bank registered against the defendants, yet not once during the three day hearing and trial period, did the court question the reasons for the decline or how the banks consequential actions directly affected their businesses and the defendants ability to service the alleged debt.

The court heard that the Bank of Scotland did indeed ‘engage’ in discussions regarding keeping an earlier claim from BOS, out of the courts, [if] the defendants signed a consent order. The court heard that the defendants agreed to sign the consent order (private terms) in Good Faith. Terms were agreed both verbal and written the detail of which was heard by the court. The Claimant was in clear ‘breach of contract, when they proceeded with the registration of a judgement against the defendants for £1m, and with the possession claim of the said property. The evidence that this amount is incorrect was heard by the court. The Claimants Barrister Mr McKlusky stated that the bank and the defendants both agreed to a maximum of £350k from any surplus sale of the claimants Canadian assets and £250k from any surplus born out of the sale of Low newbiggin. So the maximum that was expected from the sale of both assets would be £600k. Lloyds bank of Scotland said that it would not unfairly restrict a sale of Low Newbiggin Estate in the event that there was no surplus for them in fixing £350k as the lower limit agreed as ‘payable’ by consent. The defendants have had a £1m judgement, derogatory CRA information which breached data protection laws, registered personally against them and their properties for some 10 years now. This information authorised by the Lloyds Banking Group and approved by the UK court system, has caused the defendants considerable harm and financial losses. Throughout the process, the claimants never shied away from their lawful financial or fiduciary responsibilities as set out to them by the bank at that time. Instead they worked tirelessly

and honestly as evidenced by the documentation and witnesses presented by both sides, to, and read by, the court.

The defendants represented themselves throughout the pre-hearing and the two day trial. It was not fair or 'just', for the court to state that they considered them to have been represented right up until the trial. There was/is a conflict of interest between the Lloyds Bank of Scotland and Michelmores LLP. Solicitors are 'officers of the court' and or 'legal system' which is where their ultimate and primary responsibility lays.

Since representing themselves the defendants have gathered evidence of a much bigger picture involving Lloyds Banking Group, St James Place, Bank of Scotland and other international banks. The scale of their findings is staggering. The timings of the restructuring, disposal of assets within the group and financial losses to trustees and shareholders whilst still trading as part of an alleged 'Land Grab' is wholly criminal. The defendants have researched bankers who were made redundant and whom families have been left on the 'scrap heap' after the financial crash, they were sold low interest loans bought substantial houses and prestigious cars when times were good. The bank then increased their interest payments when the markets and bank of England base rate fell, which resulted in them foreclosing and was grabbing properties, land and personal assets for a fraction of their real value in the down turn. They then rented out for huge sums of money at arms length by estate agents only to be resold for their ultimate owners when the next boom comes. The media

(BBC & Others) did confirm prior to our hearing, the jailing of members of the Bank of Scotland now part of the Lloyds Banking Group, whom were found guilty of fraudulent banking practices.

The Bank of Scotland its employees and its council stated in court that the bank had not resold, securitised or entered into swaps, guaranteed or underwritten the loans. Through research on the Treasury Direct service the defendants have found evidence that this is not true. There are direct links, (Lloyds own them) to companies such as The bank of New York Mellon PLC, New York Master Issuer, The Royal Bank of Canada, and other mortgage and bond resellers owned by or partnered with Lloyds Banking Group and their sub members. The banks employees Mr Robert Lockyer and Ms Linda Williams perjured themselves as they avoided the facts hid the truth and blatantly and knowingly lied under oath. Robert Lockyer is involved at the highest level in Lloyds offshore wealth management and was/is fully aware of activities surrounding this and other international movements of funds.

It is clear from the evidence heard by the court and proofed by the sheer scale of the financial crash and the consequential fines, reprimands and jail sentences as confirmed by the government and the media that the Lloyds Banking Group, Bank of Scotland, Eversheds Sutherland & Others do not come to the table with ‘clean hands’ or are Nil of equity’ Precedents have been set in common law and this case should have never been accepted by the court or permitted to enter a courtroom.

The defendants are the harmed, NOT, guilty party.

We the ‘Defendants’ as real live persons pleading their human and natural birth rights under common Law, do not accept the courts decisions as documented and provided to them and we GIVE NOTICE to the court that we will appeal and fight any formalisation of the same.

Yours Sincerely

Mr Paul Michaels

For and behalf of;

Mr Paul Michaels
Mrs Charlotte Sarah Michaels
& Others .

Final Terms dated 11 December 2006

(to the base prospectus dated 30 October 2006)

ARKLE MASTER ISSUER PLC

(Incorporated with limited liability in England and Wales with registered number 05941709)

Residential Mortgage Backed Note Programme

Issue of Series 2006-2 Notes

Series	Class	Interest rate	Initial principal amount	Issue price	Scheduled redemption dates	Maturity date
Series 1	Class A	One-month USD LIBOR +0.03% Floating Rate	$750,000,000	100%	February 2008	November 2020
Series 2	Class A1	Three-month USD LIBOR +0.07% Floating Rate	$1,750,000,000	100%	November 2009	November 2012
Series 2	Class A2	One-month CDOR +0.08% Floating Rate	CAN$400,000,000	100%	November 2009	November 2012
Series 3	Class A1	Three-month USD LIBOR +0.09% Floating Rate	$630,000,000	100%	—	February 2052
Series 3	Class A2	Three-month EURIBOR +0.11% Floating Rate	€1,100,000,000	100%	—	February 2052
Series 3	Class A3	Three-month Sterling LIBOR +0.11% Floating Rate	£375,000,000	100%	—	February 2052
Series 1	Class B	Three-month USD LIBOR +0.08% Floating Rate	$30,000,000	100%	February 2008	February 2052
Series 2	Class B	Three-month USD LIBOR +0.12% Floating Rate	$84,000,000	100%	November 2009	February 2052
Series 3	Class B2	Three-month EURIBOR +0.18% Floating Rate	€57,500,000	100%	—	February 2052
Series 3	Class B3	Three-month Sterling LIBOR +0.18% Floating Rate	£19,100,000	100%	—	February 2052
Series 1	Class M	Three-month USD LIBOR +0.15% Floating Rate	$16,000,000	100%	February 2008	February 2052
Series 2	Class M	Three-month USD LIBOR +0.20% Floating Rate	$46,000,000	100%	November 2009	February 2052
Series 3	Class M2	Three-month EURIBOR +0.27% Floating Rate	€29,150,000	100%	—	February 2052
Series 3	Class M3	Three-month Sterling LIBOR +0.27% Floating Rate	£12,500,000	100%	—	February 2052
Series 1	Class C	Three-month USD LIBOR +0.24% Floating Rate	$32,000,000	100%	February 2008	February 2052
Series 2	Class C	Three-month USD LIBOR +0.38% Floating Rate	$82,000,000	100%	November 2009	February 2052
Series 3	Class C2	Three-month EURIBOR +0.45% Floating Rate	€56,750,000	100%	—	February 2052
Series 3	Class C3	Three-month Sterling LIBOR +0.45% Floating Rate	£20,000,000	100%	—	February 2052

Terms not otherwise defined herein shall be deemed to be defined as such for the purposes of the conditions set forth in the base prospectus dated 30 October 2006 which constitutes a base prospectus (the **base prospectus**) for the purposes of the Prospectus Directive (Directive 2003/71/EC) (the **Prospectus Directive**). This document constitutes the final terms (the **final terms**) of the notes described herein for the purposes of Article 5.4 of the Prospectus Directive and must be read in conjunction with the base prospectus. Full information on the issuing entity and the offer of the notes is only available on the basis of the combination of final terms and the base prospectus. The base prospectus is available for viewing at the registered office of the issuing entity at 8th Floor, 68 King William Street, London, EC4N 7DZ and the Principal Paying Agent at its offices at, One Canada Square, London E14 5AL.

Arrangers for the programme

Citigroup **Lloyds TSB Bank**

Dealers and Joint Bookrunners

Citigroup **Merrill Lynch International** **Lloyds TSB Bank**

BANK OF SCOTLAND
PO Box 548
Leeds
LS1 1WU

Mr P & Mrs C S Michaels
Bohunt Manor Barn
Portsmouth Road
Liphook
Hampshire
GU30 7DL

Telephone: 0800 028 3861

Our Ref: QAR001

1 March 2017

Dear Mr & Mrs Michaels

Your Mortgage Account Number: 70352947390500 Mr P & Mrs C S Michaels
Low Newbiggin House Aislaby Whitby North Yorkshire YO21 1TQ

Please find enclosed an up to date statement of your arrears. The arrears now amount to £63243.20 and the balance outstanding on your account is £1259979.41.

If you have a payment arrangement in place, please ensure that payments are continued in accordance with this arrangement.

Should you have any queries with any aspect of your arrears, please contact us Monday to Friday between the hours of 8.00am to 7.30pm or 8.00 am to 12:30 pm on Saturdays.

Yours sincerely

J Graham
Director, Collections and Recoveries

Memorandum from Carmel Butler

CONSUMER AND TAX PAYER

> "lLet us be clear that the reason for today's injection is the lack of openness and honesty by the banks on the amount of bad debts that they have on their booksl"
>
> JOHN McFALL MP[105]

1. The banks have stated their case. They say: the banking crisis ensued from bad borrowers to bad debts to toxic assets to taxpayer support. The banks with their powerful lobby, powerful public relations and easy access to the media have framed the public debate. Consumers on the other hand do not have such powerful infrastructure to effectively rebut the bankers' defamatory accusations. This written evidence challenges the bankers' version and endeavours to dispel the bankers' myths. The chain of events is rooted in lenders' abuse of unfettered power to impose unsustainable interest and charges on consumers combined with their determination to avoid contributing to the public purse.

