

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
SITTING AT MANCHESTER DISTRICT REGISTRY

NCN: [2017] EWHC 3898 (Ch)

Case No: D30MA479

Courtroom No. 40

Manchester Civil and Family Justice Centre  
1 Bridge Street West  
Manchester  
Greater Manchester  
M60 9DJ

2.45pm – 4.40pm  
Monday, 31<sup>st</sup> July 2017

Before:  
THE HONOURABLE MR JUSTICE BARLING

B E T W E E N:

MR M L GOODALL *Claimant/Respondent*

and

- 1) SANTANDER UK PLC *First Defendant/Applicant*
- 2) STRATEGIC INVESTMENT SOLUTIONS LTD

MR M GOODALL appeared in Person  
MS A JEAVONS appeared on behalf of the Applicant/First Defendant

JUDGMENT  
(Approved)

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*Act 1992), or where an order has been made in relation to a young person.*

MR JUSTICE BARLING:

### **Introduction**

1. This is an application by the first defendant, Santander UK plc, (“the Bank”) represented by Ms Jeavons, for summary judgment against the claimant on the claim or, alternatively, for the claim to be struck out. If the application succeeds, the Bank also applies for an extended civil restraint order against the claimant.
2. The claimant, Mr Goodall, is not a lawyer and has represented himself throughout the hearing before me. He has conducted his case forcefully and with courtesy.
3. I have heard argument on the summary judgment/strike-out application over two separate days and, in view of the history of the issues ventilated, it is appropriate to give judgment now rather than reserving it.

### **Background**

4. The background to the claim can be reasonably briefly stated. In July 2006, Mr Goodall was employed, part-time, as an accountant for a company called Sight and Sound Marketing Ltd (“S&SM”). Mr Goodall agreed with the directors of that company, a Mr and Mrs Moran, that Mr Goodall would become a shareholder and a director of the company, and would make a cash injection into it of £112,500.
5. Mr Moran apparently referred Mr Goodall to a Mr Turner, a mortgage advisor associated with a company called Strategic Investments Solutions Ltd (“SIS”). SIS is, in fact, the second defendant to the present proceedings, but is not involved in this application. Mr Moran referred the claimant to that company with a view to raising the funds in question by way of re-mortgage against Mr Goodall’s unencumbered residential property.
6. Mr Turner recommended a mortgage from the Bank, and Mr Goodall duly completed a 28-page form, which he signed and dated. The form contained a declaration, which he signed, as to the accuracy of the information provided. Mr Goodall states that, at this meeting with Mr Turner, which he says took place on 19 July 2006, he informed Mr Turner that he had commenced a part-time role at S&SM on 17 October 2005, and that his salary was £7,800 a year but that it would be increasing to £40,000 a year when, at the time the mortgage was advanced, he took up a full-time role.
7. On 20 July 2006, SIS submitted an application to the Bank. In a witness statement dated

3 November 2014, Anita Parker, who was at the time, and perhaps still is, the external solicitor for the Bank, explains the relationship between that 28-page input form, which was completed by Mr Goodall, and a 6 or 7-page mortgage application, submitted to the Bank by SIS. In this statement, she makes it clear that the only part of the 28-page form sent to the Bank was the declaration page signed by Mr Goodall. Ms Parker states that the Bank would not need or receive the 28-page input form; everything it required would be on the 6 or 7-page application form. That form indicated that Mr Goodall was employed by S&SM as an accountant, that his gross salary was £40,000 per annum, and that he had been employed since 17 October 2003.

8. Mr Goodall contends that this salary and date of employment information was incorrect, and was deliberately and fraudulently mis-stated by Mr Turner, and that he, Mr Goodall, had informed Mr Turner that his employment began on 17 October 2005 and that his salary, at that time, was £7,800 per annum. Mr Goodall states that he was wrongly informed by Mr Turner that the £40,000 figure was the relevant one for mortgage purposes, on the basis that what mattered was his salary at the start date of the mortgage. Mr Goodall accepts that £40,000 was, in fact, his salary at the start date in August 2006.
9. The signed declaration page from the mortgage application, as sent by SIS to the Bank, shows a signature date of 20 July 2006. This was sent, together with certified copies of Mr Goodall's passport and a utilities bill which also bore that date, and a confirmation of identity and affordability form which confirmed that SIS was regulated by the Financial Services Authority – now the Financial Conduct Authority – and that SIS had discussed the mortgage payments with Mr Goodall and had confirmed that he could afford those payments. Mr Goodall contends that the date on the declaration form was deliberately and fraudulently altered from 19 July to 20 July 2006.
10. It is common ground that on 26 July 2006, the Bank sought confirmation of Mr Goodall's earnings directly from his employer, S&SM. In response, on 28 July, S&SM, acting through Mr Moran, confirmed to the Bank that Mr Goodall's gross salary was £40,000 per annum and that his employment had commenced on 17 October 2003. Mr Goodall contends that this information was incorrect and was deliberately and fraudulently mis-stated by Mr Moran.
11. On 1 August 2006, the Bank made a mortgage offer to Mr Goodall for a 20-year, interest-only loan in the sum of £112,500, which Mr Goodall accepted. The mortgage completed on 15 August 2006, and on that date Mr Goodall executed the mortgage deed to

secure the loan. On the same date, Mr Goodall loaned £112,500 to S&SM and was duly appointed a company director and company secretary. Mr Goodall obtained personal guarantees from Mr and Mrs Moran for S&SM's obligations to him under the loan agreement.

12. In the event, S&SM failed to make repayment to Mr Goodall under that agreement, and the company was ultimately dissolved on 30 April 2008. Mr Goodall brought proceedings against Mr and Mrs Moran in Manchester County Court, under their personal guarantees, and obtained a default judgment against them on 20 June 2008, in the sum of £118,264, that being the sum advanced, plus interest. The judgment has, apparently, not been satisfied.
13. Some three years later, in about mid-2011, Mr Goodall told the Bank that he would not be making any further payments under the mortgage. He also made complaints to the Bank, which the Bank contends are very similar to the present claim.
14. On 9 March 2013, Mr Goodall applied to HM Land Registry to set aside or rectify the mortgage deed registered in the Bank's name. That was the first of a number of applications and proceedings in which the Bank submits that Mr Goodall has raised the same or very similar allegations against the Bank. All these applications and proceedings have been unsuccessful. I will need to refer to those other matters in due course, but first I should describe the allegations in the present claim.

