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| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* | **04/02/2026** |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**CHANCERY DIVISION**

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**BANK OF SCOTLAND PLC**

**Plaintiff/Respondent**

**and**

**[1] GEORGE KENNETH BIBBY**
**[2] HELEN BIBBY**

**Defendants/Appellants**

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**Robert McCausland (instructed by TLT Solicitors) for the Plaintiff/Respondent**
**Anthony Brennan (instructed by Chambers Solicitors) for the Second Defendant/Appellant**

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**SIMPSON J**

*Introduction*

[1] In 2006 Mr and Mrs Bibby, the defendants in this case, with the help of a mortgage from Bank of Scotland, the respondent to this appeal, purchased a property in Bangor. The mortgage was for £680,000. In May 2007 they made an application to the plaintiff for a further joint advance of £150,000, bringing the total borrowing to £830,000.

[2] The last payment by the defendants under the mortgage was in June 2016, now 12½ years ago. Today the combination of the outstanding amount borrowed plus the accumulated arrears adds up to some £1.7 million. As Mr McCausland for the plaintiff put it, the reality is that Mr and Mrs Bibby continue to live in a fine house while not paying. The property is stated to be worth some £1.2 million.

[3] The plaintiff has brought proceedings for repossession of the house and payment of the moneys secured by the mortgage. On 16 September 2025 Master Hardstaff made an order that the defendants within 4 months of service…of this Order deliver to the plaintiff possession of the property…". The case comes before

me on appeal from the master. On the morning of the hearing I was informed that the first defendant, George Bibby, had failed to file his notice of appeal within time and, therefore, was unable to appeal. The case proceeded on behalf of Helen Bibby. For ease I will refer to the parties taking part in this appeal as the plaintiff" (the Bank) and the defendant" (Mrs Bibby). Where it is necessary to refer to Mr and Mrs Bibby, I will refer to them as the defendants."

[4] The evidence shows that in 2006 Mr Bibby approached a Mr Ronnie Savage, a mortgage broker, to arrange the mortgage.

[5] The Mortgage Offer document is relevant to this appeal. It is dated 13 September 2006 and is addressed to both defendants. It notes, in section 3, that the offer is based on borrowing of £680,000 plus £599.00 for fees that will be added to the loan…You require the mortgage over a term of 13 years. You require £680,599 on an interest-only basis. The valuation of the property is £800,000." Section 4 describes the mortgage and in section 5 it is stated that the total amount you must pay back, including the amount borrowed, is £1,264,886.69." The monthly payments are set out in section 6 and the following appears:

> As far as the part of your mortgage that is interest only is concerned, your payments cover only interest and not any capital borrowed. You will still owe £680,599 at the end of the mortgage term. You will need to make separate arrangements to repay this …
>
> It is important that you arrange a separate savings plan to pay off this mortgage at the end of the term …"

[6] The mortgage term being 13 years, the term of the mortgage in fact expired in September 2019 and the full balance then became due to the plaintiff.

[7] Section 7 of the Mortgage Offer asks the borrowers if they are comfortable with the risks, referring to possible rises in interest rates and diminution in the borrowers income.

[8] Second 13 is relevant to this appeal. It says:

> **13. Using a mortgage intermediary**
>
> Bank of Scotland will pay Dowling Savage Practice and Openwork Limited and Openwork Ltd (sic) an amount of £3,400 in cash and benefits if you take out this mortgage."

[9] On 8 July 2019 the plaintiff s solicitors wrote to the defendants. The letter included the following:

> We have been instructed to contact you regarding the arrears position on your account. Your arrears currently stand at £247,020.08. An additional payment of £4,730.41 will fall due this month and the total amount owing under your mortgage is £1,111,354.79."

[10] The originating summons grounding the plaintiff s application is dated 19 July 2019. It has taken in excess of six years to get to this appeal.

