Neutral Citation Number: [2021] EWHC 426 (Ch)

Case No: PT-2019-000423

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
Rolls Building,
Fetter Lane
London, EC4A 1NL

Date: 12th March 2021

Before:

DEPUTY MASTER HANSEN

- -

Between:

CHRISTOPHER ALAN ROWLAND **Claimant**

- and -

SHARON MARGARET BLADES **Defendant**

- -
- -

MR PAUL DIPRÉ (instructed on Direct Access) for the **Claimant**

MR THOMAS ROE QC AND MR SIMON LILLINGTON (instructed on Direct Access) for the **Defendant**

Hearing date: 8-12 February 2021

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JUDGMENT

1. This is my judgment on the trial of a claim under CPR Part 8 issued on 27 May 2019 for declaratory relief as to the beneficial interests in a large country house known as Tadmarton House, Lower Tadmarton, near Banbury in Oxfordshire ("the Property").

2. On 31 March 2009 the Claimant ("Dr Rowland") and the Defendant ("Ms Blades"), then an unmarried couple in their 50s, caused the Property to be conveyed into their joint names with no declaration of trust. They used it as a holiday and weekend home. The price was £1,550,000. Dr Rowland paid the whole of the purchase price and all the other costs associated with the acquisition. Not long afterwards, the relationship began to break down when Dr Rowland formed a liaison with another woman ("the new partner").

3. Dr Rowland contends that he and Ms Blades acquired the Property on the basis that it was to be entirely his in equity, or alternatively, that the property later became entirely, or mostly, his in equity. Although the relationship broke down in the latter part of 2009, there were times thereafter when the parties' relationship was partially rekindled and there were occasions when they both spent time at the Property together, but primarily it was Ms Blades who continued to use the Property from late 2009 until 2018. On that basis Dr Rowland also claims an occupation rent from Ms Blades. Ms Blades maintains that the parties intended to create and to maintain a beneficial joint tenancy and that there is no basis for the imposition of an occupation rent.

The Factual Background

4. In setting out the factual background, I propose, at this stage, to recite the facts that are either uncontroversial or are incontrovertible in the light of the contemporaneous documents. That said, there is, as one might expect, a significant dispute as to what was said by the parties to one another, and indeed to the conveyancing solicitors, in the run-up to the purchase about the ownership of the Property and thus a stark conflict as to the central issue of common intention and/or the inferences that should be drawn as to what the parties' common intention was. I

shall of course have to resolve that conflict and make appropriate findings of fact, but for the moment I propose to set out the facts in a neutral way, particular as the documents (to a large extent) speak for themselves.

5. Dr Rowland and Ms Blades began their relationship in 2006. At the time Dr Rowland was separated, with one daughter, Hanna. Ms Blades was divorced with no children. Dr Rowland was in his 50s, having been born on 13.3.55. Ms Blades was in her late 40s having been born on 10.6.57. Both had properties of their own. Dr Rowland had a flat in West London ("the Flat") and Ms Blades owned a property in Wooburn Green ("Wooburn Green") in Buckinghamshire. Both maintained separate bank accounts and they never pooled their resources.

6. Both Dr Rowland and Ms Blades are intelligent, professional people. Dr Rowland has a PhD in economics and was working at the material time as a financial analyst. Ms Blades has worked for many years at a senior level in the semiconductor industry.

7. Dr Rowland was a wealthy man at the material time. In the tax year 08/09, his earnings from employment were £1,176,255. In the subsequent tax year 09/10 he earned £757,660. His earnings for previous tax years were lower but still significant: £428,383 (05/06), £232,377 (06/07) and £360,160 (07/08).

8. The parties agree that in the latter part of 2008 they decided to buy a house in the country "*at which to go and stay to enjoy their free time*". The property that they eventually resolved to buy was a 3-storey country house with 9 bedrooms and a considerable amount of land. It was described in the estate agents' particulars as "*a distinguished, fully restored Grade II listed Italianate villa*" with 24 acres.

9. On 26.2.09, Dr Rowland and Ms Blades completed a Form of Authority, which they both signed, in which they instructed Bower & Bailey ("B & B"), solicitors, to act

for them in the purchase of the Property. On the same date, they completed and signed a number of forms which had been sent to them by B & B.

10. The first form was a Buyers Questionnaire. One of the questions was, "*Is this an Investment Purchase or are you going to live in the property*?" to which the available answers on the form were "*This is an investment purchase*" and "*I will be living at the property*". The box which said "*I will be living at the property*" was marked with an "x"**.**

11. The second form was a document entitled "*Joint Ownership of Property*". Under that heading the clients were identified as "*Dr Chris Rowland and Ms Sharon Blades*". The document explained that:

> *"If you are proposing to purchase a property in two or more names then it is important that you understand the different types of joint ownership available".*

12. The document then purported to explain joint tenancy and tenancy in common. Under the heading, "*Joint Tenants*", the document explained that:

> *"If you hold the property as JOINT TENANTS you are each entitled to share equally in the net proceeds of sale (being the proceeds of sale less repayment of any mortgages, agents and legal fees etc.). If one of you dies then the survivor will automatically become the owner of the whole of the property. This is regardless of whether the deceased owner has or has not made a will.*"

13. Under the heading "*Tenants In Common*", the document explained that:

> *"If the property is held as TENANTS IN COMMON then it is possible for you to define each owners exact share of the net proceeds of sale (as referred to above). For example, unless you contributed equally to the purchase monies ... the person paying or contributing the largest share of the purchase monies may wish to ensure that when the property is sold they are entitled to receive a larger share of the monies remaining (after repayment of the*

mortgage, etc) than the other joint owner. If you do wish to own the net proceeds of sale in the property in unequal shares then this will need to be recorded in a separate document known as a Declaration of Trust."

14. The document concluded by stating:

> *"Please consider the above quite carefully and then indicate your choice of joint ownership by circling the appropriate paragraph below. If you wish to own the property in accordance with paragraph C then please telephone us to discuss your requirements in more so that we can draft the appropriate Declaration of Trust (as referred to above) for you."*

15. The available options at the bottom of the form were:

> *A. Joint Tenants*
>
> *B. Tenants in Common in Equal Shares*
>
> *C. Tenants in Common in Unequal Shares.*

16. Option A was circled and the document was signed by both parties and dated 26.2.09.

17. In an email dated 27.2.09 Dr Rowland explained to Mr Palmer, the conveyancing solicitor at B & B, that:

> *"… our intention is to purchase Tadmarton House as Joint Tenants and will forward the signed joint ownership form by post".*

18. On 28.2.09 Dr Rowland sent back the signed joint ownership form by post to Mr Palmer of B & B and B & B then began the conveyancing process.

