Neutral Citation Number: [2010] EWHC 1865 (QB)

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**MANCHESTER DISTRICT REGISTRY**

**MERCANTILE COURT** **Date: 22 July 2010**

Before:

**HIS HONOUR JUDGE WAKSMAN QC**

**Sitting as a Judge of the High Court**

**BETWEEN:** Claim No. 9AL03763

**JOSEPH STERNLIGHT**

Claimant

and

**BARCLAYS BANK PLC**

Defendant

**AND BETWEEN:** Claim No. 9AL03784

**ANDREW SNEDDON**

Claimant

and

**BANK OF SCOTLAND PLC**

Defendant

**AND BETWEEN:** Claim No. 0AL00889

**DAVID BURT**

Claimant

and

**ROYAL BANK OF SCOTLAND PLC T/A MINT**

Defendant

**AND BETWEEN:** Claim No. 9AL03789

**NICOLA COATES**

Claimant

and

**CAPITAL ONE BANK (EUROPE) PLC**

Defendant

**AND BETWEEN:** Claim No. 9AL03779

**SCOTT WRIGHT**

Claimant

and

**HSBC BANK PLC**

Defendant

**Hearing date: 16 July 2010**

David Berkley QC and William Frain-Bell (instructed by ATM Solicitors) for all Claimants

Andrew Mitchell (instructed by Hogan Lovells International LLP) for Barclays Bank Plc

Iain Macdonald (instructed by Retail Legal dept. HBOS Plc) for Bank of Scotland Plc

Julia Smith (instructed by DLA Piper UK LLP) for Royal Bank of Scotland Plc

Toby Riley-Smith (instructed by Legal Department Capital One Bank (Europe) Plc) for Capital One Bank (Europe) Plc

Sonia Tolaney (instructed by HBEU Legal) for HSBC Bank Plc

# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

## INTRODUCTION

1. On various dates in 2009 and (in the case of *Burt*) in February 2010 proceedings in the 5 cases listed above were issued in the Altrincham County Court. All of them were brought by holders of credit cards issued by the Defendant banks. All of the credit card agreements were regulated running-account debtor-creditor agreements governed by the Consumer Credit Act 1974 ("the Act"). In all cases the principal allegation made was that the rate of interest set out in those agreements was mis-stated with the effect that the agreements were "irredeemably unenforceable" ie the banks would never hereafter be able to obtain a judgment against any of the Claimants should there be arrears or other defaults under the agreements. That central allegation has been made in at least 100 cases issued in the Altrincham County Court by ATM Solicitors Limited, the Claimants' solicitors here. It is thought that many other such claims have also been issued in other County Courts. Following a case management conference on 26 May 2010, these 5 cases were chosen as test cases and transferred to the Manchester Mercantile Court so that this and other related issues could be determined either at trial or summarily. The Particulars of Claim in these cases were not in adequate form on 26 May 2010 and proposed Amended Particulars of Claim were later served. The Defendants then objected to those amendments, and made applications to strike out the Particulars of Claim and/or obtain summary judgment for their dismissal, on the grounds that the Particulars of Claim, whether in their existing or amended form, disclosed no reasonable grounds for the claim and in any event had no real prospect of success on the evidence.

2. On 16 July 2010 I heard those various applications and struck out all of the claims on those grounds. In so doing I decided the issue of alleged interest mis-statement against the Claimants. I gave brief reasons for that conclusion that day on the basis that a full written judgment would follow. This is that judgment.

## STATUTORY FRAMEWORK

3. By s60 of the Act the Secretary of State would make regulations as to the form and content of documents embodying regulated agreements. By s61 of the Act, a regulated agreement is not "properly executed" unless (among other things):-

> "(a) A document in the prescribed form itself containing all the prescribed terms and conforming to regulations under section 60(1) is signed in the prescribed manner both by the debtor ...and by or on behalf of the creditor...;
>
> and
>
> (b) The document embodies all the terms of the agreement, other than implied terms."