#### **The present claim**

15. There are essentially two extant claims advanced against the Bank. First, a claim for damages under section 138D of the Financial Services and Markets Act 2000 ("FSMA"), for alleged breaches of the Mortgage Conduct of Business Rules, which have been referred to throughout this hearing as the MCOB Rules. The second element is a claim for a declaration pursuant to section 27 of FSMA that the mortgage is unenforceable, together with a claim for rescission of the mortgage and compensation.
16. From time to time in his submissions to me, Mr Goodall has alleged fraud against Mr Turner, and also against the second defendant. He has hinted at an allegation that the Bank might have been involved in Mr Turner's alleged fraud. To that end, he has previously sought to introduce expert handwriting evidence into one of the other proceedings – that application being ultimately unsuccessful. The highest this allegation is put in the present proceedings, so far as the Bank is concerned, is reflected in paragraphs 80 and 81 of the Particulars of Claim. However, the contents of those paragraphs do not amount to an allegation of fraud against the Bank, but to speculation by Mr Goodall that if

on disclosure it should emerge that the documents to which I have referred were falsified by an employee of the Bank, then Mr Goodall would plead it against the Bank. I therefore do not regard there being an extant allegation of fraud pursued against the Bank, and describe in more detail the two pleaded claims.

17. As to the first of those claims, the claimant contends that when assessing the affordability of the mortgage, the Bank unreasonably relied upon the information provided to it by SIS, and also in the confirmation of earnings by S&SM, and/or failed properly to discharge its duty to assess affordability under the MCOB Rules, on the grounds that, first, the Bank should have noticed that the date on the declaration page of the mortgage input form had been changed and, second, the Bank should have checked with Companies House the date of incorporation of S&SM; that would have revealed that it post-dated the commencement of Mr Goodall's employment, as stated on the mortgage application and on the confirmation of earnings.
18. The claimant contends that, in relying on the information in question, the Bank also breached its own internal policies, as well as the MCOB Rules on the assessment of affordability. He has placed considerable emphasis on there being a high duty on lenders to act responsibly, in accordance with the legislation.
19. The claimant contends that he invested the funds advanced to him under the mortgage in S&SM, that S&SM subsequently failed, and that he lost his investment and is entitled to recover his loss from the Bank.
20. As to the second claim, which is pursuant to section 27 of FSMA, the claimant's case appears to be that, although SIS was an Authorised Person under the relevant legislation, having been authorised by what is now the FCA, Mr Turner, the employee of SIS or the representative of SIS who advised on the mortgage, was not independently so authorised; alternatively, Mr Turner acted outside the scope of his authority; therefore the mortgage agreement was made through a third person who was unauthorised for the purposes of section 27; the Bank had constructive notice of that fact, as there were reasonable grounds to doubt the information in the mortgage application; this was because of the discrepancies to which I have referred, and other discrepancies that have been outlined by Mr Goodall in the course of his submissions and which are referred to in the Particulars of Claim.
21. In relation to these two heads of claim, the Bank contends that each of them is without merit as a matter of substance. In addition to that submission on the merits, the Bank submits that there are other features which render one or both of the claims unsustainable. In particular,

the claim for damages for breach of the MCOB Rules is said to be time-barred; secondly and, in any event, it is submitted that no recoverable loss has been suffered by Mr Goodall.

22. Furthermore, Ms Jeavons submits that the key planks of the present claim have all been the subject of previous judicial consideration and findings against Mr Goodall, and so are the subject of issue estoppels against him. She also submits, further or in the alternative, that to pursue these claims in these proceedings represents an abuse of process by reason of the history of other proceedings.

*Breach of MCOB Rules*

23. I will first consider the MCOB claim for damages. The provisions of the rules which are relied upon by Mr Goodall appear to include the following: Rules 2.5.2, 11.3.1, 11.3.2, 4.4.1(c) and 4.7. Ms Jeavons has submitted that rules 4.4.1(c) and 4.7 and 11.3.2 are inapplicable. As far as rules 4.4.1(c) and 4.7 are concerned, it is submitted that these only apply to *advised* sales (as it says in the Rules) and bind the person providing the advice. It is common ground that the Bank did not advise Mr Goodall and that any advice was provided by the second defendant, SIS, through Mr Turner. In my view this submission is clearly correct and, therefore, rules 4.4.1(c) and 4.7 have no application in the present case.
24. Rule 11.3.2 concerns self-certification mortgage applications. The application here was not treated by the Bank as a self-certification mortgage. Ms Jeavons submits that it was not such a mortgage. Mr Goodall does not agree. It is certainly correct, as Mr Goodall noted, that there is a statement on page 1 of the mortgage application that appears to indicate that the application was a self-certification one. However, it is also clear that it was not treated as such. Mr Goodall accepts that another part of the application could be taken to indicate that it was not a self-certification mortgage.
25. However, there is another point. In seeking to rely upon rule 11.3.2, Mr Goodall has perhaps not understood the position. As I indicated during argument today, although this rule does apply to self-certification, it adds nothing to the other rules relied upon, because it only applies where the lender actually relies on the self-certification of income by the borrower. In the present case, it is common ground that the Bank did not so rely but sought verification of income from the claimant's employer. Therefore, whether this is a self-certification mortgage or not, there is really nothing to be gained by reliance upon that rule.
26. I am satisfied that the key provisions of the MCOB Rules, for present purposes, are rules 2.5.2 and 11.3.1.
27. At the material time, these provisions were in the following form.

Rule 2.5.2: ‘A firm will be taken to be in compliance with any rule in MCOB that requires the firm to obtain information, to the extent that the firm can show that it was reasonable for it to rely on information provided to it by another person’.

28. Rule 11.3.1 states, under the heading “Customer’s Ability to Pay”:

“A firm must be able to show that, before deciding to enter into a regulated mortgage contract with a customer, or making a further advance on a regulated mortgage contract, account was taken of the customer’s ability to repay.