19. On 23 March 2019 Dr Rowland emailed Mr Palmer, copied to Ms Blades to say that:

> *"We've now moved enough funds to cover a 10% deposit (surprisingly, money had moved into the liquid account quicker than we had realised). It's coming from a Halifax account in my sole name."*

20. It is common ground that the vendors were in a rush to exchange and complete and were insisting on exchange on 23.3.09 and completion on 31.3.09. A meeting at B & B's offices was scheduled for 23.3.09. The parties were running late. It is common ground that the meeting began at about 6pm and lasted about 1¼ hours. It is also common ground that the vast majority of the time (c. 80%) was devoted to discussing matters of title, boundaries, building control and the like.

21. Mr Palmer made an attendance note of this meeting, the material part of which reads as follows:

> *"SP [i.e. Mr Palmer] discussing joint ownership. Clients had confirmed in initial instructions they wish to own as joint tenants. SP re-explaining difference between joint tenants and tenants in common. Discussion about merits of a declaration of trust. Both clients confirming that they were happy to proceed as joint tenants and do not require decl of trust. SP asking them to give further consideration. Clients agreeing to own as joint tenants but if there was a change of mind they would let SP know before completion.*
>
> *Sharon Blades needs a will. SP to ask Brit to get in contact."*

22. I shall of course return to what was discussed at this meeting because there is an important conflict of evidence. Dr Rowland said he mentioned his daughter, Hanna, and made it clear that the common intention was for the Property to be owned ultimately by his daughter but for Ms Blades to have a right to live in it if Dr Rowland predeceased Ms Blades. Both Ms Blades and Mr Palmer firmly deny that there was any such discussion. Returning, for the moment, to uncontroversial matters, it is common ground that the attendance note records the fact that mention was made of the fact that *"Sharon Blades needs a will*" and it is apparent from the

conveyancing file that Mr Palmer asked his colleague Brit to get in touch with Ms Blades about a will on 24.3.09. However, there is no evidence that the making of a will was ever progressed and no evidence that Dr Rowland raised the issue until after the relationship had broken down. Despite the importance that Dr Rowland attached to this entry in the attendance note, there was no evidence given about wills, neither party produced a will in disclosure, no request was made for disclosure and despite my suggestion that I might find it helpful to see any wills that were made, neither party produced any will.

23. Following the meeting at B & B's offices, contracts were exchanged by telephone by the solicitors on 23.3.09 at 7.30pm. The agreed purchase price was £1,550,000.

24. In a letter dated 24.3.09 Mr Palmer confirmed that contracts had been exchanged with completion scheduled for 31.3.09. Mr Palmer recorded in this letter that:

> *"We also had an opportunity at our meeting to discuss your joint ownership of the property. I note that it is almost certainly the case that you would like to own the property as joint tenants. However, you are considering the issue and if you have any change of plans in this regard, then you will let me know prior to completion".*

25. It is a matter of record (and neither party suggests otherwise) that neither party contacted Mr Palmer to let him know of any change of plan.

26. On 26 March 2006 Mr Palmer wrote to Dr Rowland and Ms Blades enclosing a copy of a draft TR1 transfer deed, asking them to sign and initial it in various places in the presence of a witness but not otherwise to alter it. The draft TR1 provided for a transfer into the joint names of Christopher Alan Rowland and Sharon Margaret Blades.

27. Precisely to try and preclude arguments of the kind that have occupied the Court in this case for 5 days, the Land Registry's (then) standard form of TR1 contained a

panel, panel 10, which is designed to eliminate the opportunity for property buyers to argue about the equitable ownership of property that they own jointly at law. Where there is more than one transferee, the form requires the transferees to choose between three options:

> *"Declaration of trust. The transferee is more than one person and*
>
> □ *they are to hold the property on trust for themselves as joint tenants*
>
> □ *they are to hold the property on trust for themselves as tenants in common in equal shares*
>
> □ *they are to hold the property on trust".*
>
> [The marginal note adjacent to this last option says: "*Complete as necessary*"].

28. None of these boxes was ticked on the draft sent to the parties by B & B and they were not asked to tick any of them and did not tick any of them. The parties duly executed the draft, with none of the boxes ticked, and dropped off the signed and witnessed Transfer at B & B's offices in advance of the date scheduled for completion.

29. Completion took place on 31.3.09. It is common ground that all of the purchase money came from Dr Rowland. There was no mortgage. The total including tax and expenses was £1,618,311. Dr Rowland says, and Ms Blades accepts, that the money derived from his earnings.

30. On the day of completion, Dr Rowland emailed Mark Roberts, his long-time financial advisor. Dr Rowland explained that he was hoping that completion would take place that day and continued as follows:

> *"But [I am] worried that potential inheritance liability is being compounded by Sharon and I buying the property as joint owners, with the view to passing the new house (or a large part of the value of the new house) to Hanna if we both die. Is my understanding right that this would trigger an*

> *inheritance liability between Sharon and me if either of us die (on half the value of the house), then a second inheritance tax liability when the second of us dies and passes the house to Hanna? If my understanding is right, I guess we should reconsider how to pass the house to Hanna in a way that two inheritance tax bills are not triggered. This is in addition to the need to put in place a policy to cover part of the overall inheritance tax liability that might arise on my death."*

31. Mr Roberts replied on 1.4.09 to the effect that Dr Rowland was correct. He went on as follows:

> *"However as I said to you before, the basis of ownership ie. joint tenancy can be severed and a new tenants-in-common arrangement can be set up (and it doesn't have to be a 50/50 split)."*

32. Mr Roberts discussed the possibility of Dr Rowland and Ms Blades each taking out an insurance policy on the other's life, to cover the inheritance tax liability that would arise on the death of either of them as a result of their joint ownership of the Property. He continued:

> *"The second IHT liability would be halved if we did a 50/50 tenants in common arrangement, and Hannah would end up owning half the house. You need to ensure that Sharon has a right to continue living there".*

33. Dr Rowland took out insurance on the Property, under which he was the named insured. The Property was insured as a "Holiday Home".