4. If an agreement is improperly executed in this sense, it is only enforceable against a debtor on an order of the Court made under section 65(1). In this connection, section 127(1) provides that the Court shall dismiss any application for an enforcement order under section 65(1) "if, but only if, it considers it just to do so having regard to prejudice caused to any person by the contravention in question, and the degree of culpability for it." However, in respect of regulated agreements signed before 6 April 2007, if the agreement fails to contain the prescribed terms required by section 61(1) (a) (and set out in regulations made pursuant to section 60), then, pursuant to section 127(3) the Court is unable to grant an enforcement order in relation to the agreement. The description "irredeemably unenforceable" given to such an agreement derives from the judgment of Lord Hoffman in *Dimond v Lovell* [2002] 1 AC 384 at p397F.

5. The "prescribed terms" which must be contained in the document signed by the debtor are set out in Schedule 6 to the Consumer Credit (Agreements) Regulations 1983 ("the Agreements Regulations"). Paragraph 4 of Schedule 6 of the Agreements Regulations states that one such prescribed term for "agreements for 'running-account credit" [ie the agreements here] is:

> **"A term stating the rate of any interest on the credit to be provided under the agreement."**

6. In addition, Schedule 1 of the Agreements Regulations sets out the information which must be included in a regulated agreement in order for it to be in the "prescribed form" for the purpose of section 61(1)(a). By paragraph 10 thereof (prior to amendment in May 2005) this includes information relating to the interest and other charges on the credit provided under the agreement.

7. Paragraph 15 of Schedule 1 also requires there to be included information in respect of the "APR" or "annual percentage rate". The APR is a creature of the Act and the regulations thereunder. It seeks to express the interest and other charges payable in terms of an equivalent annual rate. And it is information which the debtor or prospective debtor is entitled to have. For the purposes of the Agreements Regulations, the total charge for credit and the APR are to be determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980 ("the TCC Regulations"): see regulation 1(2) of the Agreements Regulations. The TCC Regulations stipulate that certain items, including the total of the interest on the credit which may be provided under the agreement, are to be included in the total charge for credit (regulation 4), and that certain items are to be excluded (regulation 5). They also lay down the assumptions upon which the calculation of the APR is to be based: see regulations 2 and 12 to 18. The APR necessarily has to be calculated upon the basis of assumptions because when the calculation is made, the total charge for credit is not known; in the context of running-account credit, it is not known, for example, when the debtor will draw down credit, how much he will draw down, or what repayments he will make or when, with the result that it is impossible to know how much interest he will be charged. Moreover, the APR is to be calculated by means of a formula, which, in the case of the agreement in *Burt*, was prescribed by regulation 9 of the TCC Regulations. For the other agreements, made after 14 April 2000 the APR formula was prescribed by regulation 7.

8. It follows that whereas the rate of interest is a prescribed term, the stipulation about APR is not, and is subject only to the information requirements under Schedule 1. The difference between the two sets of requirements, in Schedules 6 and 1 respectively, was set out by Mr Recorder Douglas QC in *Hurstanger v Wilson* [2007] 1 WLR 2351 cited with approval in paragraph 11 of the judgment of the Court of Appeal given by Tuckey LJ as follows:

> "In my judgment the objective of Schedule 6 is to ensure that, as an inflexible condition of enforceability, certain basic minimum terms are included which the parties (with the benefit of legal advice if necessary) and/or the court can identify within the four corners of the agreement. Those minimum provisions combined with the requirement under section 61 that all the terms should be in a single document, and backed up by the provisions of section 127 (3), ensure that these core terms are expressly set out in the agreement itself: they cannot be orally agreed; they cannot be found in another document; they cannot be implied; and above all they cannot be in the slightest mis-stated. As a matter of policy, the lender is denied any room for manoeuvre in respect of them. On the other hand, they are basic provisions, and the only question for the court is whether they are, on a true construction, included in the agreement. More detailed requirements, which are designed to ensure that the debtor is made aware, so far as possible, of specified information (including information contained in the minimum terms) are to be found in Schedule 1."

## THE CHALLENGED PROVISIONS

9. The relevant parts of each of the challenged agreements are set out below.

### Sternlight

10. The agreement here provided as follows:

> *"3.1 We will charge interest at the following monthly rates:…*
>
> *(c) on the Cash Advance Balance at 1.531% (20.4% APR)"*

together with a handling fee as set out in clause 3.2 thereof.

### Sneddon

11. The agreement here provided as follows:

"

| 9.9% APR Card | On balance transfers related interest and charges | On cheques related interest and charges | On cash advances related interest and charges | On purchases and other amounts |
|---|---|---|---|---|
| … | …. | … | … | … |
| Monthly rate (variable) | … | … | 1.736% each month | .. |
| Annual Percentage Rate (variable) | … | … | 25.4% APR | … |

…We make a handling charge of 2% (at least £2) for cash advances.

