

Certificate Of Annexure

In Accordance with The Oaths Act 1978

England Wales and Northern Ireland

I, Paul Michaels, certify the following annexures marked 26 to 32 referred to in the Affidavit of Paul Michaels were presented, sighted and affirmed before me

Annexure 26: Bank of Scotland – v – Waugh Judgment of Case No. 3 NE 30105 21st July 2014

Annexure 27: Land Registry Official copy of register of title 19th March 2017

Annexure 28: Mr A Gibbons second witness statement 16th October 2017

Annexure 29: E-mail from P Colam, BOS to Defendant 27th February 2009

Annexure 30: HBOS Overdraft Agreement 2nd April 2007

Annexure 31: Savills Private Finance mortgage recommendation

Annexure 32: Jackson Stops & Staff property valuation 5th October 2006

I Paul Michaels do sincerely and honestly affirm the present Annexures 26 to 32 are in with my Affidavit which I have witnessed firsthand and can swear to under oath of sound mind and reasonable knowledge and sources of information as appear in the present Affidavit.

Deponent Signature:

Certificate witness:

V. Rev. Monsignor Canon Murtagh
M.A. STL

Annexure 26:

Bank of Scotland – v – Waugh Judgment of Case No. 3 NE 30105

21st July 2014



England and Wales High Court (Chancery Division) Decisions

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Case No: 3 NE 30105

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY

The Court House
Oxford Row
Leeds LS1 3BG
21 July 2014

Before:

His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

Between:

BANK OF SCOTLAND PLC

Claimant

- and -

(1) JOHN THOMAS WAUGH

(2) KATHLEEN WAUGH

(3) TIMOTHY ROHAN GRAY

(4) IAIN ERNEST WILLIAMS

Defendants

Ian Wilson (instructed by Shepherd and Wedderburn LLP) for the Claimant
John Waugh appeared in person and on behalf of his wife Kathleen Waugh
Hearing date: 17 June 2014

HTML VERSION OF JUDGMENT

Judge Behrens :**1 Abbreviations**

1. In this judgment I shall adopt the following abbreviations:

Bank of Scotland plc	The Bank
HM Land Registry	The Registry
John Thomas Waugh	Mr Waugh
Kathleen Waugh	Mrs Waugh
Sintons Law and/or Sinton & Co	Sintons
The Nelson Trust	The Trust
Timothy Rohan Gray	Mr Gray
Iain Ernest Williams	Mr Williams
Trustees of the Nelson Trust	The Trustees
Asquorn House 20 – 22 Borough Road, North Shields	Asquorn House
The Law of Property (Miscellaneous Provisions) Act 1989	The 1989 Act
The Charge dated 8th August 2003 of Asquorn House	The Charge

2 Introduction

2. These proceedings form part of a long running dispute between the Bank and Mr Waugh and other members of his family. The Bank has provided banking facilities to the Trust since 2002. It has provided loans to the Trust pursuant to various facility letters and taken a number of securities.
3. This action is concerned with the charge granted over Asquorn House in August 2003 and the monies due under a facility letter dated 18 July 2007. There is also a claim against Mr Williams under a limited guarantee but it forms no part of this application.

2.1 Asquorn House

4. It will be necessary to set out the facts surrounding the grant of the charge in a little detail later in this judgment. It is however clear that the charge was duly signed by the Trustees and registered in October 2003 under title TY202264.
5. Although the charge was duly signed by the Trustees it is plain on the face of the charge that the Trustees' signature was not attested. Accordingly there was no compliance with section 1(3) of the 1989 Act. There is a further error in the charge in that it ascribes to the Trust a registered office at Nelson House Stroud. In fact the Trust is not a registered corporation and the Trustees are individuals.
6. As a result of these errors the Trustees have made an application to the Registry for cancellation of the charge/rectification of the register. That application is stayed pending the outcome of these

proceedings.

7. In these proceedings the Bank seeks a declaration that the Trustees and/or the Trust are estopped from denying the validity of the charge. As a fall back it seeks a declaration that the charge is effective as an equitable mortgage and/or that it is entitled to perfect the charge pursuant to its standard terms and conditions.
8. In this application the Bank seeks summary judgment of its claims in relation to Asquorn House. On 11th June 2014 Mr Waugh presented an application to the Court in which he sought to dismiss the claim summarily. As there is a civil restraint order against Mr Waugh the papers were referred to me to consider whether the application should be issued. I took the view that the application was so closely related to the Bank's application for summary judgment it should be issued and heard at the same time. Accordingly it was issued on 16th June 2014.

2.2 The Facility Letter

9. The facility letter is dated 18th July 2007. It is addressed to the then Trustees (Mr Waugh, Mrs Waugh and Mr Gray). It offers a working capital facility of £3,000,000 subject to its terms which include reference to security. The letter is not signed on behalf of the Bank but was countersigned by the Trustees.
10. Mr Gray is not a party to this application. I was told that there was subsequent correspondence under which his liability was limited to the assets of the trust.
11. In this application the Bank seeks summary judgment against Mr and Mrs Waugh of the sums due under the facility letter. As at 9th April 2014 these sums amounted to £1,970,791.66. There are no updated figures.
12. Mr Waugh has submitted a number of possible defences to each of the claims. Due to their wide ranging nature it is convenient to deal with them later in this judgment.

3 The facts

3.1 The Trust

13. The Trust was created pursuant to a Deed of Settlement dated 16th June 2000. The original trustees were Mrs Waugh, Ms Armstrong and Mr Gray. Mr Gray was a solicitor and a partner in Sintons (a Newcastle firm of solicitors). Ms Armstrong died in 2004 and was replaced by Mr Waugh as a trustee on or about 30th April 2004.
14. Mr Gray retired as a trustee on 20th March 2013. Mrs Waugh resigned as a Trustee on 27th March 2013. According to her Defence she retired on the grounds of ill health as a result of heart problems. She was replaced by Mr Williams.
15. The principal activity of the Trust was property development.

3.2 Asquorn House

16. On 1st April 2003 Mr McLeod on behalf of the Bank wrote to the Trustees offering a restructuring of the existing working capital facilities and a bridging loan of £165,000 for the purchase of Asquorn House. The outline terms for the bridging loan included the provision of a charge over Asquorn House. The outline terms for the trading account overdraft had a similar provision.
17. In an undated letter Mr Waugh accepted the offer on behalf of the Trust.

18. On 9th April 2003 the Bank instructed Mr Gray to act on its behalf in relation to the granting of security over Asquorn House. The letter made clear that the Bank was using its simple Certificate of Title Scheme. Amongst the instructions given to Mr Gray:

We will send you the Legal Charge ... and any other relevant paperwork. You should arrange for the borrower to execute this and let us have a certified copy immediately.

19. Between 23rd and 24th April 2003 there was an exchange of correspondence between Mr Gray and Ward Hadaway as to the extent of their respective roles in the transaction. It was agreed that Mr Gray would be responsible for the investigation of title, making a report to the Bank, and the preparation and registration of the legal charge.

20. On 30th July 2003 Mr Gray sent to the Bank the duly completed Certificate of Title and 7 lease reports. There were 10 units; 7 were let; the other 3 were to be let. The Certificate of Title included undertakings by Mr Gray to submit appropriate documents to the Registry to enable registration of the charge within the appropriate priority period.

21. The replies attached to the Certificate of Title indicated that the purchasers were Mrs Waugh, Ms Armstrong and Mr Gray (as the Trustees of the Trust), that the purchase price was £415,000 and that the loan comprised a term loan of £340,000 and a bridging loan of £165,000.

22. On 6th August 2003 the Bank sent to Mr Gray the Charge for execution "by your client". A copy of the document as sent to Mr Gray is included in the bundle. As already noted it defines the borrower as:

The Nelson Trust whose registered office is Nelson House, Brimcombe Hill, Brimscombe, Stroud, ... and whose company registration number is 03211815.

23. That statement is wrong. The Trust is not incorporated and does not have a company registration number. It provided for execution by the Bank and two of the Trustees and made no provision for the attestation of any of the signatures. The execution clause made it clear that the Deed was not delivered until the date of the Deed.

24. The charge was signed by all three Trustees and the Bank. None of the signatures was attested. An undated certified copy of the charge as signed was sent by Mr Gray under cover of a letter faxed on 6th August 2003.

The letter includes:

It is imperative that we succeed in dealing with completion of this matter tomorrow.

Would you please confirm immediately on receipt of this fax that you will be able to send the funds tomorrow....

25. Mr Gray inserted the date of 8th August 2003 on the legal charge and submitted it to the Registry. On 3rd November 2003 Mr Gray wrote to the Bank confirming completion of the registration and enclosed the original charge.

26. On 21st March 2013 the Trustees made an application to the Registry to rectify the register on the ground that it was not properly attested. On 12th April 2013 the Bank's solicitors responded in detail to the application. As a result the First Tier tribunal has stayed the application pending the result in this case.

Terms of the charge

27. In the light of the Bank's fall back arguments it is necessary to set out some of the terms of the charge:
28. Under clause 2 the Trustees charged Asquorn House as security for the Secured Liabilities.
29. By clause 3 the charge incorporated the Standard Conditions. Those conditions define the secured liabilities as "all sums of money owed and all liabilities or obligations to be carried out by you as at any time and from time to time ..."
30. Conditions 14 and 15 provide

You shall take whatever steps and execute whatever documents we may require for:

14.1. The purpose of perfecting and giving effect to the Charge

15.1. You by way of security, irrevocably appoint us and any Receiver and each one severally to be your attorney (with full power to delegate) for you and in your name and as our act and deed:

15.1.1. To execute as a deed and perfect all deeds ... which you ought to execute under the obligations and provisions contained in these Conditions

...

3.3 The Facility Letter

31. It is apparent that there have been a number of facility letters between the Trustees and the Bank. It is not, however necessary to mention any before 2007. As already noted the Bank relies on the facility letter dated 18th July 2007. This letter was addressed to the then trustees. It was countersigned as "Agreed and Accepted on behalf of the Nelson Trust" by Mr and Mrs Waugh and Mr Gray. The letter of offer appears not to be signed on behalf of the Bank.
32. The following clauses are relevant:
 1. The Trustees are identified as "the Borrower". The first paragraph provides that if the offer is accepted the letter and the Schedules will form the agreement between the parties for the working capital facility of £3,000,000.
 2. Under clause 1.1 the facility can only be used if the documents referred to in the Schedule have been provided to the Bank. These include a legal charge over a number of properties including Asquorn House.
 3. Under clause 2.5 the facility matured on 30th December 2007 ("the Maturity Date") and would be reviewed annually thereafter. It would cease to be available unless an extension was agreed in writing. The amount outstanding under the facility was to be repaid on the Maturity Date. Under clause 4 there was power to demand payment after the repayment date.
 4. Clause 9 deal with payments. Under clause 9.5 any determination by the Bank of any amount of principal, interest, commission is in the absence of manifest error conclusive and binding on the Trustees.
33. On 2nd July 2010 the Bank made a formal demand on the Trustees to repay immediately the sum of £2,486,034.69. Shortly thereafter the Bank appointed Receivers under the terms of the charges.

34. After taking into account realisations under the Receivership the sum of £1,970,791.66 is said by the Bank still to be due.

3.4 Other Proceedings

35. Action ONE30032 was brought by Michael Waugh (Mr and Mrs Waugh's son) on behalf of the Trustees against the Bank and the Receivers. The nature of the claim is contained in paragraph 4 of the skeleton argument of the Defendants in the strike out application:

The claim is for damages in excess of £2m including "triple damages" for breaches of the Bills of Exchange Act 1882, the HBOS Re-organisation Act 2006 and the Fraud Act 2006... At the heart of his claim is the contention that the Trust's overdraft was discharged when in February 2010 the Claimant tendered to the Bank a promissory note in the amount of £3m. As a result the Claimant argues the Bank was not entitled thereafter to demand repayment of the overdraft or to appoint receivers.

36. On 22nd October 2010 Judge Walton struck out the claim certifying it as totally without merit. An application for permission to appeal was accompanied by written grounds of appeal from Michael Waugh. It is clear from paragraphs 4 - 7 of those grounds that it was to be argued that an unsigned copy of the facility letter which does not incorporate all its terms is not enforceable as a result of section 2 of the 1989 Act.