34. On 14.4.09 B & B applied to register the parties as the new registered proprietors of the Property. On 15.4.09 the Land Registry wrote back to B & B declining to accept the application, in part because panel 10 on the TR1 had not been completed.

35. On 17.4.09 Mr Palmer of B & B resubmitted the application to register the transfer. He explained that:

> *"We have now amended the application as requested [and] ... We have also completed panel 10 of the transfer as requested".*

36. It is common ground that the completion of panel 10 of the TR1 consisted of Mr Palmer (or someone else at B & B) taking the already-executed TR1 and inserting a cross in panel 10 next to the words "*they are to hold the property on trust for themselves as joint tenants*" and that B & B did not refer back to either Dr Rowland or Ms Blades about this before doing so.

37. Registration was completed on 21.4.09 and Mr Palmer wrote to tell the parties about this on 27.4.09, saying "*The property has been registered within your joint ownership*".

38. When it emerged, in the course of this litigation, that B & B had completed panel 10 without express instructions to do so from either party, Ms Blades wrote to complain about this, as did Dr Rowland. In their response to Ms Blades, dated 17.1.20, B & B explained why they had not reverted to Dr Rowland and Ms Blades before altering the executed deed as follows:

> *"It is denied that there was any duty upon this Firm to 'check' your instructions before completing panel 10 on the TR1. It is clear from the chronology of events ... that this Firm gave clear advice and took your and Mr Rowland's instruction prior to exchange of contract and prior to completion regarding how you both wanted to hold the Property. Stuart Palmer had received your instructions regarding holding the property as joint tenants and therefore had no need or duty to confirm the same yet again before completing panel 10 of the TR1 and re-sending the same to the Land Registry."*

39. As I have already indicated, the relationship between Dr Rowland and Ms Blades ran into problems relatively soon after completion. Dr Rowland formed a relationship with the new partner, and Ms Blades discovered this in or about November 2009. Dr Rowland then continued to see both Ms Blades and the new partner for more than a year but in the early part of 2011, Ms Blades dropped in unexpectedly at the Flat and found him in bed with the new partner. There was an altercation that resulted in Ms Blades accepting a police caution for assaulting the new partner and Dr Rowland accepting a restraining order preventing contact with either woman for 4 weeks.

40. Ms Blades was clearly very upset by the incident and the break-up of the relationship generally and was being prescribed anti-depressants by her GP even before the altercation. However, it would appear that the couple retained some hope of a rapprochement for some time after November 2009 because they engaged in couples therapy for a number of months in 2010. It would appear that any hopes in this regard ended after the incident in 2011 although even after that date the parties occasionally saw each other. Ms Blades saw a psychotherapist regularly during the course of 2012 in an effort to come to terms with the break-up of the relationship.

41. The contact between the parties was much less frequent and more strained after Ms Blades found out about Dr Rowland's relationship with the new partner in November 2009. However, they remained in contact by email and because both sides (particularly Dr Rowland) placed significant reliance on the course of dealing after the breakdown of the relationship, I need to set out those parts of the course of dealing, almost exclusively emails, which are particularly relied on. In doing so, again I propose to do so neutrally at this stage although I will of course have more to say as to what light, if any, they shed on the common intention, whether at the time of acquisition, or subsequently, particularly as Dr Rowland's alternative case, if I find that the common intention at the outset was to share the Property beneficially, is that those shares became unequal as a result of a post-acquisition constructive trust. The post-breakdown course of dealing is also relevant to Dr Rowland's claim for an occupation rent.

42. On 28.3.10 Stephen Blades, Ms Blades' brother, contacted her to ask if he and his partner could stay at the Property for a couple of days. Ms Blades told Dr Rowland of this request and said: "*What do you think, it's fine by me, but obviously you need to decide too*".

43. On 26.7.10 Ms Blades wrote a lengthy email to Dr Rowland, which she prefaced with the observation "*Yes I am drunk*", and concluded as follows:

> *"It would be good to meet sometime this week and you can tell me where you are with "her" and me (or not). If we are done then please think in advance about what we will do with TH [i.e. the Property]. I love it up there but if you are going to be with "her" then I do not want "her" up there and will not want you to be up there when I am, if you are going to be going back to her, after you have been at our house!"*

44. On 30.7.10 Ms Blades emailed Dr Rowland suggesting that they should keep in touch once a week by email and continued as follows:

> *"We can then discuss who goes to TH and who doesn't the following weekend?*
>
> *So on the TH weekends:-*
>
> *I'll go this weekend*
>
> *You can go next weekend?*
>
> *Will you want to use TH the bank holiday weekend, that's the weekend of August 28th? ...*
>
> *We can discuss the other August weekends on our weekly communication email?*
>
> *Chris, PLEASE, PLEASE do not let "her" into TH".*

45. Dr Rowland replied the following day, agreeing to keep in touch weekly. As regards the Property, he wrote:

"On TH, yes I'll plan on being up there next week-end but no thought at all about the Bank Holiday long week-end. I promised you I wouldn't let [the new partner] in - the place is yours - and I won't let her in."

46. On 10.8.10 Ms Blades wrote:

"I need to start a new life without you and in fact I want to start a new life altogether and I think I would like to move into TH and build a new life up there! There is nothing left for me down this part of the country, for my job and I can commute!

If you want to sell TH, fine, I will still probably move away from WG and start again somewhere else, just let me know what is best for you and 'her' none of this seems to be about me and what is best for me anymore, it's predominantly about you and to a lesser degree 'her'."

47. On 19.8.10 Ms Blades wrote:

"We do need to talk sometime about what we do/how we use TH! I'd like to keep it/use it but if [the new partner] doesn't want that, then let me know and we can sell it and I will walk away! I'd rather you sell it and have nothing, than have the risk of 'her' going up there! It was 'our' place and if nothing else I'd like to keep that memory even if I don't physically have it/or am able to be there anymore! You two now have a nice house in the south of France so I'm not sure how much use you (on your own) will get out of TH anymore?

I'm certainly assuming that you do not/cannot go to TH this weekend as if you are in the country, [the new partner] will not be happy about you being away from her and she is not able to go to TH. To be honest I can't see you being able to go up there very often as I simply cannot accept her going to 'our' house under any circumstances and I'm sure she will not let you be up there on your own, just in case I might be there and also I assume she will want to be with [you] every minute that she can (lucky girl, if she can manipulate that situation happening)..."