When we work out the APRs we do not take into account any changes to the interest rates charges or fees. We may change these and introduce new charges or fees at any time by giving you notice under condition 8.2."

### Burt

12. The agreement here provided as follows:

> "Interest on cash advances ..will be charged for each Charging Period at the Base Rate ruling on the Reference Date in the preceding Charging Period plus a fixed margin of 9.72% per annum. At the date this Agreement was prepared this formula produced a rate of 15.72% per annum equivalent to an ANNUAL PERCENTAGE RATE of …19.2 % (variable) for cash advances. A handling fee of 2% will be made on the amount of any cash advance subject to a minimum of £1.50"

### Wright

13. The agreement here provided as follows in relation to Gold Visa cards:

> "..the monthly interest rate will remain at our standard Gold Visa rate currently 1.1%. The APR will then be 15.3% for purchases and for balance transfers and 17.1% for cash advances.."

14. In fact, although these were the rates challenged by the Claimant, they were not applicable to this Claimant anyway who had a MasterCard.

**Coates**

15. The primary allegation about mis-statement of the rate of interest is not now advanced on the same basis as in the other cases. So I need not say anything further about it here.

## THE REPORT BY MR YOUNG

16. In each of these cases the Claimant has produced an expert report by Nigel Young, a mathematician and computer expert. In each case he has performed a calculation on the basis that "..the Claimant will say that the APR stated in the agreement should be regarded as the primary figure and the monthly interest rate should be calculated from and correspond to the APR as near as may be.." [paragraph 2.4.2]

17. For each case, therefore, Mr Young has reverse-engineered monthly (or in *Burt* the annual) interest rates by calculating what rates if applied to the APR formula required by the regulations, would yield the stated APR figures referred to above. His conclusions are as follows:

    (1) In *Sternlight* the implicit monthly cash advance balance rate is 1.3205% not the stated 1.531%;

    (2) In *Sneddon* the implicit monthly cash advance balance rate is 1.58395% not the stated 1.736%;

    (3) In *Burt* the implicit annual cash advance balance rate is 14.83603% not the stated 15.72%;

    (4) In *Wright*, had the Gold Visa rate been the right one to start with (which it was not) the implicit monthly rate for cash advances is 0.91045%, and for balances transfers and purchases 1.0072% instead of the stated rate of 1.1%.

18. It is noteworthy that in three of these cases the challenge is not made to the interest charges for the most commonly-used feature of credit cards, ie purchases, but cash advances.

## THE ISSUE

19. The Defendants do not accept that the calculations made by Mr Young are factually correct but for the purpose of the applications before me, this was assumed. The Claimants therefore contend that if one starts with the stated APR the "true" monthly or annual rate of interest has been mis-stated because it differs from that which appears in the agreement. The term prescribed by paragraph 4 of Schedule 6 is thus mis-stated rendering the agreement as a whole irredeemably unenforceable.

20. The Defendants accept that if the term as to rate of interest has been mis-stated as alleged by the Claimants then those consequences would follow. But they reject what both sides accept is the premise of the Claimants' argument namely that the stated APR is the "driver" for the determination of the actual applicable monthly or annual rate. Rather, the Defendants say that the stated particular interest rates are indeed the applicable interest rates and there is no basis for re-calculating them starting with the APR. In my judgment, it is plain that the stated APR is not the driver and the monthly and annual rates are what they are stated to be. There is therefore no mis-

statement of those rates and no breach of paragraph 4 of Schedule 6. My reasons are set out below.

21. First the proposition has a surreal quality to it. Taking the example of *Sternlight* it means that although on the face of the written document the debtor has agreed as a matter of contract to pay a monthly rate of 1.531% on cash advances, in truth he had agreed no such thing, but rather to pay at a rate of 1.3205%. And that is absent any contractual term to the effect that he should pay the stated rate or (if different) such rate as is to be derived backwards from the APR.

22. Second, there is a very clear difference between the nature and functions of the stated monthly (or annual) rate and the APR. The stated monthly or annual rate is on its face a contractual term. The APR is a statutory construct brought into existence in order to provide information to consumers, arrived at by the application of a complex formula itself based on various assumptions and designed to include not only interest rates but other charges. See paragraph 7 above.