***The relevant statutory provisions***

[11] The statutory provisions which are under consideration in this appeal appear in Part II of the Financial Services and Markets Act 2000 ( the 2000 Act"), under the rubric Regulated and Prohibited Activities." The material provisions are as follows:

> **19 The general prohibition.**
>
> (1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—
>
> (a) an authorised person; or
>
> (b) an exempt person.
>
> (2) The prohibition is referred to in this Act as the general prohibition.
> …
>
> **27 Agreements made through unauthorised persons.**
>
> (1) This section applies to an agreement that—
>
> (a) is made by an authorised person ( the provider") in the course of carrying on a regulated activity,
>
> (b) is not made in contravention of the general prohibition,
>
> (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
>
> (d) is made in consequence of something said or done by another person ( the third party") in the course of—
>
> (i) a regulated activity carried on by the third party in contravention of the general prohibition, or

(ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

…

An agreement to which this section applies is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) Agreement" means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider…

**28 Agreements made unenforceable by section 26 or 27: general cases.**

(1) This section applies to an agreement which is unenforceable because of section 26 or 27, other than an agreement entered into in the course of carrying on a credit-related regulated activity.

(2) The amount of compensation recoverable as a result of that section is—

(a) the amount agreed by the parties; or

(b) on the application of either party, the amount determined by the court.

(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—

(a) the agreement to be enforced; or

(b) money and property paid or transferred under the agreement to be retained.

(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—

(a) …

(b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).

…

(6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.

(7) If the person against whom the agreement is unenforceable—

(a) elects not to perform the agreement, or

(b) as a result of this section, recovers money paid or other property transferred by him under the agreement,

he must repay any money and return any other property received by him under the agreement.

…"

[12] Under the heading Exemption" the material parts of section 39 provide:

**39 Exemption of appointed representatives.**

(1) If a person (other than an authorised person)—

(a) is a party to a contract with an authorised person ( his principal") which—

(i) permits or requires him to carry on business of a prescribed description, and

(ii) complies with such requirements as may be prescribed, and

(b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility."

[13] Accordingly, the relevant parts of the statutory scheme mean that for a person to carry on a regulated activity (and it is common case that the mortgage provision in this case was a regulated activity) that person needs to be either an authorised person or an exempt person. However, a contravention of the general prohibition in section 19 does not automatically render the agreement unenforceable. Section 27 renders agreements made by an authorised firm unenforceable, but only if the agreement is made in consequence of something said or done" by an unauthorised third party acting in breach of the general prohibition. Even then the court has a discretion pursuant to section 28 to allow the agreement to be enforced if it considers that it is just and equitable so to do, and in its consideration of whether it is just and equitable, the court is constrained to have regard to whether the provider (here the plaintiff Bank) knew that the third party (here the intermediary) was contravening the general prohibition or that it should reasonably have known that the general prohibition was being contravened" (see Newey LJ in *Adams v Options Sipp UK LLP (formerly Carey Pensions UK LLP) and another* [2021] EWCA Civ 474, para [112]).

***Discussion***

[14] On behalf of the defendant Mr Brennan says that there is a contravention of the general prohibition. He points to section 13 of the Mortgage Offer and submits that the entity therein identified as Dowling Savage Practice is not an authorised person, not is there any evidence produced of a contract between that entity and an authorised person such as is required by section 39(1) to render the entity exempt. Since section 19 bars anyone but an authorised person" or an exempt person" from carrying on a regulated activity" (as was the activity in this case) he says that the mortgage contract is unenforceable against the defendants.

[15] He relies on the decision in *Adams* (op cit).

[16] The facts of that case, in brief, were that Carey Pensions UK LLP ( Carey") had carried on business as a SIPP provider and administrator. In 2011 Carey started to accept into SIPPs a product involving investment in storepods , which comprised long leases of units in a storage facility. Most of the clients who invested in storepods were introduced to Carey by CLP Brokers Sociedad Ltda., which operated from premises in Spain. While Carey was authorised by the FCA, CLP never was.