2. The evidence contained in this memorandum is focused on two fundamental issues. Firstly, the consumer issues that arise in the context of Special Purpose Vehicles ("SPVs") that are incorporated as securitisation companies who issued the infamous "toxic-assets"; and secondly, the taxpayer heist at the hand of the SPV securitisations companies. The evidence will illuminate the hitherto hidden truth that the tax payer is supporting the profits of foreign owned companies incorporated in tax havens and their private investors.

BRIEF INTRODUCTION

3. I am British Citizen resident in the UK and a qualified lawyer admitted to practice in New York, U.S.A. I have an LLB Laws from the London School of Economics and a JD (Juris Doctor) from Columbia University, New York. I practiced securities law at Sidley Austin LLP New York office from September 2006 to December 2007. Whilst at Sidley Austin I worked on various Structured Finance transactions such as mortgage securitisations, CDOs and various derivatives. I am also a consumer of a mortgage product that has been securitised. Consequently, as both an ex-practitioner of securitisations and a consumer subjected to a securitisation, the intention is to focus on consumer issues that arise from mortgage securitisations, its central causal role in the banking crisis and its detrimental effect on the

economy and public purse.

sUMMARY oVERVIEW

4. Six key submissions are evidenced in this memorandum:

— Passing on the Interest Rate Cuts (see paras. 5 to 13). Banks do not pass on the interest rate cuts to borrowers because they do not have that power. That power is vested in the SPV securitisation companies.

— Openness and Honesty (see paras. 14 to 37). The Government has saved banks from the allegedly bad debts on their books. But banks are unable to say the extent of the bad debt problem. This is because, in truth, there are no bad debts of any significance. Two sleights-of-hand are discussed under the headings "the legal ruse" and "the auditor ruse". Enlightenment of the combined effect of these manoeuvres explains how the allegedly bad debts appear on the bankers books.

— The FSA Regulatory Role (paras. 38 to 43). The Practitioners Panel have called for rigorous enforcement of the FSA's MCOB rules. Consumers would concur with this principle.

— The Fallacy of Financial Advice (see paras. 44 to 52). The source of this issue is the mortgage originators' failure to disclose material facts on the products sold to consumers. The lenders' concealments render independent financial advice a nullity and an academic exercise.

— The Rule of Law—Repossession or Dispossession? (paras. 53 to 78). The Financial Services Practitioner Panel calls for the faithful application of the rule of law with respect to the performance of contractual obligations. There is no difficulty in concurrence with this principle. Accordingly, the Treasury Committee are invited to consider the SPV securitisation companies performance of its contractual obligations and the effect of their abrogation from such obligations on the functioning of the mortgage market.

— The Perfect Storm (paras. 79 to 88). The cause of the banking crisis is widely mooted as the abrupt closure of the wholesale money markets in August 2007 but the public debate on why the market seized is conspicuously absent. It is submitted that new tax laws were the catalyst instilling fear which caused the flight. The money-men fled from securitisation companies on the real prospect of their being called upon to contribute to the Treasury. The liquidity had to be filled. The tax-paying public was rallied to fill the gap and to suffer the economic fall-out. Paragraphs 83 to 86 recommends: a potentially effective solution in which the Government can revive the housing market and economy without the need for the banker's acquiescence to the hitherto unheeded pleas for the bankers to commence lending.

— Conclusion (paras. 89 to 91). Confusion through concealment creates complexity. Transparency is the antidote. Once illuminate, securitisation is simple. Follow the asset and follow the cash which reveals that the supreme beneficiaries of the crisis are the banks, the SPVs and their investors.

— Recommendations: The Committee is invited to consider the recommendations at paragraphs: 37, 43, 52, 79 and especially the recommendation at paragraphs. 85 to 88.

pASSING ON THE iNTEREST rATE cUTS

5. The Committee has rightly been concerned to elicit a reason for banks failure to pass on the Bank of England interest rate cuts to borrowers and yet, do pass on the interest rate cuts to the savers[106]. The answer to the question is simple. The banks have passed the interest rate cuts to the savers because the banks have the power to set the interest rate for the savers. Conversely, the banks do not have the power to pass the interest rate cuts to the borrower.

6. This is because, the banks have sold the mortgage contracts to the SPVs and it is the SPVs alone, that have the contractual power

to determine the borrowers interest rates. Consequently, it is the SPVs that decide whether or not to pass on the interest rate cuts. It is the SPVs that have decided not to pass on the interest rate cuts.

7. This fact is evidenced by the various and respective Prospectuses that the SPVs file at the UK Listing Authority. In general, the bank that originates the loans will make a True Sale[107] of the mortgages to the SPV which means the contractual power to set the borrower's interest rate is vested in the SPV.

8. Following the bank's True Sale of the mortgages, the bank's contractual relationship with the borrower is extinguished. The SPV, as assignee, becomes the party that is in privity of contract with the borrower. However, neither the bank nor the SPV inform the borrower of the SPV's ownership of the mortgage contract.[108] The SPV will remain concealed. The borrower is unlikely to discover the SPV's ownership of their mortgage contract because, following the sale to the SPV, the bank and the SPV enter into a contract wherein, the bank agrees to administrate the mortgages on behalf of the SPV and in return, the SPV remunerates the bank for its administrative services. Consequently, whilst the bank has extinguished all its right and title to the consumer's mortgage contract, the bank's connection to the consumer's mortgage is through its administration agreement with the SPV only. Following these legal manoeuvres: (i) the consumer and the SPV are in privity of contract under the mortgages; (ii) the bank and the SPV are in privity of contract through their administration agreement; and (iii) the world will remain ignorant of these events because, the bank continues to service the loans as if nothing has happened.

9. Therefore, the bank's only interest in the loans following its True Sale of the mortgages is that of a mere administrator and servicer of the loans. It is the SPV that is the bank's client from whom the bank earns its servicing fees and from whom it receives its instructions. Consequently, the bank's loyalty is to SPV client only. The power to set the borrowers interest rates is a contractual power contained in the mortgage contract:a fortiori when the contract is sold to the SPV, the contractual power to set the borrowers interest rates is vested in the SPV and not the bank. Therein is the reason why the banks have not passed-on the interest rates cuts. It is simply because: they cannot. They must, in accordance with their administration agreement with the SPV, implement the interest rate policy of their client, the SPV.

10. Evidence of these submissions is best demonstrated by example. In the case of Northern Rock, the SPV has given Northern Rock the authority to set the interest rates. However, Northern Rock has undertaken to set the interest rate at a level that not only covers Northern Rock's administration costs, it is contractually obliged to set the rate at a level sufficient to support the entirety of all the administration costs, expenses and profits of each of the numerous entities involved in the securitisation structure[109]. This means that Northern Rock must set the interest rate at a level that will ensure the SPV suffers no revenue shortfall. In the event that Northern Rock fails to set the rate at a level sufficient to satisfy the SPVs required revenue, then the mortgage trustee may "notify the administrator that|the standard variable rate and the other discretionary rates or margins for the mortgage loans|should be increased|the administrator will take all steps which are necessary|to effect such increases in those rates or margins."[110] Consequently, Northern Rock may only exercise the interest rate pursuant to the SPV's authority to do so under the terms of its administration agreement, and in any event must set the rate at levels to the satisfaction of its SPV client. In other words, Northern Rock does not have the autonomous power to set the rates independent of its SPV client. Accordingly, it is the SPV that controls the interest rate setting power.

11. Whilst Northern Rock has been used as the example, the Treasury Committee is reminded that this circumstance is not unique to Northern Rock. It is standard to most SPVs. In conclusion, it is recommended that the Committee encompass within its inquiry consideration of the role of the SPV in the banking crisis and the relationship between the banks and the SPVs.

12. Finally, if the Government is determined that the interest rate cuts are passed on to the borrowers, it must ask the SPVs.

13. In conclusion, this means that the correct answer to the Committee's question No. 170[111]: ". . . Are the banks just pocketing a few bob for themselves here?": the full and correct answer is—No, it is the SPVs that are pocketing a few bob for themselves.

OPENESS AND HONESTY

14. There are no bad debts on the banks books. And if there is any bad debt, the amount is de minimis. A primary purpose of a securitisation is: to remove the credit risk from the bank's books. The bank, under a `true sale' will sell all its rights and title in the mortgages to the SPV and the SPV will in return pay the bank cash for the mortgage assets. This plain truth has remained elusive because under the terms of the true sale contract, the bank and the SPVs have unlawfully agreed to keep the transaction concealed from the borrower and, from H.M. Land Registry. Thus giving the false appearance to the world that the banks still own the mortgages.

15. Two sleights-of hand are at play in this manoeuvre. One is the legal ruse, the other the auditor ruse. This is not to suggest that the professions have conspired, they are each compartmentalised and each are generally unaware of the combined effect.