2. A firm must make an accurate record to demonstrate that it has taken account of a customer’s ability to repay for each regulated mortgage contract that it enters into [...]. The record must be retained for a year from the date of which the regulated mortgage contract is entered into [...].”
29. Thus, rule 11.3.1 concerns the assessment of the customer’s ability to repay and rule 2.5.2 provides that a firm may rely upon information provided by another person, where it is reasonable to do so.
30. The claimant’s case for breach of provisions of MCOB is, in summary, this: that the Bank calculated a mortgage loan against income stated on the application form of £40,000, and in doing so relied upon, first, the income figure stated on the mortgage application form, and second, the confirmation of earnings certificate provided by Mr Moran, the representative of Mr Goodall’s employer; that the Bank’s reliance on the mortgage application is unreasonable because the date on the declaration had been amended from 19 to 20 July 2006, and because there were some other discrepancies in the mortgage application form, to which I will refer.
31. Mr Goodall also submits that the Bank’s reliance on the confirmation of earnings certificate completed by Mr Goodall’s employer was unreasonable because the date of incorporation of the company, which he contends the Bank should have identified by searching the Companies House website, post-dated the stated date of commencement of employment. It was also unreasonable to rely upon the certificate because, in Mr Goodall’s submission, the Bank’s own policy, internally, was that an employer confirmation of earnings certificate was not acceptable proof of income.
32. Mr Goodall has also identified what he submits to be non-compliance with the Bank’s internal policies in relation to record keeping. He further submitted that the change to the date was important, ‘Otherwise’, he asks rhetorically ‘why should it be part of the application form?’
33. Mr Goodall questioned why there were initials in the box of the form which is designed to

include the name of a second applicant and their signature. He submits that the initials which appear to be his are, in fact, not his, and the Bank should have queried it. This, together with the other discrepancies, should have alerted it, given the positive duty on a lender with respect to responsible lending.

34. In his submissions to me, the claimant has also outlined what he described as ‘a theory’ based on the difference between the way the figure ‘2’ is written in 2006 on the declaration page and the altered ‘2’ in ’20. The theory is that someone other than Mr Turner must have made the alteration and then, realising that it did not match Mr Turner’s “2s”, had gone so far as to insert other “2s” with the same kind of loop, in order to camouflage the fact that it was someone from the Bank who had changed the original date.
35. For these reasons, he contends that the Bank failed to comply with its obligations under MCOB properly to take account of Mr Goodall’s ability to repay the loan.
36. As to causation and loss, Mr Goodall claims the sum lost in his unsuccessful investment in S&SM, as I have already outlined. It appears that Mr Goodall’s case on this is that, had the Bank assessed the mortgage against that which he states to have been his actual income at the time of the mortgage application, namely £7,800, rather than against the income figure stated on the mortgage application form of £40,000, the mortgage application would not have passed the Bank’s affordability assessment, That would have meant the mortgage would not have been advanced, he would not have invested the money in S&SM, and would not have lost his investment upon the subsequent failure of S&SM. He also claims as damages the costs of proceeding against the directors of S&SM under their personal guarantee of the loan to the company, and the interest paid and due on the mortgage.
37. Leaving aside the issues raised by the Bank in relation to previous judicial findings on these same points, I can see no basis for the contention that the Bank was somehow put on notice that there were reasonable grounds to doubt the income figure provided to it in the mortgage application. As Ms Jeavons has pointed out, SIS was authorised and regulated by the FSA. Not only had the income information in question been provided by a regulated firm, which had certified that the mortgage payments had been discussed with Mr Goodall and that he had confirmed that he could afford those payments, but the Bank had also obtained independent verification of his income from his employer. There is nothing which would cause anyone to doubt whether £40,000 was a credible salary for a company accountant. Insofar as Mr Goodall contends that the Bank ought to have been put on notice of the possibility that SIS and the company were both providing information dishonestly (if,

- indeed, that was the case), there is simply no evidence to support such an assertion.
38. As to the points about the application form relied upon by Mr Goodall, again there is nothing to indicate that the amendment to the date on the declaration from 19 to 20 July 2006 was suspicious or improper. Beneath the amendment are what appear to be Mr Goodall's initials affirming it, and there would be no indication to a recipient of this faxed document that those initials had not been added by Mr Goodall. All the indications to a recipient of that application, including the date of the certified copies of the passport and gas bill, and the key facts illustration which was the document required to be provided to a client at the time of making the recommendation, are that the meeting with Mr Goodall had taken place on 20 July, so that the amendment to the declaration page would appear simply as an amendment to an error – nothing out of the ordinary. There was simply nothing to indicate to a recipient of that document that the meeting had taken place on 19 July (if that is when it took place), or that the declaration had subsequently been altered.
  39. Perhaps more importantly, there would be no motive, so far as the Bank was concerned, for Mr Turner to have deliberately altered the date, as it is clear that the date had no bearing on the likely success of the application itself. Similarly, there is simply no reason why the employees of the Bank would wish to alter the date, and there is not a shred of evidence that they did so. I must record that I entirely discount Mr Goodall's 'theory' based on the looped "2s" in the application form. To say that this theory is far-fetched would be something of an understatement.
  40. The other minor discrepancies in the mortgage application which were relied on by Mr Goodall, gave no reason for anyone to be concerned about the probity of the application. Although, for example, the mortgage in question is referred to as a re-mortgage on page 1, it was clear from other parts of the documents that the application was not for a re-mortgage. A similar point can be made, as I have indicated, in relation to the suggestion that it was a self-certifying mortgage, although it was clearly not treated by the Bank as such.
  41. I also consider that other erroneous references elsewhere in the mortgage application, which had been identified by Mr Goodall, were not of any significance in the context of this case, and were neither misleading nor suspicious. This applies to his contention that the blank space next to 'key facts information' on the application form, should have alerted the Bank to the possibility that the key facts illustration had not been provided. I am afraid this simply does not assist Mr Goodall. The evidence from the Bank's witness is that the document was faxed to the Bank by SIS, along with other documents on 20 July 2006.

Mr Goodall has told me today that the copy of the document contained in the bundle for this application is, in fact, his own copy of that document. He also told me that he did not receive it, as he should have done, when the recommendation was made, and before the application for a mortgage was made. He states that he received it only after the application was made.

