

Neutral Citation Number: [2021] EWHC 2598 (Ch)

Case No: PT-2020-BHM-085

IN THE COUNTY COURT AT BIRMINGHAM
BUSINESS AND PROPERTY WORK

Birmingham Civil Justice Centre
Bull Street Birmingham B4 6DS

Date: 30/09/2021

Before :

HHJ DAVID COOKE

Between :

Amina Beg

Claimant

- and -

Amina Beg (as executor of the estate of Ehsan

Defendants

Ali Beg) (1)

Arif Ali Beg (2)

Asaf Ali Beg (3)

James Quirke (instructed by **Murria Solicitors**) for the **Claimant**
Omar Faruk (directly instructed) for the **Second and Third Defendants**

Hearing dates: 1-2 September 2021

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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.

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HHJ David Cooke:**Introduction**

1. This is a claim by Amina Beg, widow of Ehsan Ali Beg who died on 17 October 2019, for provision from his estate for herself pursuant to the Inheritance (Provision for Family and Dependents) Act 1975. The deceased in fact left a will dated 18 October 2010 in which he bequeathed the whole of his estate to the claimant, and the real dispute concerns the interest the deceased had immediately before his death in the house in which he and the claimant resided, 87 Clovelly Rd Southampton (“the Property”) which was then registered in the names of the deceased and his brother Arif Ali Beg, the second defendant.
2. The issues disputed at trial were as to the size of that interest (whether it was one half or one third) and whether it was held under a beneficial tenancy in common, in which case it would pass under the will to the claimant, or under a beneficial joint tenancy, in which case it would pass by survivorship to Arif. If it was a joint interest, the claimant seeks an order that it be brought back into the estate pursuant to s9 of the 1975 Act and transferred to her by way of provision under that Act.
3. By CPR 57.16 a claim for provision under the 1975 Act must be started by issuing a claim form using the procedure in CPR 8. That procedure is, except where specifically mandated by another rule (such as CPR 57.16) to be used in general where there is no substantial dispute of fact between the parties (CPR 8.1(2)(a)) and so requires only very limited information to be set out in the claim form about the claim; essentially identifying the question to be decided and the remedy sought (CPR 8.2(b)). The claimant must file any written evidence relied on with the claim form (CPR 8.5).
4. The part 8 procedure is potentially inappropriate for cases where there is a substantial dispute as to ownership of assets, such as the extent and nature of the assets comprised in a deceased’s estate, since they are likely to involve disputed questions of fact. The facts that the claimant must rely on in support of her claim in respects of those assets, and the basis on which her contentions are put forward, may not be properly apparent to the court and other parties from the claim form and written evidence provided. That has proved to be so in this case, in which the way in which the claim was put, insofar as it had been disclosed to the defendants at all in documents filed at court, changed from what could be seen from her original evidence and changed again radically on the eve of trial, without any application to amend.
5. In other cases where such disputes have arisen, the matter has been dealt with either by issuing two sets of proceedings, one under Part 7 for a declaration as to the assets of the estate and the other for provision under the 1975 Act dependent on the result, or by transferring the proceedings to Part 7 so that pleadings can be directed to set out the facts relied on and the basis of the claims made. Neither has happened in this case. The difficulties arising will appear from what follows.

Factual background

6. Ehsan Ali Beg’s parents were his father Sher Beg and his mother Salamat Beg. They had four children, Ehsan himself, his brothers Arif Ali Beg (the second defendant)

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and Asaf Ali Beg (the third defendant) and their sister Nasreen Khan. For convenience I will refer to all the children by their first names, as they were at trial. The claimant is also named as the first defendant, as a formality and in her capacity as executor of Ehsan's estate. If I refer to the defendants collectively, unless otherwise specified it is to Arif and Asaf. Ehsan and Nasreen were born in Pakistan and came to the UK with their parents when Ehsan was about 5 and Nasreen a baby of 6 months. That appears to have been in about 1969. Asaf and Arif were born later in the UK.

7. On 31 January 1986 the Property at 87 Clovelly Rd Southampton was conveyed by Southampton City Council into the joint names of Sher Beg, Salamat Beg and Ehsan (referred to in the transfer as Ikram Beg) (Bundle p 465A). The transfer recorded that it was made following the exercise of a right to buy, though it is not specific as to whether all three purchasers were tenants of the council. Ehsan would have been 21 at the time. The transfer contains no express declaration of trusts, though it records that the survivor of the joint owners would be entitled to give a receipt for capital monies. The Property was registered after that transfer.
8. Sher Beg died in 1991 (p 465E) and by 1995 the Property was registered in the joint names of Ehsan and Salamat Beg (p 461B).
9. In 2004, Ehsan and Amina were married by an Islamic ceremony conducted over the telephone. It was an arranged marriage and Amina was at the time in Pakistan and remained there for another four years. She was then 21, about 18 years younger than Ehsan. The evidence of Asaf and Arif is that the marriage was arranged by their mother in order that Ehsan should have someone to look after him after her own death, as he was by then seriously ill with Thalassaemia.
10. The claimant came to the UK in April 2008. She has not given details of her immigration history, save that she was naturalised in 2018. It appears from the evidence of Asaf and Arif that a visa was initially obtained for her on the basis that she was to be a carer for Ehsan. She and Ehsan were married in an English civil ceremony on 15 September 2008 (p 29) at which time Ehsan recorded his occupation as "Trainee Solicitor". That appears to have been an exaggeration; there is no evidence that he held a trainee solicitor's contract though he had attended a HND Law course at Southampton Solent University between 2005 and 2008 during which he appears to have passed one out of 6 course modules (p 83M).
11. The claimant lived with Ehsan and his mother at the Property. Asaf also lived there until he moved out in 2011 or 2012, in circumstances that are disputed. He maintains that he always kept a bedroom at the property which he uses occasionally and intends to return to. Arif is married and now lives with his wife elsewhere; it is not clear from the documentation when he left the Property.
12. Salamat Beg died on 18 January 2009 (p 32). By her will made on 8 July 1994 (p 33) she had appointed Ehsan and Arif as her executors and left all her estate to her sons Ehsan, Asaf and Arif in equal shares. The will does not mention the Property specifically, other than as the address of herself, Ehsan and Arif.
13. On 24 July 2009 all three brothers went to an office of the Land Registry and signed a form TR1 by which Ehsan transferred the Property into the joint names of himself, Asaf and Arif (p 83B). Boxes on the form were ticked to state that the transfer was not