48. On 6.9.10 Ms Blades wrote:

> *"Can you let me know if you have any plans to go to TH, this weekend!*
>
> *Please bear in mind that I STILL do not want 'that woman' at our house EVER!*
>
> *Even when I have gotten my head to a place that I do not care anymore that you still are with her, I don't ever want her up there.*
>
> *You haven't been to TH for some time so it is 'your turn' but please do let me know either way so that I can make my own plans around whatever you are doing."*

49. On 12.10.10 Ms Blades commented, in an email to Dr Rowland, that if the Russian plane she was about to travel on fell out of the sky, "*the inheritance tax on TH and my death duties will probably wipe out my 'estate'*."

50. On 13.12.10 Ms Blades mentioned, in an email to her sister Jennifer, that things with Dr Rowland were "*up in the air*". She went on:

> *"He often talks about TH and that we should have dogs up there when we retire up there …"*

51. The email correspondence suggests that Dr Rowland Ms Blades spent Christmas together at the Property.

52. In a long undated letter, but sent in or about February 2011, Ms Blades wrote to Dr Rowland as follows:

> *"You had given me hope of a longer term relationship. Clearly I misinterpreted your actions. I clearly misunderstood the buying of TH.*
>
> *I read too much into the things you were saying to me?*
>
> - *'I'm so looking forward to growing old together'*
> - *'When we retire up here…'*
> - *'Lets sell WG [Wooburn Green] and buy more fields…'*

Tadmarton House

I so love TH and loved sharing it with you. […].

When we first bought it I thought it would be our home …

I always wanted a house in the country and I want to thank you for helping me fulfil that dream but I now see how worthless it is without having someone (you) to share it with!

In time I hope I can see it again as my home and a sanctuary from the hurt and the busy, work consuming life. If not then I will continue to 'furnish' the top floor and maybe we should rent it out as a holiday home and get some income from it?"

53. On 18.3.11 Ms Blades wrote to Dr Rowland as follows:

> *"I am planning to be at TH as often as I can. If however you (without [the new partner]), Hanna or your friends want to go there anytime, please do let me know as I have several weekends planned with friends and family over the coming weeks, although on my own this weekend to reflect on the last stupid 4 weeks and to catch up on some much needed work projects. … BUT TH is your house too so if you want to/need to use it, (without [the new partner]) then do let me know and I will re-arrange things to suit your plans, where I can. I have no plans to go there with any new partners."*

54. On 13.4.11 Ms Blades emailed again, saying:

> *"As you are not acknowledging or replying to my letters, text messages or emails, I have to assume that you want nothing to do with me and have completely 'moved on' from me ….*
>
> *I'll assume that you will never be going to TH again so I will be there as often as possible …*
>
> *In time I guess we will have to decide if/when we get shot of the place".*

55. On 30.4.11, in an email which is heavily relied on by Dr Rowland, Ms Blades wrote:

> *"If you have decided to never come to TH again, it doesn't seem right for you to be paying all of the bills! I wish I had the funds to be able to take on all of the bills for TH but regrettably I cannot! So I was thinking that perhaps I should pay all the day to day utility type bills and you pay the more structural bills and bills that maintain the property in its current form. (At the end of the day, TH is an investment for you and Hanna)".*

56. On 2.5.11 May 2011 Ms Blades wrote to Dr Rowland with a proposal: "*if you are planning to never come to, or use TH again … I (we) rent it out for short term corporate lets*." Her message concluded: "*So please do one day, let me know your thoughts on the above. I'm keen to move ahead with this plan but TH belongs to both of us*".

57. On 1.6.11 Dr Rowland replied by email to the long, undated letter from Ms Blades referred to above. He did not contradict Ms Blades' account of what he had said about retirement to the Property. And he wrote:

> *"As far as TH is concerned, I've no intention of trying 'to take it away from you' – it's at least as much yours as mine. And I would like to spend some time up there – I still have an invitation to honour to Joanne and Adrien (and I'll never take [the new partner] there). More importantly, I'd just like to be in the place for a few days (but I won't turn up without pre-arranging with you …*
>
> *Not sure I'm enthusiastic about your renting out plans. Have wondered if you want to move in fully…"*

58. On 27.11.11 Ms Blades recorded in an email an informal agreement that Dr Rowland would pay "*the majority of the bills that were considered to be 'structural/safety' type of bills*". Dr Rowland replied on 28.11.11: "*Yes, of course I'd be happy to contribute or pay to these bills – as agreed*".

59. After 2011 the email correspondence thins out and for 2012 and 2013 is mostly concerned with bills.

60. On 6.1.14 Ms Blades emailed Dr Rowland and observed that: "*Running TH is a continually challenging job, I love being here but it is not an easy task by any means*!" "*I wish*", she wrote, "*I had sufficient funds to buy TH from you …*"

61. On 7.2.14 Dr Rowland emailed Ms Blades as follows:

> *"I'm also trying to do a bit of financial planning with Mark (Roberts), notably on inheritance tax. My recollection of our agreement is that TH should be available for whoever survives the other, but TH should ultimately pass to Hanna. But also that that arrangement should be after any inheritance incurred on the way - ie so that you can pass the rest of your estate on to whomever you want without a chunky inheritance tax bill because of TH. Not sure how all that gets implemented, but maybe there needs to be a life assurance policy on your life to cover inheritance tax on TH, which I should fund. Also, all sorts of will-writing issues that will need to be addressed - I haven't but not certain if you ever did?"*

62. Ms Blades replied, on 13.2.14 as follows:

> *"Yes we do need to sort out TH and inheritance tax etc. Now that Eva [Ms Blades' niece] is around I want to be able to leave her a good legacy and provide for her too. By the time she is 25 years old I will probably be long gone. I do have a will but TH is not even mentioned. Also we need to bear in mind that I have spent many many thousands of pounds on TH and hopefully contributed to its increase in value, so perhaps that needs to be in the equation somewhere too!"*

63. Dr Rowland returned to the subject of their February 2014 correspondence on 26.4.14 when he wrote as follows:

> *"I'm also trying to tidy up my financial affairs etc such that life would be relatively straightforward for Hanna if I fell under a bus. That made me realise that we sort of had an agreement about Tadmarton House, but … that agreement probably needs some details filled in. One aspect I was talking about with Mark (Roberts) was the idea that you should have access to it passed my death, but that it would be left to Hanna. I'm aware that the legacy to Hanna shouldn't create an inheritance tax burden on your estate, so the legacy to Hanna should be after inheritance tax on Tadmarton House is satisfied. One solution to that might be to put in place some insurance*

> *policy that pays out to cover the inheritance tax on Tadmarton House in that circumstance, which I'd pay for".*

64. Ms Blades, in her reply on 2.5.11 did not directly address whether she agreed that they had "*sort of had an agreement*". However, she suggested, that: *"on our deaths why don't we just get TH sold to take care of inheritance tax/death duties*?"