42. None of these points has any bearing whatsoever on the obligations of the Bank under the MCOB Rules, in the context of what happened in this case. There is simply nothing in any of these points to put the Bank on notice of anything untoward or suspicious. Similarly, there is no basis for challenging the Bank's reliance upon the confirmation of earnings certificate from Mr Goodall's employer. That form had been sent directly by the Bank to the employer, S&SM, and S&SM appeared, to all intents and purposes, to be an independent source for verifying the stated income of £40,000. In addition, the suggestion that because it had the Companies House reference number the Bank should have checked the date of incorporation on the website, and should have noted that it post-dated the date stated on the mortgage application form, is, frankly, unrealistic. Also, unsurprisingly, the evidence is that the Bank does not in the usual course check an employing company's date of incorporation at Companies House before accepting verification of an employee's income. Indeed, there is no conceivable reason why it should.
43. Mr Goodall's other contention, that an income reference was not a permissible form of verification under the Bank's internal policies, is in my view irrelevant. It is also said to be incorrect for the reasons indicated in paragraph 44 of the witness statement of Ms Lyn James, one of the Bank's external solicitors. It is clear that at the time in question income references were a perfectly acceptable form of income verification. It may be that the Bank's policy has changed over the decade or so since 2006, but it clearly was acceptable at the time. The Bank's policy document, shown to me today by Mr Goodall, states that each case will be processed on its merits in relation to income verification and affordability. This is what one would expect, and in my view, therefore, there is nothing in these internal documents which can assist in the context of this case. It cannot, in my view, reasonably be argued that the Bank should have taken any further steps to verify Mr Goodall's income. The fact is that, in the circumstances, the Bank did everything that could reasonably be done to verify it. The Bank relies upon *Abbey National plc v Tufts* [1992] 2 FLR 399 as providing some assistance in relation to the Bank's position. However, such cases turn very much on their own facts, and I place no particular reliance upon them.

44. Reliance is placed, as I have said, on a number of so-called inconsistencies and discrepancies in the various documents. Some of these are relied upon by Mr Goodall in paragraphs 26 to 39 of his Particulars of Claim, and he has developed these points to some extent in his oral submissions. However, to take three examples, the points that he made in relation to his date of retirement, the means by which he intended to repay the loan, and the purpose for which it was being sought, do not, in my view, conceivably form the basis for an allegation with any substance, in the context of this claim.
45. I note that most, and possibly all, these points were raised before District Judge Burrow in the possession proceedings in Tameside County Court. I find myself in complete agreement with his conclusions, which he expressed as follows, in paragraph 34 of his judgment. (The references in this extract to ‘the claimant’ are references to the Bank, and references to ‘the defendant’ are to Mr Goodall):

‘It is also right to say that, whilst not determined before the tribunal, some consideration was given to the MCOB Rules and particularly the conduct of the claimant in relation to verification of the defendant’s income and any failure on the part of the claimant was roundly rejected’.

There is then a reference to *Abbey National v Tufts* as having been applied. Continuing, the District Judge said:

‘Having heard further argument on this issue, I share the view of the tribunal in that respect and am far from impressed of any suggestion that any breach of the MCOB Rules on the part of the claimant. The claimant deemed that, as a properly regulated intermediary, it was entitled to rely on the information provided. But, in fact, it did not do so in relation to the defendant’s income, and instead independently verified this. At no time was the claimant on notice as to the fact that information supplied by the intermediary, and the company, may be incorrect. The income details and declared expenditure confirmed this mortgage to be affordable. The fact that repayments were maintained until 2011 shows that it was affordable and the claimant’s assessment was correct. I struggle to see what more the claimant should have done’.

#### *Causation*

46. The absence of any real substance in the allegations of breach of the MCOB Rules is not the only problem for Mr Goodall in relation to this aspect of the claim. Another problem relates to causation. Even if there had been some breach of the MCOB Rules by the Bank in assessing the affordability of the loan, the Bank submits that no loss was, in law, caused thereby. In particular, the Bank submits that the affordability of the loan has no bearing whatsoever on the loss which was suffered by Mr Goodall, and that such alleged breach (which I have found to be unarguable) must be the cause of loss and not merely the

occasion for it. In this regard, I was taken to *Chitty on Contracts 32<sup>nd</sup> Edition*, paragraph 26-058, and the decision of the Court of Appeal in *Galoo Ltd v Bright Grahame Murray* [1994] 1 WLR 1360. Ms Jeavons pointed out that by the time the mortgage was drawn down, Mr Goodall's income had, as was anticipated by Mr Goodall and as he had informed Mr Turner would be the case, increased to £40,000 - the figure against which affordability had been assessed by the Bank. She also pointed out that Mr Goodall was, at all material times, aware that the affordability of the mortgage had been assessed against an income of £40,000, because the documents provided to him by SIS, made that clear. I was shown a copy of emails relating to this. Ms Jeavons also submits that as a matter of fact Mr Goodall could afford the loan repayments, and duly made them for almost five years, until he formed the view that he was not bound by the mortgage because of the second defendant's alleged fraud.

47. Ms Jeavons submits that if the Bank breached any regulatory rule in this regard, that was not the cause of any loss which Mr Goodall has suffered. Alternatively, she submits that the loss which Mr Goodall says he has suffered as a result of having badly invested the proceeds he received from the mortgage transaction, has nothing to do with affordability and, therefore, does not fall within the scope of the alleged regulatory duties. She referred again to *Chitty on Contracts*, at paragraphs 26-109 to 26-111. In her submission, Mr Goodall's loss was in fact caused by his decision – a decision which had nothing to do with the Bank - to advance the mortgage proceeds to S&SM in consideration for his being appointed a director and company secretary of S&SM, and for shares in the company plus a substantial salary increase. That may not have been a good commercial decision given that the company subsequently failed and was then dissolved with the loan remaining unpaid, but that loss cannot be laid at the Bank's door.
48. Ms Jeavons states, and it does not appear to be disputed by Mr Goodall, that the Bank did not know that he intended to use the loan proceeds to invest in the way in which he did. The Bank also contends that the fact that Mr Goodall obtained a judgment against Mr and Mrs Moran in 2008 shows that he appreciated at that time that the loss of the loan monies had been caused by those parties. If that judgment has not been satisfied then that does not mean, the Bank submits, that the claimant can now look to it as the cause of the loss. It is submitted that this point, too, has been decided in favour of the Bank by District Judge Burrows in paragraph 34 of the judgment to which I have already referred.
49. Mr Goodall, in his response to these submissions, drew a parallel between his situation and

that of the claimant in the case of *Rubenstein v HSBC* [2012] EWCA Civ 1184. There the claimant was explicit in making clear to the defendant bank, which was advising him, that he could not afford to risk his capital. Mr Goodall submitted that it was implicit in the present case, too, that he would not want to proceed with a transaction which involved a fraud, and that if someone (he identified Mr Moran) committed a fraud in order to gain access to funds, it was foreseeable that they would seek to steal those funds. He also submitted that his loss was suffered as soon as the Bank granted him the mortgage, as by that time he was committed to lend the money to S&SM. Therefore, it was wrong for the Bank to argue that the grant of the mortgage was simply an opportunity for a loss, rather than a cause of the loss.