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- for value and that the transferees declared that they were to hold on trust for themselves as beneficial joint tenants. The transfer was registered on 27 July 2009 (p 45).
14. Some 9 months later on 16 April 2010 all three brothers signed a further form TR1, witnessed by their sister Nasreen, by which they transferred the Property into the names of Ehsan and Arif alone (p 83F). The form records again that it is not for value and the transferees declare they hold on trust for themselves as beneficial joint tenants.
 15. Ehsan made his own will dated 18 October 2010 (p 38) which was drafted by a firm of solicitors he instructed. I will refer in more detail to the papers from the solicitors' file later, but for present purposes note that it named his wife the claimant as sole executor and left "all my real and personal estate whatsoever and wheresoever over which I have any power of disposition by will..." to his wife if she survived him "including my property 17 St Matthew's Close Southampton...". No specific mention was made of the Property at Clovelly Rd, save as Ehsan's address.
 16. 17 St Matthew's Close is a two bedroomed property acquired by Ehsan as an investment. It has at all times been subject to a mortgage in favour of Preferred Mortgages Ltd, administered by an agent trading under the name Acenden. It is occupied by residential tenants.
 17. On 29 October 2018 Ehsan and Amina's daughter Ayaat Beg was born, after a prolonged course of IVF treatment.
 18. Ehsan died on 17 October 2019.
 19. Within two weeks, on 30 October 2019 Arif as the surviving registered proprietor applied to HMLR to remove Ehsan's name from the Register of the Property (p 50)
 20. It appears from a letter from Acenden (p164) sent in August 2020 following enquiries by the claimant's solicitors that they were contacted by Asaf on 2 November 2019 and informed that Ehsan had died and that Asaf would be applying for probate. On 9 December 2019 Asaf sent Acenden a copy of an interim death certificate and told them he was named as executor in the grant of probate. That cannot have been true, as no application for any grant had by then been made. In response Acenden wrote asking for a copy of the grant and proof of identification but they heard no more from Asaf or Arif.
 21. On 10 January 2020 Arif and Asaf signed a TR1 form (p 83J) by which Arif transferred the Property into the joint names of himself and Asaf. That transfer form was witnessed by Arif's wife and states that it is not for value. In a change from the earlier forms, a box is ticked declaring that the transferees hold on trust for themselves as beneficial tenants in common rather than as joint tenants. However, apparently inconsistently, in the box for "additional provisions" it states that "The property is to automatically go to the surviving person in case of death". That transfer was registered in 14 January 2020 (p 52).
 22. Solicitors then acting for the claimant (not her solicitors in these proceedings) made an application on her behalf for a grant of probate to Ehsan's estate. That application

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appears to have been made to the Brighton Probate Registry in February 2020, and in response the solicitors were told by an email on 25 February 2020 that a prior application had been made in the Winchester Probate Registry by Arif “as the lawful attorney of Amina Beg” (p 60). The solicitors asked for a copy of the power of attorney and were sent a document dated 10 January 2020, apparently signed by Amina Beg and naming Asaf (not Arif) as her attorney. It is on a form printed for use in intestacy cases, and so states that the deceased died intestate, which was incorrect, and appoints the attorney for the purpose of applying for a grant of letters of administration, rather than probate. The claimant maintains that her signature on this document has been forged.

23. The claimant’s solicitors issued a summons for directions in the Winchester Registry seeking refusal of the application in Arif’s name. It appears that no response was made to that and accordingly a grant of probate was issued to the claimant on 27 March 2020 (p 27). The application in Arif’s name must have been dismissed.
24. The solicitors now acting for the claimant sent a letter of claim to Arif and Asaf dated 14 August 2020
25. This Part 8 claim was issued on 8 September 2020. On 28 September Asaf and Arif issued their own claim in the County Court at Southampton seeking possession of the Property on the basis that the claimant was a trespasser there. That claim has been transferred to this court and awaits the outcome of the Part 8 proceedings.

Ehsan’s interest in the Property

26. I address first the issues in relation to the amount and nature of Ehsan’s interest in the Property immediately before his death. The claimant’s case in that respect as set out in the documents filed on commencing the proceedings was:
 - i) The claim form (p 9) stated that the claim was made under the 1975 Act and the court’s equitable jurisdiction, and sought a declaration that the Property was held “on trust for the estate of the deceased or the claimant as to the whole or part of the beneficial interest therein and for the purpose of the claimant residing therein [for her lifetime]”. The grounds for the claim were said to be set out in the claimant’s accompanying witness statement.
 - ii) That witness statement (p 11) includes the following:
 - a) That Ehsan had told her that he had made his will, that he was not telling his brothers about it because of bad relations with them and he had made sure they would not inherit anything, that she was not to worry and would inherit “his share of the property... we lived in”.
 - b) After Salamat’s death the property was transferred to Ehsan, Arif and Asaf “as joint tenants on 27 July 2009 as informed to me by my legal advisers” (para 39)
 - c) “due to [Asaf] wishing to get rid of his assets the Property was transferred to [Ehsan and Arif] as joint tenants on 20 April 2010 as informed to me by my legal advisers” (para 40).