37. The application was refused by Lloyd LJ on 9th February 2011. He certified it as totally without merit but did not make a civil restraint order. His judgment includes:

The contention that the agreement between the parties represented by the facility letter is void because it does not comply with [s2 of the 1989 Act] is wrong. The section only applies to contracts for the sale or other disposition of an interest in land. The facility letter is not such a contract.

The fact that security by way of a legal charge over property was required as a condition of drawing down on the facility ... does not make it an agreement for the creation of a charge over land.

The bank does not need to substantiate its losses as the appellant says. All it needs to do is to satisfy the Court that the trustees had borrowed the money and not repaid it. As the judge said the very fact that the trustees tendered a promissory note for £3 million is, at the very least, strong evidence that there was a substantial indebtedness outstanding.

38. On 29th February 2012 Michael Waugh, on behalf of the Trustees applied to set aside what he described as "the void order of Judge Walton". On 11th April 2012 Judge Walton refused to re-open the case on the grounds that it was concluded by virtue of the order of Lloyd LJ.
39. The Trustees then sought to quash the decision of Judge Walton by means of an application for judicial review. Permission was refused on the papers by Judge Langan QC on 22nd May 2012. On 28th June 2012, after hearing Mr Waugh in person I dismissed the application to renew and made a limited civil restraint order against Mr Waugh.
40. Sometime in 2013 the Trustees sought to bring criminal proceedings against the Receivers for what was alleged to be aggravated trespass and fraud by false representation. The prosecution was stayed and the Trustees were ordered to pay costs in the sum of £6,586.
41. On 26th July 2013 Norris J made an extended civil restraint order against the Trustees.

4 Claim under the Facility letter.

42. On the face of it there would appear to be little prospect of a successful defence. As Lloyd LJ has pointed out all that the Bank have to do is to establish the loan, the demand, the failure to repay and the amount of the debt.
43. Mr Waugh has however suggested that there are a number of defences:

Failure to serve his wife.

44. He points out that his wife has not been personally served with these proceedings. In so far as documents were posted to her he has removed them so as to ensure she did not receive them. Mrs Waugh has made a limited response to these proceedings. On 24th December 2013 she wrote to the Court. The only points she took were that she had not received any papers and that it would be oppressive for any judgment to be entered against her as a result of her ill health.
45. In fact Mrs Waugh has been validly served with the claim form and the application for summary judgment. Service was by first class post addressed to the correct residential address of Mrs Waugh. Appropriate certificates of service were filed. This is a permitted method of service under CPR 6.3. It is plain from CPR 6.14 and 6.26 that service is deemed to have been effective.

Failure to comply with s 2 the 1989 Act.

46. Mr Waugh repeated the point that had been rejected both by Judge Walton and Lloyd LJ. For the reasons given by Lloyd LJ it is totally without merit. It is, in addition, res judicata.

Failure to disclose the financial difficulties facing the Bank

47. As is well-known the Bank got into severe financial difficulties and had to be bailed out by the government. During his oral submissions Mr Waugh took me to a number of web sites critical of the Bank, its senior management relating to the collapse. He submitted that the agreement between the Trust and the Bank was a contract "uberrimae fidei" with the result that the Bank was bound to disclose its financial difficulties to him. He was accordingly entitled to rescind the contract. He asserted (though his calculation was not explained in detail) that he had repaid the bank in full.
48. In my view this too is a hopeless argument. The contract is not a contract "uberrimae fidei". There was no duty to disclose the bank's financial position. Once the £3 million was lent the relevant financial position was that of the Trust as it was under the obligation to repay.
49. Although Mr Waugh asserted that he had paid the Bank what was due he had in my view failed to establish any realistic argument that there is a manifest error in the figures put forward by the Bank.

The letter dated 7th January 2011

50. On 7th January 2011 the Bank's solicitors wrote a letter to Mr Gray which included the following sentence:

For the avoidance of doubt however we confirm that the Bank accepts that the Trustees are not personally liable for the debt in the name of the Trust.

51. Mr Wilson described this as Mr Waugh's best point. However he also pointed out that the letter post dates the facility letter, the demand and at least some of the proceedings. He points out that there is no consideration for the release of the trustees and no basis for any estoppel.
52. There is nothing in any witness statement or other evidence which suggests that the Trustees altered

their position on the statement in the letter.

53. In his oral submissions Mr Waugh said that he made decisions based upon it but he did not explain what those decisions were.
54. I agree with Mr Wilson that the statement in the letter did not, as a matter of law, release the Trustees from any liability under the facility letter. I also agree that there is no realistic basis for an estoppel. In those circumstances I agree that the sentence in the letter does not afford a defence to the claim under the facility letter.

Mr Waugh's History

55. Mr Waugh took me through his personal history. He told me that he was originally an insurance broker but that through no fault of his own he was adjudged bankrupt in 1983. After his discharge he raised about £160,000 to pay off most of his creditors even though there was no legal obligation to do so. He showed me a letter dated 16th April 1989 from Dickinson Dees confirming these facts. The letter does indeed confirm that he paid off some of his creditors after his discharge. It also makes the point that one of the creditors unpaid was HM Inland Revenue and that the costs of the bankruptcy which exceeded £80,000 were unpaid.
56. It is unnecessary for me to comment on any of these matters as they are not in my view relevant to the claims of the Bank in these proceedings.

Conclusion

57. In the result I do not think that there is any realistic defence to the claim under the facility letter and there will be judgment in the sums claimed by the Bank.

5 Claims under the charge of Asquorn House

Points of Law

58. Before considering the estoppel argument it is convenient to set out a number of points of law which in my view are incontrovertible.

S 52 of the Law of Property Act 1925

59. Under this section all conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.
60. It will be noted that the section does not provide that the conveyance is void for all purposes. It is simply void "*for the purpose of conveying or creating a legal estate*".
61. In so far as Mr Waugh asserts that the defects in this case made the charge void for all purposes he is, with respect, wrong.

S 1(3) of the 1989 Act

62. This section is concerned with the execution of Deeds by individuals. Under this section:

An instrument is validly executed as a deed by an individual if, and only if –

(a) it is signed –

(i) by him in the presence of a witness who attests his signature
or

(ii) ...

(b) ...

63. It is not in dispute that the Trustees were individuals and that the Charge was not attested in accordance with the section. The lack of attestation appears on the face of the charge itself.
64. It follows that the Charge was not validly executed as a Deed. It also follows that it was void for the purpose of conveying or creating a legal estate.

S 51 of the Land Registration Act 2002.

65. This section is concerned with the effect of registration of the charge at the Registry. It provides:

On completion of the relevant registration requirements, a charge created by means of a registrable disposition of a registered estate has effect, if it would not otherwise do so, as a charge by deed by way of legal mortgage.

66. Thus the effect of registration of the Charge was to create a charge by deed by way of legal mortgage. It is, of course, open to the Trustees to apply to the Registry for rectification of the register and they have availed themselves of this right. Rectification is, however, governed by Schedule 4 to the Act. As Mr Wilson pointed out there are a number of matters which need to be determined before the application could succeed. Those matters have, of course, been stayed pending the outcome of this application and very properly Mr Wilson did not address me on them.
67. Rectification operates for the future. There is no power to rectify retrospectively. See paragraph 8 of Schedule 4 and commentary in paragraph 46.017 of Ruoff and Roper – Registered Conveyancing. It follows that acts (such as the appointment of Receivers) carried out by the Bank under the charge prior to any order for rectification and acts of the Receivers are not void as alleged by Mr Waugh. Both the Bank and the Receivers were entitled to rely on the effect of registration of the charge.

Estoppel

68. As already noted Mr Wilson asserts that the Trustees are estopped from relying on s 1(3) of the 1989 Act. In his written skeleton he submitted that this case was on all fours with the case of Shah v Shah [2001] EWCA Civ 527. In his oral submissions he conceded that his written submission put his case too high. He drew to my attention the recent decision of Newey J in Briggs v Gleeds [2014] EWHC (Ch) 1178. Newey J's decision was given on 15th April 2014 and may well not have been published at the time of the preparation of Mr Wilson's written skeleton dated 24th April 2014.

Shah v Shah

69. Shah v Shah concerned the enforceability of a document under the terms of which the defendants were to make a payment of £1.5 million to the claimant. The document was described as a deed and provided for each defendant to sign in the presence of a witness. In the event, although the "witness" signed shortly after the defendants, he did so without having been present when they signed. When, therefore, the claimant brought proceedings against them, the defendants disputed the claim on the basis that the "deed" had not been validly executed. The Court of Appeal, however, concluded that the defendants were estopped from denying that they had signed the document in the witness's presence. Pill LJ, with whom the other members of the Court agreed, said (at paragraph 33) that "the delivery of the document ... involved a clear representation that it had been signed by the ... defendants *in the presence of the witness* and had, accordingly, been validly executed by them as a deed"^[1].

70. Pill LJ's reasoning can be seen in paragraphs 29 – 32 of his judgment:

"29 I bear in mind the clarity of the language of section 1(2) and (3) and also that the requirement for attestation is integral to the requirement for signature in that the validity of the signature is stipulated to depend on the presence of the attesting witness. I also accept that attestation has a purpose in that it limits the scope for disputes as to whether the document was signed and the circumstances in which it was signed. The beneficial effect of the requirement for attestation of the signature in the manner specified in the statute is not in question. It gives some, but not complete, protection to other parties to the deed who can have more confidence in the genuineness of the signature by reason of the attestation. It gives some, but not complete, protection to a potential signatory who may be under a disability, either permanent or temporary. A person may aver in opposition to his own deed that he was induced to execute it by fraud, misrepresentation or, as was unsuccessfully alleged in the present case, duress and the attestation requirement is a safeguard.

30 I have, however, come to the conclusion that there was no statutory intention to exclude the operation of an estoppel in all circumstances or in circumstances such as the present. The perceived need for formality in the case of a deed requires a signature and a document cannot be a deed in the absence of a signature. I can detect no social policy which requires the person attesting the signature to be present when the document is signed. The attestation is at one stage removed from the imperative out of which the need for formality arises. It is not fundamental to the public interest, which is in the requirement for a signature. Failure to comply with the additional formality of attestation should not in itself prevent a party into whose possession an apparently valid deed has come from alleging that the signatory should not be permitted to rely on the absence of attestation in his presence. It should not permit a person to escape the consequences of an apparently valid deed he has signed, representing that he has done so in the presence of an attesting witness, merely by claiming that in fact the attesting witness was not present at the time of signature. The fact that the requirements are partly for the protection of the signatory makes it less likely that Parliament intended that the need for them could in all circumstances be used to defeat the claim of another party.

31 Having regard to the purposes for which deeds are used and indeed in some cases required, and the long-term obligations which deeds will often create, there are policy reasons for not permitting a party to escape his obligations under the deed by reason of a defect, however minor, in the way his signature was attested. The possible adverse consequences if a signatory could, months or years later, disclaim liability upon a purported deed, which he had signed and delivered, on the mere ground that his signature had not been attested in his presence, are obvious. The lack of proper attestation will be peculiarly within the knowledge of the signatory and, as Sir Christopher Slade observed in the course of argument, will often not be within the knowledge of the other parties.

32 In this case the document was described as a deed and was signed. A witness, to whom the third and fourth defendants were well known, provided a form of attestation shortly afterwards and the only failure was that he did so without being in the presence of the third and fourth defendants when they signed."

Briggs v Gleeds

71. As already noted Shah concerned a case where the document purporting to be a deed was regular on its face in that it appeared that the relevant signature had been attested by a witness. In fact the witness was not present when it was signed. Thus the formalities of s 1(3) of the 1989 Act were not complied with.

72. That situation is different factually from a situation where the document has no attestation clause at all. It is thus not even regular on its face.

73. Gleeds concerned a situation where some 30 documents in a pension scheme needed to be executed by partners in Gleeds. As they were individuals the signature needed to be witnessed. It was contended that the members of the scheme were estopped from denying that deeds were validly executed. Newey J distinguished the decision in Shah and held that the members could not be estopped.

74. In paragraph 40 of his judgment he analysed the effect of Pill LJ's judgment:

40. It is evident from *Shah v Shah* that there are circumstances in which a person can be estopped from denying that a document was executed in accordance with the requirements of section 1 of the 1989 Act. It is also apparent from Pill LJ's judgment that attestation is less crucial than signature. On the other hand, Pill LJ did not decide that estoppel can be used in response to every sort of failure to comply with the 1989 Act. To the contrary, he expressed his conclusion narrowly: he was unable to detect a statutory intention "totally" to exclude the operation of an estoppel in relation to the application of section 1 or to exclude it "in present circumstances". It seems fair, moreover, to infer that Pill LJ would not have considered estoppel applicable if the defendants had not even signed the "deed". In Pill LJ's view, "a document cannot be a deed in the absence of a signature" and the public interest lies in the requirement for a signature.