65. On 1.6.14 June 2014 Dr Rowland asked whether Ms Blades had ever made a will leaving the Property to Hanna, commenting: "*as I recall, TH will pass to the other one of us on the first death*."

66. On 25.9.14 Ms Blades wrote to Dr Rowland, saying:

> *"Don't forget to let me know if you want to come up to TH sometime."*

67. On 28.9.14 Dr Rowland wrote:

> *"I would love to pay a visit to TH. However, as I guess I'm not flavour of the month, I'll leave it for you to let me know some good dates when you're not entertaining, etc."*

68. There was no reply to this email.

69. During 2015 there was a brief rapprochement in the relationship, the parties apparently meeting at the Property in the summer of that year. It appears that any rapprochement with Ms Blades was very short-lived. Later that year, in or about October 2015, Dr Rowland said he stopped seeing the new partner.

70. On 27.1.17 Dr Rowland asked to meet Ms Blades "*to chat about your thoughts on Tadmarton – I know it's tough to keep on top of the place and wondered if made sense to think about selling it?*".

71. On 12.2.17 Ms Blades saying that she did not want to have any such discussions. She said:

> *"Tadmarton has become my home and I spend as much time as I can there ... My plan has been to retire to TH (like you and I had discussed when we originally bought TH!). […].*
>
> *You chose to walk away from Tadmarton and I have been living there, looking after it and caring for it ever since. Are you really going to try and take TH away from me too?*

72. On 3.3.17 Dr Rowland asked whether Ms Blades had made a will leaving the Property to Hanna "*in line with the original intention given that I paid 100% of the purchase price*".

73. Ms Blades replied on 12.3.17 to the effect that she had not and said this:

> *"My understanding is as follows:*
>
> 1. *The property is in joint equal names and as such is half mine*
> 2. *If I die before you, the jointly owned property will become yours and you will be liable for inheritance tax on my half, as it goes to you.*
> 3. *If you die before me, the jointly owned property will become mine and I will be liable for the inheritance tax on your half, as it comes to me".*

74. There then ensued a course of email correspondence containing proposals of various kinds or indications of what either party might countenance by way of settlement. None of this was marked "without prejudice", it was in the trial bundle and no one objected to my looking at it. It is not clear whether at this time either party had sought further formal, legal advice – it would appear not - but it seems to me that this later material is of very limited evidential value in ascertaining the common intention at an earlier (and happier) time, particularly as these "offers" were invariably prefaced with some kind of assertion of what the party considered to be their strict legal rights.

75. What is clear is that later in 2017 Dr Rowland did obtain further, formal legal advice. As he explained in an email dated 22.11.17 his legal advisers "*suggested we should put in place a Declaration of Trust to confirm the financial side of Tadmarton*", and he copied a draft of what he proposed to Ms Blades. It contained the following recitals:

> *"**WHEREAS**:*
>
> *(A) By a transfer dated 31st March 2009 ... the Property ... was transferred to Christopher and Sharon to be held by them on the basis that the survivor of them could give a good receipt for capital monies being beneficial joint tenants*
>
> *(B) Christopher and Sharon have agreed that their joint tenancy of the property should be severed and from the date of this declaration their interest in the property and its proceeds of sale and their income from it shall be held as mentioned below."*

76. The draft then went on to effect a declaration of trust in unequal shares, under which Dr Rowland would be entitled to the first £1,618,311 of the net proceeds of any sale and any balance over this would be shared in proportion to the parties' respective contributions to the Property's "*improvement/repair/decoration etc*"

77. Ms Blades did not agree to sign the declaration of trust. On 24.12.17, having taken legal advice, she said this:

> *"The position, I am advised, is very straightforward – we are joint beneficial owners as appears by the TR1 which incorporates a declaration of trust in box 10. The TR1 is a deed and was executed by us both and accords with our agreement, reached after the appropriate legal advice and explanations, to hold the property as joint tenants as is evidenced by various documents in the conveyancing file.*
>
> *Consequently upon any sale we are entitled to share the net sale proceeds (after costs of sale) equally".*

78. In October 2018 there was a mediation which did not resolve the dispute but did lead to agreement as to how the use and expenses of the Property should henceforth be shared, the agreement being that each party would have alternate use of the property for blocks of 2 weeks from the beginning of November 2018. The end of October 2018 therefore marks the end-point of any claim for occupation rent, if any is payable. These proceedings were issued on 27.5.19.

The Issues

79. At §12 of his Particulars of Claim Dr Rowland contends that:

> *"... at the time of the purchase there was a common understanding between the Claimant and the Defendant that the Property was beneficially the Claimant's, that the Property in the event of the death of the Claimant was to devolve wholly to his daughter Hanna Rowland with the Defendant to retain the right to live at and/or make use of the Property for the duration of her life".*

80. Alternatively, Dr Rowland contends (at §16 of his Particulars of Claim), that:

> *"the separation of Dr Rowland from Ms Blades brought the shared recreational/free-time purpose of the trust of the Property to an end, and the respective beneficial interests of the parties fall to be determined by reference to their actual contributions to the ongoing costs of the repair and upkeep of the Property."*

81. Dr Rowland further contends (at §17) that "*Ms Blades from September 2009 vetoed the use of the property by Dr Rowland in the company of his new partner*" and (at 9) that "*by reason of the exclusive use by her of the Property ... the Claimant is entitled to an occupational rent for the period from September 2009 to end of October 2018*".