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- d) "...[Asaf] was the one who arranged the transfer of the Property and no solicitors were instructed..." (para 41).
 - e) "...later... I learnt that... the Property was held by [Ehsan and Arif] in the incorrect manner... as joint tenants rather than as tenants in common in equal shares..." (para 45).
 - f) "...the Property... was transferred into [Arif's] sole name... [and] ...is presently held by [Arif and Asaf] as tenants in common in equal shares.." (para 47)
 - g) "...I can categorically say that it was never the intention of my husband to own the property as joint tenants with [Arif]...My husband always promised me that his share of the Property would go to me. Given that it was [Asaf] who prepared all the paperwork including the property transfers and with no solicitors having been instructed I can understand how this has happened without any professional advice. My husband never got on with his brothers and the last thing he would have wanted is for his share of the property to go to them leaving me with very little to support myself and our young daughter." (paras 48-50)
27. This evidence does not appear to make any challenge to the transfer into the joint names of the three brothers, as beneficial joint tenants, in 2009. It asserts that the transfer in 2010 into two names was "incorrect", presumably because of the allegation that it was never Ehsan's intention to hold as joint tenant with Arif. As to how this happened, there is the allegation that Asaf prepared the documentation, but no allegation is made against him in relation to it, the suggestion apparently being merely of error in reflecting the true intentions of Ehsan and Arif.
28. There is no detail at all of the assurances that Ehsan is said to have given his wife, and no supporting evidence of the allegation as to Ehsan's intention to hold under a tenancy in common rather than a joint tenancy. It seems unlikely that the claimant can have had any appreciation of the difference when Ehsan was alive (and so can hardly be likely to have known whether Ehsan himself did), firstly because in her witness statement she says that she came to understand that difference as a result of advice given to her by her solicitors after Ehsan's death, and secondly because when she was asked in cross examination to explain it, it was immediately clear that in fact even now she had no understanding of the issue at all.
29. There is no apparent basis for any suggestion that Ehsan's interest could have amounted to the whole beneficial interest in the Property.
30. The claim had been preceded by a solicitor's letter of claim dated 14 August 2020 (p 253). That letter opened by stating that Amina would be seeking an order under s9 of the 1975 Act relating to property held under a joint tenancy "to bring Ehsan's share of the Property back into his ...estate". It "stated that prior to Salamat Beg's death the Property "was held jointly by Ehsan and... Salamat Beg..." and after her death "without taking legal advice the Property was transferred into the joint names of [all three brothers] to be held as joint tenants...the intention of all of you was never to hold the Property as joint tenants but as tenants in common in equal shares..". It goes on to say however that "at the time of death of Ehsan the Property was owned by

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[Arif] and Ehsan as joint tenants.” It asks the defendants to agree that “Amina should inherit [Ehsan’s] interest in the Property” and proposes that “her 50% share” be sold to the defendants, or that the Property be sold and Amina receive half of the proceeds.

31. This letter is far from clear. It does not seem to challenge the transfer in 2009 into three names, other than as to the nature of the beneficial interests. Insofar as it alleges that there was an intention in 2009 for the three brothers to hold as tenants in common, it gives no indication of any evidence in support of that contention of fact, and that allegation is not carried forward into the claim form or supporting evidence filed with it. It appears to accept however that on the transfer in 2010 to the names of two brothers, they intended to hold as joint tenants rather than tenants in common, thus necessitating an order under s9 to bring Ehsan’s joint interest into the estate, although there is a reference to Ehsan “..not [having] apprehended... that the Property was not registered...as a tenancy in common in accordance with the intentions of him and Arif”. No allegation is made against either defendant of any impropriety by either of them in relation to the circumstances in which the transfers were signed or registered.
32. The claimant served a second witness statement in which she made additional factual allegations about the history of the ownership of the Property. Insofar as those allegations extended her case, by doing so in evidence rather than an amended pleading, the defendants had no procedural opportunity (without making an application to adduce further evidence) to respond. In that witness statement the claimant alleged:
 - i) That Ehsan had at all times since the property was purchased had a 50% interest in it. That would seem to ignore the fact that on purchase it had been registered in three names, those of Ehsan and his parents. Notably, in view of what was said at trial, there is no allegation that Ehsan ever held a 100% beneficial interest.
 - ii) That the transfers of the property after Salamat’s death were “entirely a manipulation by [Asaf]. [Ehsan] was uneducated and simply signed documents whenever requested by the defendants”. No supporting facts are referred to for this allegation. Ehsan was not uneducated; he must have received formal education at least to the level necessary to enrol on his HND course and he plainly knew enough about property to acquire and manage the buy-to-let property at St Matthews Close.
 - iii) Asaf had arranged for a transfer into a joint tenancy because he knew that Ehsan’s health meant he would be the first to die. Again nothing is cited in support of this allegation. No reference is made to the fact that Arif also suffers from Thalassaemia.
33. Neither side, it appears, originally held copies of the transfer forms that had been delivered to the Registry for the transfers in 2009 or 2010. The claimant’s solicitors however obtained these from the Registry on 19 August 2021 and disclosed them a few days before trial. Having seen that both transfers contained express declarations that the transferees intended to hold as beneficial joint tenants, Mr Quirke delivered a skeleton, sent apparently on Friday 27 August one working day before the start of the trial, in which he effectively abandoned the case that Ehsan had intended to create a

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tenancy in common and made an entirely new case, as his “main submission”, ie that following Salamat Beg’s death Ehsan had been the sole beneficial owner of the Property as the survivor of the joint owners, and that when the brothers had attended the Registry to transfer it into their three names Asaf and Arif had owed fiduciary duties to Ehsan, which they had breached by obtaining a gift to themselves of two thirds of the beneficial interest without informing him that he was the sole owner, and that they had induced in him the misapprehension that the property was to pass to all of them under their mother’s will rather than being already his sole asset.

