

## Table of section 15 TOLATA cases

	Facts	Section 15(1)(a)	Section 15(1)(b)	Section 15(1)(c)	Section 15(1)(d)	Section 15(3)	Other	Result
<i>Mortgage Corp v Shaire</i>	Mr & Mrs Shaire split up, and Mr Shaire sold his interest in the property to Mr Fox. This gave Mrs S 75% of the beneficial interest; Mr F 25%. F had fraudulently entered into a mortgage. This charge was enforceable against F's estate, but not against S. As a result, the bank brought an action under Section 14(1) applying for sale of the property.	There was no evidence as to what Mrs S and Mr F had intended would happen with the house if Mr F died.	Mr F had changed the basis on which he held the house when he fraudulently entered into the charge. See also <i>Bankers Trust v Namdar</i> . It is therefore "difficult to say" what the purpose of the trust property is.	Does not apply.	Required the court to consider the interests of the secured creditor- here they had 25% and wanted to get themselves out of the mess caused by Mr F's dishonesty. Mrs S was 48 and there was no evidence that she would seek to sell soon. The house was large, and Mrs S did not need such a large house. Also the bank had no control over whether the property was adequately insured etc.	The major part of the beneficial interest was held by Mrs S and she wished to remain in occupation. It does seem harsh, although not necessarily too harsh, to require Mrs S to leave her home of 25 years+.	The old case law on trusts for sale is not of much assistance in cases considered under the 1996 Act. The court has more flexibility than before.	Neuberger sent the parties away to try to come to a deal. If Mrs S was able to pay the other mortgage and compensate the Mortgage Corp for being kept out of the property, then there would be no need to sell. The best way to do this is for the value of the home to be assessed, and then divided by 4. Mrs S will then take out a loan to this value and pay off this loan to TMC.
<i>Bank of Ireland v Bell</i>	Mr Bell forged his wife's signature on a mortgage agreement. There was therefore an equitable mortgage. At trial, the judge refused to order sale. The appeal was brought by the bank.	The intentions of the parties when they purchased the house was as a family home, but this purpose has ceased.		At trial, the son was just short of 18, and so his welfare should only have been of very slight consideration.	Although it is true that section 15 altered the general approach, the bank's interest was still an important one. [31] In this case the debt was increasing daily and no payments had been made by either Mr or Mrs Bell for 8 years.	Mrs B only has a 10% interest, and the entire equity in the property was to be taken up by the bank's charge. It is true that she was in poor health at the time of the sale, but this would be a reason to postpone the sale, not to refuse it, [29].	The factors in section 15(1) and (3) are inclusive, not exclusive [24].	The court ordered a sale, but remitted to the county court for a precise order for sale.
<i>Edwards v BOS</i>	Mrs E entered into a charge with the bank which Mr E did not sign. His signature was forged. The Edwards also owned a nightclub. Their grandchild lived with them.	Although the original purpose of the trust was as a family home, when Mrs E charged her share in the property, she changed the basis on which the parties held the property, [27].	The parties had separated, and so there was no sole purpose for which this property was held.	Although a grandchild did live there, he was no longer a minor, and therefore this was no longer relevant under s 15(1)(c).	The bank had an equitable mortgage over Mrs E's half share in the property. The bank was therefore as much a beneficiary of the trust as Mr E was [25]. The bank's interests were "of real significance" [30].	Mr E wished to remain, and that was without doubt a relevant factor but it was no more than one of the factors that the court must take into account, [31].	Mr E was 77, but in good health, and so although his age can be relevant, it was no more than a minor consideration here. His age was also likely to be only a reason to postpone sale, not to refuse it. The ability of Mr E to purchase alternative accommodation may have been relevant however, [32].	Order for sale and possession was made.
<i>Blackford v Tate</i>	Blackford purchased his property from a local authority. If he sold the property within 3 years he would suffer a penalty. As a result, he agreed to sell to Tate, but did not transfer the legal title. According to Tate, an agreement was made in writing, and £35,000 was paid to Blackford. The judge concluded that the deed of trust was signed by Blackford. Tate claimed that the court should make an order under section 14 that the legal title to the property be transferred into his sole name.						The parties' original intention had been that the freehold title to the property would eventually be transferred and the court should as far as possible give effect to this intention.	Not a sale, but a transfer of the legal freehold to the beneficiary under the trust.
<i>Chun v Ho- Jonathan Parker LJ, Court of Appeal, 2002.</i>	Chun was Ho's assistant. He was then imprisoned for bribery and corruption. The two were a couple at this time. While Ho was in prison, Chun ran his business affairs. When he was released the couple bought a house, registered in the sole name of a company of Ho. They broke up and Miss Chun lived in the house alone. It was concluded that the house was held on trust 49% Chun; 51% Ho.		The house was held as a home for the couple, but was also a home for Miss Chun even once the husband had left. It did not matter that the house was too large for her. Sale could still be delayed.				The house was too big for what she needed, but this did not make it unsuitable for accommodation and therefore the order that sale be delayed could stand.	Delay of sale until after Miss Chun had finished her university studies.
<i>FNB v Achampong</i>	Mrs Achampong was induced to enter into the charge by her husband's undue influence. As a result, FNB became the beneficiary under a trust.	It was bought as a matrimonial home, but that purpose was now spent.		What matters is the welfare of the children, not just their existence. In this case one of the children was disabled and yet there was no evidence as to how the welfare of the children would be affected. The children of the marriage were no longer minors. [65]	The bank's inaction had meant that the debt had tripled but to refuse sale here would be to condemn the bank to wait forever until A decided to sell with no prospect that there would be recovery by any other means. [62, 65]	Sale would deprive Mrs A of her home.		Sale was ordered.
<i>Edwards v Lloyds TSB</i>	The bank had an equitable charge over Mr Edwards' share of the property. Mrs Edwards occupied with her children.	The original intention was to make a family home for the couple and their children. This is at least partly at an end because the couple have divorced, although it was still used as a home for their children.	The purpose survived because the house was being used as a home for Mrs E and the children.	The welfare of the children was the main consideration in prompting the court to order sale. The children were still minors and were without doubt a relevant consideration.	Mrs E did not wish the house to be sold. If the house was sold now, it is difficult to see how she could raise the money to buy another one, [31].	The bank was owed money, but the debt did not exceed the value of the bank's share of the property when sold. This case is therefore different to <i>Shaire</i> for example, [32].		Sale was delayed for 5 years