75. In paragraph 43 he held that there was no estoppel on the facts of the case:

43. In the end, I have concluded that estoppel cannot be invoked where a document does not even appear to comply with the 1989 Act on its face or, at any rate, cannot be so invoked in the circumstances of the present case. My reasons include these:

i) To state the obvious, Parliament has decided that, for an individual validly to execute a deed, he must sign "in the presence of a witness who attests the signature". That requirement has an evidential purpose: as Pill LJ noted in *Shah v Shah*, it "limits the scope for disputes as to whether the document was signed and the circumstances in which it was signed" and "gives some, but not complete, protection to other parties to the deed who can have more confidence in the genuineness of the signature by reason of the attestation". As Pill LJ further noted, the requirement also "gives some, but not complete, protection to a potential signatory who may be under a disability, either permanent or temporary". The Law Commission thought, too, that the need for attestation would "emphasise to the person executing the deed the importance of his act" (see paragraph 8.3(i) of the Law Commission's Working Paper No 93: Transfer of Land: Formalities for Deeds and Escrows (1985));

ii) Fulfilment of Parliament's and the Law Commission's objectives would be undermined, potentially to a serious extent, if estoppel could be invoked in circumstances such as those in the present case;

iii) *Shah v Shah* shows, of course, that a person can sometimes be estopped from denying due attestation. The document with which the Court was concerned in that case *appeared*, however, to be valid. Accordingly, Pill LJ said that failure to comply with the formality of attestation should not in itself prevent a party into whose possession "an apparently valid deed" has come from alleging that the signatory should not be permitted to rely on

the absence of attestation in his presence. He also spoke of "an apparently valid deed" in the next sentence of his judgment;

iv) The "deeds" at issue in the present case are not "apparently valid". It can be seen from each document that it was not executed in accordance with the 1989 Act. This distinction from *Shah v Shah* is a significant one. If estoppel can be invoked in relation to documents that are not "apparently valid", the documents cannot necessarily be taken at face value. "[A]s far as possible," however, "it should be clear on the face of the document whether or not it has been validly witnessed" (see paragraph 8.3(i) of the Law Commission working paper). That is especially so since the validity of a deed can matter for many years, and those considering "deeds" long after they have been executed may well have no personal knowledge of the circumstances in which they were executed and access to little or no contemporary correspondence;

v) If estoppel were available in circumstances such as those in the present case, a party to a "deed" who had not himself executed the document in accordance with section 1 of the 1989 Act could choose whether or not the document should be treated as valid. If it turned out to be in his interests to disavow the document, he could do so. If, on the other hand, the document proved to be advantageous to him, he could invoke estoppel. To take an example close to the facts of the present case, if a "deed" provided for a pension scheme to become money purchase rather than final salary, an employer who had signed without having his signature witnessed could wait and see whether the change was, in the event, beneficial to him;

vi) Section 1 of the 1989 Act was in part designed to achieve certainty. It could, however, have the opposite consequence if estoppel were available in circumstances such as those in the present case. The effectiveness of a "deed" that had not, on the face of it, been validly executed could be left in doubt.

Discussion and Conclusion

76. Mr Wilson sought to distinguish Briggs. He relied on the letter sent by Mr Gray on 6th August 2003 in which he said:

We have had the mortgage deed executed by the Trustees and are now enclosing a certified copy of it.

77. He submitted that this was a clear representation that the Legal Charge had been validly executed. He pointed out the triple capacity in which Mr Gray was acting. He was solicitor for the Trustees, solicitor for the Bank and one of the Trustees. It was this triple capacity which founded the estoppel. He pointed out that the Bank had relied on the representation by lending the funds on or about 8th August 2003.

78. I cannot accept Mr Wilson's submission. It seems to me that this case is on all fours with the situation in Briggs. The six reasons given by Newey J seems to me to be powerful reasons for not allowing an estoppel where it is clear on the face of the "deed" that it has not been executed in accordance with the Act. I also agree with Newey J's analysis in paragraph 40 of his judgment as to the limitations on the decision in Shah. I cannot, for my part, see that the fact that "the deed" is subsequently sent to a third party by a person acting for that third party and the other party to the deed makes any difference. It would substantially diminish the effect of the Act in a case where it

was clear on the face of the document that it had not been properly executed.

79. In my view, therefore, the Trustees are not estopped from relying on the invalidity of Legal Charge.
80. I am conscious that this is an application for summary judgment by the Bank. However there is also a cross application by Mr Waugh for summary judgment. The point at issue is a short point of law. All of the evidence is before the Court and I have formed a clear view as to the result.
81. Accordingly I propose to accede to Mr Waugh's application for summary judgment on this issue and to declare that the Trustees are not estopped from relying on the fact that the Legal Charge was not validly executed as a Deed.

6 Claim for an equitable charge

Points of Law

82. It is again necessary to set out a number of points before turning to the facts of the case.

Equitable Mortgage

83. A document, which for some defect of form (but which is otherwise valid) fails to take effect as a legal mortgage will (subject to section 2 of the 1989 Act) be a good equitable mortgage. The basis of this is the court's power specifically to perform a contract to create a legal interest in land. See Fisher & Lightwood Law of Mortgage 13th Ed at par 3.6 and the cases cited at footnotes 1 and 2.

Section 2 of the 1989 Act

This section provides:

(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contract are exchanged, in each.

(2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

84. In this case the Charge was signed by both the Trustees and on behalf of the Bank. It expressly incorporated the Standard Terms.

Discussion

85. It seems to me that the above principles apply directly to the Legal Charge. It was not executed as a Deed and thus did not take effect as a legal charge. However it was signed by the parties and did contain all the terms that had been agreed and thus took effect as an equitable mortgage.
86. In his oral submissions Mr Wilson suggested that the Bank could rely on clause 15 of the Standard Conditions to enable it to execute any necessary documents pursuant to the Power of Attorney created by that clause. Following the hearing he has written to the court drawing my attention to section 1(1) of the Power of Attorney Act 1971 and a passage from paragraph 15 in Halsbury Laws Vol 1 5th Ed on Agency to the effect that a power of attorney must be created by deed and that if power is to be given to an agent to execute a deed that power must be given by a deed. Thus he now accepts that the Bank cannot rely on clause 15. He submits that instead the Court should order the Trustees to execute any documents necessary for perfecting the Legal Charge. In the event that the Trustees fail to execute them the Court has inherent power to direct that an officer of the Court execute them on behalf of the Trustees.

87. I see the force of these submissions. However, as Mr Waugh has not had the opportunity to respond to them I propose to deal with them when the matter is relisted for the handing down of this judgment.

7 Conclusion

88. In the result I hold:

1. that there is no realistically arguable defence to the claim for the sums due under the facility letter and the Bank is entitled to summary judgment in respect of the sums claimed.
2. that the Trustees are not estopped from relying on the defects in the execution of the Legal Charge and that Mr Waugh is entitled to a declaration to that effect.
3. that the Legal Charge was, nonetheless, effective as an equitable charge. Whether or not the Bank is entitled to an order compelling the Trustees to execute further documents will be determined at the hearing when the judgment is handed down.

Note 1 This summary is taken verbatim from paragraph 37 of Newey J's judgment in Briggs. [\[Back\]](#)

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URL: <http://www.bailii.org/ew/cases/EWHC/Ch/2014/2117.html>

Annexure 27:

Land Registry Official copy of register of title

19th March 2017



Official copy of register of title

Title number NYK256562

Edition date 13.11.2008

- This official copy shows the entries on the register of title on 19 MAR 2017 at 11:42:31.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 19 Mar 2017.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

NORTH YORKSHIRE : SCARBOROUGH

- 1 (12.10.2001) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Low Newbiggin House, Aislaby, Whitby (YO21 1TQ).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (12.10.2001) PROPRIETOR: PAUL MICHAELS and CHARLOTTE SARAH MICHAELS of Low Newbiggin House, Aislaby, Whitby, North Yorkshire YO21 1TQ.
- 2 (12.10.2001) The price stated to have been paid on 29 June 2001 was £575,000.
- 3 (12.10.2001) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.
- 4 (23.01.2007) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 17 January 2007 in favour of Bank of Scotland PLC referred to in the Charges Register.
- 5 (06.06.2008) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 2 June 2008 in favour of Bank of Scotland PLC referred to in the Charges Register.

C: Charges Register

This register contains any charges and other matters that affect the land.

Title number NYK256562

1 (12.10.2001) By a Conveyance of the land in this title dated 1 October 1985 made between (1) Richard Henry Frederick Dangar and Jennifer Mary Dangar and (2) Marion Constance Kempley the land was conveyed subject as follows:-

"Subject to

.....
..

(iii) the rights covenants and other matters contained mentioned or referred to in a Conveyance of the 4 April 1985 and made between (1) Richard Henry Frederick Dangar and Jennifer Mary Dangar and (2) George Edwin Pearson and Irene Mary Pearson.

NOTE: Neither the original, nor a certified copy or examined abstract of the Conveyance dated 4 April 1985 was supplied on First Registration.

2 (23.01.2007) REGISTERED CHARGE dated 17 January 2007.

3 (13.11.2008) Proprietor: BANK OF SCOTLAND PLC (Scot. Co. Regn. No. SC327000) of 1 Lovell Park Road, Leeds LS1 1NS.

4 (23.01.2007) The proprietor of the Charge dated 17 January 2007 referred to above is under an obligation to make further advances. These advances will have priority to the extent afforded by section 49(3) Land Registration Act 2002.

5 (06.06.2008) REGISTERED CHARGE dated 2 June 2008.

6 (06.06.2008) Proprietor: BANK OF SCOTLAND PLC (Scot. Co. Regn. No. SC327000) of The Mound, Edinburgh EH1 1YZ.

End of register

Annexure 28:

Mr A Gibbons second witness statement

16th October 2017

Party: Claimant
Deponent: A Gibbons
No: 2
Exhibits: ANG1
Date: 16 October 2017

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY

Claim No 4PA41550

B E T W E E N :

BANK OF SCOTLAND PLC

Claimant

and

(1) PAUL MICHAELS

(2) CHARLOTTE MICHAELS

Defendants

SECOND WITNESS STATEMENT OF ANTONY NIGEL GIBBONS

I, ANTONY NIGEL GIBBONS, of Eversheds Sutherland (International) LLP 1 Callaghan Square, Cardiff CF10 5BT say as follows:

1. I am an Associate in the employment of Eversheds Sutherland (International) LLP, Solicitors for the Claimant, and under the supervision of my principals, have conduct of this matter. I am duly authorised by the Claimant to make this Witness Statement.
2. Save where otherwise appears, I make this statement from facts and matters within my knowledge which are true and from information provided to me by the Claimant which I believe to be true.
3. I make this statement pursuant to paragraph 4 of the Order of HHJ Mark Raeside QC of 4 October 2017 which states "The Claimant shall file an updating witness

statement confirming the principal, interest and costs in respect of which judgment has been obtained by no later than 17 October 2017".

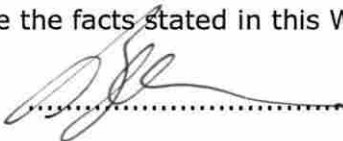
4. There is now produced and shown to me and exhibited hereto marked "ANG1" a statement of the mortgage account from inception on 17 January 2007 to 30 September 2017, being the last month-end before the hearing on 3 October 2017.
5. The exhibited statement of account shows how the balance outstanding on the mortgage account as at 30 September 2017 has been calculated and provides full details of the principal sums loaned, payments made, interest accrued and legal and administration costs debited to the mortgage account. Excluded from this statement of account are legal costs which have been incurred since 1 June 2017.
6. At the hearing on 3 October 2017, Judgment was entered in the sum of £1,356,985.74 which was calculated as follows:-

Item	Balance
Balance on mortgage account according to witness statement of Antony Gibbons	£1,345,105.33
Further legal costs	£13,451.56
Less credit for VAT on legal costs	(£1,571.15)
Balance	£1,356,985.74

STATEMENT OF TRUTH

I believe the facts stated in this Witness Statement are true.