34. A second previously unheralded allegation was made, ie that if in 2013 the Property had been held under a joint tenancy by Ehsan and Arif, that tenancy had been severed by Ehsan granting a charge over the Property to the local authority on which he had forged Arif’s signature. As a result it was said his severed 50% interest fell into the estate and passed to the claimant under his will.
35. Mr Quirke’s skeleton referred to a document sent a few days beforehand headed “Succinct Case Summary”, which might have given the impression that it was intended to be a neutral document but which Mr Quirke confirmed when I asked was not a document that had been the subject of any attempted agreement between the parties and was best regarded as an extension of his skeleton.
36. This is not, in my view at all a satisfactory way to proceed. The case sought to be made at trial necessarily relies on matters of fact that had not been put in issue by the pleaded case (which is as noted extremely limited in a Part 8 claim) or even by the evidence filed by the claimant in support of that case. Much of that factual background is outside the claimant’s own knowledge and so attested to by nothing more than her assertion. Insofar as it might be said that the defendants have not responded by producing evidence to counter those assertions, it may well be because they either would not have needed to do so, because they were not matters apparently in issue, or have not had the procedural opportunity to do so as a result of the claimant’s changes of the way she puts her case. A case summary, whether or not an agreed document, is intended to summarise the case before the court for the assistance of the judge and so should so far as possible be a neutral summary setting out the contentions of all parties, not a partisan presentation of the case of one side only.
37. Having said that, I propose to make and explain my findings as to the ownership of the Property fairly briefly. Firstly, I do not accept that it can be assumed that on the death of Salamat Ehsan became by survivorship the sole beneficial owner. That could only be definitively established if the parties had had the opportunity to adduce all the relevant evidence as to the intentions of Ehsan and his parents while alive, which they have not had because it was a point that emerged, effectively, at the start of the trial.
38. It is of course the case that prima facie the beneficial interests follow the legal ownership. But it is not uncommon at all for families to make arrangements between themselves that may have the effect that the beneficial interests are different, and the parties have not had the opportunity to address their minds specifically to evidence that might have borne on that point. Insofar as there is relevant evidence, it tends to support a conclusion that prior to her death all three brothers regarded the Property as belonging solely to Salamat.

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39. That is certainly the evidence of the defendants. Both say that all three brothers discussed what should happen to the property after their mother had died and agreed that it should pass in accordance with the terms of her will, ie to all of them in equal shares. The value of the estate was declared on the basis that it included the whole value of the Property. Both these would be consistent with it being understood by all of them and by Salamat that the house was beneficially Salamat's property. Nor is that in the least implausible; since the Property was acquired under a right to buy when Ehsan was only 21 it would be likely that most of not all of the tenancy giving rise to the right to buy, and to the discount obtained, would have accrued to Salamat and her husband rather than Ehsan, and that they, rather than Ehsan, may have been solely or mainly responsible for funding the purchase. Further, it is not at all implausible that insofar as Ehsan was named on the title, it was for reasons of ease of administration and giving effect to family expectations, and was not intended within the family as indicating that he should be the sole ultimate inheritor of the property when his parents died.
40. It also appears to have been Ehsan's own understanding at the time. When he went to see solicitors to make his own will in 2010 they recorded him as instructing them (p 165) that:
- “Client owns two properties. The first (87 Clovelly Rd) was owned by his mother and when she died she left it to him and his two brothers. The second property (17 St Matthews Close) he owns solely.”
- The defendants were not involved in any way with these instructions, so there is no reason to think they are anything other than a true reflection of Ehsan's understanding at the time. There is no indication that he felt any grievance against his brothers at having transferred the Property into all their names, as he might have done if he had considered he ought to have had a greater share.
41. Further, there is no evidence at all that Ehsan either did not understand the effect of a joint tenancy or was in any way misled, by his brothers or anyone else, as to that effect. The claimant has no knowledge of the circumstances of the transfer, so her evidence on the point is no more than assertion. Both defendants' evidence is that they all attended at the Land Registry office in July 2009, where they met an official who explained the difference between a joint tenancy and a tenancy in common, which they all understood, and who then acted as witness when they all executed the TR1 form with its express declaration of a beneficial joint tenancy. I do not consider it at all unlikely that the official would have acted in that way, and I accept that evidence.
42. Mr Quirke submits that the declaration of a joint tenancy was contrary to Salamat's wishes expressed in her will, which was to leave her estate to her sons “in equal shares” ie under a tenancy in common. Accordingly he says the defendants must have persuaded Ehsan wrongly that he was performing her wishes when in fact he was departing from them. I do not accept that; the gift “in equal shares” was of the whole residuary estate and so hardly an indication of the way in which one asset, even her principal asset, should be held, and even if it had been, the nature of their interests was a matter the beneficiaries were free to agree among themselves, as I find they did, with full knowledge of the effect as explained to them at the time.