THE LEGAL RUSE

16. First, the legal ruse. The law provides mortgagees with a statutory power to transfer a legal charge.[112] It is under these statutory provisions that the banks exercise their right to assign the mortgages to the SPVs. In a contract of sale that provides for a disposition[113] of an interest in land, the legal title will be conveyed immediately from the seller to the buyer[114] on the completion date. There can be no doubt that on completion, the buyer has acquired the legal title, but there will inevitably be a "registration gap" between the conveyance date on which the buyer acquired the legal title and the date on which his legal title is registered at H.M. Land Registry. During this registration gap, the law provides that the buyer's title: "does not operate at law until the relevant registration requirements are met".[115]

17. This is where the legal ruse comes into play. It is this "registration gap" that the SPV unlawfully exploits in order to conceal its ownership and control of the mortgages. Under the Land Registration Act 2002 ("LRA 2002"), the transferee[116] of a registered charge is required to register at H.M. Land Registry, its ownership of the mortgage that it purchased.[117] Therefore, it is a legal requirement that the SPV register its proprietorship of the mortgage at H.M. Land Registry. Whilst the law implicitly permits the registration gap as a matter of pragmatism, the law also implicitly mandates that the registration requirements are to be observed expeditiously. Nonetheless, in contumacious disregard for its legal duty to comply with the registration requirements of the LRA 2002, the contract of sale expressly provides that the SPV will not register the transfer at H.M. Land Registry indeed, the contract provides that notice of the transfer is to be concealed from the borrowers and H.M. Land Registry and a fortiori concealed from the world[118].

18. The suppression and concealment of this information from H.M. Land Registry is a criminal offence[119], and in furtherance of this offence[120], the SPV's legal title to the mortgages is also concealed from the county courts and the Government. The Banks remain registered as the proprietor of the mortgages and accordingly all interested parties are deceived by this concealment with one exception. The SPV does inform its investors that the bank sold its legal title to the SPV (to whom, the right to register the legal title to the mortgages is important). Consequently, the bank appears to be the legal owner, but it is not.

19. For example, in the case of Northern Rock as the seller of mortgages, the prospectus states: "under the mortgage sale agreement dated March 26, 2001 entered into between the seller, the mortgages trustee, the security trustee and Funding, the seller assigned the initial mortgage portfolio together with all related security to the mortgages trustee|"[121]. Additionally, under the terms of Northern Rock's mortgage sale agreement, it is, "entitled under the terms of the mortgage sale agreement to assign new mortgage loans and their related security to the mortgages trustee". [122] (bold emphasis added).

20. Northern Rock may remain falsely registered as the putative `legal owner' but in truth, Northern Rock is merely the administrator of the mortgage loans. Again the Prospectus states: "The seller acts as administrator of the mortgage portfolio under the terms of the administration agreement, pursuant to which it has agreed to continue to perform administrative functions in respect of the mortgage loans on behalf of the mortgages trustee and the beneficiaries, including collecting payments under the mortgage loans and taking steps to recover arrears."[123] (Bold emphasis added).

21. The legal reality is that: (i) Northern Rock sold its legal title to the SPV, in this case, to Granite Finance Trustees Limited[124] and therefore, Granite is the legal owner; (ii) Northern Rock is the administrator of the mortgages and falsely holds itself out as the legal owner of the mortgages; (iii) Granite Finance Trustees Limited should be, but is not, registered as the owner of the mortgage; and (iv) all these facts remain concealed because Granite and Northern Rock have unlawfully contracted to suppress this information from H.M. Land Registry.

22. Notwithstanding that the SPV conceals its legal title from H.M. Land Registry, the SPV will, nonetheless, avail itself of, and exercise, all the statutory and contractual legal powers that the legal owner enjoys. For example, the SPV will exercise the legal owner's statutory power to create a legal charge [125] on the borrower's mortgages. The SPV will file at Companies House a Form 395 "Particulars of a Mortgage or Charge" within the statutory 21 days, to register the Legal Charge that the SPV created against the mortgage loans in favour of the SPV's trustee, as security for the payment of money due to its investors and creditors.[126]

23. The SPV's exercise of the legal owner's contractual and statutory legal powers leaves no doubt that SPV is: the legal owner of the mortgages. Nonetheless, the banks and the SPV unlawfully exploit the "registration gap" in a smoke and mirrors tactic to cause confusion and conceal the SPV's legal title. The SPV is the legal owner. The banks are the administrators.

THE AUDITOR RUSE

24. The Treasury Committee has endeavoured to discover the amount of bad debts on the banks' books. An answer to that question has hitherto evaded an adequate response. As discussed above, the bank has sold the mortgages and thereby transferred the credit risk to the SPVs which means, that the banks do not have these (allegedly) "bad" debts on their books.[127] Therefore, to provide the Committee with the full answer, the question must be re-framed as: having sold legal title to the debts, how do these allegedly "bad" debts appear back on their balance sheets?

25. Likewise as discussed above, the SPVs legal title to the mortgages is also concealed from the auditors. The auditors know that the bank originated and owned the mortgage loans and therefore, the mortgage loans are initially and correctly `recognised' as an asset on the bank's books. However, when the bank securitises that asset, the bank has sold the asset to the SPV. This means that the SPV owns both the benefits and the credit risks of the assets. Accordingly, the bank's transfer and sale of legal title should result in the assets being `derecognised' as an asset on the banks' books. However, the auditor's continue to recognise the assets on the bank's books. This is because of an inadvertent erroneous evaluation and application of the IAS39 accounting standard.

26. IAS39 sets out three main scenarios in which an asset will be derecognised and removed from the bank's books. Under any one of these three scenarios, the mortgage loan assets that have been securitised should be derecognised with the consequent effect that the assets are removed from the banks books.

27. The mis-application of the IAS39 derecognition policy is best illustrated by the following example. In the Northern Rock's Annual Report and Accounts 2007, the derecognition policy states:[128] "The Group also derecognises financial assets that it transfers to another party provided the transfer of the asset also transfers the right to receive the cash flows of the financial asset." In a securitisation, that is exactly the legal effect. However, auditors are called upon to make an evaluation of the bank's legal rights in their analysis. The auditor must determine who has the legal right to the cash flows. Understandably, an auditor is not best qualified to make an accurate legal determination. Nonetheless, the auditors do see that: (i) the bank's legal title is still registered at the Land Registry (albeit falsely); (ii) the auditors see the bank's administration of the mortgage loans; and (iii) the auditors see the cash flows from the mortgage loans are paid to the bank. In contrast, the auditors do not see (iv) the contract of sale wherein the bank transferred to the SPV, all its title and rights to the asset; (v) do not see the bank's administration agreement with the SPV which evidences the bank's interest is merely authority to administrate the mortgage loan asset; and (vi) do not see that the bank has no right or title to the cash flows it receives from the mortgage loans. Consequently, the auditors understandably fail to accurately evaluate the legal rights and accordingly fail to derecognise the asset. As a result, the asset erroneously remains recognised as an asset on the bank's book.

28. However, the auditors are mindful that the asset has been securitised and that such transactions require some acknowledgment and entries in the accounts. Again, IAS39 is the culprit. IAS39 directs the auditor to "Consolidate all subsidiaries (including any SPE)" [129]. The IAS39 therefore instructs the auditor's to consolidate the special purpose entity[130] (or vehicle), into the group accounts.

29. This is an extremely bizarre instruction to auditors for three reasons. Firstly, this instruction contradicts the foundational principle of a securitisation structure which is: that the originator of the asset must be `Bankruptcy Remote' from the SPV. That is, that the SPV is a wholly independent company that is in no manner whatsoever connected with the originator of the assets it has purchased. The true sale must be an `arms-length' transaction between the two wholly independent entities. This is an essential element of the securitisation structure to ensure that the SPV and its assets are not in any way affected by the bankruptcy or insolvency of the asset originator. Secondly, the bankruptcy remoteness of the SPV is the credit rating agencies predominant factor for the SPV's Notes achieving the triple A rating. Thirdly, there is no legal basis on which a wholly independent company, (iean SPV) should be included in the consolidated accounts of another company where the SPV is not a subsidiary or legal undertaking of that company.

30. Notwithstanding that the SPV and Northern Rock are wholly independent and separate companies, the mortgage loan assets and liabilities that the Granite SPV own, was consolidated onto the Northern Rock's Group accounts.

31. To illustrate this point, take for example Granite Master Issuer plc's prospectus where it expressly states: "The Issuer is wholly owned by Funding 2|The Issuer has no subsidiaries|The Seller [Northern Rock] does not own directly or indirectly any of the share capital of Funding 2 or the Issuer"[131].

32. Therefore, when reading the Northern Rock accounts,[132] the figure of £43,069.5 million stated as a Northern Rock liability, is in fact, Granite Master Issuer plc's liability. The "Debt Securities" issued of £43,069.5 million is the liability of Granite Master Issuer plc, a wholly independent company which the auditor has erroneously consolidated on to the Northern Rock Group accounts solely because of the erroneous application of IAS39.[133] That liability is Granite's liability to its investors.

33. Likewise, Granite's assets also appear on Northern Rock's balance sheet. Consequently when reading the figure of £98,834.6[134] million stated as a Northern Rock asset, at least £49,558.5 million,[135] is in fact, Granite Master Issuer plc's asset.

34. The Committee is respectfully reminded that whilst Northern Rock has been used to illustrate the point, this application of IAS39 is common practice.

35. In summary, the assets "appear back on the books" due to the misapplication of IAS39. The error is compounded through the unlawful exploitation of the registration gap which conceals the facts necessary for an accurate application of IAS39. It is this concealment that causes the auditor confusion. These assets and liabilities should not be on the bank's balance sheet. They are there solely because of the combined effect of the legal and auditor ruse[136].