23. That they are two different things is recognised in the Agreements Regulations themselves. Paragraph 4 of Schedule 6 deals specifically with the term as to rate of interest, while paragraph 15 of Schedule 1 refers specifically to the APR. APR is thus treated as the subject only of an informational requirement not a prescribed term. It would therefore be very surprising if it should be also treated as if it were a prescribed term. Yet that would be the effect of the Claimants' argument, since on their case, one can only determine what the prescribed term truly is by starting with the APR.

24. On a fair view of each of the agreements, the contractual term is limited to the stated monthly or annual rate. In each case the statement of APR follows the underlying rate in some way. See paragraphs 10-13 above. Merely because the APR features in the agreement does not entail that it is a term. That is because the reason for its presence is the Agreements Regulations' requirement that all these agreements must contain the information that is represented by the APR. By way of contrast, Schedule 6 is not prescribing information – rather it is prescribing where certain specific contract terms are to be placed within the agreement documentation. The prescribed terms are all ones which the Agreements Regulations determine to be so important that they must be contained in the document as opposed (for example) merely to be being embodied within it which would allow them merely to be incorporated by reference to another document. See *Hurstanger* quoted in paragraph 8 above. By the same token, Schedule 6 is not prescribing what particular terms an agreement should contain; rather it simply prescribes the location of the terms that it inevitably will contain.

25. Mr Berkley QC argues that the concept of APR is an important one. APR figures feature heavily in advertisements by competing banks and finance houses. Indeed the relevant advertising regulations require that APRs are stated. Prospective customers may compare offers by different banks by reference to the quoted APRs. That is no doubt true although it needs to be remembered in this context that usually what are quoted are "typical" or "representative" APRs. Publication of quoted APRs may also stimulate competition. See paragraph 3.8.3 of the Crowther Report (which led to the passing of the Act). Paragraph 6.5.21 of the Crowther Report also said this in relation to statements of annual rates in running-account agreements such as those governing credit cards:

> "We recognise that the annual rate so produced ..takes no account of the way in which the customer actually utilises the credit facility extended to him. Nonetheless it will provide a useful basis of comparison between one revolving credit facility and another and we think that this is sufficient justification for adopting this method of dealing with the problem."

26. Equally the FSA's Draft Mortgage Sourcebook published in June 2001 said at paragraph 11.2 that "the APR is a long-established tool for enabling consumer comparison of the total costs of alternate costs of credit."

27. But none of this means that the APR itself must be regarded either as in truth the subject of paragraph 4 of Schedule 6, or as an actual term of the agreement.

28. The Claimants also rely upon the fact that the APR figure is the "only published interest rate in the agreements which is subject to a prescribed mathematical formula". But unless the APR is the driver, the mathematical basis for it is irrelevant for present purposes.

29. Moreover, if the APR was the driver it would be unworkable for this reason: the APR needs only to be stated at the inception of the agreement when the document is produced and signed, or at some stage before. It can therefore only act as a guide to the rates in force at the outset. However, all credit card agreements enable the creditor, as matter of contract, to vary the rates and charges over the life of the agreement. But if the actual rates are to be drawn at all times from the APR as the driver (and checked against it) this cannot be done because once the agreement is signed the APR has no further role to play. Mr Berkley QC responds by saying that breach of paragraph 4 of Schedule 6 is to be judged at the time the agreement is made. Quite so but the point made here is a different one: if the supposed driver cannot act as such over the life of the agreement it rather suggests that it should not be viewed as the driver in the first place.

30. Mr Berkley QC then argued that because in general terms customers relied upon quoted APRs they should be regarded as actionable pre-contractual representations. But there is no plea of misrepresentation in any of the cases before me. In truth it would be an extremely difficult claim to make in my judgment, because apart from having to identify the particular APR representation and reliance thereon, there is likely to be a real problem about remedy. Rescission would not be available given the performance of the agreement over a long time, usually many years. And showing loss would require proof that if this particular agreement had not been entered into the debtor would have been able elsewhere to pay less interest over the life of the agreement, with another creditor or another card. Given that if Mr Young's reports are correct, all the major banks appear to have made similar calculation errors over APR, that will be a formidable undertaking.