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43. I accordingly reject the late allegation that Ehsan made a gift of most of his interest in the Property to his brothers, and the suggestion that his brothers knew that he was doing so and procured him to make that gift at all, let alone by misleading Ehsan or acting in breach of any duty they owed to him. No facts that might have established any such duty, such as the joint venture Mr Quirke alleged in his skeleton, were pleaded or put in evidence by the claimant, and such a case cannot properly be established simply by allegation at the opening of the trial.
44. I find therefore that from 27 July 2009 when that transfer was registered the three brothers held under a beneficial joint tenancy. On 20 April 2010 when the title was transferred into the names of Ehsan and Arif, on the face of it Asaf ceased to have any interest and Ehsan's interest was enlarged to 50%. It might nevertheless in principle have been the case that the joint intention of the three brothers at the time was that although Asaf would not appear on the title he would nevertheless be regarded by all of them as retaining a one-third interest. If such a common intention were established it would support a finding of an enforceable constructive trust.
45. However it would be for the defendants to make a case for any such common intention to depart from the position on the face of it shown by the register, and, though with some hesitation, I do not consider that they have done so. In para 40 of her first witness statement the claimant refers to the 2010 transfer and says it was made because Asaf wished to get rid of his assets, to avoid claims either by creditors or by his former wife. In his witness statement Asaf says he disagrees with para 40, but the only particulars he gives of that disagreement relate to the reasons for the transfer- he denies any intention to avoid creditors and says he was not facing any matrimonial claim. The reason was, he says, because Ehsan wished to rely on his ownership of the Property to support the immigration of the claimant, and Ehsan had suggested to him that this would be weakened if there were three names on the title.
46. Either of these explanations might have been the basis for a case that, notwithstanding appearances, it was the joint intention of the brothers that Asaf should retain a one-third interest. But, crucially, the defendants have not given any evidence of such an intention, and it is not a finding that can be made in the absence of evidence. It is certainly not something that can be assumed; apart from the presumption that the beneficial interests mirror the legal estate, it is not the only credible explanation of the transfer, on either basis. Either stated purpose would be achieved by a transfer that had exactly the effect that it purported to, without any behind the scenes understanding between the brothers, or at least any that would be enforceable, to the contrary.
47. My hesitation arises from the way the case has been presented, and whether that has given the defendants a fair opportunity to realise that they needed to present such evidence, which comes down to whether it was made clear that the claimant's case was that at the date of his death Ehsan's interest, however held, was a 50% interest rather than a one-third interest. That is not expressly stated in the claim form or either of the claimant's witness statements, though the first witness statement does state, in relation to the size of Ehsan's estate, that he owned the Property "jointly with [Arif]", so implying a 50% share. The prior letter of claim does however refer expressly to Ehsan having a 50% interest, and I have concluded that in combination these are sufficient to make it apparent to the defendants that if they contended for a smaller interest they would have to say so and provide relevant evidence in support.

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48. On the evidence, then, after the 2010 transfer Ehsan's beneficial interest in the Property was as to one-half and not one-third.
49. I do not accept the claimant's case however that this interest was held by way of a tenancy in common. Again, there is no positive evidence of any such intention at the time of the 2010 transfer. The declaration of trust set out in the transfer form is on the face of it conclusive that the intention was to hold as joint tenants. I have some doubts whether Arif's evidence at trial that this form was also signed at the Land Registry office can be correct (it was witnessed by Nasreen and not a Land Registry official, and he appeared to be conflating it with the 2009 transfer) but in any event since I have accepted that Ehsan knew the difference and intended a joint tenancy in 2009 and there is no reason to think he had forgotten that or intended anything different in April 2010.
50. As to the late contention that any joint tenancy had been severed, that relied on Ehsan having made a disposition of his interest by way of a charge in favour of the local authority in 2013. Mr Quirke relied on *First National Securities Ltd v Hegarty* [1985] 1 QB 850, in which a husband forged his wife's signature on a legal charge over the jointly owned matrimonial home. The Court of Appeal upheld a charging order over the husband's beneficial interest, Bingham J expressing the view (obiter, at p 854B) that if that interest had previously been by way of joint tenancy, the charge had probably been a sufficient act of alienation of the husband's interest to sever the tenancy.
51. This point had not featured in the claim form, the letter before action or the claimant's evidence. If it was to be relied on, it should have been properly raised so that the defendants could have a fair opportunity to respond. It plainly relied on the establishment of facts that the claimant ought to have set out in making her case. Mr Quirke said he relied on the defendants' own evidence that they knew nothing about any such charge, which he said showed that Arif's signature on the charge document must have been forged by Ehsan. In fact the evidence of Asaf and Ehsan was that the charge related to a grant made by the council for works to adapt the Property for Ehsan's disability; they had not known of any such application at the time but considered that Amina, not Ehsan, had forged Arif's signature on the application.
52. The documentary evidence available shows only :
- i) A legal charge in favour of the Council created in 2006, registered at HMLR, so well before any of the material events.
 - ii) A certificate of ownership (p 144) apparently signed by Ehsan and Arif, dated 10 October 2013. This form states that it is in connection with an application to the council for a grant under the Housing Grants Construction and Regeneration Act 1996 and that the persons signing have an ownership interest in the Property and understand that if a grant is made a local land charge will be registered against the Property to secure any potential repayment obligation if the Property is sold within ten years. A later letter from the council confirms that such a charge has in fact been registered.
53. If Arif's signature on this document is forged, there is no evidence from which I could conclude that this was done by Ehsan rather than the claimant. In any event, it is not a

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document creating any charge over the Property, and so could not amount to a disposition by Ehsan of his interest or that of anyone else. It merely acknowledges that the council may become entitled to register a local land charge, which is an entitlement given by statute and not by virtue of any disposition by the owner. A local land charge is binding on any estate or interest in the land, without the need for any interest to be conveyed or created by any owner of the land. Its existence arises from the act of the council in registering it, and does not therefore amount to an act of alienation of Ehsan's separate interest that could operate to sever a joint tenancy. Even if this case had been properly made, it would therefore have failed.