[17] The plaintiff was a goods vehicle driver. In early 2012, he and his wife jointly owned their home, which was worth about £380,000 but subject to a mortgage of about £170,000, and he had a personal pension plan with Friends Life valued at some £52,000. In the previous year, HSBC had obtained judgment against him on a loan and so he was looking for ways in which to meet this liability. As he explained in his witness statement, he saw an ad saying, release some cash from your pension' (or words to that effect)" and was led to CLP website which claimed that [he] could do much better with [his] pension by investing with them." His evidence was that having had a discussion with a representative of CLP they persuaded me that I should follow their advice and guidance to transfer my pension and invest it in Storage Pods in accordance with their advice because I believed that, as they said, my pension would do better, and it would be safely and securely held with a reputable UK based pension provider — Carey."

[18] The investment went badly and the plaintiff issued proceedings for, inter alia, a declaration that the agreement was unenforceable. His claim was rejected at first instance. It was successful on appeal, where the court refused to exercise the discretion in section 28(3) of the 2000 Act to allow the agreement to be enforced.

[19] Mr Brennan relied heavily on paras [115] and [116] of the Court of Appeal s judgment, in the course of which, inter alia, the court identified consumer protection as a key aim" of the 2000 Act and stated that section 27 was designed to throw risks associated with [accepting instructions from unregulated sources] onto the providers."

[20] A detailed reading of the *Adams* case shows that the factual circumstances were wholly different from those in this case.

[21] In the present case, at the material time Openwork Ltd. was registered as an authorised person with the Financial Conduct Authority and Dowling Financial Planning Ltd was also registered as an authorised person with the FCA. Mr Ronnie Savage was an appointed representative of Openwork Ltd. and was employed by Dowling Financial Planning Ltd. At the material time, therefore, Mr Savage was an exempt person as provided for by section 39. Accordingly, the mortgage intermediary was approved and regulated by the FCA.

[22] Mr Brennan s point boiled down to this: because the entity named in section 13 of the Mortgage Offer — 'Dowling Savage Practice' — is not registered with the FCA it is not, therefore, an authorised person. There being no evidence of any contract such as is required in section 39, the plaintiff cannot show that Dowling Savage Practice' is an exempt person. Therefore, in acting as the mortgage intermediary, Dowling Savage Practice' was in breach of the general prohibition. The agreement is, therefore, unenforceable.

[23] In the course of his submissions I asked him this: if an entity known as Savage and Brennan was registered and authorised, but section 13 of a Mortgage Offer had

mistakenly referred to it as Savages [plural] and Brennan , would that mean that the contract was unenforceable? In view of his general submission, he was driven to answer yes , that the name is absolutely vital. So even a small typographical error in entering the name in section 13 would render the contract unenforceable.

[24] In my view that submission only has to be articulated in this way to reveal the weakness of it. The mischief which the statute seeks to prevent is the carrying on of regulated activity by rogue persons ie those who are neither authorised nor exempt — like CLP in the *Adams* case. The public is, therefore, protected by the statutory mechanisms. However, in this case each of the intermediaries between the defendants and the lender was either an authorised person or an exempt person. In my view, if the court was to conclude that there was a breach of the general prohibition simply because the entity was incorrectly named, it would result in absurdity.

[25] Accordingly, I find that there was no contravention of the general prohibition in this case, and that the contract is enforceable. In effect, that is the end of the matter. However, lest I am wrong in this conclusion, I need to consider the other sections of the statute. So, on the assumption that Mr Brennan s first submission is correct, was the agreement (between the plaintiff and the defendants) made in consequence of something said or done by another person", the other person being the mortgage intermediary?

[26] This means that the court would have to be persuaded that the defendants relied on the entity Dowling Savage Practice' and entered into the agreement in consequence of something said or done by" Dowling Savage Practice — as opposed to it being said or done by Mr Ronnie Savage, who was an exempt person. There is no evidence of this. The only reference to Mr Savage at the material times is in an affidavit sworn by the defendant on 11 August 2025. Where material, she says:

> 2. Around 2006 my husband and I agreed to purchase the subject property for the sum of £680,000. My husband approached Mr Ronnie Savage, a mortgage broker, to arrange the necessary finance.
>
> 3. Mr Savage submitted the mortgage application, and a formal offer was issued on 13 September 2006."