50. I agree with the Bank's submissions. Any loss suffered by Mr Goodall resulting from the demise of the company S&SM, and the consequential loss of Mr Goodall's investment in that company, is too remote in law to be recoverable as damages for the alleged breach of MCOB Rules. Any such breach, had it occurred, would not have been, in law, a cause of the alleged loss, any more than any other link in the chain of events leading Mr Goodall to loan the money to this company, in exchange for higher salary, shares and a directorship. Mr Goodall did not suffer loss because he could not afford the mortgage. He suffered loss because the investment proved unsound and S&SM failed. Thus, I agree with Ms Jeavons that the affordability or otherwise of the mortgage is simply irrelevant.
51. It is true that if the Bank had not granted the mortgage then Mr Goodall would not have raised the money to make the investment by means of the Bank. Perhaps he would have found another lender had the Bank refused. But, regardless of whether he might or might not have done so, what Mr Goodall is seeking to rely on is sometimes called 'Adam and Eve causation'. A particular event may be able to be traced back through a whole series of circumstances, had any one of which not occurred, the event would not have taken place. However, that does not mean that each of those circumstances is causative of the event as a matter of law. In the present case the Bank no more caused any loss to Mr Goodall than would a purchaser of his house, had Mr Goodall decided to sell rather than mortgage the house to raise the investment funds. In that scenario, Mr Goodall would not have had the funds to invest had the purchaser not provided them in the form of the proceeds of sale, but it would be absurd to regard the purchaser as having caused Mr Goodall's loss.
52. Ms Jeavons stated that the Bank did not know what Mr Goodall intended to use the mortgage money for, and had no duty to enquire. I agree that no such duty existed. The

Bank's decision to grant Mr Goodall a mortgage was too remote in law to be the cause of his loss, regardless of whether Mr Goodall was, as he says, already committed to Mr and Mrs Moran to lend the funds to S&SM. There is no real prospect of Mr Goodall establishing causation in law or any recoverable loss as a result of the alleged breach of MCOB. The case is simply unarguable.

*Limitation*

53. The Bank submits that, in any event, the claim for damages for breach of MCOB is time-barred by virtue of section 9 of the Limitation Act 1980. Section 9 states:

‘An action to recover any sum recoverable by virtue of any enactment, shall not be brought after the expiry of six years from the date upon which the cause of the action accrued’.

The claim here was issued on 5 August 2016, almost 10 years after the cause of action would have accrued in 2006 when the mortgage was granted. Thus, the claim was clearly time-barred by the summer of 2012, unless the claimant is entitled to rely on section 32, as he submits. In his pleadings the claimant has not articulated on what basis he relies on that section.

54. Section 32 provides, so far as relevant:
- ‘1. Subject to sub-sections 3 and 4a) below, where in the case of any action for which a period of limitation is prescribed by this Act, either:
    - a) the action is based upon the fraud of the defendant or
    - b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant or
    - c) the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered fraud, concealment or mistake (as the case may be) or could, with reasonable diligence, have discovered it [...].’
55. Thus, section 32 provides for a delayed start of the limitation period in cases of fraud, deliberate concealment or mistake. The case law makes clear that ‘concealment’, for the purposes of section 32, may take the form of non-disclosure as well as active concealment and that it may be via the actions of an agent: see, for example, the decision of Holroyde J (as he then was), in *Parkin v Alba Proteins Ltd and Others* [2013] EWHC 2036 (QB) at paragraph 81.
56. Mr Goodall does not advance any claim of fraud or mistake against the Bank and, indeed, no obvious allegation in relation to deliberate concealment is made, although we have explored this in oral submissions. Indeed, Mr Goodall had earlier stated that, subject to

further disclosure, he was not alleging that the Bank had deliberately concealed or deliberately failed to disclose anything. When I asked him about this in the course of the hearing today, he qualified that statement by indicating that it only related to the period prior to 2010, and that he regarded assurances given in 2010, and again in 2013, to the effect that the Bank had effectively disclosed such relevant documents as it possessed, as inaccurate. Therefore, he does apparently wish to argue that there has been a deliberate failure to disclose.

57. However, as I have already explained, the essence of the claim against the Bank is that the Bank should not have assessed affordability of the mortgage against an income of £40,000. The problem in relation to limitation is that Mr Goodall has known from the very outset that the Bank assessed affordability against that figure. So far as the documents received thereafter are concerned, since, as I have found, they added nothing to the claimant's case in relation to the alleged breach of MCOB Rules, there is nothing material which could be said to have been concealed from the claimant, whether deliberately or otherwise, or which there has been a failure to disclose, whether deliberate or otherwise. Insofar as there could be any relevant knowledge on the part of Mr Goodall, in relation to the claim for MCOB breaches, he has been in possession of anything and everything that could be material since the mortgage was granted. There is, therefore, simply no arguable basis for reliance upon section 32. It follows that the damages claim for MCOB breaches is time-barred.

*Conclusion on the merits of the MCOB damages claim*

58. For these reasons the Bank is entitled to summary judgment on the damages claim, and is entitled, either additionally or in the alternative, to have that claim struck out as disclosing no reasonable cause of action. I so find quite apart from the arguments that have been raised on issue estoppel and abuse of process, with which I propose to deal in due course.
59. Before doing so I will turn to the merits of the section 27 claim.

*Section 27 claim*

60. Section 27 of FSMA provides:

**'Agreements made through unauthorised persons**

1. An agreement made by an authorised person ("the provider") [...] in consequence of something said or done by another person ("the third party") in the course of a regulated activity carried on by the third party in contravention of the general prohibition, is unenforceable against the other party'.
61. The general prohibition there referred to is set out in section 19 of FSMA which provides:
- '(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 referred to in this Act is the general prohibition’.