31. As a residual argument Mr Berkley QC then suggested that the Court's approach should not be limited to a standard contractual analysis confined to ascertaining terms and representations. The primacy of the APR as the driver could be established in some other way. In support of this he referred me to paragraph 30.127 of *Goode: Consumer Credit Law and Practice*. Here it is said that the requirement that the document should "embody" all the terms of the agreement appeared to create a further exception to the parol evidence rule. First I am not sure why that is said: a written agreement can surely incorporate by reference terms set out in another document expressly referred to in it. Second, even if it did, I do not see how this assists the Claimants here. The extract from *Goode* is still dealing with terms of the contract.

32. In my judgment, support for the views expressed above can be found in the decision of HHJ Tetlow in *Brooks v Northern Rock* in the Oldham County Court on 16 April 2010. In that case the monthly repayments on a fixed loan were expressed to be £164.28 and the rate of interest was 5.8% being the same as the APR since there were no other charges involved and the repayment amounts were set. The debtor argued however that the interest rate of 5.8% should be applied by using a "nominal" rather than "effective" rate at 5.8% which would yield monthly repayments not of £164.28 but £165.03. Since the monthly repayments were prescribed terms by virtue of paragraph 5 of Schedule 6 but were stated incorrectly, the agreement was irredeemably unenforceable. The Judge referred to this argument as "looking through the wrong end of the telescope". That is because the parties had in fact agreed the monthly repayments at the amount stated. If the nominal rate should have been used, all that would mean is that a rate of 5.7% should have been shown under "Other Financial Information" but this would not have been a Schedule 6 breach.

33. The particular issue in that case is not the same as here but the type of argument raised by the debtor is analogous: ie assume a different starting point so as to assert that a stated term as to repayment of the loan is other than what it declares itself to be. The answer to the argument is the same. One starts – and ends – with the provision which is clearly the express contractual term. In the cases before me it is hardly surprising that the term stating "the rate of interest" and thus regulated by paragraph 4 of Schedule 6 is that provision which is described as the monthly or annual rate, or rate of interest, not the separate item called APR.

34. If Mr Young's calculations are right and there is a mismatch between the stated interest rates and the APR but the former and not the APR is the driver, it must follow that the APR has been mis-stated. Mr Young has done the exercise on that alternative basis and produced what on this analysis would be the "true" APR in each case. If this were established then there would be a breach of Schedule 1 so that the agreement could not be enforced without the permission of the Court. So it is not as if there is no sanction if the APR is mis-stated. Indeed, at the beginning of the hearing Mr Berkley QC sought unsuccessfully to adjourn it, or part of it, so as to enable him to plead that alternative scenario. I gave a short judgment when refusing the adjournment but it is worth repeating here that I could see no reason to delay resolution of the matters before me when the most that this alternative scenario would produce would be a possibility that if the bank sought a judgment under the credit card agreement they might not get it, depending on whether a case of prejudice could be made out by the debtor. It seemed to me that prejudice was most unlikely since the debtor paid according to the stated interest rates (the source, on this analysis, of the "true" APR) and an error over the APR is likely to have been made by other major banks as well and because there was no prospect of any enforcement action by the creditor under any of these agreements. All were being maintained properly by the debtors. Nor could it be said that there was some residual need to have a point of principle determined in the abstract. Here there was no dispute of law. Both sides agree that a mis-statement of APR in the agreement would lead to a Schedule 1 breach. The only issues would be purely factual: (a) was there a mis-statement and (b) if there was, do the facts advanced by the debtor on prejudice and culpability mean that the Court should decline to enforce? Point (b) was entirely speculative at this stage since none of the Claimants' instructions had been taken about it.

35. Nonetheless the Defendants have agreed that should any of them seek hereafter to enforce an agreement against a Claimant debtor, or should a Claimant bring fresh proceedings against them, the Claimants will be at liberty to argue then that there has been a failure to state the APR

correctly and that the Court should not enforce. But this does not arise in any of the cases now before me.

36. Accordingly, the claim in the above cases that the agreements are irredeemably unenforceable because of an alleged mis-match between the APR and the stated rates of interest must be struck out.