82. Dr Rowland further contends (at §18) that he paid a total of £208,602, being the costs of structural work, council tax, insurance, gardening and energy costs, "*as an unmatched contribution*" and it is said that:

> *"this fact compels the inference that the common intention of Dr Rowland and Defendant was that Dr Rowland was the sole beneficial owner but if Dr Rowland and Defendant were 50% joint beneficial owners then this fact alters the beneficial ownership and imputes an increase of the proportion of the beneficial interest due to Dr Rowland as a result of his additional contributions being greater than 50% falls to be made by the court [sic]. In these circumstances the increase in actual proportion of his beneficial interest is at least 10% and makes a total of 60% at least."*

83. At §(3) of the prayer for relief Dr Rowland quantifies his claim for an occupation rent in the sum of £371,000. As to that claim there is a report dated 20 November 2020 prepared by a single joint expert, Edward Briggs, who offers his opinion on the likely rental value of the Property on various bases. That report is supplemented by an addendum dated 10 December 2020.

84. In the course of the trial, having heard the various ways in which he was putting the case for Dr Rowland, I raised with Mr Dipré the question of whether he was minded to apply to amend his claim to include a claim for proprietary estoppel. He reflected on the point and decided not to make any application to amend.

85. Ms Blades' case is that the Property is and always has been held by the parties on a beneficial joint tenancy, and that no occupation rent is due.

86. Against that background, the parties had agreed the issues as follows:

    (i) What are the parties' respective beneficial interests in Tadmarton House? ("Issue 1")

    (ii) Is there any occupational rent payable by Ms Blades and, if so, how much? ("Issue 2")

    (iii) Should the TR1 be rectified? ("Issue 3")

87. In fact, before me the parties agreed that Issue 3 is redundant. The Claim Form included a claim for rectification of the TR1 so as to show Box 10 unticked. However, the TR1 as executed by the parties did not have Box 10 ticked or checked and in those circumstances, whatever Mr Palmer may have thought his instructions permitted him to do, the parties have agreed, in my judgment correctly, that I should proceed on the basis that there is no declaration of trust and nothing to rectify.

The Law

88. At first blush, this is a classic dispute about the beneficial interests in a property conveyed into the joint names of an unmarried coupled but without an express declaration of trust. That was certainly how the case was presented in the pleadings and Skeleton Arguments. On that basis, the applicable law is to be found in *Stack v Dowden* [2007] 2 AC 432 and *Jones v Kernott* [2012] 1 AC 776. The principles to be taken from those two cases can be summarised as follows:

(i) The starting point is that equity follows the law and thus the parties are to be taken as joint-tenants in equity;

(ii) This is a presumption but it is not to be lightly dismissed because, according to *Jones v Kernott*, it is how both parties are likely to see their relationship developing and because evidence of an agreement as to any other share is likely to be misremembered and tainted by ill-will: at §51 per Lord Walker and Baroness Hale;

(iii) The conclusion that equity follows the law can, however, be displaced by showing that the parties had a different common intention when the property was first acquired or that they formed a different common intention at a later date, providing of course there is detrimental reliance.

(iv) This displacing common intention may be express or inferred ("*deduced objectively from their conduct*"): *Jones v Kernott* at §51 per Lord Walker and Baroness Hale;

(v) The relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that person's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party: *Jones v Kernott* at §51(3);

(vi) Each case will turn on its own facts. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it;

(vii) Many more factors than financial contributions may be relevant to divining the parties' true intentions, including any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses.

(viii) The express or inferred common intention usually will also determine the size of the shares of the co-owners. The court should give effect to the intention thus discovered. If, however, there is no evidence to this effect, the court may impute an intention so as to ensure that the co-owners obtain that share which the court considers fair having regard to the whole course of dealing between them and the property.

89. There was no disagreement between Counsel about the applicable principles. However, I raised with both Counsel the question whether this was indeed a case

which falls within the *Stack v. Dowden* paradigm. Baroness Hale identified the issue in *Stack v Dowden* in these terms at §40:

> *"My Lords, the issue before us is the effect of a conveyance into the joint names of a cohabiting couple, but without an explicit declaration of their respective beneficial interests, of a dwelling house which was to become their home".*

90. Later, at §58, she set out her conclusion as follows:

> *"For the reasons already stated, at least in the domestic consumer context, a conveyance into joint names indicates both legal and beneficial joint tenancy, unless and until the contrary is proved".*

91. At §69, she emphasised the importance of context ("*context is everything*") and explained that the domestic context is very different from the commercial world. To similar effect, Lord Walker said this at §33:

> *33. In the ordinary domestic case where there are joint legal owners there will be a heavy burden in establishing to the court's satisfaction that an intention to keep a sort of balance-sheet of contributions actually existed, or should be inferred, or imputed to the parties. The presumption will be that equity follows the law.*

92. The decision in *Stack v Dowden* marked a significant departure, indeed the decisive break, from the resulting trust approach that had invariably been employed where parties to a joint purchase had contributed in unequal shares.

93. The move away from the resulting trust approach, at least in the domestic consumer context, was cemented by the joint decision of Baroness Hale and Lord Walker in *Jones v Kernott* where they said this at §25:

> *25. The time has come to make it clear, in line with Stack v Dowden [2007] 2 AC 432 (see also Abbott v Abbott [2008] 1 FLR 1451), that in the case of the purchase of a house or flat in joint names for joint occupation by a married or unmarried couple, where both are responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit (or indeed the rest of the purchase) in unequal shares. The presumption is that the parties intended a joint tenancy both in law and in equity. But that presumption can of course be rebutted by*

evidence of a contrary intention, which may more readily be shown where the parties did not share their financial resources.

94. However, in referring back to Baroness Hale's judgment in *Stack v Dowden*, Baroness Hale and Lord Walker had earlier in their joint judgment clarified the fact that:

> *10. The conclusions in Baroness Hale's opinion were directed to the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any mortgage, and where there is no express declaration of their beneficial interests.*

95. The present case is not on all fours with the typical domestic case. A number of features warrant particular mention. Firstly, although the parties were in a relationship at the time of acquisition, the Property was not bought as a family home in which they were to live together on a full time basis. It was a weekend retreat. Each of Dr Rowland and Ms Blades had their own, separate homes. Whilst they were still together as a couple, the parties spent time together at each other's properties and time together at the Property but they had independent, busy lives and their circumstances were not the typical domestic circumstances of a cohabiting couple buying a quasi-matrimonial home with the assistance of a mortgage. Secondly, Dr Rowland provided the whole of the not inconsiderable purchase price. There was no mortgage, let alone a joint mortgage. There was no financial contribution at all from Ms Blades to the acquisition of the Property. Thirdly, the parties never pooled resources in any shape or form and never had a joint bank account either before or after the date of acquisition.