Signed



Name: Antony Nigel Gibbons

Dated this 16th day of October 2017

Solicitors for the Claimant

EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

1 Callaghan Square
Cardiff CF10 5BT

Party: Claimant
Deponent: A Gibbons
No: 2
Exhibits: ANG1
Date: 16 October 2017

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY

Claim No 4PA41550

B E T W E E N :

BANK OF SCOTLAND PLC

Claimant

and

(1) PAUL MICHAELS

(2) CHARLOTTE MICHAELS

Defendants

EXHIBIT ANG1

REFERRED TO IN THE WITNESS STATEMENT OF ANTONY NIGEL GIBBONS

✳ BANK OF SCOTLAND

Statement of Account

Name	Mr P & Mrs C S Michaels	Roll Number	70352947390500
Date of Balance	17/01/2007	Balance (£)	£0.00

Date	Credit (£)	Debit (£)	Balance (£)	Transaction
17/01/2007		£1,000,000.00	£1,000,000.00	ADVANCE
17/01/2007		£999.00	£1,000,999.00	PRODUCT FEE
15/02/2007	£7,423.46		£993,575.54	DIRECT DEBIT
19/02/2007		£92,000.00	£1,085,575.54	Paid Cheque 100001
15/03/2007	£5,033.85		£1,080,541.69	DIRECT DEBIT
16/04/2007	£5,498.65		£1,075,043.04	DIRECT DEBIT
15/05/2007	£5,498.65		£1,069,544.39	DIRECT DEBIT
15/06/2007	£5,725.36		£1,063,819.03	DIRECT DEBIT
16/07/2007	£5,725.36		£1,058,093.67	DIRECT DEBIT
15/08/2007	£5,952.17		£1,052,141.50	DIRECT DEBIT
17/09/2007	£5,952.17		£1,046,189.33	DIRECT DEBIT
20/09/2007	£300,000.00		£746,189.33	PART REPAYMENT
26/09/2007		£19,427.78	£765,617.11	Paid Cheque 100002
26/09/2007		£4,957.17	£770,574.28	Paid Cheque 100003
26/09/2007		£10,000.00	£780,574.28	Paid Cheque 100004
04/10/2007		£7,000.00	£787,574.28	Paid Cheque 100005
09/10/2007		£379.53	£787,953.81	Paid Cheque 100006
09/10/2007		£30,414.91	£818,368.72	Paid Cheque 100007
12/10/2007		£133.37	£818,502.09	Paid Cheque 100008
15/10/2007	£4,316.36		£814,185.73	DIRECT DEBIT
22/10/2007		£1,350.00	£815,535.73	Paid Cheque 100010
26/10/2007		£3,692.65	£819,228.38	Paid Cheque 100009
30/10/2007		£7,000.00	£826,228.38	Paid Cheque 100013

01/11/2007		£450.00	£826,678.38	Paid Cheque 100011
01/11/2007		£100.00	£826,778.38	Paid Cheque 100012
05/11/2007		£4,700.00	£831,478.38	Paid Cheque 100014
07/11/2007		£16,000.00	£847,478.38	Paid Cheque 100016
07/11/2007		£3,750.00	£851,228.38	Paid Cheque 100017
07/11/2007		£13,000.00	£864,228.38	SUNDRY
08/11/2007		£61,426.82	£925,655.20	Paid Cheque 100015
09/11/2007		£13,000.00	£938,655.20	Paid Cheque 100018
13/11/2007		£2,538.60	£941,193.80	Paid Cheque 100019
13/11/2007		£45,000.00	£986,193.80	Paid Cheque 100020
15/11/2007	£4,712.53		£981,481.27	DIRECT DEBIT
17/12/2007	£5,581.05		£975,900.22	DIRECT DEBIT
24/12/2007		£8,000.00	£983,900.22	Paid Cheque 100021
31/12/2007		£62,639.18	£1,046,539.40	INTEREST
02/01/2008		£25,000.00	£1,071,539.40	Paid Cheque 100022
11/01/2008		£5,500.00	£1,077,039.40	Paid Cheque 100023
15/01/2008	£5,369.11		£1,071,670.29	DIRECT DEBIT
23/01/2008		£8,000.00	£1,079,670.29	Paid Cheque 100024
11/02/2008		£8,000.00	£1,087,670.29	Paid Cheque 100025
15/02/2008	£5,572.27		£1,082,098.02	DIRECT DEBIT
17/03/2008	£5,431.16		£1,076,666.86	DIRECT DEBIT
08/05/2008		£35.00	£1,076,701.86	ARRS LETTER/CALL FEE
19/05/2008		£35.00	£1,076,736.86	ARRS LETTER/CALL FEE
04/06/2008		£40.00	£1,076,776.86	FAILED PROMISE
16/06/2008		£35.00	£1,076,811.86	ARRS LETTER/CALL FEE
23/06/2008		£35.00	£1,076,846.86	ARRS LETTER/CALL FEE
10/07/2008	£1,500.00		£1,075,346.86	
26/07/2008		£35.00	£1,075,381.86	ARRS LETTER/CALL FEE
13/08/2008	£500.00		£1,074,881.86	
06/09/2008		£35.00	£1,074,916.86	ARRS LETTER/CALL FEE
19/09/2008	£1,200.00		£1,073,716.86	
26/11/2008	£10,000.00		£1,063,716.86	
31/12/2008		£63,072.34	£1,126,789.20	INTEREST
02/01/2009		£35.00	£1,126,824.20	ARRS LETTER/CALL FEE

16/01/2009		£100.00	£1,126,924.20	FIELD AGENT COSTS
20/01/2009	£1,500.00		£1,125,424.20	
06/02/2009	£697.01		£1,124,727.19	
04/03/2009	£1,749.56		£1,122,977.63	
07/04/2009	£1,749.56		£1,121,228.07	
08/05/2009	£15,000.00		£1,106,228.07	
26/05/2009	£1,289.05		£1,104,939.02	
26/06/2009	£1,289.05		£1,103,649.97	
28/07/2009	£1,289.05		£1,102,360.92	
26/08/2009	£1,289.05		£1,101,071.87	
29/09/2009	£1,289.05		£1,099,782.82	BANK CREDIT
28/10/2009	£1,289.05		£1,098,493.77	BANK CREDIT
03/12/2009	£1,289.05		£1,097,204.72	BANK CREDIT
24/12/2009	£1,289.05		£1,095,915.67	BANK CREDIT
31/12/2009		£17,317.69	£1,113,233.36	INTEREST
27/01/2010	£1,289.05		£1,111,944.31	BANK CREDIT
25/02/2010	£1,289.05		£1,110,655.26	BANK CREDIT
30/03/2010	£1,289.05		£1,109,366.21	BANK CREDIT
29/04/2010	£1,289.05		£1,108,077.16	BANK CREDIT
26/05/2010	£1,289.05		£1,106,788.11	BANK CREDIT
25/06/2010	£1,289.05		£1,105,499.06	BANK CREDIT
26/07/2010	£1,289.05		£1,104,210.01	BANK CREDIT
26/08/2010	£1,289.05		£1,102,920.96	BANK CREDIT
22/09/2010	£1,289.08		£1,101,631.88	BANK CREDIT
27/10/2010	£1,289.08		£1,100,342.80	BANK CREDIT
25/11/2010	£1,289.08		£1,099,053.72	BANK CREDIT
31/12/2010	£1,289.08		£1,097,764.64	BANK CREDIT
31/12/2010		£14,463.50	£1,112,228.14	INTEREST
26/01/2011	£1,289.05		£1,110,939.09	BANK CREDIT
25/02/2011	£1,289.05		£1,109,650.04	BANK CREDIT
29/03/2011	£1,289.05		£1,108,360.99	BANK CREDIT
28/04/2011	£1,289.05		£1,107,071.94	BANK CREDIT
26/05/2011	£1,289.05		£1,105,782.89	BANK CREDIT
28/06/2011	£1,289.05		£1,104,493.84	BANK CREDIT

27/07/2011	£1,289.05		£1,103,204.79	BANK CREDIT
24/08/2011	£1,289.05		£1,101,915.74	BANK CREDIT
29/09/2011	£1,289.05		£1,100,626.69	BANK CREDIT
27/10/2011	£1,289.05		£1,099,337.64	BANK CREDIT
31/12/2011		£2,406.20	£1,101,743.84	PAYMENT HOLIDAY
31/12/2011	£2,406.20		£1,099,337.64	PAYMENT HOLIDAY
31/12/2011		£14,452.29	£1,113,789.93	INTEREST
30/04/2012		£4,812.40	£1,118,602.33	PAYMENT HOLIDAY
30/04/2012	£4,812.40		£1,113,789.93	PAYMENT HOLIDAY
28/05/2012	£1,243.00		£1,112,546.93	BANK CREDIT
26/06/2012	£1,243.00		£1,111,303.93	BANK CREDIT
23/07/2012	£1,243.00		£1,110,060.93	BANK CREDIT
28/08/2012	£1,243.00		£1,108,817.93	BANK CREDIT
27/09/2012	£1,243.00		£1,107,574.93	BANK CREDIT
29/10/2012	£1,243.00		£1,106,331.93	BANK CREDIT
23/11/2012	£1,243.00		£1,105,088.93	BANK CREDIT
31/12/2012		£14,526.60	£1,119,615.53	INTEREST
08/03/2013		£2,673.64	£1,122,289.17	INTEREST
26/03/2013	£12.16		£1,122,277.01	BANK PAYMENT
26/03/2013	£11.38		£1,122,265.63	BANK PAYMENT
26/03/2013	£476.46		£1,121,789.17	BANK PAYMENT
31/03/2013		£7.28	£1,121,796.45	DEBIT INTEREST
31/03/2013		£12.05	£1,121,808.50	DEBIT INTEREST
31/03/2013		£4.00	£1,121,812.50	DEBIT INTEREST
31/03/2013		£895.67	£1,122,708.17	DEBIT INTEREST
19/04/2013	£19.46		£1,122,688.71	BANK PAYMENT
19/04/2013	£26.52		£1,122,662.19	BANK PAYMENT
19/04/2013	£10.59		£1,122,651.60	BANK PAYMENT
19/04/2013	£443.43		£1,122,208.17	BANK PAYMENT
30/04/2013		£9.52	£1,122,217.69	DEBIT INTEREST
30/04/2013		£15.71	£1,122,233.40	DEBIT INTEREST
30/04/2013		£5.21	£1,122,238.61	DEBIT INTEREST
30/04/2013		£1,168.96	£1,123,407.57	DEBIT INTEREST
30/05/2013	£19.46		£1,123,388.11	BANK PAYMENT

30/05/2013	£26.52		£1,123,361.59	BANK PAYMENT
30/05/2013	£10.59		£1,123,351.00	BANK PAYMENT
30/05/2013	£443.43		£1,122,907.57	BANK PAYMENT
31/05/2013		£9.84	£1,122,917.41	DEBIT INTEREST
31/05/2013		£16.23	£1,122,933.64	DEBIT INTEREST
31/05/2013		£5.37	£1,122,939.01	DEBIT INTEREST
31/05/2013		£1,208.90	£1,124,147.91	DEBIT INTEREST
30/06/2013		£9.51	£1,124,157.42	DEBIT INTEREST
30/06/2013		£15.69	£1,124,173.11	DEBIT INTEREST
30/06/2013		£5.19	£1,124,178.30	DEBIT INTEREST
30/06/2013		£1,170.75	£1,125,349.05	DEBIT INTEREST
31/07/2013		£9.84	£1,125,358.89	DEBIT INTEREST
31/07/2013		£16.23	£1,125,375.12	DEBIT INTEREST
31/07/2013		£5.37	£1,125,380.49	DEBIT INTEREST
31/07/2013		£1,211.06	£1,126,591.55	DEBIT INTEREST
19/08/2013	£19.46		£1,126,572.09	BANK PAYMENT
19/08/2013	£26.52		£1,126,545.57	BANK PAYMENT
19/08/2013	£10.59		£1,126,534.98	BANK PAYMENT
19/08/2013	£443.43		£1,126,091.55	BANK PAYMENT
31/08/2013		£9.84	£1,126,101.39	DEBIT INTEREST
31/08/2013		£16.24	£1,126,117.63	DEBIT INTEREST
31/08/2013		£5.38	£1,126,123.01	DEBIT INTEREST
31/08/2013		£1,212.19	£1,127,335.20	DEBIT INTEREST
30/09/2013		£9.52	£1,127,344.72	DEBIT INTEREST
30/09/2013		£15.72	£1,127,360.44	DEBIT INTEREST
30/09/2013		£5.20	£1,127,365.64	DEBIT INTEREST
30/09/2013		£1,174.11	£1,128,539.75	DEBIT INTEREST
08/10/2013		£35.00	£1,128,574.75	ARREARS MNGT FEE
31/10/2013		£9.85	£1,128,584.60	DEBIT INTEREST
31/10/2013		£16.26	£1,128,600.86	DEBIT INTEREST
31/10/2013		£5.38	£1,128,606.24	DEBIT INTEREST
31/10/2013		£1,214.55	£1,129,820.79	DEBIT INTEREST
27/11/2013		£100.00	£1,129,920.79	COMP VISIT FEE
29/11/2013		£35.00	£1,129,955.79	ARREARS MNGT FEE