## OTHER ISSUES

### Introduction

37. There were in fact a total of 8 issues to be argued before me distilled from the 5 cases. The first was the issue dealt with above. At the hearing Mr Berkley QC (who only came into this matter at a late stage) indicated that he was not in a position to defend the claims as presently formulated on the remaining issues. If he lost on Issue 1 he could not pursue the others and even if he won further work was required in terms of the statements of cases and evidence before they could become viable. Given my decision on Issue 1 Mr Berkley QC formally abandoned the other claims and issues.

38. Although, therefore, the other claims and issues do not arise for consideration they were all the subject of written submissions by both sides. Out of deference to these and because some guidance might be useful hereafter I make the further limited observations below.

### Issue 2: failure to state monthly rate as annual rate and vice-versa

39. In *Sternlight*, *Sneddon* and *Wright* it is alleged that in addition to stating a monthly rate the equivalent annual rate should have been stated. In *Burt* where the rate was expressed annually, it was alleged that monthly rates should have been stated. This was said to have been required by paragraph 4 of Schedule 6. This contention was clearly unsustainable: all paragraph 4 requires is that a term stating the rate of any interest is contained in the document. It does not purport to dictate how the interest rate is to be expressed.

### Issue 3: failure to state total charge for credit

40. In all the cases except for *Coates* it is alleged that the total charge for credit was not "quoted" on the agreement. This was misconceived, first because at the time when the relevant agreement was made the original version of paragraph 10 of Schedule 1 simply required that the rate of interest be provided under the agreement and that the total amount of other charges under the agreement be provided. But those matters were provided so there was no breach. Secondly the allegation was misconceived because of the consequences said to flow from the breach. It was said that the omission of the total charge for credit "represents a breach of Section 61 (b) of the Act and ought to be treated as making the agreement irredeemably unenforceable on the basis that the Agreement without stating the total charge for credit fails to properly embody all the terms of the Agreement.." However, the requirement as to total charge for credit is an informational one. There could be no breach of a prescribed term requirement under Schedule 6 and since the agreement clearly sets out the interest and other charges it cannot possibly be said that the document fails to embody all the terms.

41. Mr Berkley QC abandoned the claims under Issues 2 and 3 as being unsustainable. For the reasons given above he was clearly right to do so.

**Issue 4: pre-emptive order that the bank cannot apply to the court for an order for enforcement**

42. s142 of the Act provides that where under any provision of the Act a thing can be done by a creditor on an enforcement order only, where either the creditor seeks such an order or it does not but an interested party applies for a declaration, the court may declare that the creditor may not do that thing and thereafter no application for an enforcement order in respect of it may be made. Here the Claimants sought a declaration that the Defendants could not enforce the agreements and an order preventing future applications to enforce, by reason of the Schedule 1 breaches under Issue 3 above. Because Issue 3 was abandoned, Issue 4 could never arise. But in any event Mr Berkley QC would have needed to go back and add to this plea. That is because no facts relating to prejudice and culpability were set out in the Amended Particulars of Claim so the Court would not have been in a position to see whether it would otherwise have permitted enforcement of the agreement. Mr Berkley QC correctly says that it would be wrong for the Court to declare or observe in this judgment that there could never be circumstances where a debtor could obtain such a pre-emptive order against a creditor under s142. But unless all the circumstances going to that issue and relied upon by the debtor are pleaded, such a claim will go nowhere.

**Issues 5 – 8**

43. These are dealt with in the context of the *Sternlight* case in paragraphs 17 – 22 of Mr Mitchell's Skeleton Argument. In the course of submissions Mr Berkley QC made it clear that it was no part of his case that my decision in *Carey v HSBC* [2009] EWHC 1681 or that of Flaux J in *McGuffick v RBS* [2010] 1 All ER 634 were wrong where they dealt with matters of principle. That being so, it would have been impossible to maintain the following contentions in particular, using *Sternlight* as an example:

    (1) That the mere fact of an improperly executed agreement creates an unfair relationship (see paragraph 22 of the Amended Particulars of Claim and cf paragraphs 184-185 of *Carey*);

    (2) That if the agreement was found to be irredeemably unenforceable the bank was prevented from registering adverse credit entries or requesting payment or simply issuing proceedings to recover monies due or taking preparatory steps thereto (see paragraphs 19, 24 and sub-paragraphs (f) to (h) of the Prayer cf paragraphs 74-85 of *McGuffick* and 135-139 of *Carey*).

44. It is not necessary to say anything further about these issues.

**CONCLUSION**

45. For all the reasons given above, all of these claims have now been struck out.