62. Mr Goodall seeks a declaration that the mortgage is unenforceable pursuant to section 27, on the grounds that Mr Turner was not independently authorised by the FCA (then FSA) to advise on the sale of mortgages. He contends that the mortgage agreement was, therefore, entered into between the Bank and himself as a consequence of something done by a third party, that is Mr Turner, in the course of a regulated activity carried out by that third party in contravention of the prohibition in section 19.
63. The Bank submits that there is a fundamental flaw in this reasoning because SIS was admittedly authorised to provide advice on mortgages, and Mr Turner was an appointed representative of SIS, not a third party. He was SIS’s employee and/or agent. There is no question, they submit, of section 19 applying, nor of the criminal liability that could result from a breach of section 19 arising as a result of Mr Turner not being personally authorised. The Bank points to the approved persons regime, which is a different regime contained in section 59 of FSMA.
64. I do not propose to set out section 59 in terms. In my view the Bank is correct in its submission that there is a confusion on the part of Mr Goodall in his submissions. If one looks at the way it is pleaded by Mr Goodall in paragraphs 4, 5, 6 and 7 of the Particulars of Claim, it is clearly accepted that the intermediary here was SIS. Paragraph 6 makes plain that the second defendant was an authorised firm under the Financial Services Authority, and that the allegation is that the second defendant facilitated the fraud of ‘its advisor, Mr Stuart Turner’. Therefore, it is alleged in paragraph 7 that the second defendant is in breach of its statutory duties under MCOB, causing the claimant loss.
65. The authorised person, therefore, is quite clearly SIS, as stated in the Particulars of Claim. The approved persons regime, to the extent that it applies (which is questionable), applies to employees and agents of an authorised person. If an authorised person fails to ensure that its employees, agents and representatives have the necessary approval, then that authorised person, (in the present case SIS) may be in breach of section 59, which may, in turn, be actionable under section 71 of the legislation. The regulated activity in the present case was clearly carried on by SIS as part of its business. The Bank is, therefore, correct in submitting that section 27 is simply not engaged - it is not relevant.
66. Further, this point was considered in some detail by District Judge Burrows in a hearing at

which Mr Goodall was apparently represented by counsel. The point appears to have been conceded by the claimant in that context.

67. Mr Goodall's response is that mortgage advising is not within the section 59 approved persons regime, or was not within it in 2006. But, as Ms Jeavons submits, that objection provides no assistance to the claimant. If the FSA intended to make, but has not yet made, mortgage advising a controlled function under the approved persons regime, it is section 27 or nothing. For the reasons the Bank has stated in its submissions, section 27 does not assist Mr Goodall here. It is simply a misconceived argument.
68. Also misconceived, in my view, are the other arguments raised by Mr Goodall that the Bank was aware of Mr Turner's lack of authorisation by reason of its internal documents referring to Mr Turner as an introducer. It is clear that Mr Turner was not an introducer within the meaning of the regulatory regime: he was a representative of an intermediary which was an authorised person. There is nothing in that point.
69. Nor is there anything in Mr Goodall's alternative contention that Mr Turner was acting in a way which caused the Bank to fall within section 27, because Mr Turner was acting outside the scope of his authority by forging the documents in question. Even if he was acting outside of the scope of his authority in providing incorrect information (and this also seems to be a somewhat dubious proposition), that does not, of itself, engage section 27. I can see no basis upon which the scope of Mr Turner's authority can have a bearing on whether there has been a breach of the general prohibition by SIS.

*Conclusion on merits of s.27 claim*

70. It is clear that there is no real prospect of Mr Goodall succeeding in the claim based on section 27, and the Bank is entitled to summary judgment on that claim too, and/or it is entitled to have the claim struck out as disclosing no reasonable cause of action. Again, these conclusions are separate from, and in no way dependent on, the Bank's contention that the section 27 claim represents a collateral challenge to other decisions of a judicial nature or is subject to issue estoppel or is an abuse of process.

*Overall conclusion on the merits*

71. My overall conclusions on the merits of the claim are that, for the reasons I have stated, it falls to be struck out in its entirety; alternatively, the Bank is entitled to summary judgment on the claim in its entirety. I do not consider that the Bank is overstating the position in submitting that the claim is legally and factually unsustainable. Another way of putting it is to say that it is devoid of merit.

72. For the sake of completeness, I record that in reaching these conclusions I have noted all Mr Goodall's submissions, including that one should not conduct a mini-trial in a summary judgment application; that in a strike out application any reasonable doubt about the facts should be resolved in favour of the respondent to the application; that even a very weak claim, or one which seems to be fanciful on paper, may be fit to go to trial, and that access to justice is a right and not a privilege. It seems to me that Mr Goodall has very fully exercised his right to access to justice in the course of the various proceedings to which I will now refer.

**Issue estoppel/collateral challenge/abuse of process**

73. In view of my conclusions on the merits, it is not strictly necessary to deal with the additional submissions of the Bank, relating to issues estoppel, collateral challenge and abuse of process. However, as I have heard submissions, I will express my views as briefly as I can. To do so, I need to describe the other proceedings between the parties, in addition to this claim.

*Other proceedings*

74. I have already mentioned that on 9 March 2013, Mr Goodall applied to HM Land Registry to set aside the mortgage deed registered in the Bank's name. That application was heard by the First-tier Tribunal, the Property Chamber, on 11 December 2013. The claimant alleged fraud on the part of the Bank, chiefly on the basis that Mr Turner was the Bank's agent – an allegation that he has not pursued in this claim, other than in a very tentative way. It is not the subject of any pleaded allegation in the Particulars of Claim, and amounts to no more than suggesting that it is possible that one can be the agent of more than one person, a submission which, if I have not expressly done so already, I reject as entirely unsustainable in terms of not being properly pleaded and having no real basis of fact. The claimant also alleged, in essence, a breach by the Bank of the MCOB Rules, now advanced by reference to those rules to which I have already referred.

75. The application was dismissed in all respects by Judge Professor Abbey on 10 January 2014. It is clear, in particular from paragraphs 4 and 5 of Judge Abbey's decision, that the submissions made by the claimant before the Tribunal were, essentially, the same as those now made in this claim.

76. In relation to the matters being pursued before me, the judge said this, at paragraph 23 of his decision:

'To the extent that Mr Goodall contends that the disputed charge should be

set aside on the basis that the lender ought to have taken further steps than it did to verify [Mr Goodall's] income [...], then I am of the view that there is no legal basis for this assertion. The [Bank] cites *Abbey National PLC v Tufts* [...] where the [Bank] says precisely this argument was rejected by the Court of Appeal and having reviewed that case, I must agree entirely. For example, in that case, it was said by Chadwick LJ "...in failing to insist on obtaining wage slips or a P60, the Bank failed to make such enquiries as you would reasonably have made. In my view that contention is unsustainable". I would add to this that, in this dispute, it seems to me that the Bank did make enquiries which were sufficient in the circumstances by actually writing, requesting written confirmation of income, an enquiry the applicant accepts was indeed made'.

77. Mr Goodall then applied for permission to appeal the judgment of Judge Abbey. In his first application for permission, he asserted that he could make available new handwriting expert evidence. This would indicate that the person who changed the date on the declaration page of the mortgage application might not have been Mr Turner. He submitted that this was new evidence that the Bank had actual or blind-eye knowledge of the fraud which he was alleging against SIS. Mr Goodall also stated that it was 'in these additional forms (two proofs of identity and a confirmation of identity document) that the evidence of the respondent's fraud was found'.