96. In those circumstances, I raised the issue with Counsel whether I should take the presumption established by *Stack v Dowden* (and confirmed in *Jones v Kernott*) as my starting point. I also raised with them the possible significance in this context of the subsequent Privy Council case of *Marr v Collie* [2018] AC 631 where Lord Kerr said this:

> *53. If what Baroness Hale described as a "starting point" (that joint legal ownership should signify joint beneficial ownership) is to be regarded as a presumption, is it in conflict with the presumption of a resulting trust where the parties have contributed unequally to the purchase of property in their*

> *joint names? A simplistic answer to that question might be that, if the property is purchased in joint names by parties in a domestic relationship the presumption of joint beneficial ownership applies but if bought in a wholly non-domestic situation it does not. In the latter case, it might be said that the resulting trust presumption obtains.*
>
> *54. The Board considers that, save perhaps where there is no evidence from which the parties' intentions can be identified, the answer is not to be provided by the triumph of one presumption over another. In this, as in so many areas of law, context counts for, if not everything, a lot. Context here is set by the parties' common intention—or by the lack of it. If it is the unambiguous mutual wish of the parties, contributing in unequal shares to the purchase of property, that the joint beneficial ownership should reflect their joint legal ownership, then effect should be given to that wish. If, on the other hand, that is not their wish, or if they have not formed any intention as to beneficial ownership but had, for instance, accepted advice that the property be acquired in joint names, without considering or being aware of the possible consequences of that, the resulting trust solution may provide the answer.*

97. Mr Roe, Counsel for Ms Blades, reminded me that if I considered there to be a conflict between *Marr v Collie* and *Stack v Dowden*/*Jones v Kernott*, I should apply the latter two cases, being binding decisions of the House of Lords and Supreme Court. That is no doubt right as a matter of precedent (see e.g. *Willers v Joyce and another (No2)* [2018] AC 843) but in the event, whilst rightly emphasising the "*centrality of intention*" (see *Marr v Collie* at §56), both Counsel agreed that I should approach this case as if it is a domestic consumer case (and in many ways it is much more akin to a domestic case than a commercial case) and take as my starting point the presumption that equity follows the law. If that is the starting point, it will be presumed that the legal effect of a conveyance into joint names is that the parties are also beneficial joint tenants but it is open to the party asserting otherwise to prove (the burden being on him/her) that the beneficial interests are unequal and one party may in fact be no more than a nominee with the entire beneficial interest vested in the other: see e.g. *Abbey National Bank plc v Stringer* [2006] EWCA Civ 338. My search is to ascertain the parties' shared intentions, and I have, ultimately, reached firm conclusions which do not turn on where the burden lies, or the resolution of any clash of presumptions, but rather on my conclusions as to what was actually intended by the parties, to be deduced objectively from their words and their actions. If that can be discovered, as is the case here, then whatever I may think about the fairness of the ensuing result, it is not open to me to impose a

solution upon the parties in contradiction to those intentions, merely because I consider it fair to do so: *Jones v Kernott* at §46.

98. In *Stack v Dowden* Baroness Hale also had cause to consider issues relating to the liability, as between beneficiaries, to pay an occupation rent where one occupies trust property to the exclusion of another. At §93 she said this:

> ***93*** *There remains the question of the payment for Mr Stack's alternative accommodation. This matter is governed by the Trusts of Land and Appointment of Trustees Act 1996. Section 12(1) gives a beneficiary who is beneficially entitled to an interest in land the right to occupy the land if the purpose of the trust is to make the land available for his occupation. Thus both these parties have a right of occupation. Section 13(1) gives the trustees the power to exclude or restrict that entitlement, but under section 13(2) this power must be exercised reasonably. The trustees also have power under section 13(3) to impose conditions upon the occupier. These include, under section 13(5), paying any outgoings or expenses in respect of the land and under section 13(6) paying compensation to a person whose right to occupy has been excluded or restricted. Under section 14(2)(a), both trustees and beneficiaries can apply to the court for an order relating to the exercise of these functions. Under section 15(1), the matters to which the court must have regard in making its order include (a) the intentions of the person or person who created the trust, (b) the purposes for which the property subject to the trust is held, (c) the welfare of any minor who occupies or might reasonably be expected to occupy the property as his home, and (d) the interests of any secured creditor of any beneficiary. Under section 15(2), in a case such as this, the court must also have regard to the circumstances and wishes of each of the beneficiaries who would otherwise be entitled to occupy the property.*

99. Sections 12-15 of the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA") provide as follows:

> ***12 The right to occupy***
>
> *(1) A beneficiary who is beneficially entitled to an interest in possession in land subject to a trust of land is entitled by reason of his interest to occupy the land at any time if at that time—*
>
> *(a) the purposes of the trust include making the land available for his occupation (or for the occupation of beneficiaries of a class of which he is a member or of beneficiaries in general), or*

(b) the land is held by the trustees so as to be so available.

(2) Subsection (1) does not confer on a beneficiary a right to occupy land if it is either unavailable or unsuitable for occupation by him.

(3) This section is subject to section 13.

13 Exclusion and restriction of right to occupy

(1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 12 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.

(2) Trustees may not under subsection (1)—

(a) unreasonably exclude any beneficiary's entitlement to occupy land, or

(b) restrict any such entitlement to an unreasonable extent.

(3) The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 12.

(4) The matters to which trustees are to have regard in exercising the powers conferred by this section include—

(a) the intentions of the person or persons (if any) who created the trust,

(b) the purposes for which the land is held, and

(c) the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.

(5) The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him—

(a) to pay any outgoings or expenses in respect of the land, or

(b) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.

(6) Where the entitlement of any beneficiary to occupy land under section 12 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to—

(a) make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted, or

(b) forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.

(7) The powers conferred on trustees by this section may not be exercised—

(a) so as prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 12) from continuing to occupy the land, or

(b) in a manner likely to result in any such person ceasing to occupy the land,

unless he consents or the court has given approval.

(8) The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

14 Applications for order

(1) Any person who is a trustee of land or has an interest in a property subject to a trust of land may make an application to the court for an order under this section.