36. In consequence, the British tax payer is not just the supporter of British banks, the tax payer is the unwitting guarantor and

supporter of all the privately owned, wholly independent SPVs foreign companies incorporated in tax havens. Their consolidation into the group accounts of British banks means that the tax-payer is also funding the capitalisation of the SPVs. These foreign SPV companies and their investors must be extremely satisfied with the UK tax payers support. After all, there are always winners in any crisis.

37. Recommendations:

— Auditors should reconsider the application of IAS39 and perhaps seek legal opinions on the bank's legal rights and obligations in its evaluation and application of this accounting standard. It is recommended that the law firm that acted on the actual securitisation is not used for this purpose, and that an independent barrister may be more suitable. Moreover, an SPV should never be consolidated into the Group accounts unless it is an actual legal subsidiary or a legal undertaking of the Group.

— Both the SPVs and banks must be held to compliance with the Land Registration Act 2002 and accordingly, complete the registration requirements under the Act. For those that do not comply with the registration requirements, enforcement action should be considered. Transparency is the antidote that will cure the abuses facilitated by concealment.

THE FSA'S REGULATORY ROLE

38. Whilst the FSA regulates mortgages, it does not regulate the SPVs that own the mortgages. Given that it is the SPV's that exercise the power and control over mortgagors, interest rate policies and repossession policies, there is a major lacuna in regulatory oversight. Through the medium of the ruse discussed above, an added bonus of concealment is that the SPV circumvents regulatory oversight. It may be argued that such lacuna is covered by the FSA's authorisation and regulation of the loan administrator. However, this argument does not address the inherent conflict between the bank's compliance with the FSA's regulations and its loyalty to its SPV client. This is because the SPV is vigilant on the bank's implementation of its policies under their administration contract whereas, the FSA in contrast are widely known for its apparent determination not to enforce[137] its MCOB[138] rules and regulations. Therefore, given the choice between the impotency of FSA deterrence on the one hand, and client loyalty and profit incentive of banks and SPVs on the other hand, the dominant motivation that will inevitably prevail is the satisfaction of the profit incentive. This means that the bank's allegiance to its SPV reigns supreme over the bank's regulatory obligations to consumers. After all, the irony of the FSA's `Treating Customers Fairly' principle, is that the SPV is the customer of the bank whereas, the borrower not. The borrower is in fact, the customer of the SPV.

39. But all is not lost. The Financial Services Practitioner Panel is in consensus with the principle that the FSA's MCOB rules should be enforced. In its Annual Report 2007/8 it stated: "This was a major area of risk from a consumer point of view and the Panel considered that the Mortgage Conduct of Business (MCOB) rules were not achieving the objectives that were intended by them—in fact, to some degree, they had served to compound the issue "[139]. The Practitioners Panel then goes on to call for the FSA to supervise and enforce the MCOB rules, it continues, "The Panel remains concerned that the FSA's supervisory and enforcement activities in this area continue to move too slowly to significantly improve standards in this sector."[140] The principle quoted here is highly laudable, and to the extent quoted above, this principle from the consumer's perspective, would attract strong consensus.

40. To be accurate however, the Practitioners Panel is vociferous for FSA enforcement of the MCOB rules only to the extent that they apply to the 3,000 small businesses that provide services in the financial intermediary sector. Nonetheless, the Consumer Panel and Practitioners Panel both support the FSA's enforcement of the MCOB rules in principle and apparently, both the Practitioner and Consumer Panels would wish to achieve the objectives that were intended by the MCOB rules.

41. Whilst the Practitioner Panel's call for MCOB enforcement is supported in principle, it is suggested that enforcement against the many small business in the intermediary sector should be deferred because: (i) enforcement in that sector would yield no immediate assistance to the consumer or small businesses; (ii) that sector of the economy is at present, relatively inactive; (iii) it is probable that some of those small businesses may not survive the economic downturn and the FSA should not exacerbate their plight for survival at this juncture; and (iv) the Government aspires to assist small businesses in any event.

42. Accordingly, in recognition that the FSA's resources are finite and therefore should be focused and targeted to achieve the Government's aspirations, it is suggested that the enforcement campaign focus on the MCOB rules to the extent applicable to mortgage administration and mortgage repossessions. An FSA publicly announced policy decision to take enforcement action against mortgage administrators non-compliance with the MCOB[141] would have an immediate deterrence effect, concentrate the mortgage administrator's mind, attitude and conduct on its regulatory obligations and in turn, produce immediate assistance to consumers in financial difficulty. The announcement of such policy may also achieve the added bonus that the FSA's TCF objectives, (which were also intended to protect consumers), may also be realised as a result of an enforcement policy. Moreover, an actual enforcement may have a longer-term deterrent effect and re-position the FSA's supremacy in the conflict between the bank's deference to its SPV clients prevailing over its obligations to consumers. Finally, and most pertinently, from a public relations perspective, it may restore a large degree of public confidence in the FSA and the financial industry generally and stem the repossession trend.

43. Recommendations:

— the Treasury Committee give its fullest support to the Panels aspirations and immediately recommend that the FSA vigorously enforce the MCOB rules; and

— the courts are informed of the claimant's[142] administration and repossession legal obligations under the MCOB rules and that the courts assure themselves of the administrator's strict compliance with those rules before ordering repossession. Again, this would have immediate impact to assist consumers in difficulties.[143]

THE FALLACY OF FINANCIAL ADVICE (TERMS OF REFERENCE 1.9 AND 3.7)

44. On 14 January 2009, Mr Tutton of the Citizens Advice Bureau gave oral evidence wherein he enunciated the principles that "|borrowers need to have the risks properly pointed out to them|to understand the consequences|what is the interest rate, what is it going to cost me?|and borrowers are properly helped to decide what they are getting into."[144]

45. There is an abundance of consumer laws and regulations that govern credit agreements and in particular, govern the advice that independent financial advisers provide to consumers on mortgage products. In practice however, the consumer's choice of lender and product is often a nullity and can be deemed an academic exercise. This is because, whilst the consumer may be advised to select a mortgage product from Bank X and may choose to enter into a contract with Bank X on that advice, the reality is that Bank X will not be the company with whom the consumer will ultimately be in privity of contract, nor will Bank X be the entity that performs that contract.

46. In general, neither the IFA, nor the consumer knows at the outset that Bank X will merely originate the mortgage contract and that Bank X will sell the mortgage contract. Moreover, whilst the consumer may be informed of the initial `pass-the-parcel' of their mortgage contracts to various entities, the consumer will never be told of the final and ultimate owner of their mortgage contract, namely the SPV entity that securitises their mortgage contract. In other words, neither the IFA nor the consumer is aware of, nor considers the impact of the "originate-to-distribute model" when providing or considering financial advice.

47. To illustrate the practical impact of the SPV's concealment from the borrower, take for example, a consumer that was advised to choose a GMAC-RFC standard variable rate mortgage. Firstly, some of those borrowers would have been securitised through an SPV called Clavis Securities plc. Thus, the consumer's advice as to the lender is rendered academic. Secondly, unbeknown to the borrowers, Clavis unilaterally decided that borrowers who had purchased a GMAC standard variable rate mortgage contract would be treated as if they had purchased a track-rate mortgage.[145] Accordingly, Clavis' decision renders the consumer's advice on product as also academic. Thirdly, it was irrelevant to Clavis that the borrowers contracted to pay GMAC's standard variable rate, because Clavis at all times charged its borrowers at least 0.25% in excess of GMAC's standard variable rate. Accordingly, Clavis at all times demanded (and was paid) interest that the borrowers were not contractually obliged to pay.

48. In one case on point, the non-contractual demanded interest rate overcharge was disputed. The response was that it had the "power and liberty" to charge as they pleased. Following a vigorous defence of this contention, it was finally conceded that it had overcharged interest but at the same time, inferred that the overcharge was de minimis as it only amounted to approximately £3,000. However, this amount is not de minimis to an individual nor when taken in the context of the securitisation as a whole. That securitisation involved a pool of approximately 4,500 mortgages contracts each of which would have been subjected to the same contractual abuses. As Clavis had overcharged each of those consumers an extra non-contractual 0.25% and assuming that that overcharge was in the region of £3,000 for each consumer, such modus operandi would yield a conservatively estimated extra £13.5 million.

49. There is an abundance of anecdotal evidence that consumers are instinctively aware that their mortgage accounts are being abusively charged.[146] However in the majority of cases, it is improbable that consumers would be able to identify and articulate the character and nature of the abuse sufficient to present such defence in a court. Therefore, this type of abuse remains substantially, undetected. From the consumer perspective it inevitably results in repossession, but on strict construction of the borrower's mortgage obligations it is in fact, dispossession.

50. Therefore, with respect to mortgage products that will be securitised, the notion that a financial adviser can advise consumers, and the notion that consumers have choice, is a pure fallacy. The evidence shows that whilst the fault cannot be laid on the adviser, it does not change the practical reality for the consumer who will be aggressively held to their obligations (including, in some cases demands for money which they are not contractually obliged to pay), whilst the SPV lender will conveniently absolve itself of its obligations (including, in some cases substituting the product with a completely different product). Consequently, neither adviser nor borrower can make an informed decision on that which, directly and substantially affects them. They cannot know how much the interest rates will be, and cannot know how much it will cost them, because all of these variables are dependent on the arbitrary decisions of the SPV with whom the borrower is ultimately in privity of contract—and that information is at all times, concealed[147].

51. Finally, this issue highlights the importance of the principle of Transparency. To echo the Prime Minister,[148] "all transactions should be transparent and never hidden". The concealment of the SPV from the borrower presents the SPV with the opportunity to abuse with impunity, safe in the knowledge that the consumer would never know who is really perpetrating the abuse and whom they should hold accountable. The borrower should know with whom they are in privity of contract and that information should never be concealed.