78. Judge Abbey dismissed the application on 24 February 2014 and stated in his judgment:

'The matter of the date has no bearing on the nature of the mortgage in dispute and the change of date makes no difference to the mortgage application. Whether the date was the 19<sup>th</sup> or the 20<sup>th</sup> seems to me to be entirely immaterial to the lending decision made by the proposed lender and that, therefore, this alleged change could not amount to a fraud on the applicant'.

79. Mr Goodall then made a second application for permission to appeal the main judgment and, again, advanced the grounds that he advanced before. That application came before His Honour Judge Pelling QC who, in his refusal of permission, stated that the change to the date was 'entirely immaterial'. The learned judge went on to say:

'If, as Mr Goodall alleges, false information was provided on the mortgage application form then that was a fraud on, not a fraud by, [the Bank]. In those circumstances, even if Mr Goodall could demonstrate that change to the date was made by an employee of the [Bank], rather than the intermediary, it would not provide any realistic basis for arriving at a different conclusion, in relation to the claim'.

80. That decision by Judge Pelling QC was made on the papers, without a hearing, and therefore Mr Goodall renewed his application at an oral hearing before His Honour Judge Hodge QC. Judge Hodge dismissed the application and recorded in his

- order on 22 May 2014 that the renewed application was, ‘Certified as totally without merit’.
81. On 9 October 2013, while that was going on, the Bank began mortgage possession proceedings and the claimant applied to strike them out. That application was dismissed by Deputy District Judge McNall who made a possession order on 13 January 2014, after waiting for Judge Abbey’s decision in the First-tier Tribunal. It appears that the claimant raised the same, or similar, arguments against the Bank to those he raised in the Tribunal proceedings, which, no doubt, is the reason why Deputy District Judge McNall waited for the outcome of the latter.
82. The claimant next applied to revoke the possession order. That application was struck out by District Judge Osborne on 24 February 2014, as an abuse of process, apparently on the ground that it raised matters which had been raised before Deputy District Judge McNall. District Judge Osborne said the application was ‘totally without merit’. The claimant then applied for permission to appeal the order of District Judge Osborne, and that application was dismissed as ‘entirely without merit’ by His Honour Judge Katz on 29 May 2014.
83. Next, the claimant applied to suspend the warrant of possession to give him time to consider making a counterclaim and, in due course, he applied for permission to bring a counterclaim in the possession proceedings. At the hearing before District Judge Burrow on 4 September 2014, the claimant was represented by counsel. The claimant raised the same MCOB allegations and the section 27 claim, as well as the fraud claim based on the alleged agency of Mr Turner. That application was dismissed by District Judge Burrow in a detailed judgment on 13 November 2014. The judge refused permission to appeal on 5 March 2015. In that regard, it is worth looking at paragraph 34 of the judgment, from which I have already quoted.
84. In relation to the section 27 claim, District Judge Burrow said this, at paragraph 49 of his judgment, referring to the Bank’s submissions:
- ‘The point made is that FSMA recognises the different roles of parties involved in a transaction. SIS [Mr Turner’s employer] was the authorised person and Mr Turner was a person they allowed to perform a controlled function. Section 59 provides detailed regulation for such persons and, if SIS breached that provision, then section 59 does not provide Mr Goodall with a claim against the Bank; it provides a right of action, under section 71, against SIS for allowing Mr Turner to perform a controlled function without approval, a point which counsel for Mr Goodall has conceded’.
85. The judge then went on to accept those submissions and to reject Mr Goodall’s argument that Mr Turner was not acting on behalf of SIS, which was the basis on which counsel for

Mr Goodall had argued that Mr Turner was a third party and therefore required independent authorisation, which he did not have. The judge went on to hold, at paragraph 5 of his judgment:

‘Whilst there may be little authority on the point, it seems to me that the whole purpose of section 59 reflects the fact that regulatory organisations will have individual advisors working for them under their umbrella and authorisation. It therefore places obligations upon such organisations in relation to those individuals. Such evidence as there is in this case confirms, in my view, that Mr Turner was acting on behalf of SIS. The tribunal findings are in line with that and, again, an issue estoppel may well apply. SIS was the authorised person and there is no question as to their authorisation’.

86. Ms Jeavons submits that, in the light of this history, the essential features of the present claim have all been the subject of previous judicial consideration and of findings adverse to Mr Goodall and are, therefore, the subject of issue estoppels. In particular, she identifies the following issues as having been so subject.
87. First, the finding that the Bank took all reasonable steps to verify Mr Goodall’s income, in which regard she relies upon paragraph 23 of Judge Abbey’s judgment and paragraph 34 of District Judge Burrow’s judgment. Second, the Bank was not on notice of any alleged fraud of SIS and/or of S&SM with respect to the income figure and/or of the alleged changing of date of the signature on the declaration. She relies, in that regard, on Judge Abbey’s paragraph 19 and District Judge Burrow’s paragraphs 34 and 36 to 43. Third, the issue that the change of date on the declaration had no impact on the Bank’s decision to lend to Mr Goodall and that, therefore, even if Mr Goodall’s application may or could have been changed by an employee at the Bank were correct, it would not amount to a fraud on the part of the Bank: Judge Abbey’s decision, paragraph 1; decision of His Honour Judge Pelling QC, paragraphs 3 to 4. Finally, the issue as to whether Mr Turner acted as Mr Goodall’s agent, rather than the Bank’s agent, during the mortgage application: the judgment of Judge Abbey, paragraph 24 and of District Judge Burrow at paragraph 36 to 43. These findings, Ms Jeavons submits, bind Mr Goodall, and his present claim being founded upon the previously rejected arguments is, for that reason, unsustainable.
88. Mr Goodall responds, in summary, as follows. First, he refers to cause of action estoppel and to the conditions relating to that. However, this principle is not relied upon here by the Bank. In relation to issue estoppel, he submits that it does not apply to interim applications such as that before District Judge Burrow, which was an application for permission to bring a counterclaim. He submitted that that was not conclusive. In his submission, certain other

statements in the judgment of Judge Abbey, in relation the MCOB claim, were expressly not determinative but simply an expression of his views. Further, all estoppels must be applied so as to work justice and not injustice, and any estoppel operating against the claimant here would be unjust. Mr Goodall also relies upon what he submits to be newly discovered facts, such as the documents revealed in 2014. This, he says, militates against any possibility of relying upon a judgment based on the earlier facts and not taking those new facts into account.