54. I find therefore that immediately prior to his death Ehsan held a one half beneficial interest in the Property, by way of a beneficial joint tenancy with Arif. On his death, that interest passed by survivorship to Arif, subject to any order the court makes under s9 of the 1975 Act. Arif has subsequently made a transfer into the joint names of himself and Asaf, but it is not suggested that that was a transfer for value, or otherwise prevents the court from granting relief to vest in the estate the interest Ehsan held immediately before he died.

Consideration under the 1975 Act

55. I turn therefore to considerations under the 1975 Act, which, as the trial unfolded, in fact occupied very little of it save for the cross allegations of disreputable conduct that, Mr Quirke accepted in his skeleton were "of marginal relevance save, perhaps, as to credit."
56. There is no dispute as to the law applicable. The claimant of course as Ehsan's spouse is eligible to make an application under section 1(1)(a) of the 1975 Act. Section 2 of that Act provides that if the court is satisfied that the will of the deceased does not make "reasonable financial provision" for an eligible applicant, it has a discretionary power to make a wide range of orders for her provision out of the assets of the net estate. By section 1(2)(a) in the case of a claim by a wife who was living with the deceased at the date of his death, as the claimant was, "reasonable financial provision" means "such financial provision as it would be reasonable in all the circumstances of the case for a ... wife to receive, whether or not that provision is required for ... her maintenance."
57. Section 3(1) sets out a non-exclusive list of particular matters to which the court is to have regard in determining whether or not the will makes reasonable financial provision for the applicant and, if it does not, whether and in what respect the court should exercise its powers, culminating with :
- “(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.”
58. Section 3(2) provides that in the case of a claim by such a wife the court shall also have regard to the age of the applicant, the duration of the marriage and the contribution she made to the welfare of the family, and to the provision that she might reasonably have expected to receive if on the date of death of the deceased the marriage had been terminated not by that death but by a decree of divorce.

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59. Section 9 provides that if immediately prior to his death the deceased was beneficially entitled to a joint tenancy of any property the court may order that, his severable share “shall, to such extent as appears to the court to be just in all the circumstances, be treated for the purposes of this Act as part of the net estate of the deceased”. Section 19(1) provides that any order made is treated as having effect as at the date of death, subject to any contrary provision of the order. Section 2(4) enables the order to contain consequential provisions for the purpose of giving it effect, including an order against any person holding assets of the net estate for payment or transfer of any property.
60. As I have said, a great deal of the evidence and the time at trial was taken up by allegations relating to conduct on both sides. I agree with Mr Quirke that these are of at best marginal relevance, so I will only refer to two of them, and then as briefly as I can.
61. The first is the claimant’s allegation that Asaf forged her signature on the form of power of attorney that he used to make an application for a grant of letters of administration (in the name of Arif) to Ehsan’s estate. Asaf denies forgery and says that the claimant herself asked for help in dealing with the estate without mentioning that there was any will. There is no expert handwriting evidence in relation to the signature, and it is not so different from other examples of the claimant’s signature that I could conclude without such evidence that it could not have been made by her.
62. There is some circumstantial evidence that would support the claimant’s version:
- i) The power of attorney is dated 10 January 2020 and is premised on intestacy. On 20 January 2020 the claimant signed her own application for a grant of probate, made through solicitors, which may suggest it is unlikely that she would have asked her brother in law for assistance ten days earlier, or that if she had she would not have been aware of, and mentioned, the will.
 - ii) When the solicitors were informed of the earlier application and invited Arif to withdraw it, he apparently declined to do so (see their letter to the Probate Registry on 26 March, p 337). If Arif had been acting at Amina’s request it should have been obvious that she had changed her mind and he would have no reason to pursue his own application.
 - iii) In his witness statement Asaf said that he would call the witness to the claimant’s signature to give evidence, but he has not done so.
63. In the end however I have concluded that this is not sufficient for me to make any finding against Asaf or Arif on such a serious allegation. The claimant’s allegation ultimately depends on her evidence being preferred to that of the defendants, and I do not consider that I can have sufficient confidence in the frankness or completeness of that evidence to do so.
64. The second aspect of the conduct evidence relates to serious allegations made by the claimant of abuse and ill treatment by the defendants, and in particular of serious violence including a sexual assault on her said to have been committed by Asaf at the Property on 20 August 2020. That would have been shortly after Asaf had received her solicitor’s letter of claim (which was dated 14 August, p 253). However as Asaf

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points out none of these allegations have been pursued against him by the police, and the extensive disclosure of police records in this case shows that this was because they considered the claimant's account insufficient to support them. In particular:

- i) The police noted that the claimant had said in a video recorded interview that she had been advised by her solicitor that it would assist her civil case (ie this claim) if she had made complaints to the police against the defendants. Asked about this in cross examination, the claimant could only say that the police "must have misunderstood", but I consider that unlikely.
- ii) The police obtained CCTV footage of an incident a few days later when the claimant complained of Asaf following and harassing her at a shop, which they considered supported Asaf's account and not hers, showing the claimant voluntarily giving her child to Asaf to play with while she went into the shop. The officer viewing the footage thought that inconsistent with her allegation of recent serious violent and sexual assault. In cross examination the claimant's explanation was that she had not wanted to cause a scene in the street, but, as Mr Faruk submitted, she has made frequent calls to the police and to other agencies when she wishes to make allegations against the defendants, so it is unlikely she is reluctant to cause a disturbance if she is genuinely in fear.