52. Recommendations:

— Mortgage originator's must make full and frank disclosure of the effect of securitisation on the borrower

— The contractual formula for interest rate setting must be fully disclosed and fixed such that the extensive discretionary powers are abated and/or

— The SPV's unfettered powers to unilaterally inflate the borrower's obligations should be curbed.

THE RULE OF LAW—REPOSSESSION OR DISPOSSESSION?

53. The Committee's attention is drawn to the Practitioner Panel's promulgation in its Annual Report 2007-08 under the heading "Caveat Emptor" wherein it stated: "The Panel believes that a consumer's legal responsibilities should be those underpinned by contract law, which includes a duty to act lawfully and in good faith, not to make misrepresentations or withhold material information, to abide by the terms of the contract, and to take responsibility for his or her own decision."[149]

54. The Practitioner Panel's is commended for its enunciation of these principles under the banner "caveat emptor" as it demonstrates that the Panel have correctly identified that `the buyer beware' maxim is an appropriate forewarning which consumers should heed when purchasing loans from powerful financial institutions. Consumers should always be alert to the shenanigans of sellers with whom they contract. However, at this juncture it is apposite to remind the Committee that irrespective of a prudent purchaser's precautions, the consumer cannot beware of that which is deliberately concealed. Consequently, the consumer is doomed to become the unwitting counterparty to the SPV in their mortgage contracts in any event. The consumer did not expressly agree to contract with the SPV more accurately, it is the SPV that imposed itself on the consumer.

55. Two observations to the Practitioner Panel's promulgation are appropriate. Firstly, the Panel's axiomatic principles are tantamount

to a demand for the faithful application of the Rule of Law. That demand invites an exorable concurrence from consumers which invitation is unreservedly accepted. Secondly, as the Treasury Committee has rightly observed, there are two parties to the contracts and they both share risk.[150] Accordingly, the principles apply with equal force and conviction to the SPVs legal responsibilities.

56. In consideration to the faithful application of the Rule of Law, it is necessary to illuminate the conduct of SPVs in their performance of their legal obligations under the mortgage contracts.

57. The material provision in the mortgage contract is that the lender will loan the advance for a term of 25-years. The SPV imposed itself into the mortgage contract as assignee, and as such, assented to perform this fundamental term of the contract. However, the SPV has no intention of performing that 25-year term. The SPV uses its wide discretionary interest rate setting powers to demand interest, often in excess of that which the consumer is legally obligated to pay, and often sets its rates at levels that are specifically designed to force consumers to seek to remortgage to a more reasonable rate. For those consumers who do not, or cannot remortgage, the excessive fees and interest rate charges are designed to guarantee arrears such that, the alleged arrears can be contrived as the grounds for repossession. Either way, the strategy ensures that the mortgages in the securitised pool will be redeemed within a 2 to 5 year period. Hence, the practice is designed to defeat the SPV's obligation to lend for the 25-year term. Moreover, it does so in a manner that gives the impression that it is the borrower in default of contract.

58. Therefore, with respect to the Practitioner Panel's call for disclosing material information, it is necessary for originator's to disclose the material facts that (i) the consumer's contract will be sold to an SPV and that the SPV may not intend to fully honour its contractual obligation to lend for the full 25-year term; and (ii) that the SPV's interest rates will reflect not only the bank's administration of the mortgage loans, but also the extensive fees and expenses[151] of all the entities involved in the securitisation transaction[152].

59. Evidential support for these contentions can be found in the repossession policies and the interest rate setting policies. There is also evidence from the lightening speed in which the SPV pays down its Investors and there is prima facie evidence from the amount of new business in mortgage market for remortgages[153] (in comparison to new business written for a house purchase mortgage). Such evidence is best illustrated from actual examples:

60. In June 2006, Clavis Securities plc became the owner of 4,293 consumer mortgage contracts that were originated by GMAC-RFC Limited. Clavis securitised those mortgages totalling £587,945,144 in a securitisation transaction which issued £600 million[154] of Notes to Investors. This £600 million of Notes mature in the year 2031[155] which reflects the 25-year term of the mortgage contracts.

61. In theory, the principal amount on the Investors Notes should pay down in exact correlation with the consumer's payments of principal on the mortgage. From the consumer perspective, this means that it should take at least a couple of decades to pay down the Investors. However, the Clavis Investors Report in December 2008 shows that miraculously, Clavis have paid down £456.8 million of these 25-year consumer mortgage contracts in only 2½ years. This means that within the short duration of only 2½ years, Clavis has successfully manipulated over 77% of its borrowers to redeem either through duress perpetrated on the borrower to remortgage[156] through its interest rate policy and/or through repossession. Either way, Clavis has absolved itself of performing its 25-year loan obligation to the vast majority of its borrowers[157].

62. It is submitted that it can reasonably be inferred from these facts, that Clavis had no intention of performing its 25-year obligation. Whilst the Clavis securitisation is used to illustrate the point, this course of conduct is not an isolated example. It is ubiquitous throughout the securitisation industry and illustrates that the SPVs are in breach of contract for their evident intention not to perform and/or their failure to perform their contractual obligation to the consumer for the 25-year term.

63. To achieve the SPVs absolution from its 25-year obligation, the SPVs use their wide discretionary interest rate setting powers to manipulate consumers to remortgage[158]. For those consumers who cannot remortgage, it is almost a certainty that they will be subjected to repossession action at some juncture. In all cases, the interest rate charged is designed to create arrears. There are cases where one or more of the following examples apply: (i) borrowers who are current in their payments are suddenly informed that arrears had accrued some years earlier for which immediate payment is demanded;[159] (ii) the arrears are contrived through applying interest and charges that the consumer is not contractually obliged to pay[160]; (iii) adding fees and charges and falsely claiming that they are interest arrears contrary to the MCOB[161]; and (iv) the amount claimed as arrears is exaggerated by claiming amounts that are not yet due. In all cases, the consumer has to trust the mortgage administrator's calculations and is rarely in a position to challenge the accuracy of the alleged arrears. The SPV, through their mortgage administrator will commence action grounded on the alleged arrears which are often erroneous, inflated and/or plain false.

64. The abusive use of the SPV's discretionary powers to demand non-contractual interest is best explained through illustration. GMAC borrowers who contracted under GMAC's standard variable rate ("SVR") product, agreed to pay GMAC's SVR following the initial fixed period. Under the legal principle nemo dat qui non habet[162], GMAC did not possess the contractual right to charge its SVR borrowers in excess of GMAC's SVR rate. As GMAC did not possess a contractual right to charge more than its SVR, it did not possess, and could not, assign to any assignee, the right to charge GMAC borrowers in excess of the GMAC SVR. In other words, if GMAC could not contractually enforce the borrower to pay more than its SVR, nor could an assignee of that contract. Therefore, an SPV that acquired a GMAC SVR mortgage had no contractual right to charge the borrower any amount in excess of GMAC SVR. In short, an SPV as an assignee can only lawfully demand of its borrowers to like extent that GMAC could lawfully demand.

65. However, in practice, the SPVs violate this fundamental Rule of Law and unlawfully demanded that consumers pay at interest rates in excess of GMAC's SVR. Failure to remit the unlawfully demanded payment rendered the borrower in jeopardy of repossession. Consequently, the SPVs were in breach of contract to each of those borrowers to whom they charged interest in excess of the GMAC SVR.

66. It is the excess interest that consumers were unlawfully overcharged that often formed the basis of the alleged arrears. Additionally, those falsely alleged arrears were used to form the basis of the SPVs alleged right to further exacerbate the borrowers account with considerable charges such as monthly arrears fees, debt counsellor's fees, legal fees, etc. Following these abusive (and unlawful) charges, the SPV's use a further strategy of claiming future payments as alleged arrears to further exaggerate the appearance of large arrears. It is these strategies of overcharges and exaggerated claims, that contrive the false appearance of the borrower's breach of contract which the courts accept without reservation and the borrowers are unable to challenge.

67. Again an exact example will demonstrate the point. Clavis Securities plc, through its mortgage administrator issued proceedings on 14 December 2006[163] alleging arrears of £4,530.63 for which they requested an immediate possession order. Of the £4,530.63 claimed as arrears, £1552.27 were not arrears because that amount was not due for payment until 31 December 2006. Nonetheless, the exaggeration of arrears strategy had the effect of giving the court the false impression of substantial arrears which would cause undue prejudice to the consumer before judge[164]. Of the remaining £2978.36 claimed as arrears, £1489.18 represented the payment due on 30 November 2006 and therefore was only 14 days overdue and the final £1489.18 represented the payment due on 31 October 2006 and therefore was only 44 days overdue.

68. On strict construction of the contract, the SPV invoked the one-month arrears clause to commence the action. However, the only payment that was one month in arrears was the October payment of £1489.18[165]. Moreover, on strict construction of the consumer's obligation to pay interest, as discussed above, interest was at all times overcharged (which was eventually admitted[166]). The admitted interest overcharges amounted to some £3,000. Therefore, in this case, out of the total alleged arrears of £4530.63: (i) £1552.27 was not due for payment at all on the date that the amount was falsely claimed as arrears; and (ii) the remaining alleged arrears of £2978.36 could be more accurately classified as representing the £3000 interest overcharges rather than arrears. The conclusion is that the entirety of the repossession claim was falsely alleged and falsely claimed[167].