89. The law on issue estoppel is reasonably clear, although somewhat more difficult to apply in certain cases. It is helpfully set out in a citation from the judgment of Lord Sumption, in *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2013] UKSC 46. There Lord Sumption quotes from Lord Keith of Kinkel in *Arnold v National Westminster Bank plc* [1991] 2 AC 93:

‘Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue.’

90. Lord Sumption continues:

‘Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised’.

91. As far as the first issue identified by Ms Jeavons is concerned, I note that Judge Abbey expressed his views, at paragraph 23 of his judgment, in somewhat nuanced terms. District Judge Burrow, at paragraph 34 of his judgment, regarded Judge Abbey as not having determined any issue relating to breach of the MCOB Rules by the Bank, as opposed to the validity of the point that was under consideration by Judge Abbey. In addition, District Judge Burrow’s agreement with Judge Abbey’s views was expressed as part of his reasoning in an interlocutory application to permit the bringing of a counterclaim. Ms Jeavons, I believe, accepted in her reply submissions that this was not really a case of issue estoppel in relation at any rate to a breach of the MCOB Rules, but simply the expression of views that were persuasive. I consider that was a correct submission in relation to the first issue. I do not regard these judgments as founding an issue estoppel.

92. As to the second issue, this appears to relate to a claim against the Bank based on fraud, or

constructive notice of a fraud which, as I have already indicated, does not appear to be pursued, subject to what might turn up on further disclosure. If it were to be pursued, then I would certainly consider the findings of Judge Abbey at paragraph 19 of his judgment to be capable of giving rise to an issue estoppel, on the question whether the Bank had constructive or imputed notice of any fraud. However, I do not reach any conclusion on that matter given that it is not, at this stage, a live issue.

93. As to the third issue, relating to the question whether the date of the declaration (either 19 or 20 July 2006) had any bearing on the Bank's decision to grant a mortgage, the findings of Judge Abbey and His Honour Judge Pelling QC were made in permission to appeal decisions. I would not regard those as giving rise to an issue estoppel.
94. As far as the fourth issue is concerned, that is, the matter of the agency of Mr Turner, the allegation in question is unpleaded. It was adumbrated by Mr Goodall today as being the possibility that if something turns up Mr Turner might be shown to have been the servant of more than one master. Since it cannot be pursued, I do not propose to make any finding at all in relation to this. The findings relied on by Ms Jeavons are not made in a context such that they are likely to give rise to issue estoppel.
95. For those reasons, I do not regard issue estoppel as an additional ground upon which to base my decision to grant summary judgment, or to strike out the claim.

**Collateral attack/abuse of process**

96. However, the fact that issue estoppel does not arise in relation to the relevant allegations does not mean that the court, in the exercise of its inherent jurisdiction, cannot strike out as abusive allegations which represent repetitions of earlier unsuccessful assertions made in judicial proceedings of whatever kind.

*MCOB claim*

97. In relation to the MCOB claim, in the case of *Eco-Power Co UK Ltd v TFL* [2010] EWHC 1683 (Admin), a decision of Simon J as he then was, the claimant, having brought judicial review proceedings which were unsuccessful, later sought in respect of the same facts remedies in damages for negligence, misfeasance in public office and malicious falsehood. The claim was struck out. Although judicial review proceedings could not be relied upon to found an issue estoppel, the courts have an inherent jurisdiction to prevent, in the interests of justice, issues being tried repeatedly, where the point had already been argued before a court without success. In that case the judge found that the claim amounted to a collateral attack on the findings of the judge in the judicial review claim. He said this, at

paragraph 21:

‘It is not simply a question of finality, important as this principle is, it is in the overall interests of justice that limited resources should not be deployed so that a party can raise before a different tribunal a point which it has previously argued without success. This has less to do with questions of estoppel and much to do with common sense and practicality. If an argument has failed before one tribunal which has heard the argument and seen the evidence, there will be little likelihood of success before a second tribunal’.

98. In my view, that principle clearly applies with reference to the allegations upon which the claimant has sought to rely in pursuing the MCOB claim. Each and every aspect of that claim, and the allegations underlying it, has been the subject of judicial consideration and findings adverse to the claimant, on one or more occasion. The claimant has, in my view, abused the process in court in pursuing the matter in the way that he has done. He has for some time been flogging a horse which is well and truly dead. I would, therefore, also strike out the MCOB claim under the court’s inherent jurisdiction, as an abuse of the process of the court.

*Section 27 claim*

99. Ms Jeavons submits that the section 27 claim constitutes a collateral attack on the decision of Judge Abbey, and also on the conclusions in the possession proceedings, and is therefore an abuse of process. In the case of *Hunter v Chief Constable West Midlands* [1982] AC 529, the court held that it was an abuse of process to initiate:

‘Proceedings in a court of justice for the purpose of mounting a collateral attack upon the final decision against the intending claimant, which had been made by another court of competent jurisdiction in previous proceedings, in which the intending claimant had full opportunity of contesting the decision in the court in which it was made’.

100. Mr Goodall made a number of points. In relation to the possession order, Mr Goodall submits that it was not defended and therefore no account should be taken account of it. That is not a good point. In fact, the claimant was proposing to contest the proceedings for possession upon the same grounds as he was challenging the mortgage registration and validity in the First-tier Tribunal, and for that reason the matter was stood-over to await Judge Abbey’s decision in the Tribunal.
101. Nor do I consider that the Bank is precluded from striking out the claim by reason of having put in a defence on the merits to the claim. The Bank’s contention of collateral attack was expressly included within the defence and there is, therefore, no acquiescence by the Bank. Further, I do not regard *Johnson v Gore Wood* [2002] AC 1 and *Coca Cola v Ketteridge*

[2004] FSR 29, upon which the claimant relies, as laying down any such immutable principle. The question depends upon the particular circumstances of the case. The passages in those cases upon which Mr Goodall relies do not assist him, as they are fact-specific.

102. The declaration sought by Mr Goodall in the section 27 claim would clearly be at odds with, first: Judge Abbey's rejection of the claimant's application to have the mortgage declared invalid and removed from the register: second: the possession order by Deputy District Judge McNall; and, very possibly, third: the dismissal by Deputy District Judge Osborne of the claimant's application to revoke the possession order. All those matters reached their final conclusion, including, where appropriate, any applications to take the decisions in question to appeal.
103. There is nothing in any of the claimant's submissions which persuades me that to pursue the section 27 claim now is anything other than a collateral attack on those earlier decisions and an abuse of process. I would therefore also strike out the section 27 claim on that additional ground.

**End of Judgment**

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