



## Update

16 December 2010

### Re: RBS v Wilson

There has been significant media coverage recently of the Supreme Court's decision in the case of Royal Bank of Scotland plc v Wilson [2010] UKSC 50, which stated that, contrary to the standard practice of most secured lenders in Scotland, a calling-up notice is required if a lender wishes to repossess on the basis of mortgage arrears.

This significant case proceeded to the Supreme Court with legal aid funding.

The full implications of the case are still emerging, such as anecdotal evidence of banks contacting borrowers' agents with proposals to dismiss ongoing actions on the basis of no expenses due to or by either party. Practitioners dealing with such cases should have regard to our earlier guidance on the clawback implications arising from such settlements, which is available from the link on the home page of this site.

A settlement of this type will give rise to clawback (unless the value of the house is less than the outstanding mortgage), because the property will have been preserved in the settlement to bring the proceedings to an end. Practitioners should, therefore, consider carefully whether it is appropriate not to seek expenses from the opponent.

We understand that offers to consent to decrees of dismissal with no expenses due to or by either party do not equate to any undertaking that fresh proceedings will not be raised by the lender. It is important to note that if legal aid is made available in respect of any such fresh proceedings and the assisted person successfully opposes repossession then clawback will also apply to those cases unless the opponent agrees to pay expenses or the value of the property is less than the outstanding mortgage.

Any queries about this matter should be directed to Cindy Morrice, Manager of Civil Finance, who can be contacted on 0131 240 2199 or by e mail at [morriceci@slab.org.uk](mailto:morriceci@slab.org.uk)

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