69. Again, whilst the example illustrates Clavis Securities plc's unlawful breach of contract, this conduct is not isolated to the Clavis Securitisation. It is ubiquitous generally, and standard practice in the context of GMAC mortgages that have been assigned to other SPVs.

70. As another example, consider the repossession policies of Northern Rock plc. The Treasury Committee have searched for explanation for Northern Rock's repossessions rates and its failure to pass on interest rate cuts, adequate explanations for which has hitherto, remained elusive. There are two fundamental questions that should be answered in order to illuminate an adequate explanation for Northern Rock's interest rate and repossession policies. The first fundamental question is "who" sets these policies and the second question is "why" the policies are implemented and apparently immutable.

71. Northern Rock merely administrates the mortgages on behalf of the SPV that owns the mortgage contracts[168]. The SPV that owns the mortgage contracts that Northern Rock originated is Granite Finance Trustees Limited (a Jersey incorporated company). It is Granite Finance Trustees Limited that exercises the contractual powers under the mortgage contracts and it is Granite Finance Trustees Limited that determines the interest-rate setting policy and the repossessions policy. Northern Rock plc as the administrator acts as agent for the SPV and implements the SPV's policies[169]. Therefore, when endeavouring to elicit an explanation for the policies, the Committee should be mindful that it is Granite Finance Trustees Limited who set the policies that Northern Rock must implement.

72. The second fundamental question is "why" those aggressive policies are dogmatically pursued. The answer is: in June/July 2008 Granite Finance Trustees Limited required more than £8.8 billion to redeem some of its Notes. Throughout 2008, the SPV's monthly Investor Reports[170] stated that: "All of the notes issued by Granite Mortgages 03-2 plc may be redeemed on the payment date falling in July 2008 and any payment date thereafter if the New Basel Capital Accord has been implemented in the United Kingdom." The same notice is given on a further five Note issues alerting the investors to the same advice.

73. The condition that triggers the Note redemption is the implementation of the new Basel Capital Accords, a condition that has been satisfied.[171] Accordingly, the Granite Master Issuer's Notes for each of the series 2003-2, 2003-3, 2004-1, 2004-2, 2004-3 and 2005-1, may now be redeemed. Naturally, this means that Northern Rock plc, in its capacity as administrator and cash manager, acting as agent on behalf of the Granite SPV, must raise the cash that will be required for such redemptions. The cost of these redemptions amounts to £8.8 billion[172].

74. Nick Ainger M.P. observed that in the half-year to June 2008, Northern Rock's repossessions increased 68% on the previous period, and he queried whether there was a link between the aggressive repossession policy and the staff's bonus incentive scheme. He requested an explanation from Mr Sandler[173], Northern Rock's Non-Executive Chairman. In reply, Mr Sandler admitted that the staff incentive scheme "|is designed in the early years around the objective of debt repayment"[174]. Mr Ainger's instinct was correct and the full open and honest answer to his question is: that the incentive scheme was designed around the objective of debt repayment because Northern Rock's client, Granite Finance Trustees Limited and Granite Master Issuer plc, requires £8.8 billion in cash to redeem its Notes.

75. In these premises, it is submitted that the SPVs are in violation of a material term of their legal obligations under the mortgage contracts. The SPVs' course of conduct evidences that they have no intention of honouring their contractual obligation to loan to the consumer for the 25-year term. The Practitioner Panel's calls for the Government to support the rule of law. To that end, consumers would be assisted if the owners of the mortgage contracts would be held to honour their contractual obligations, and/or pay damages to each of the borrowers whom they force to remortgage.

76. The SPVs breaches of contract are not limited to the examples above. The Early Redemption Charges ("ERC") are also unlawful. These ERCs are often in tens of thousands of pounds and do not reflect the SPVs reasonable costs of the redemption. They are therefore, penalties imposed on the consumer and are unlawful because the imposition of such excessive charges on the consumer is a violation of the FSA rules[175]. Moreover, the SPVs impose the charges on properties that they have repossessed. Notwithstanding that ERCs in the tens of thousands are unlawful in any event, the contractual trigger for an ERC charge is when the borrower voluntarily redeems. In the context of repossession, the borrower is not voluntarily choosing to redeem, rather it is the SPV that demands redemption. Thus, the ERC clause is not triggered and should not be charged. Nonetheless, in breach of contract, the SPV demands that charge and borrowers are unlawfully forced to satisfy that non-contractual overcharge too.

77. To conclude, the Practitioner Panel's demand for faithful observance of the Rule of Law is welcomed. They may have intended that only those laws that benefit their members be considered, however on review, consumers would greatly benefit if the courts would properly construe the contracts and that judicial support for the SPVs ubiquitous and excessive and unlawful charges are refused. The consumers would benefit if the SPV were held to their contractual obligation to provide the loan for the 25-year term, and the consumers would benefit if the SPVs were prevented from abusing their discretionary powers to set interest rates. In short, consumers would benefit if the rule of law was observed and that the principle of equality before the law had real meaning, substance and effect.

78. In conclusion: in light of the SPVs legal obligations which are generally performed in violation of the FSA's MCOB rules, and generally, in breach of contract, it begs the question whether the SPVs are lawfully repossessing the homeowner or more accurately dispossessing the homeowner.

79. Recommendations:

— Strictly apply the rule of law. Statute law is merely words on paper until brought to life through judicial observance, application and enforcement.

— Empower the consumer to access the law to effect the enforcement of their rights, both contractual and statutory.

THE PERFECT STORM

80. The Committee has heard the widely rehearsed crie de coeur from bankers that the wholesale markets abruptly closed in August 2007 and that they "didn't see it coming". Which means that the real question to be determined is: why did the wholesale markets abruptly close?

81. The bankers' explanation is that the assets became toxic. The bankers blame the source of toxicity on the allegedly "bad" borrowers who defaulted on their loans. This universal defamation of the borrowing public unjustly stigmatises the homeowner when in fact, in August 2007, the default rates were no more than would be ordinarily experienced. To accept the bankers' allegation without question requires a gullible belief that a minority of defaulting borrowers had the power to bring down the whole of the banking industry. That contention is too incredulous to countenance and consequently, it is submitted that the bankers' explanation should be rejected.

82. A more reasonable and logical explanation for the source of the toxicity can be found in tax law. In the Finance Act 2005, the Government took tentative steps with new tax law targeted specifically at securitisation companies. The 2005 Act provided "interim

relief for securitisation companies".[176] Then, on 21 March 2007, H.M. Revenue and Customs made a public announcement[177] stating that legislation would be introduced in the Finance Bill 2007 that would affect "Large companies involved in securitisation or issuance of debt" and that the measures would have effect following its Royal Assent. The Finance Act 2007 received its Royal Assent on 19 July 2007. It cannot be a mere co-incidence then, that the wholesale money markets went into meltdown within a couple of weeks apparently with the cry "toxic-assets". On the facts, it is logical to deduce that the source of toxicity is tax rather than the bankers' defamatory allegation against the allegedly "bad" borrower. The flight from funding was fear. Fear of paying tax.

83. The twist of fate turned the tide on tax policy and trumped the Treasury's tax intentions. The SPVs, rather than being the new contributors to the Treasury coffers became the greatest recipients of the Treasury coffers. The consumer now pays the money-masters twice. First directly to the banks and then indirectly through the Treasury.

84. To exacerbate these events, a further factor came into play. The banks cry for capital. The cry was driven by the apparent immediate need to comply with the new Basel Capital Accords. Angela Knight informed the Committee that the banks' capital requirements "jumped" overnight[178] which naturally implies, that the banking industry was caught off-guard. Again, this assertion is too incredulous to attract credibility. Nonetheless, this lame excuse is the generally accepted foundation for the tax payer funding the banks' balance sheets. The result is that the ordinary public was hit with this double-whammy of tax policy and Basel.

85. The Government aspires to stimulate the economy which requires the revival of the housing market. The Government appears to be in state-mate with the banks. There is demand for property purchases, but the banks will not facilitate the buyer's desire to buy. Again, the Government is at the mercy of the banks. But the Government does not necessarily need to beg the bankers to lend. It can apply the rule of law and revive and give life to law that already exists.

86. The Law of Property Act 1925 s.95 contains a provision: "Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of re-conveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly" Emphasis added.

87. This means that the borrowers have a statutory right to assign the mortgage debt to a buyer. The loan already exists. No new lending is required. The borrower can assign the debt to the buyer as part of the property sale. The SPVs have made use of their statutory rights to assign. It is now time to give life and real effect to the borrower's right to assign. The Government does not need the bankers, the funding is already available. The Government can revive the housing market without the acquiescence of the bankers. If nothing else, the threat of facilitating the public's use of this provision would add weighty negotiation leverage to effect the Government's aspirations. The Government has given the golden carrot to the bankers who have coveted that carrot to the exclusion of all. It is perhaps time to use the stick.

88. Implementation of this provision is simple. H.M. Land Registry could create a new Transfer Form to facilitate the mortgage assignment. For example, the TR1, transfer of the property and TR4, transfer of mortgage charge, could be used as the basis to create a new form to simultaneously transfer and assign both the property and the mortgage debt to the buyer. Additionally, the HIP pack could be amended to include disclosure of the mortgage product.