30/11/2013		£9.54	£1,129,965.33	DEBIT INTEREST
30/11/2013		£15.75	£1,129,981.08	DEBIT INTEREST
30/11/2013		£5.21	£1,129,986.29	DEBIT INTEREST
30/11/2013		£1,176.66	£1,131,162.95	DEBIT INTEREST
20/12/2013		£125.00	£1,131,287.95	ARREARS LETTER
31/12/2013		£9.87	£1,131,297.82	DEBIT INTEREST
31/12/2013		£16.29	£1,131,314.11	DEBIT INTEREST
31/12/2013		£5.39	£1,131,319.50	DEBIT INTEREST
31/12/2013		£1,217.19	£1,132,536.69	DEBIT INTEREST
31/12/2013		£0.04	£1,132,536.73	DEBIT INTEREST
10/01/2014	£5.84		£1,132,530.89	BANK PAYMENT
10/01/2014	£7.96		£1,132,522.93	BANK PAYMENT
10/01/2014	£3.18		£1,132,519.75	BANK PAYMENT
10/01/2014	£133.02		£1,132,386.73	BANK PAYMENT
31/01/2014		£9.88	£1,132,396.61	DEBIT INTEREST
31/01/2014		£16.30	£1,132,412.91	DEBIT INTEREST
31/01/2014		£5.40	£1,132,418.31	DEBIT INTEREST
31/01/2014		£1,218.43	£1,133,636.74	DEBIT INTEREST
31/01/2014		£0.19	£1,133,636.93	DEBIT INTEREST
28/02/2014		£8.93	£1,133,645.86	DEBIT INTEREST
28/02/2014		£14.74	£1,133,660.60	DEBIT INTEREST
28/02/2014		£4.88	£1,133,665.48	DEBIT INTEREST
28/02/2014		£1,101.69	£1,134,767.17	DEBIT INTEREST
28/02/2014		£0.29	£1,134,767.46	DEBIT INTEREST
03/03/2014	£5.84		£1,134,761.62	BANK PAYMENT
03/03/2014	£7.96		£1,134,753.66	BANK PAYMENT
03/03/2014	£3.18		£1,134,750.48	BANK PAYMENT
03/03/2014	£133.02		£1,134,617.46	BANK PAYMENT
31/03/2014		£9.89	£1,134,627.35	DEBIT INTEREST
31/03/2014		£16.33	£1,134,643.68	DEBIT INTEREST
31/03/2014		£5.40	£1,134,649.08	DEBIT INTEREST
31/03/2014		£1,220.80	£1,135,869.88	DEBIT INTEREST
31/03/2014		£0.33	£1,135,870.21	DEBIT INTEREST
30/04/2014		£9.58	£1,135,879.79	DEBIT INTEREST

30/04/2014		£15.82	£1,135,895.61	DEBIT INTEREST
30/04/2014		£5.23	£1,135,900.84	DEBIT INTEREST
30/04/2014		£1,182.72	£1,137,083.56	DEBIT INTEREST
30/04/2014		£0.32	£1,137,083.88	DEBIT INTEREST
19/05/2014	£9.73		£1,137,074.15	BANK PAYMENT
19/05/2014	£13.26		£1,137,060.89	BANK PAYMENT
19/05/2014	£5.29		£1,137,055.60	BANK PAYMENT
19/05/2014	£221.72		£1,136,833.88	BANK PAYMENT
31/05/2014		£9.91	£1,136,843.79	DEBIT INTEREST
31/05/2014		£16.35	£1,136,860.14	DEBIT INTEREST
31/05/2014		£5.41	£1,136,865.55	DEBIT INTEREST
31/05/2014		£1,223.35	£1,138,088.90	DEBIT INTEREST
31/05/2014		£0.33	£1,138,089.23	DEBIT INTEREST
30/06/2014	£9.73		£1,138,079.50	BANK PAYMENT
30/06/2014		£9.59	£1,138,089.09	DEBIT INTEREST
30/06/2014	£13.26		£1,138,075.83	BANK PAYMENT
30/06/2014		£15.84	£1,138,091.67	DEBIT INTEREST
30/06/2014	£5.29		£1,138,086.38	BANK PAYMENT
30/06/2014		£5.24	£1,138,091.62	DEBIT INTEREST
30/06/2014	£221.72		£1,137,869.90	BANK PAYMENT
30/06/2014		£1,185.05	£1,139,054.95	DEBIT INTEREST
30/06/2014		£0.32	£1,139,055.27	DEBIT INTEREST
31/07/2014		£9.91	£1,139,065.18	DEBIT INTEREST
31/07/2014		£16.37	£1,139,081.55	DEBIT INTEREST
31/07/2014		£5.41	£1,139,086.96	DEBIT INTEREST
31/07/2014		£1,225.62	£1,140,312.58	DEBIT INTEREST
31/07/2014		£0.33	£1,140,312.91	DEBIT INTEREST
30/08/2014		£561.60	£1,140,874.51	SOLICITORS FEE
31/08/2014		£9.92	£1,140,884.43	DEBIT INTEREST
31/08/2014		£16.39	£1,140,900.82	DEBIT INTEREST
31/08/2014		£5.42	£1,140,906.24	DEBIT INTEREST
31/08/2014		£1,226.97	£1,142,133.21	DEBIT INTEREST
31/08/2014		£0.33	£1,142,133.54	DEBIT INTEREST
11/09/2014		£799.20	£1,142,932.74	SOLICITORS FEE

30/09/2014		£9.61	£1,142,942.35	DEBIT INTEREST
30/09/2014		£15.88	£1,142,958.23	DEBIT INTEREST
30/09/2014		£5.25	£1,142,963.48	DEBIT INTEREST
30/09/2014		£1,188.71	£1,144,152.19	DEBIT INTEREST
30/09/2014		£0.32	£1,144,152.51	DEBIT INTEREST
31/10/2014		£9.94	£1,144,162.45	DEBIT INTEREST
31/10/2014		£16.42	£1,144,178.87	DEBIT INTEREST
31/10/2014		£5.43	£1,144,184.30	DEBIT INTEREST
31/10/2014		£1,229.64	£1,145,413.94	DEBIT INTEREST
31/10/2014		£0.95	£1,145,414.89	DEBIT INTEREST
24/11/2014	£36.97		£1,145,377.92	BANK PAYMENT
24/11/2014	£50.38		£1,145,327.54	BANK PAYMENT
24/11/2014	£20.12		£1,145,307.42	BANK PAYMENT
24/11/2014	£842.53		£1,144,464.89	BANK PAYMENT
30/11/2014		£9.62	£1,144,474.51	DEBIT INTEREST
30/11/2014		£15.90	£1,144,490.41	DEBIT INTEREST
30/11/2014		£5.25	£1,144,495.66	DEBIT INTEREST
30/11/2014		£1,191.08	£1,145,686.74	DEBIT INTEREST
30/11/2014		£1.77	£1,145,688.51	DEBIT INTEREST
05/12/2014		£3,148.80	£1,148,837.31	SOLICITORS FEE
11/12/2014		£1,997.40	£1,150,834.71	SOLICITORS FEE
17/12/2014		£6.00	£1,150,840.71	SOLICITORS FEE
31/12/2014		£9.92	£1,150,850.63	DEBIT INTEREST
31/12/2014		£16.40	£1,150,867.03	DEBIT INTEREST
31/12/2014		£5.42	£1,150,872.45	DEBIT INTEREST
31/12/2014		£1,231.38	£1,152,103.83	DEBIT INTEREST
31/12/2014		£1.83	£1,152,105.66	DEBIT INTEREST
17/01/2015		£5,856.00	£1,157,961.66	SOLICITORS FEE
31/01/2015		£9.93	£1,157,971.59	DEBIT INTEREST
31/01/2015		£16.42	£1,157,988.01	DEBIT INTEREST
31/01/2015		£5.43	£1,157,993.44	DEBIT INTEREST
31/01/2015		£1,232.74	£1,159,226.18	DEBIT INTEREST
31/01/2015		£1.84	£1,159,228.02	DEBIT INTEREST
18/02/2015		£7,803.40	£1,167,031.42	SOLICITORS FEE

28/02/2015		£8.98	£1,167,040.40	DEBIT INTEREST
28/02/2015		£14.85	£1,167,055.25	DEBIT INTEREST
28/02/2015		£4.91	£1,167,060.16	DEBIT INTEREST
28/02/2015		£1,114.68	£1,168,174.84	DEBIT INTEREST
28/02/2015		£6.80	£1,168,181.64	DEBIT INTEREST
31/03/2015		£9.96	£1,168,191.60	DEBIT INTEREST
31/03/2015		£16.46	£1,168,208.06	DEBIT INTEREST
31/03/2015		£5.44	£1,168,213.50	DEBIT INTEREST
31/03/2015		£1,235.34	£1,169,448.84	DEBIT INTEREST
31/03/2015		£14.00	£1,169,462.84	DEBIT INTEREST
30/04/2015		£9.65	£1,169,472.49	DEBIT INTEREST
30/04/2015		£15.94	£1,169,488.43	DEBIT INTEREST
30/04/2015		£5.27	£1,169,493.70	DEBIT INTEREST
30/04/2015		£1,196.81	£1,170,690.51	DEBIT INTEREST
30/04/2015		£21.90	£1,170,712.41	DEBIT INTEREST
05/05/2015		£12,892.56	£1,183,604.97	SOLICITORS FEE
31/05/2015		£9.98	£1,183,614.95	DEBIT INTEREST
31/05/2015		£16.49	£1,183,631.44	DEBIT INTEREST
31/05/2015		£5.45	£1,183,636.89	DEBIT INTEREST
31/05/2015		£1,238.02	£1,184,874.91	DEBIT INTEREST
31/05/2015		£22.66	£1,184,897.57	DEBIT INTEREST
30/06/2015		£9.67	£1,184,907.24	DEBIT INTEREST
30/06/2015		£15.98	£1,184,923.22	DEBIT INTEREST
30/06/2015		£5.28	£1,184,928.50	DEBIT INTEREST
30/06/2015		£1,199.41	£1,186,127.91	DEBIT INTEREST
30/06/2015		£21.95	£1,186,149.86	DEBIT INTEREST
31/07/2015		£10.00	£1,186,159.86	DEBIT INTEREST
31/07/2015		£16.53	£1,186,176.39	DEBIT INTEREST
31/07/2015		£5.46	£1,186,181.85	DEBIT INTEREST
31/07/2015		£1,240.71	£1,187,422.56	DEBIT INTEREST
31/07/2015		£36.94	£1,187,459.50	DEBIT INTEREST
06/08/2015		£218.40	£1,187,677.90	SOLICITORS FEE
27/08/2015	£29.18		£1,187,648.72	BANK PAYMENT
27/08/2015	£39.78		£1,187,608.94	BANK PAYMENT