65. These allegations would be very serious if true, but I do not consider that the evidence before me is sufficient to make findings on them one way or the other, and nor is it necessary to do so in order to resolve the principal matters before me. The evidently poor relations between the parties will no doubt be relevant when it comes to consider the form of any relief to be granted if the claimant succeeds.
66. As to the claimant's resources and needs, her evidence is that she does not work and receives treatment by her GP for depression. She has inherited the property at 17 St Matthews Close under Ehsan's will, which she estimates is worth about £160,000 subject to a mortgage on which just under £78,000 is outstanding. She receives state benefits of about £1,000 per month, plus rent of £700 pm paid in cash by the tenant of 17 Matthews Close, from which she says she pays the interest only mortgage payments of £208 and council tax and utilities at that property of about £250 (it is not clear why these outgoings are not the tenant's responsibility). She said in her first witness statement that she has no other capital assets and spends all her benefits to support herself and her young daughter.
67. Although she did not say this in her witness statement, the claimant has said to the police and other agencies, and submits through Mr Quirke, that what she seeks is to have her husband's interest in the Property transferred to her and then realised, either by sale of the Property or sale of that interest to the defendants, so that she can discharge the mortgage on St Matthews Close and move into that property with her daughter. Although she said in cross examination that she did not want to move into that house until it had been made "suitable" for her and her daughter, that was not the case presented by her counsel and she has given no evidence in her witness statement or elsewhere of why it is not suitable or what if any changes are required to make it suitable. In the absence of such evidence I assume that she could move in as soon as the tenant vacates and without having to make any significant expenditure on modifications or improvements.

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68. The claimant has not given any detail of the benefits she receives or the way in which they are calculated. I do not know, for instance, the extent to which they take into account her ownership of St Matthews Close or the receipt of rent from it. I have not been provided with any evidence as to the effect on her benefits of the order she seeks. In the circumstances I can only proceed on the basis of ignoring any possible impact on benefits of the order that I might make.
69. The defendants alleged that the claimant's evidence did not disclose properties she owns in Pakistan, which they said she had purchased out of benefits received in the UK. They gave no details of any such properties. In her second witness statement the claimant accepted that she had inherited two parcels of land from her mother, which had been sold in November 2020 for approximately £5850, which she had since spent. In addition there is a property in Lahore that had been owned by Salamat Beg, in relation to which she is in litigation against Asaf in Pakistan seeking to recover the share in that property which should have been inherited by Ehsan and subsequently by her but which she says Asaf has instead fraudulently diverted to himself. The value of that property she says is about £50,000. The claimant has disclosed statements on various bank accounts in her name and was asked about payments of some hundreds (in some cases a few thousand) pounds back and forth between those accounts and accounts in Pakistan. The claimant said these were between herself and her relatives in Pakistan, but did not give any detailed explanation of what they were for.
70. There is no specific evidence of any other assets the claimant may have, in Pakistan or the UK or elsewhere. Although I have some doubts as to whether the claimant has been entirely candid in her disclosure, they are not sufficient for me to be able to find or assume that she has undisclosed assets. I take no account of any interest she may have in Salamat Beg's former house in Lahore; on the defendants' own case as apparently presented in the Pakistan court she has no such interest, and if she succeeds in establishing any such interest its value is inherently uncertain and subject to the risks and costs of litigation.
71. The defendants also submitted that there is no reason why the claimant cannot either now or at some point in the future go to work and cease dependency on benefits. Although she says she suffers from depression there is no medical evidence that she is not now, or will remain, incapable of working. Her daughter is presently below school age, but in due course she will go to school so her mother could, as many mothers do, then take up work. Her English is poor, but that is not an insuperable obstacle. Although I recognise those submissions, in the absence of any specific evidence in my view the prospect of the claimant being able to obtain and undertake work that would improve her position over that which she can maintain on benefits is too remote to take into account.
72. Neither defendant has chosen to put in any evidence of his own resources or needs. They evidently each have their own accommodation, though they have from time to time used a bedroom each at the Property and stored possessions there. I accept Mr Quirke's submission that in those circumstances I must regard them both as not having any relevant needs that would be affected by any relief sought.
73. As to the value of the Property itself and Ehsan's interest in it, the evidence is unsatisfactory. Neither side has obtained any valuation evidence, even of an informal nature such as the agent's letter produced in relation to St Matthews Close. The

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claimant estimates its value at £275,000 but she gives no indication how that is derived. Asaf's witness statement estimates £206,000 though that is based on undisclosed online searches of his own. A letter from the Council of 17 February 2021 states that the amounts of grants repayable to it, secured by its charges, is just over £6000..

74. Each side made submissions as to what they said Ehsan's wishes and intentions were. The claimant says she was assured that she would inherit his interest in the Property, but she gives no detail of such assurances and there is no documentary evidence in support of them. She points to the attendance note made by the solicitors with whom Ehsan made his will in October 2010. I have noted above that he told the solicitors he owned the Property jointly and St Matthews Close solely. The note goes on:

“Client asked about transferring ownership of both properties to his wife. I said a fee would be payable with the Land Registry, but he would need a solicitor that dealt with conveyancing and unfortunately we don't deal with that area...

Client wishes to leave everything to his wife, I confirmed she would then be able to make the decision whether she keeps the properties or sells them.

Client currently lives at 87 Clovelly Rd with his wife and two brothers but things [at] home are a bit tricky... he therefore wants to leave everything to charity if his wife predeceases him...”