89. The Government has supported the minority, the bankers to the absolute detriment of the majority, the public. The Government should re-focus its perspective and support the majority. Consumers only need the Government commitment to enforce the rule of law to empower the ordinary public.

cONCLUSION

90. Qui Bono? Who benefits? The banks and the SPVs. The banking-crisis has undoubtedly been the greatest heist of public money at the hands of money-men wielding their power in the guise of victimhood. In reality it is passive-aggressive intimidation. Power is being concentrated in the hands of the few remaining banks that have successfully dispensed with competition, leaving the public at the future potential mercy a cabal of bankers and the attendant possibility of a concealed cartel. The golden rule will prevail. He who holds the gold—Rules! Private foreign companies and their investors have also done exceptionally well. The SPVs are being capitalised by the public purse through bank consolidated balance sheets and consequently, the public purse will carry any SPV losses. The investment paradigm appears to have shifted. Historically, investors capitalised their companies and received high returns for taking risk and, if the risk manifests, investors lost their investment; but now, the Investors still receive high returns but, the public capitalise their companies and guarantee the investors' returns.

91. The intention of this memorandum is to highlight securitisation issues from the consumer and the tax payer perspective. It is not intended to give the impression that the securitisation process is harmful per se but it is intended to demonstrate that without checks and balances, this financial engineering dysfunctions to the detriment of the consumer and ultimately the economy. Transparency is essential, together with openness and honesty from the financial institutions[179].

92. The contractual relationship is not one of equals, it is one of Goliath and David without the stone! The scales of justice are in urgent need of recalibration. To restore equilibrium between the contracting parties the remedy is: the faithful application of the rule of law. The failure of British courts to give effect to consumer rights makes the UK a most creditor friendly jurisdiction (which means a most debtor unfriendly jurisdiction) in the world attracting the highest creditor friendly rating of A1[180]. This high rating is achieved not through the lack of consumer protection law, but rather through the lack of consumer law enforcement. Consumers do not necessarily need new protection laws, consumers need empowerment to enforce their contractual rights and the consumer laws that exist.

This memorandum is respectfully submitted for your consideration.

February 2009

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105 John McFall M.P.: question to the Chancellor of the Exchequer on 19 January 2009 in reference to the Government's £37 billion cash support to the banking industry. Back

106 See eg, Chairman's Q116, Q117, Q169 and Q170. Treasury Committee Banking Crisis Uncorrected Transcripts of Oral Evidence Back

107 True Sale means "This is a genuine sale with title passing to the issuer SPV." Source: H.M. Revenue & Customs CFM20030 at: http://www.hmrc.gov.uk/manuals/cfmmanual/cfm20030.htm Back

108 Additionally, both the bank and the SPV unlawfully suppress and conceal this information from H.M. Land Registry. Back

109 See eg, the SPV's revenue receipts waterfall setting out the order of priority of payments to the many and various creditors followed by the payments due to and investors. Granite Master Issuer plc Prospectus Supplement dated 23 May 2005 at page 144 onward. Back

110 Granite Master Issuer plc Prospectus Supplement dated 23 May 2005 at the 1st para. on page 103 Back

111 See Q170. Angela Knight of the BBA states in explanation that the housing market reduction is value is "affecting the risk weighting of those assets|so the amount of capital that banks hold against that risk also increases". In fact, the bank have sold the assets and passed that risk to the SPV and therefore with respect, Ms Knight's reasoning is defective. In effect, the governments initiatives are supporting the SPVs and their investors and not (as it believes) the banks. This begs the question, why should the tax payer be called upon to guarantee the return of investments? Investors are warned and know that their investments may go down! Back

112 Law of Property Act 1925 s.114 and Land Registration Act 1925 s.33 (note the LRA 1925 is repealed as of October 2003 pursuant to the LRA 2002) Back

113 The legal definition of a disposition includes the conveyance of a mortgage. See Law of Property Act 1925 s.205(ii) Back

114 See Megarry & Wade 7th Ed. Para.7-150 Back

115 See Land Registration Act 2002 s.27(1) As legal title does not operate until registration, it operates in equity pending registration. Also note equity's rule that: equity regards as done that which ought to be done. Back

116 A transfee is: an assignee of a legal charge. See Law of Property Act 1925 s.114(2) Back

117 See Land Registration Act 2002 s.27(3) and Schedule II, paras. 8 and to 10. (Sch. II, para. 10: "In the case of a transfer, the transferee, or his successor in title, must be entered in the register as the proprietor" (bold emphasis added). See also Law Commission Report printed 9 July 2001. Law Com No. 271 HC114 at para. 4.30 Back

118 The contract provides that the SPV will not register unless certain events occur such as, if the mortgage trustee wishes to enforce the security due to the insolvency of the bank, thus defeating any of the bank's creditors claiming against the asset. Back

119 See Land Registration Act 2002 s.123 Back

120 For example, Clavis Securities were sold GMAC mortgages under an absolute assignment with full title guarantee on or around 15 June 2006 and after some 2½ years have failed to register its ownership at the Land Registry. Back

121 Granite Master Issuer plc. Prospectus Supplement dated 23 May 2005 at page 108 under the heading "The mortgage sale agreement". Back

122 Id. See at page 113 under the heading "Assignment of new mortgage loans and their related security". Back

123 Id. See at page 11 under the heading "The Seller, the administrator, the cash manager, the issuer cash manager and the bank account". Back

124 Granite Finance Trustees Limited is a Jersey incorporated company. Back

125 Pursuant to the mortgagee's power as the legal owner under the Land Registration Act 2002 s.23(1). Back

126 See eg Clavis Securities plc (Reg. No.05778179) Form 395 filing at Companies House on 22 June 2006. Back

127 Although it is conceded that the banks may hold the SPV issued Notes in their Treasury Departments which means: the debts are not trading losses from the bank's loan book of advances to its customers, but rather the (allegedly) poor investments of its Treasury Department in the banks proprietary trading as an investor. Back

128 Northern Rock plc Annual Report and Accounts 2007 at page 55 para. j). Para. "j)" is essentially a concise summary of the three main scenarios of the IAS39 derecognition accountancy standard. Back

129 IAS 39 Technical Summary prepared by IASC Foundation staff (which has not been approved by the IASB). Source http://www.iasb.org/NR/rdonlyres/1D9CBD62-F0A8-4401-A90D-483C63800CAA/0/IAS39.pdf Back

130 Special Purpose Entity ("SPE") is synonymous with Special Purpose Vehicle ("SPV") Back

131 Granite Master Issuer plc, Prospectus Supplement dated 23 May 2005 at page 56. See also, page 60: Northern Rock "does not own directly or indirectly any of the share capital of Holdings or the mortgages trustee". See also page 62: Northern Rock "does not own directly or indirectly any of the share capital of Holdings or the post-enforcement call option holder [namely, GPCH Limited]". Back

132 Northern Rock Report and Accounts 2007. See page 45 and see in particular note 22 on page 73 Back

133 To correct the balance sheet, the "loans and advances to customers" asset figure should be derecognised and reverse from the asset figure against the securitised notes figure. See also note 22 on page Back

134 Northern Rock Report and Accounts 2007 at page 45 Back

135 Id. at page 73 note 22. Back

136 It is probable that tax considerations are also behind this manoeuvre, ie, tax efficient to minimise/avoid tax liability particularly with respect to the possibility that interest income earned in the UK would be subject to withholding tax prior to payment to the foreign owned SPV. Back

137 "The FSA has been describing itself as `not enforcement led' which we have challenged" Quoted from the Financial Services Consumer Panel, Annual Report 2007/8 at page 21 para. 2.25. Back

138 The FSA's Mortgage Conduct of Business Rules (MCOB). Back

139 The Financial Services Practitioner Panel, Annual Report 2007/8 at page 19 Back

140 Id. Back

141 Which non-compliance is standard practice and ubiquitous and it is submitted there exists and abundance of evidence of non-compliance. See examples of consumer discussions on consumer help forums at: http://www.consumeractiongroup.co.uk/forum/mortgages-secured-loans/ Back

142 Another legal issue arises here. Strictly speaking the claimant should be the SPV, however, the administrator bank will make the claim in its own name. However, at law, the bank has no locus standi to bring the claim in its own name without informing the court that it is claiming in a representative capacity. The court therefore erroneously assumes the bank's legal standing and is wilfully mislead by the legal ruse to conceal the SPV. At law, the bank has no legal right to bring the claim in its own name and no legal right to obtain a possession order against the borrower. Back

143 In similar terms in which the government reminded the courts to enforce the pre-action protocols Back

144 See Mr Tutton's answer to Q135. It is noted that Mr Tutton made these comments in the context of store-cards credit, however, it is averred that these principles apply to any and all credit agreements. Back

145 "|the interest rate payable on those Mortgage Loans is a variable rate set by the mortgage lender|but|the Issuer [Clavis] has undertaken|to set such variable rate at a specified marging or margins in excess of the Bank of England Repo Rate|Accordingly, such Mortgage Loans are treated for all purposes as being Mortgage Tracker Rate Loans". Quoted from: Clavis Securities plc Asset Backed Note Programme Series 2006-1 Note Issue Supplement dated 8 June 2006 at page S-64 under the heading "Interest rate setting in relation to certain Series Portfolio Mortgages"<para>See also eg, without the consent or knowledge of the borrowers, the lenders vary the terms of the mortgages: "Most mortgage lenders in the residential mortgage market vary and extend the Standard Conditions by way of a "Deed of Variation" the terms of which are imported into each Scottish Mortgage|each |Series Portfolio Originator has executed a Deed of Variations of Standard Conditions". Quoted from: Clavis Securities plc Asset Backed Note Programme Series 2006-1 Note Programme Memorandum dated 8 June 2006 at page 40 at section (f)(1). Back