[27] Later, having referred to the second loan she says:

> 7. Both applications were submitted by the broker under the name Dowling Savage Partnership using the network authorisation of the first partner, Mr Dowling."

[28] It was Mr Bibby who went to Mr Savage to ask him to arrange the mortgage. There is no suggestion, far less proof, that the agreement was made in consequence

of something said or done" by Dowling Savage Practice, as opposed to being said or done by Mr Savage, an exempt person.

[29] If I am wrong about all of the above, then the provisions of section 28 require to be considered next. If the agreement is unenforceable because of section 27, then the court must consider section 28(3) — whether it is just and equitable in the circumstances of the case to allow enforcement. In coming to that conclusion, the court is constrained (section 28(4)) to have regard" to the issue of whether the provider [ie the plaintiff] knew that the third party [ie Savage] was (in carrying on the regulated activity) contravening the general prohibition" (section 28(6)).

[30] This matter was canvassed in the case of *Helden v Strathmore Ltd*. [2010] EWHC 2012 (Ch), by the same judge (Newey J, who as Newey LJ gave the leading judgment in *Adams*). In *Strathmore* the plaintiff, a property developer, sought a declaration that a loan agreement which he entered into with the defendant for the purchase of a residential property was unenforceable. The defendant sought possession of the property. It was common case that the defendant s only shareholders were a Peter Ashton and Pauline Ashton, neither of whom was an authorised person or an exempt person. The court held that there was a breach of the general prohibition. The court was required to consider the effects of section 28(3), and its reasoning can be found beginning at para [91]. It concluded that it was just and equitable to allow the agreement to be enforced. The only difference from my consideration in this case is that the case being a section 26 case, the court had to consider section 28(5), whereas here, it being a section 27 case, I have to consider section 28(6). The decision was appealed. The Court of Appeal upheld the judge s decision on the matters relevant in this case. The only successful element of the appeal related to indemnity costs of enforcement of the mortgage.

[31] As noted above, section 28(6) requires the court to have regard to the issue whether (here) the plaintiff knew that the entity Dowling Savage Practice was contravening the general prohibition. There is a second limb, and it is Mr Brennan s contention that an organisation such as Bank of Scotland, which he described as the largest lender in the UK" "should reasonably have known that the general prohibition was being contravened" (see Newey LJ in *Adams*, para [112]).

[32] First, there is not an iota of evidence that the plaintiff knew that Dowling Savage Practice was contravening the general prohibition. The defendant s further submission is that although Openwork Ltd and Dowling Financial Planning Ltd were authorised persons and Mr Savage was an exempt person, the appearance of the name Dowling Savage Practice' on the Mortgage Offer should have rung alarm bells within the plaintiff and should have prompted the plaintiff to make enquiries.

[33] The circumstances of this case are wholly divorced from eg those in the *Adams* case relied on by Mr Brennan. There, in relation to this issue, the court identified the following (para [115]):

> (iv) Come May 2012, Carey learnt that, contrary to what CLP had said in the Non-Regulated Introducer Profile , it was receiving commissions of about 12% from Store First, that clients were making enquiries as to when they would receive their money and that the FCA had posted a notice warning that one of those running CLP was not authorised under FSMA and that he might be targeting UK customers via the firm Cash In Your Pension.' These matters should have rung alarm bells with Carey, and they did: it terminated its relationship with CLP. Yet it still allowed pipeline" clients who had been introduced by CLP, such as Mr Adams, to proceed with investments in storepods;
>
> (v) It seems that it was not until 26 May 2012, the day after Carey notified CLP of its termination of their relationship, that Carey requested the transfer of the Friends Life pension, the proceeds were not received until somewhat later and the investment in storepods did not proceed until well into July 2012. It was open to Carey to decline to continue to permit Mr Adams (and other clients) to invest in storepods or at least to explore the position with him, but it did not do so notwithstanding the reasons for concern that it by then had."