75. The first paragraph is evidently in relation to a possible transfer while Ehsan was alive, and not to his wishes in relation to his will. If he had been considering such a lifetime transfer, the documentation does not show why, and plainly Ehsan did not take it any further.
76. The second appears to assume that the claimant would inherit Ehsan's interest in both properties under his will, and the third plainly implies that the difficulties at home were between Ehsan and his brothers, not his wife. That is some support for the claimant's case.
77. Unfortunately the solicitor's file contains no record of any advice given to Ehsan about the effect of his death on his joint interest in the Property. The claimant submits that the fact he was considering transferring it to her in 2010 and wanted to exclude his brothers from benefitting under his will must mean he intended her to inherit his interest and not his brothers, but the defendants say that the fact his will expressly mentions St Matthews Close but not the Property must mean he knew it would not pass under his will and so must have intended that it would go to them (or at least Arif) by survivorship.
78. It does appear that there must have been some discussion between Ehsan and the solicitor in relation to the properties subsequent to this initial note, because the solicitor's file, which has been disclosed, includes a letter of 5 October 2010 sending a draft will for the client's comments (p 531) which is in a substantially different

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layout (apparently made from a different precedent) and materially different in its operative provisions from that eventually executed five days later.

79. The file shows no explanation for the changes made, but they must presumably have resulted from Ehsan's subsequent instructions. Among the changes in the substantive provisions are:
- i) The will as executed contains an introductory statement, which did not appear in the earlier draft, that it was to apply only to his property in the UK and not elsewhere. This must have been deliberate and presumably reflects Ehsan's instructions that he did not wish the will to deal with the property he had told the solicitors he owned in Pakistan. What that property was is not apparent from the evidence, though it may have been (or at least included) his interest in the house that his mother had owned. The conventional statement of revocation of previous testamentary provision was also amended so that it related only to property in the UK, presumably therefore leaving in effect any earlier will (if there was one, as to which I have no evidence) insofar as it dealt with property abroad.
 - ii) The will as executed includes, in its principal provision leaving the residuary estate to the claimant, the specific statement that that gift was "including my property 17 St Matthews Close...". That did not appear in the earlier draft. The fact that it was inserted when the first draft was revised may make it more likely that it reflected instructions specifically given by Ehsan, rather than that the solicitor who took the initial note referring to two properties inadvertently mentioned only one of them when he came to prepare the initial draft. It is not however in my view safe to rely on this to make any inference as to what was in Ehsan's mind in relation to the Property that he did not mention.
80. The discretion given to the court is wide, and the range of matters it may take into account is equally wide. Although in principle it would be open to the court to take account of any evidence suggesting that the will may not truly have reflected the testator's intentions at the time it was made, the starting point must be to assume that it does do so, and in the circumstances of this case the relevant evidence is at its highest inconclusive and therefore is no basis for departing from that assumption.
81. Drawing all this together, the most obvious and primary claim on Ehsan's estate was to provide for his wife and child, and in particular to do so by ensuring that they had a home to live in. The operation of the will does not make reasonable provision for that need, because Ehsan's joint interest in their present home passed to Arif and although the claimant inherits St Matthews Close it is subject to a mortgage which the claimant has no means of discharging. In order to occupy that house she would have to end the present tenancy and so lose the income which currently meets the mortgage payments. So far as appears from the evidence, her remaining income is not sufficient in any event to repay the capital on the mortgage, even by instalments, and she has no other assets that would enable her to do so.
82. It would in my judgment be appropriate, in the exercise of the court's discretion, to make provision from the estate to meet that need, and to do so by directing that Ehsan's joint interest in the Property be brought into the net estate, to the extent necessary to realise £80,000, which would be sufficient to discharge the mortgage

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over St Matthews Close. The court is not required to make an “all or nothing” order in respect of that interest, and I do not consider it appropriate to do so, if a lesser order would meet the purpose of providing funds to discharge the mortgage and enable the claimant to move in to St Matthews Close.

83. I will hear submissions as to the form of order appropriate to achieve that provision, but subject to such submissions it seems to me that this may be done by an order providing:
- i) Pursuant to s 2(4) of the 1975 Act for payment by the defendants (who now hold what was Ehsan’s interest in the Property and which is to be treated as part of the net estate) to the claimant of £80,000, whereupon that interest would again vest in them, and in default
 - ii) Provision for valuation evidence to enable the extent of the interest necessary to realise £80,000 to be calculated, and for Ehsan’s former interest in the Property to be vested in the claimant up to that limit, with provision for realisation of that interest by way of sale, made either as consequential provision under the 1975 Act or by way of order under the Trusts of Land and Appointment of Trustees Act 1996.
 - iii) In addition provision by way of consequential order for a period of continued occupation of 87 Clovelly Rd by the claimant and her daughter, reasonably sufficient to enable her to receive the funds necessary to discharge the mortgage on St Matthews Close and move there. No doubt more detail will be required to regulate the position in the interim.
84. The result will be that the claimant should be in a position to own St Matthews Close mortgage free for her own occupation. Her day to day living expenses, and those of her daughter would, I must assume, continue to be met from benefits. She does not presently work, but there is no reason apparent why she might not do so in future, if it would improve her position. However if that does not happen she will remain on benefits as she has been to date. Once she has moved, it is to be hoped, any reason for friction between her and the defendants or their family will come to an end.
85. I will fix a date for this judgment to be handed down, with a short hearing to deal with the form of order and any other matters arising. If longer is required, counsel should contact my clerk with an agreed time estimate and their availability so that a later hearing can be fixed.