146 See eg, the numerous examples of actual experiences of consumers discussed consumer help forums at: http://www.consumeractiongroup.co.uk/forum/mortgages-secured-loans/ Back

147 There is also an issue here with respect to the advise that a consumer received (or, as is more likely, does not receive) from the solicitor acting in respect of the mortgage. Solicitors should advise their client's on the risks and obligations they are undertaking in the mortgage contract. It is noted that the legal profession are not listed in the Committee's terms of reference which means, that the lawyers have escaped scrutiny for their part in the banking crisis. This is not just limited to the lack of advice to their consumer's clients in the context of mortgage advice, but also the conduct of the City's securitisation lawyers in condoning and sanctioning their client's wilful breaches of contracts against the mortgagors. Back

148 "First Transparency! All transactions should be transparent and never hidden" Gordon Brown P.M., speech at the Labour Party Conference, September 2008. Back

149 Financial Services Practitioners Panel, Annual Report 2007/8 at page 14 Back

150 Banking Crisis-Consumer Issuers, Uncorrected Transcript of Oral Evidence 14 January 2009, Q122 Nick Ainger Back

151 The colossal numbers of various entities that receive on-going administration fees are astounding. See for example Clavis

Securities plc 2006-1 securitisation, Note Programme Memorandum dated 8 June 2006 and the Prospectus Supplement dated 8 June 2006, both of which informs that many different financial institutions acting in capacities will each charge at least 24 various different administration fees and expenses. Back

152 This is the inevitable as the only source of the SPV's income is the cash flows it receives from the borrowers. Back

153 Angela Knight on behalf of the BBA in answer to Q189"|but actually there is a huge amount of remortgaging going on|Northern Rock, for example, and specialist lenders, as they come up for renewal at the end of whatever their [fixed] term was, they [the borrowers] are seeing rates which they consider to be far too high and they are coming back to the major providers." Quoted from Treasury Committee, Banking Crisis, Uncorrected Transcript of Oral Evidence 14 January 2009 to be published as HC 144-ii. Back

154 Observe the difference of some £12 million between the amount of notes issued and the amount of assets that backed the Note issue. The aggregate amount of outstanding principal balances on the mortgages was £588 million (which sum was also the sale/purchase price of the asset), leaving a bonanza of some 12 million extra in cash Back

155 Clavis issued 11 Classes of Notes in the 2006-1 Series. The first 5 Classes of Notes matured in 2031 and the remaining 6 Classes of Notes matured in 2039. Back

156 This remortgaging is another facet of the securitisation industry profitability. Firstly, the remortgaged properties will be securitised which means the consumers are back in the vicious circle. Secondly, the banking industry may charge another set of application fees, arrangement fees etc. Thirdly, the investment banks have a further ready source of new mortgages to securitise which yield further substantial fees and infamous City bonuses. The consumer is the ultimate source of all these cost of all these fees, profits and City bonuses. Back

157 On the balance of probabilities, it is unlikely that Clavis will perform its 25-year obligation to any of its remaining borrowers. Back

158 See footnote 21 Angela Knight: "at the end of whatever their [fixed] term was, they [the borrowers] are seeing rates which they consider to be far too high and they are coming back to the major providers" (underline emphasis added). Back

159 See eg, consumer comment posted on the web 27 November 2008 "They [Southern Pacific Mortgages Limited] have recently started badgering me for arrears that they claim come from DEC 2006!" Source: http://www.consumeractiongroup.co.uk/forum/mortgages-secured-loans/170607-spml-london-mortgage-company.html Back

160 See eg, consumer comments on Southern Pacific Mortgages Limited (a Lehman Bros. securitisation) posted on the web 19 February 2009 "Well I have just been through all bank statements & there is only 6 payments missing unlike the 12 spml mentioned,these total to £4955.74. Also received an upto date statement of spml today stating arrears now stand at £16,101.18 so that £11,145.44 in unfair charges." Source: http://www.consumeractiongroup.co.uk/forum/mortgages-secured-loans/170607-spml-london-mortgage-company-9.html£post1990917. Back

161 Id. "Yeserday [sic] when they phoned me I spoke to 2 people and got quoted £850 as arrears and then £615 and when I said that it didn't tally|I was also told it was not a FSA requirement to NOT add fees etc to the arrears amount and so they would continue to do so!" Back

162 No one gives who does not possess. Black's Law Dictionary, 8th Ed. Back

163 This case was concluded with a dismissal order on 30 January 2007, and then, following inappropriate interventions by the Claimant's solicitors and errors by the court service, the claim was finally dismissed by court order in February 2008. Back

164 A county court judge often has between 20-30 repossession cases in his/her daily cause list. The court sits for only 5 hours per day, which means that the judge has little time to assess the integrity of the Claimant's claim form and the consumer is rarely legally represented. Therefore acting as litigant-in-person the consumer is considerably disadvantaged, often emotionally distressed and intimidated by the court process. Back

165 Compare the FSA's definition of "arrears" "(a) a shortfall (equivalent to two or more regular payments) in the accumulated total payments actually made by the customer measured against the accumulated total amount of payments due to be received from the customer;" See the Glossary in the FSA Handbook. See also FSA Handbook, MCOB 13.3.1 Back

166 The overcharging was admitted on or around September 2008, albeit that they maintained the argument that they had power and liberty to charge and apply their SVR (in excess of GMAC's SVR) at their sole discretion. Back

167 Whilst on this occasion, the case concluded in favour of the consumer (a rare occurrence). The vast majority of consumers as litigant-in-person may not have the knowledge or skills to defeat such claim. Therefore, the Treasury Committee are requested to be mindful that these SPV strategies for claiming repossession would ordinarily result in a possession order against the consumer. Back

168 See the Granite Master Issuer plc Prospectus Supplement dated 23 May 2005, page 101 and the schematic on page 8. Back

169 Id at page 101, "On March 26, 2001, each of the mortgages trustee, Funding and the seller appointed Northern Rock [plc] under the administration agreement to be their agent to exercise their respective rights, powers and discretions in relation to the mortgage loans and their related security and to perform their respective duties in relation to the mortgage loans and their related security|Except as otherwise specified in the transaction documents, the administrator has agreed to comply with any reasonable directions, orders and instructions which the mortgages trustee may, from time to time, give to it in accordance with the provisions of the administration agreement." (Underline emphasis added). Back

170 See, http://companyinfo.northernrock.co.uk/downloads/securitisation/. Granite Master Issuer investor reports 2008 Back

171 Angela Knight of the BBA confirms the implementation of the new Basel Accords. See answer to Q171-172 "We went from, overnight, a situation where as a banking industry we held 8% total capital as a regulatory requirement, of which 2% was core tier one which is the expensive one, if you like, to a situation where we had to hold 8% tier one capital of which 6% was core-a big jump". Quoted from Treasury Committee, Banking Crisis, Uncorrected Transcript of Oral Evidence to be published as HC 144-ii. Back

172 £8.8 billion is understated because it does not take account of the amount of the Notes that may have been redeemed through 2008 in anticipation that the Basel Accord would be triggered. The £8.8 billion aggregate amount outstanding on the Notes as of 31 December 2008. The total figure is calculated from: £2,618,244,672 outstanding Notes denominated in Sterling; $3,373,079,787 Notes outstanding denominated in US Dollars (exchange rate £1 = $ 0.69096 as at 31-12-08); and €2,832,243,408 Notes outstanding denominated in Euros (exchange rate £1 = 0.97404 as at 31-12-08). Source: Granite Finance Trustees Limited's Investor Report available at: http://companyinfo.northernrock.co.uk/downloads/securitisation/ Back

173 See Q431 in particular and Q425 to Q434 generally and answers thereto. Treasury Committee, Banking Crisis, 18 November 2008, Uncorrected Transcript of Oral Evidence, to be published as HC 1167-iii. Back

174 Id. See Q425 and answer thereto. Back

175 See FSA Handbook MCOB 12.3. Back

176 See Global Legal Group Ltd, The International Comparative Legal Guide to: Securitisation 2007, Sanja Warna- kula-suriya and Laurence Rickard of Slaughter and May at page 117: "|under UK GAAP (as it is from 1 January 2005), significant unrealised profits and losses would have had to be recognised in the accounts of securitisation companies and, if tax had to be paid on any such profits, there would have been a risk of securitisation companies becoming unviable. In order to avoid this, and the effect that that would have had on the securitisation market, certain statutory measures were introduced to allow an interim relief for securitisation companies|", (underline emphasis added). Source: http://www.iclg.co.uk/khadmin/Publications/pdf/1321.pdf Back

177 H.M. Revenue & Customs Budget 2007 BN13 available at: http://www.hmrc.gov.uk/budget2007/bn13.pdf Back

178 See above, footnote no. 67 Back

179 It is observed that the legal profession have escaped all scrutiny for their role in the banking crisis. Without the City law firms support, bankers and SPVs may not have so confidently violated statutory obligations nor violated borrowers' contractual rights. Back

180 Contrast the U.K.'s rating of A1 with Germany and U.S.A. rated A2 and France rated B. Source: Standard and Poor's: http://www2.standardandpoors.com/spf/pdf/events/blr200714.pdf Back

 Prepared 1 April 2009

House of Lords
House of Commons

Parliamentary Commission on Banking Standards

‘An accident waiting to happen’: The failure of HBOS

Fourth Report of Session 2012-13

Volume I: Report, together with formal minutes

Volume II (oral and written evidence) is available on the Commission’s website, www.parliament.uk/bankingstandards

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