[34] I do not consider that in the particular circumstances of this case the appearance of the name in section 13 of the Mortgage Offer should have led the plaintiff to make further enquiries or that it should have rung any alarm bells.

[35] Mr Brennan also submits that the plaintiff should have made enquiries as to whether the defendants could afford the mortgage, and that this feeds into the issue of the court s discretion. However, this was a self-certified mortgage ie the income of the borrowers (or one of them) was self-certified, as many mortgage applications are. To expect a lender to institute enquiries into every such application would be wholly unreasonable and unworkable. The defendants made payments under the mortgage initially, and in May 2007 applied for a further advance. Other than saying that the plaintiff should have made enquiries about affordability, there is no other evidence to support that contention. In my view, the plaintiff was fully entitled to rely on the self-certified earnings in the application.

[36] Mr Brennan also relies on MCOB. This is a reference to Mortgage Conduct of Business, a key part of the UK Financial Conduct Authority s (FCA) rules governing how firms handle mortgages. However, I find nothing in the actions of the plaintiff to demonstrate a breach of MCOB.

[37] He says that in *Adams*, Carey was fully MCOB compliant and had been praised by the FCA. However, from the passages set out above in para [33], that was not the

basis for the decision of the court. The factual circumstances which I have identified made it clear that alarm bells should have rung and Carey was on notice of factors which, at the very least, should have led to enquiry. I find that no such circumstances exist in this case.

[38] Mr Brennan also says that possession proceedings were first commenced in 2014, an order was obtained, but this was set aside in 2015, and that the plaintiff did not bring the present proceedings until 2019. That delay, he says, should also be taken into consideration in the court s consideration of its discretion. In my view, in the exercise of my discretion in the particular facts of this case, I do not consider that this matter prevents me from allowing the agreement to be enforced.

[39] He also submits that if the court is against him, the court should consider some middle ground, rather than simply enforcing the contract. However, the decision under section 28(3) is whether it is just and equitable that the agreement be enforced, and I note that in *Strathmore* the court said (para [93]) that the subsection merely empowers the court to allow the agreement to be enforced; nothing is said about the agreement being enforced in part." Accordingly, I reject this submission.

[40] The case for allowing the contract to be enforceable seems to me to be compelling. The defendants have had the use of the property since 2006. Since they needed to obtain the loan from the plaintiff, it is a proper inference to draw that they would not have been able to purchase, and therefore enjoy the use of the property, without the money advanced by the plaintiff. Since 2013, they have made no payments to the plaintiff, so have effectively lived in the property paying nothing. I am informed that the property has increased in value, from the original figure of £800,000 to £1.2 million. Banks are not charitable institutions. They are entitled to lend money and make profit from that business. The money provided to the defendants could have been used elsewhere by the plaintiff and a profit made.

[41] Importantly, and in line with the views of Newey J in *Strathmore*, the defendants have produced no evidence whatsoever as to how they would have been better placed if, say, the name in section 13 of the Mortgage Offer document had been 'Dowling Financial Planning Ltd.' rather than 'Dowling Savage Practice.'

[42] In my view the court is faced here with a familiar story: property purchased at the height of the market in 2006, prior to the financial crash in 2007/8, using substantial borrowings from a financial institution; borrowers subsequently getting into financial problems, making repayments on the borrowings difficult or impossible; borrowers simply ceasing to pay anything, while continuing to enjoy the use of the property; and borrowers fighting a long rearguard action using every potential tactic to prevent the lender from obtaining the remedy to which it is entitled.

***Conclusion***

[43] Arising from the above, I make the following findings:

(1) There was no breach of the general prohibition.

(2) Even if there was, the mortgage agreement was not made in consequence of" something said or done by Dowling Savage Practice.

(3) In my consideration of what I have to have regard to in section 28(6), I am satisfied that the plaintiff did not know that the general prohibition was being contravened or that it should reasonably have known that the general prohibition was being contravened.

(4) It is just and equitable to allow the agreement to be enforced.

[44] The appeal from the master is dismissed, with costs to the plaintiff.