27/08/2015	£15.88		£1,187,593.06	BANK PAYMENT
27/08/2015	£665.16		£1,186,927.90	BANK PAYMENT
31/08/2015		£10.00	£1,186,937.90	DEBIT INTEREST
31/08/2015		£16.54	£1,186,954.44	DEBIT INTEREST
31/08/2015		£5.47	£1,186,959.91	DEBIT INTEREST
31/08/2015		£1,241.96	£1,188,201.87	DEBIT INTEREST
31/08/2015		£36.98	£1,188,238.85	DEBIT INTEREST
30/09/2015		£9.67	£1,188,248.52	DEBIT INTEREST
30/09/2015		£15.99	£1,188,264.51	DEBIT INTEREST
30/09/2015		£5.28	£1,188,269.79	DEBIT INTEREST
30/09/2015		£1,202.63	£1,189,472.42	DEBIT INTEREST
30/09/2015		£35.83	£1,189,508.25	DEBIT INTEREST
31/10/2015		£10.00	£1,189,518.25	DEBIT INTEREST
31/10/2015		£16.54	£1,189,534.79	DEBIT INTEREST
31/10/2015		£5.46	£1,189,540.25	DEBIT INTEREST
31/10/2015		£1,244.05	£1,190,784.30	DEBIT INTEREST
31/10/2015		£37.30	£1,190,821.60	DEBIT INTEREST
30/11/2015		£9.69	£1,190,831.29	DEBIT INTEREST
30/11/2015		£16.02	£1,190,847.31	DEBIT INTEREST
30/11/2015		£5.29	£1,190,852.60	DEBIT INTEREST
30/11/2015		£1,205.25	£1,192,057.85	DEBIT INTEREST
30/11/2015		£36.14	£1,192,093.99	DEBIT INTEREST
31/12/2015		£10.02	£1,192,104.01	DEBIT INTEREST
31/12/2015		£16.57	£1,192,120.58	DEBIT INTEREST
31/12/2015		£5.47	£1,192,126.05	DEBIT INTEREST
31/12/2015		£1,246.75	£1,193,372.80	DEBIT INTEREST
31/12/2015		£37.38	£1,193,410.18	DEBIT INTEREST
25/01/2016		£1,312.40	£1,194,722.58	SOLICITORS FEE
31/01/2016		£10.00	£1,194,732.58	DEBIT INTEREST
31/01/2016		£16.55	£1,194,749.13	DEBIT INTEREST
31/01/2016		£5.46	£1,194,754.59	DEBIT INTEREST
31/01/2016		£1,244.72	£1,195,999.31	DEBIT INTEREST
31/01/2016		£37.32	£1,196,036.63	DEBIT INTEREST
29/02/2016		£9.37	£1,196,046.00	DEBIT INTEREST

29/02/2016		£15.50	£1,196,061.50	DEBIT INTEREST
29/02/2016		£5.12	£1,196,066.62	DEBIT INTEREST
29/02/2016		£1,165.69	£1,197,232.31	DEBIT INTEREST
29/02/2016		£34.95	£1,197,267.26	DEBIT INTEREST
31/03/2016		£10.03	£1,197,277.29	DEBIT INTEREST
31/03/2016		£16.58	£1,197,293.87	DEBIT INTEREST
31/03/2016		£5.48	£1,197,299.35	DEBIT INTEREST
31/03/2016		£1,247.37	£1,198,546.72	DEBIT INTEREST
31/03/2016		£38.85	£1,198,585.57	DEBIT INTEREST
30/04/2016		£9.71	£1,198,595.28	DEBIT INTEREST
30/04/2016		£16.06	£1,198,611.34	DEBIT INTEREST
30/04/2016		£5.31	£1,198,616.65	DEBIT INTEREST
30/04/2016		£1,208.46	£1,199,825.11	DEBIT INTEREST
30/04/2016		£37.63	£1,199,862.74	DEBIT INTEREST
31/05/2016		£10.05	£1,199,872.79	DEBIT INTEREST
31/05/2016		£16.62	£1,199,889.41	DEBIT INTEREST
31/05/2016		£5.49	£1,199,894.90	DEBIT INTEREST
31/05/2016		£1,250.08	£1,201,144.98	DEBIT INTEREST
31/05/2016		£38.93	£1,201,183.91	DEBIT INTEREST
23/06/2016		£1,917.60	£1,203,101.51	SOLICITORS FEE
30/06/2016		£9.73	£1,203,111.24	DEBIT INTEREST
30/06/2016		£16.10	£1,203,127.34	DEBIT INTEREST
30/06/2016		£5.32	£1,203,132.66	DEBIT INTEREST
30/06/2016		£1,211.08	£1,204,343.74	DEBIT INTEREST
30/06/2016		£37.72	£1,204,381.46	DEBIT INTEREST
05/07/2016		£6,952.80	£1,211,334.26	SOLICITORS FEE
19/07/2016		£1,200.00	£1,212,534.26	SOLICITORS FEE
26/07/2016	£1,200.00		£1,211,334.26	REV:SOLICITORS FEE
31/07/2016		£10.07	£1,211,344.33	DEBIT INTEREST
31/07/2016		£16.65	£1,211,360.98	DEBIT INTEREST
31/07/2016		£5.50	£1,211,366.48	DEBIT INTEREST
31/07/2016		£1,252.79	£1,212,619.27	DEBIT INTEREST
31/07/2016		£39.02	£1,212,658.29	DEBIT INTEREST
31/08/2016		£10.08	£1,212,668.37	DEBIT INTEREST

31/08/2016		£16.67	£1,212,685.04	DEBIT INTEREST
31/08/2016		£5.51	£1,212,690.55	DEBIT INTEREST
31/08/2016		£1,254.16	£1,213,944.71	DEBIT INTEREST
31/08/2016		£41.17	£1,213,985.88	DEBIT INTEREST
30/09/2016		£7.89	£1,213,993.77	DEBIT INTEREST
30/09/2016		£13.05	£1,214,006.82	DEBIT INTEREST
30/09/2016		£4.31	£1,214,011.13	DEBIT INTEREST
30/09/2016		£981.38	£1,214,992.51	DEBIT INTEREST
30/09/2016		£38.20	£1,215,030.71	DEBIT INTEREST
20/10/2016		£7,991.40	£1,223,022.11	SOLICITORS FEE
31/10/2016		£8.16	£1,223,030.27	DEBIT INTEREST
31/10/2016		£13.49	£1,223,043.76	DEBIT INTEREST
31/10/2016		£4.46	£1,223,048.22	DEBIT INTEREST
31/10/2016		£1,014.97	£1,224,063.19	DEBIT INTEREST
31/10/2016		£39.51	£1,224,102.70	DEBIT INTEREST
30/11/2016		£7.90	£1,224,110.60	DEBIT INTEREST
30/11/2016		£13.07	£1,224,123.67	DEBIT INTEREST
30/11/2016		£4.32	£1,224,127.99	DEBIT INTEREST
30/11/2016		£983.10	£1,225,111.09	DEBIT INTEREST
30/11/2016		£38.27	£1,225,149.36	DEBIT INTEREST
31/12/2016		£8.17	£1,225,157.53	DEBIT INTEREST
31/12/2016		£13.52	£1,225,171.05	DEBIT INTEREST
31/12/2016		£4.46	£1,225,175.51	DEBIT INTEREST
31/12/2016		£1,016.74	£1,226,192.25	DEBIT INTEREST
31/12/2016		£46.68	£1,226,238.93	DEBIT INTEREST
31/01/2017		£8.20	£1,226,247.13	DEBIT INTEREST
31/01/2017		£13.57	£1,226,260.70	DEBIT INTEREST
31/01/2017		£4.48	£1,226,265.18	DEBIT INTEREST
31/01/2017		£1,020.44	£1,227,285.62	DEBIT INTEREST
31/01/2017		£46.85	£1,227,332.47	DEBIT INTEREST
01/02/2017		£31,658.35	£1,258,990.82	SOLICITORS FEE
02/02/2017		£7.41	£1,258,998.23	DEBIT INTEREST
03/02/2017		£12.26	£1,259,010.49	DEBIT INTEREST
04/02/2017		£4.05	£1,259,014.54	DEBIT INTEREST

05/02/2017		£922.51	£1,259,937.05	DEBIT INTEREST
28/02/2017		£42.36	£1,259,979.41	DEBIT INTEREST
31/03/2017		£8.22	£1,259,987.63	DEBIT INTEREST
31/03/2017		£13.59	£1,260,001.22	DEBIT INTEREST
31/03/2017		£4.49	£1,260,005.71	DEBIT INTEREST
31/03/2017		£1,022.17	£1,261,027.88	DEBIT INTEREST
31/03/2017		£46.93	£1,261,074.81	DEBIT INTEREST
30/04/2017		£7.96	£1,261,082.77	DEBIT INTEREST
30/04/2017		£13.16	£1,261,095.93	DEBIT INTEREST
30/04/2017		£4.35	£1,261,100.28	DEBIT INTEREST
30/04/2017		£990.08	£1,262,090.36	DEBIT INTEREST
30/04/2017		£72.78	£1,262,163.14	DEBIT INTEREST
04/05/2017		£20,104.80	£1,282,267.94	SOLICITORS FEE
10/05/2017	£127.72		£1,282,140.22	CREDIT INTEREST
10/05/2017	£131.98		£1,282,008.24	CREDIT INTEREST
10/05/2017	£70.75		£1,281,937.49	CREDIT INTEREST
10/05/2017	£2,901.14		£1,279,036.35	CREDIT INTEREST
31/05/2017		£8.15	£1,279,044.50	DEBIT INTEREST
31/05/2017		£13.53	£1,279,058.03	DEBIT INTEREST
31/05/2017		£4.46	£1,279,062.49	DEBIT INTEREST
31/05/2017		£1,023.96	£1,280,086.45	DEBIT INTEREST
31/05/2017		£73.43	£1,280,159.88	DEBIT INTEREST
30/06/2017		£7.86	£1,280,167.74	DEBIT INTEREST
30/06/2017		£13.07	£1,280,180.81	DEBIT INTEREST
30/06/2017		£4.29	£1,280,185.10	DEBIT INTEREST
30/06/2017		£991.82	£1,281,176.92	DEBIT INTEREST
30/06/2017		£70.40	£1,281,247.32	DEBIT INTEREST
12/07/2017		£59,214.55	£1,340,461.87	SOLICITORS FEE
31/07/2017		£8.13	£1,340,470.00	DEBIT INTEREST
31/07/2017		£13.52	£1,340,483.52	DEBIT INTEREST
31/07/2017		£4.44	£1,340,487.96	DEBIT INTEREST
31/07/2017		£1,025.76	£1,341,513.72	DEBIT INTEREST
31/07/2017		£90.74	£1,341,604.46	DEBIT INTEREST
31/08/2017		£8.14	£1,341,612.60	DEBIT INTEREST

31/08/2017		£13.53	£1,341,626.13	DEBIT INTEREST
31/08/2017		£4.44	£1,341,630.57	DEBIT INTEREST
31/08/2017		£1,026.68	£1,342,657.25	DEBIT INTEREST
31/08/2017		£90.82	£1,342,748.07	DEBIT INTEREST
30/09/2017		£7.88	£1,342,755.95	DEBIT INTEREST
30/09/2017		£13.11	£1,342,769.06	DEBIT INTEREST
30/09/2017		£4.30	£1,342,773.36	DEBIT INTEREST
30/09/2017		£994.44	£1,343,767.80	DEBIT INTEREST
30/09/2017		£139.07	£1,343,906.87	DEBIT INTEREST

Annexure 29:

E-mail from Mr Paul Colam, BOS to Defendant

27th February 2009

From: PaulColam@bankofscotland.co.uk
Subject: LNB sale
Date: 27 February 2009 11:20:40 GMT
To: sales@guidenb.com, cmichaels@ccdeliver.com
Cc: Matthew_Fairbairn@bankofscotland.co.uk

I have discussed your situation with my central team

Their initial view is that a sale at £1.75m would not allow full debt repayment/coverage and as such we would probably not agree to release the charge

A price of c£2m is going to be needed and/or funds from Canada or elsewhere to payback any shortfall caused by an agreed sale at a lower figure

I urge you to review your options

I have a call with my sanction team on Monday and will provide further clarity when I have it

Paul Colam
Director - City
Bank of Scotland Private Banking
Level 6
155 Bishopsgate
London EC2M 3YB

Tel: 020 70128402 / 07768 567920
Fax:020 70128586

Email: paulcolam@hbosplc.com

Bank of Scotland plc, Registered in Scotland Number SC327000 Registered office: The Mound,
Edinburgh EH1 1YZ. Authorised and regulated by Financial Services Authority.

Annexure 30:
HBOS Overdraft Agreement

2nd April 2007

**BANK OF SCOTLAND**

(Client Copy)

Private Banking
 London City, Level 6,
 155 Bishopsgate, London

EC2M 3YB

PRIVATE & CONFIDENTIAL

Mr. Paul Michaels
 Mrs. Charlotte Sarah Michaels
 Low New Biggin House
 Aislaby
 Whitby
 YO21 1TQ

Telephone: 02070128402
 Fax No: 02070128586

Our Ref:

02/04/2007

Overdraft Facility

The Bank is pleased to offer an overdraft facility to the undernoted Borrower(s) on the following terms and conditions ("this Offer"):

1. Main Financial Provisions

- 1.1. Name and Address of each Borrower: Mr Paul Michaels & Mrs Charlotte S Michaels
 Low New Biggin House
 Aislaby
 Whitby YO21 1TQ

Where there is more than one Borrower any reference to 'the Borrower' shall mean and include each of the above and their obligations under this facility shall be joint and several. This means, for example, that the Bank can claim repayment of the amount outstanding from either or both Borrowers. For further detail on other conditions which apply where there is more than one Borrower reference should be made to the 'What happens if your account is in joint names' section of the Flexible Current Account Conditions. A copy of the Flexible Current Account Conditions is enclosed.

- 1.2. Overdraft limit: £1,200,000
- 1.3. An Arrangement Fee of £16,000 is payable on acceptance of this Offer. Bank charges in relation to the facility will also be payable in accordance with the Bank's Price List. A copy of the up to date Price List is enclosed.
- 1.4. The expression "the Cleared Debit Balance" is used in the following paragraphs. It means, at any time, the amount due to the Bank by the Borrower on any applicable account, ignoring any payments which are not "cleared funds". The expression "cleared funds" means payments into an applicable account but not including cash and cheques until they would earn interest were the Bank to pay the Borrower interest on a credit balance as set out in the Flexible Current Account Conditions
- 1.5. All overdrafts are repayable on demand, so the Borrower must immediately pay the Bank the Cleared Debit Balance on the Borrower's account (plus interest and charges accrued but not yet added and the value of any cheque payment where the Bank has not yet

received payment from another Bank), whenever the Bank requires the Borrower to do so.

The facility will cease to be available as from the date of any such demand. The following are examples of some situations where the Bank might demand immediate repayment of the facility: -

- (a) where any breach of the terms of this Offer occurs; or
- (b) where the Borrower fails to pay any sum on the due date for payment under this Offer, or any other sum due and payable to the Bank or to any other members of the HBOS Group; or
- (c) where the Borrower fails to comply with any undertaking or obligation given by or owed by the Borrower to the Bank or any other member of the HBOS Group; or
- (d) where any diligence, distress, execution, sequestration or other legal process is levied or enforced or sued out against any of the assets of the Borrower; or
- (e) where a petition is presented or an order is made or a resolution is passed for the Borrower's bankruptcy, sequestration, winding up, administration or (in Scotland) a judicial factor is appointed to the Borrower; or
- (f) where the Borrower ceases or suspends payment of sums due or is unable to pay debts as they fall due or is deemed unable to pay sums due or is deemed apparently insolvent under insolvency legislation; or
- (g) where the Borrower's financial condition has worsened in some other material way; or
- (h) where the facility was agreed on the basis of incorrect or incomplete information from the Borrower; or
- (i) where the basis upon which the facility was agreed by the Bank has altered in any material way; or
- (j) where any person lawfully takes possession of any part of the Borrower's assets; or
- (k) where the Borrower has taken up residence outside the United Kingdom; or
- (l) in the event of the Borrower's death; or
- (m) where the Borrower is involved in any serious or fraudulent activity; or
- (n) if any of the events in clauses (a) to (m) above applies in relation to a Guarantor of the Borrower's obligations under the facility.

- 1.6. The Bank will review the facility on 02/10/2007 ("the Review Date"). The facility will cease to be available at that date at the latest and the facility must be repaid immediately at that time (unless before then the Bank has specifically agreed to renew or extend the facility).

Paragraph 3 of this Offer details the information that the Bank will require prior to considering renewal of the facility.

- 1.7. The interest rate applying will be 1.25% per annum over the Bank's Base Rate, as fluctuating from time to time. The interest rate payable will change immediately in line with any change in Bank of Scotland Base Rate.

Each month debit and credit interest will be calculated and applied as set out in the Flexible Current Account Conditions unless any of the following apply:

- (i) Where the Borrower elects to have credit interest remitted to a separate account, then, (a) where the amount of credit interest exceeds the amount of debit interest the difference will be remitted on the last day of that month to the account nominated by the Borrower but, (b) where the amount of debit interest exceeds the amount of credit interest the full amount of credit interest will be remitted to the account nominated by the Borrower. Where (b) applies the amount of debit interest will be added to the Borrower's overdraft (or taken off the Borrower's credit balance) at the end of the following month. The Borrower will receive at least 14 days notice before this is done.
 - (ii) Where the Borrower elects to have debit interest serviced from a separate account the payment to meet the debit interest due will be met from the Borrower's Servicing Account at the end of the following month. The Borrower will receive at least 14 days notice before the Servicing Account is debited.
 - (iii) Where the Borrower elects to have debit interest serviced from a separate account and credit interest remitted to a separate account, then (a) the full amount of credit interest will be remitted on the last day of that month to the account nominated by the Borrower and (b) the payment to meet the debit interest due will be met from the Borrower's Servicing Account at the end of the following month. The Borrower will receive at least 14 days notice before the Servicing Account is debited.
- 1.8. The Bank's Base Rate at the date of this Offer is 5.25% per annum. Changes in Bank of Scotland Base Rate are notified in at least two national daily newspapers and the Bank's Branches.
- 1.9. The Borrower must at all times provide sufficient funds to ensure that the Cleared Debit Balance on the Borrower's account never exceeds the overdraft limit set out in 1.2 above (unless the Bank otherwise agrees).
- 1.10. The Borrower must not exceed the overdraft limit specified in this Offer, and the Bank may refuse to pay a cheque (or allow any other payment or withdrawal) which would have that effect. Where the Bank charges interest or makes charges, or if the Bank does pay such a cheque, or allows such payment or withdrawal and this causes the overdraft limit to be exceeded, that does not mean that the overdraft limit has increased, or that the Bank will agree to pay any other cheque or meet any other payment instruction which would cause the overdraft limit to be exceeded. Unless otherwise agreed by the Bank, where the facility has ceased to be available (whether on the Review Date or by earlier demand), the total debit balance of the facility will attract interest at the Bank's unauthorised rate, which will be 22.50% per annum over the Bank's Base Rate, as fluctuating from time to time. The unauthorised rate will also apply where your borrowing exceeds the agreed overdraft limit, although in this case the rate will only apply to the balance over the agreed limit. The unauthorised rate will apply both before and after any court decree or judgement is obtained. The unauthorised rate can be varied as set out in condition 24 of the Flexible Current Account Conditions.

Where the balance of the facility is over the agreed limit the Borrower should immediately repay that part of the debit balance, which is over the agreed limit.

2. Use of Facility

The facility may be used only for the purchase of land in Canada, and the purchase of The barn, Bo Hunt Manor, Liphook.

Where the facility is to be used for the purchase of an asset (or assets) or property then any proceeds of sale of such asset (or assets) or property shall be paid to the Bank in reduction or repayment of the facility.

The Bank may require that the proceeds of sale of any asset or property which has been provided as security for the facility be paid to it in reduction of the outstanding balance of the facility.

3. Financial Information

Before renewal of the facility the following information must, as a minimum requirement, be delivered by the Borrower to the Bank to enable the Bank to decide whether to renew the facility: -

An up to date statement of means and income and expenditure schedules all in a form acceptable to the Bank

An up to date valuation of the property known as Low New Biggin House, Aislaby

This information must be provided to the Bank at least 28 days before the Review Date.

4. Additional Conditions

The following conditions must be met before the overdraft facility will become available:

2 years accounts for both Low New Biggin House and Corporate Communications,
6 months bank statements
Sale details of Low New Biggin House
Details of purchase in Canada

5. Security

Before the Bank will allow the Borrower to draw on any part of the facility each of the following conditions will require to be satisfied:

* As security for the amounts owing to the Bank under this Offer the Borrower will grant or cause to be granted to the Bank security in a form acceptable to the Bank as follows:

Letter of Undertaking to remit the net sale proceeds of the entire estate of Low New Biggin House,

2nd legal charge in place over the entire estate of Low New Biggin House within 6 weeks of drawdown

If the title of Low New Biggin House is separate to that of the associated land and

cottages within the entire estate, then a 1st legal charge will be taken over this title within 6 weeks of drawdown

You shall not create or allow to exist any other security or charge over the assets which form the Bank's security unless you have first obtained the Bank's written consent.

Where the Borrower is providing the Bank with new security any legal formalities regarding the registration of the security must be completed and the Bank must have received a Certificate of Title (or a suitable alternative) from the Borrower's solicitor. This must be in a form acceptable to the Bank. The costs and expenses of any firm of solicitors employed by the Bank to complete the documentation and procedures for the Bank's security requirements will be paid by the Borrower.

6. EMU Compliance

If the introduction of, changeover to, or operation of a single or unified European currency causes: -

- * The currency in which the facility is provided to be changed or replaced; or
- * The Bank (in its reasonable opinion) to have to amend this Offer, or any security held by the Bank; or
- * The Bank to incur any additional or increased cost in relation to providing the facility

then the Borrower agrees that they will allow this Offer and/or any security held by the Bank to be amended to the extent the Bank reasonably considers necessary to reflect those changed circumstances and the Borrower agrees to indemnify the Bank for any additional or increased cost the Bank incurs.

7. Time Limit for Acceptance of Offer

To accept this Offer, each Borrower named in paragraph 1.1. should sign the Offer where indicated before one witness who should also sign and complete the details requested under his / her signature. The Offer should then be returned to the Bank at the address of the office specified at the top of the first page of this Offer.

Alternatively if the Borrower draws on the facility the Borrower will be deemed to have signed and accepted the terms of this Offer in full.

The Borrower must sign and return this Offer to the Bank within one calendar month of the date of this Offer. If the Borrower fails to do so this Offer will lapse (unless the Bank agrees otherwise) and the Borrower will not be able to draw on the facility.

A duplicate copy/duplicates copies of this Offer are enclosed for the Borrower/each Borrower to keep.

8. General Administrative Provisions

- (a) Unless the Bank otherwise agrees, this Offer will be governed by the law of the country in which the Branch of the Bank (as noted at the top of the first page of this offer) is situated and the courts of that country will have jurisdiction in relation to any matter relating to this Offer.

- (b) The Bank can exercise any of the powers conferred on it under this Offer and the Flexible Current Account Conditions on more than one occasion.
- (c) Any statement of the sums outstanding at any time, and / or any interest and/or any charges due by the Borrower to the Bank will unless the Bank has made an obvious error be final and conclusive where it is certified by any one of the Bank's authorised officials.
- (d) When the Borrower returns the signed acceptance of this Offer or proceeds to use the facility the Borrower is also confirming that:
 - * No other facility or security agreement to which the Borrower is a party will be breached as a result of the Borrower's acceptance of this Offer or use of the facility
 - * The Borrower is not involved in any court proceedings.
- (e) The Bank reserves the right to assign or transfer any or all of its rights under this Offer, the facility and the Flexible Current Account Conditions to any other person, company or organisation including as part of a 'securitisation' where the Bank transfers its interest in this Offer, the facility and the Flexible Current Account Conditions to another person.
- (f) The Bank may monitor and record telephone calls to or from it. The Bank may do this to check any instructions the Borrower gave over the phone and to help the Bank train it's staff. ***
- (g) Your right to cancel under the Financial Services (Distance Marketing) Regulations 2004. You have 14 days starting from the day after your Flexible Current Account agreement is concluded to give us written notice that you wish to cancel. Notice should be given in writing at the address of the office specified at the top of the first page of this Offer. You will have to repay any overdraft, plus any charges incurred within 30 days of giving us notice to cancel as described in the Flexible Current Account brochure.

.....
 For and on behalf of the Bank Date of Offer: 02/04/2007

As with any legally binding agreement we recommend that you consult your solicitor, accountant or other independent professional adviser before accepting this Offer

We accept the above Offer

Signed.....
 Name..... PAUL MICHAELS
 Date of signing: 02/04/07

Signed.....
 Name..... C.S. MICHAELS
 Date of signing: 02/04/07

Witness

Witness

Full name

Full name

Occupation.....

Occupation.....

Address.....

Address.....

*** Telephone calls may be recorded for security purposes and monitored under our quality control procedures.

Bank of Scotland subscribes to The Banking Code. Copies are available on request. You may contact us using Type Talk. Information is available in large print, audio and Braille on request, please call for details.

Bank of Scotland represents only the Halifax Financial Services Marketing Group for the purposes of advising on and selling life assurance, pensions and collective investment schemes.

Annexure 31:

Savills Private Finance mortgage recommendation

29th December 2006

29 December 2006

**SAVILLS
PRIVATE
FINANCE**

Mr & Mrs Michaels
Low Newbiggin House
Aislaby
Whitby
North Yorkshire
YO21 1TQ

Neil Walker
Associate Director
Savills Private Finance
Unex House
132-134 Hills Road
Cambridge CB2 8PA
Tel: +44 (0) 1223 347170
Direct: +44 (0) 1223 347174
Direct Fax: +44 (0) 223 347177
nwalker@spf.co.uk
www.spf.co.uk

Dear Mr & Mrs Michaels

I have pleasure in providing you with a report of my recommendations.

Please do not overlook the important information enclosed in the Savills Private Finance Mortgage Guide and the Key Facts Illustration.

As mentioned before, we are authorised and regulated by the Financial Services Authority, the FSA do not cover buy to let or commercial mortgages. As confirmed in the Initial Disclosure Document, which was issued to you earlier, SPF offers a whole of market service.

If you have any questions or require any further information please let me know.

Yours sincerely



Neil Walker
Associate Director

YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE.

**Savills Private Finance Limited is authorised and regulated by the Financial Services Authority.
Savills Private Finance Limited is a subsidiary of Savills plc.**

Registered Office; 20 Grosvenor Hill, London W1K 3HQ. Registered in England No. 3680970.

REPORT FOR: Mr & Mrs Michaels

BY: Savills Private Finance

DATE: Friday, 29 December 2006

Before providing you with the detail, I'd like to summarise the products recommended.

Summary of products recommended.

Mortgage	
Lender	Bank Of Scotland
Product	Tracker of 0.8% above Bank Base for remaining term
Standard Variable Rate	Same
Purchase Price	£2,750,000
Loan Amount	£1,000,000
Term	20 years
Initial Monthly Cost	£4814.89
Monthly Cost at Standard Variable Rate	Same
Lenders Arrangement Fee	£999 added to the loan
Higher Lending Charge	£0
SPF Fee & Commission received from the lender	£3000 SPF Fee and £5,000 (commission rec'd from lender)
Early Repayment Charge	Nil

Scope of Service Provided

I have provided you with an advice and recommendation service based on mortgages from the whole market.

Your needs and circumstances

Further to the information you have provided me, I would like to confirm the following:

- You require a remortgage facility of £1,000,000. The aim of the remortgage is to give you a flexible cheque book facility in order to arrange for further property investment on a cheque book facility against you main residence

- You have stated that you intend to keep the property for the long term
- You have confirmed that the fees associated with the mortgage detailed in our key facts illustration are acceptable;
- With regards to the mortgage term you have confirmed the following:

You are happy that the loan will be repaid by way of overpayment over the 20 year term, which falls prior to your state retirement age.
- With regards to mortgage payments you have confirmed the following:

You are happy to have a long term tracker rate as flexibility is the most important feature of this mortgage.
- With regards to knowing the certainty of knowing how much your mortgage payment will be you have confirmed the following:

You are not concerned by having a fixed rate on this mortgage as flexibility is most important to you.
- With regard to early repayment charges for your new mortgage you have confirmed the following:

You prefer to have full flexibility for this mortgage, whilst you have not intention of selling the property you are not interested in being tied to the new lender by way of penalty
- You have confirmed that:

there are no early repayment charges for repaying your existing mortgage and 2nd charge;
- You require the ability to overpay and borrow back via a cheque book for this mortgage as you envisage using this facility regularly and a fluid mortgage balance being the norm as you overpay and borrow back.
- From our discussions the following key facts about repaying the mortgage were established:

Due to this flexibility you see irregular overpayments from bonus and returning capital as being the way you will repay this debt in the long term. You are therefore happy to take the high risk strategy of not regularly repaying the mortgage debt, which in itself will be altering on a regular basis. I am therefore happy to recommend an interest only mortgage as being suitable for your needs. You realise therefore it is your responsibility to ensure the mortgage debt is cleared by the end of the mortgage term.

Affordability

We have completed an income and expenditure analysis which shows the mortgage is fully affordable both now and in the future. I have discussed the effects of an increase in base rate with you which you are fully happy should remain affordable.

If you are in any doubt about your ability to meet your commitments please let me know immediately.

The mortgage product has been recommended for the following reasons

You require a fully flexible re-mortgage deal that offers a facility available via cheque book that offers unlimited overpayments and the ability to borrow back. I have recommended Bank Of Scotland as they are the only lender who offer a long term tracker rate, with free legals and valuation and allow access to any fund on a cheque book. They also offer an additional 5% of the property value on reserve immediately after completion. I have recommended the mortgage term and the repayment method for the reasons as already mentioned. They also offer fast track underwriting which will allow completion to occur quickly.

I have explained to you that the mortgage can be set up on a capital and interest repayment whereby the amount outstanding will reduce over the term and the mortgage is guaranteed to be repaid at the end of the term if you make all the mortgage payments when they are due.

Alternatively, it can be set up on an interest only basis. The mortgage amount does not reduce and the monthly payments to the lender only cover the interest due. With this method you require a separate means such as an investment plan to repay the loan at the end of the term.

As you are taking out an interest only mortgage you should be aware that you are responsible for ensuring that you have sufficient means to repay the loan at the end of the term. It is important that you address the issue now and regularly review your arrangements to repay the mortgage. Failure to do so could result in financial hardship and if you cannot repay the mortgage at the end of the term, you could lose your home.

I am not providing you with a recommendation about the method of repayment. Consequently, if you are in anyway unsure about your choice of an interest only mortgage, please let me know immediately. I will then refer you to a colleague who can advise you on the most suitable way to repay your mortgage.

An interest only mortgage without any arrangements to repay the capital is high risk. If you do not have adequate resources, you could lose your home and suffer considerable hardship.

The mortgage is portable. This is a very useful feature, which means that if you move, you can avoid the early repayment charge by transferring the product to another property. If you move and require a larger loan, different terms will apply to the extra amount required. If you move and need a small mortgage, there will an early repayment charge to pay on the amount redeemed.

In some circumstances the portability clause will not benefit you. This might be because the lender will require you to transfer the product within a time limit. This means that if there is a significant gap between selling your property and buying a new one, you will not be able to transfer the product. You may also want to move to a location, which the lender will not consider. When moving, the lender will assess your income again and will require a satisfactory property valuation. As a result, there is no guarantee that you will be able to transfer the product to avoid an early repayment charge.

The Lender has been recommended for the following reasons:

- Cheque Book Flexible facility
- Long term tracker rate
- Fast Track underwriting
- No redemption penalties
- Ability to overpay and borrow back funds
- Additional 5% facility on completion

Please note that we cannot guarantee that the service you receive from the lender will be satisfactory. Unfortunately, it can change for a variety of unforeseeable reasons.

IMPORTANT INFORMATION:

The value of your property can fall as well as rise. In the event that your mortgage debt exceeds the value of your property you will have to make good the shortfall if you wish to move or switch to another lender.

If your lender is a building society you may be given rights, which may result in a windfall if they demutualise. However, most of the building societies give limited or no rights to new borrowers.

The vast majority of the mortgage applications we put forward to lenders are granted, however, we strongly recommend that you do not enter into a legally binding contract before you receive your mortgage offer. Very simply, we cannot guarantee that the lender will approve your application. Additionally, they may impose conditions you do not find acceptable and there is always the possibility that the property survey will be adverse.

Once you have received your offer, check it carefully and refer to me and / or your solicitor with any questions you have. It is vital you do so before exchanging contracts as the mortgage offer may contain adverse terms and conditions. For example, if you have a personal loan, it is vital to check if the lender requires you to repay it before you complete the purchase.

Mortgage Protection Considerations

You did not have the necessary information to hand at our meeting for me to review your protection needs. Consequently I have not been able to offer any advice in this area. I would strongly recommend that you review your protection needs as a matter of urgency. You realise that Savills Private Finance cannot be held responsible for any shortfalls that may arise in your mortgage protection.

Your will

I recommend that you ensure that you have an up to date will. When doing so, please make your solicitor aware of your life assurance, as it may be beneficial to put it in trust. Please seek advice from your Solicitor regarding your will and trust arrangements.

Associated Insurances

Savills Private Finance firmly believes that general insurance products should not be a compulsory condition of your mortgage. Unless your property is leasehold, you are therefore free to arrange your buildings and contents insurance with whom you wish.

If you would like an illustration for buildings and /or contents insurance please contact our General Insurance Department on 020 7715 4170.

Missing information:

I still require 1 further proof of Address for Mrs Michaels and would ask you to forward this to me as a matter of urgency.

Annexure 32:

Jackson Stops & Staff property valuation

5th October 2006

Your ref:

Our ref: DAR060109

Date: 5th October 2006



**Jackson-Stops
& Staff**

10 Northumberland Street
Darlington DL3 7HJ
Telephone: 01325 489948
Fax: 01325 464684

darlington@jackson-stops.co.uk
www.jackson-stops.co.uk

Mr and Mrs P Michaels
Low Newbiggin House
Aisalby
Whitby
North Yorkshire
YO21 1TQ

Dear Mr and Mrs Michaels

Re: Low Newbiggin House, Aisalby, Whitby, North Yorkshire YO21 1TQ

Further to my recent visit, I am writing firstly to thank you for asking our advice on the possible marketing of your property, and secondly to outline our terms of business to act as your agents in any sale.

Low Newbiggin House is clearly a one-off property that will appeal to certain elements of the domestic market as well as the commercial market, especially if you proceed with your plans for the leisure redevelopment of the barn. The market for such properties is fairly buoyant at present, with well-presented and correctly priced examples being in particular demand. If you are contemplating a sale in the short to medium term then I would suggest that you achieve planning consent for the leisure complex, third cottage and the Fisherman's cottage. With these in place I feel that the value would then lie in the region of £2,000,000, which I know is below your expectations. However, should the economy and the property market slowly improve as expected then a guide price next Spring of, say, £2,250,000 would not be unreasonable.

It goes without saying that Jackson-Stops & Staff would be delighted to act on your behalf in a sale. Through prominently positioned offices in York and Darlington, and through our extensive and expanding countrywide network of offices, we can offer the best possible coverage for houses such as yours. I know that you do not want any overt marketing but set out below the form in any event for your information.

We normally charge a commission of 1.5% (plus VAT), in addition to which we pass on the cost of advertising and brochure production within a budget which we would agree with you in detail to suit your own particular property and requirements. For example, an excellent, colour, digitally printed, brochure, similar to the enclosed, can be produced for about £1250 (plus VAT) for the normal run of copies. Large, effective advertisements in the Darlington & Stockton Times cost approximately £195 (plus VAT) per colour insertion, in the Yorkshire Post £225 (plus VAT), and in the Newcastle Journal Country Homemaker £185 (plus VAT). Country Life insertions start from about £1300 (plus VAT) for a half page, Sunday Times from £275 (plus VAT) for a colour box and Salmon and Trout Magazine from about £500 (plus VAT). We are often able to acquire free editorial and publicity in both the local and national press, through our public relations office. In addition to normal advertising, we display all our properties on our own and Primelocation websites with a full colour page, from which we achieve an excellent response from around the world.

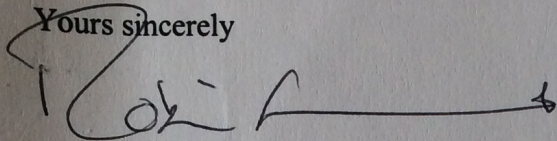


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CIRENCESTER • CRANBROOK • DARLINGTON • DORCHESTER • EXETER • IPSWICH • MIDHURST
NEWBURY • NEWMARKET • NORTHAMPTON • NORWICH • RUSTINGTON • SEVENOAKS
SHAFTESBURY • SHERBORNE • TAUNTON • TRURO • WEYBRIDGE • WILMSLOW • WINCHESTER

Mr and Mrs P Michaels

We are required by the Estate Agents Acts to confirm our terms to our clients in writing and as when you decide that you would like to market your house, please let me know and I shall then write to you again in greater detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robin Catterall', with a long horizontal line extending to the right and ending in a small arrowhead.

Robin Catterall
Director