(2) On an application for an order under this section the court may make any such order—

(a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or
(b) declaring the nature or extent of a person's interest in property subject to the trust,

as the court thinks fit.

15 Matters relevant in determining applications

(1) The matters to which the court is to have regard in determining an application for an order under section 14 include—

(a) the intentions of the person or persons (if any) who created the trust,

(b) the purposes for which the property subject to the trust is held,

(c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and

(d) the interests of any secured creditor of any beneficiary.

100. At §94 of *Stack v Dowden* Baroness Hale said: "*These statutory powers replaced the old doctrines of equitable accounting ... [and] the criteria laid down in the statute should be applied, rather than in the cases decided under the old law, although the results may often be the same*". On the facts and applying the considerations in TOLATA, Baroness Hale agreed with the Court of Appeal who had reversed the Judge at first instance.

101. However, both parties drew my attention to *Davis v Jackson* [2017] 1 WLR 4005 in which Snowden J said this at §§43-48:

43 On one view, the statements by Baroness Hale and Lord Neuberger in Stack's case might be taken to have decided that TOLATA provides an exhaustive regime to determine whether a payment in respect of occupation of property by a co-owner is to be made in any case, and that the older

principles developed in the case law on equitable accounting are no longer applicable in any circumstances.

44 That is not, however, the view that has been taken in subsequent cases.

45 In particular, in French v Barcham [2009] 1 WLR 1124, Blackburne J expressly rejected the argument, run by a spouse against a claim for an occupation rent by her husband's trustee in bankruptcy, that Stack's case had decided that TOLATA amounted to an exhaustive regime. After referring to Baroness Hale's speech, Blackburne J continued, at paras 19–20:

> *"19. ... But it is important to note that she referred to both parties having a right of occupation. It was in that context that she was addressing her remarks. I do not understand her to have been suggesting that in cases where one of the parties has no statutory right of occupation, the statutory provisions have the effect that that party can no longer claim an occupation rent in any circumstances whatever. Lord Neuberger of Abbotsbury, who was the only other member of the House in Stack's case to express any view on the question of compensation under section 13 referred, at para 150, to 'The court's power to order payment to a beneficiary, excluded from property he would otherwise be entitled to occupy, by the beneficiary who retains occupation' (emphasis added) as being governed by sections 12 to 15 of the 1996 Act. He was, in my view, careful to emphasise that the jurisdiction applies only where the beneficiary claiming the compensation has been excluded from the property that he would otherwise be entitled to occupy.*
>
> *"20. Finally, I do not accept Mr Learmonth's submission that it would make nonsense of the statutory regime contained in the 1996 Act if the regime were not exhaustive of the entitlement to compensation for exclusion from occupation. As worded the power to award compensation under section 13(6) is only exercisable as a condition to be imposed on the occupying beneficiary in relation to his occupation of the property in question. See section 13(3). It appears to look at the matter prospectively in the context of the occupying beneficiary's continued occupation. It is not difficult, especially if that view of section 13(6) is correct, to envisage cases of exclusion where both beneficiaries had a right of occupation yet where the statutory regime would not seem to be applicable. Where the scheme applies, it must be applied. But where it plainly does not I do not see why the party who is not in occupation of the land in question should be denied any compensation at all if recourse to the court's equitable jurisdiction would justly compensate him."*

46 Some commentators have supported this approach, pointing out that there is nothing in the Preamble to TOLATA to suggest that it was intended entirely to abolish the principles of equitable accounting entirely in relation

to the payment of occupation rent, and suggesting that it would be an undesirable result if it were taken to have done so: see e g Susan Bright, "Occupation Rents and the Trusts of Land and Appointment of Trustees Act 1996: From Property to Welfare?" [2009] Conv 378. I find those arguments persuasive.

47 I also note that neither Stack's case nor the Court of Appeal decision in Murphy v Gooch [2007] BPIR 1123 that followed it, were cases involving trustees in bankruptcy. In such cases, if sections 12–15 of TOLATA were held to be an exhaustive regime, it would have the surprising result in practice that neither a bankrupt nor the trustee in bankruptcy would ever be able to claim a credit or payment under section 13 in respect of the occupation by a co-owner of jointly-owned domestic property for the period after the appointment of the trustee in bankruptcy, because neither would be able to establish a statutory right to occupy under section 12. The bankrupt would no longer have any beneficial interest in the house so as to fall within section 12(1) because his interest would have vested in the trustee. And a claim by the trustee would inevitably be defeated by section 12(2) which provides that a beneficiary does not have a right to occupy land if it is "unsuitable for occupation by him". It is difficult to envisage any circumstance in which it would be "suitable" for a trustee in bankruptcy to take up occupation of a domestic house with the bankrupt and/or their co-habitee. When compared to the result in pre-TOLATA cases such as In re Gorman [1990] 1 WLR 616 and In re Pavlou [1993] 1 WLR 1046, this would undoubtedly have amounted to a major change in the law in a very obvious category of cases, which plainly neither Baroness Hale nor Lord Neuberger had in mind when they both commented that they thought that it would be a rare case in which application of the TOLATA regime would have any different result than under the old equitable principles.

48 I therefore do not accept that I am bound to apply the statutory regime under TOLATA to this case.

102. It seems to me that that discussion is very much directed to bankruptcy cases and should not cause me to take a different approach to this case than that provided for under TOLATA. In fact, as I understood their submissions, neither party suggested that I should discard the statutory regime in favour of the general equitable principles or that the result would be any different if I did. However, Mr Dipré for the Claimant contended that in considering questions of ouster or exclusion or restriction, I could derive assistance from the old case-law, and in particular cases such as *Re Pavlou* [1993] 1 WLR 1046 where Millett J said this (at 1050):

I take the law to be to the following effect. First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the

co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive. Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts. The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant in common to charge him or her with an occupation rent which he or she never expected to pay.

103. The principles were there discussed in the context of the matrimonial home and the breakdown of a marriage, but it seems to me that the same principles should apply where an association similar to a matrimonial association has broken down and one party is, for practical purposes, excluded from the jointly owned property.

104. Dr Rowland's pleaded claim in relation to what used to be called equitable accounting related only to the alleged liability of Ms Blades to pay an occupation rent. Insofar as the pleaded claim refers to Dr Rowland's expenditure on "structural work", that was in the context of the post-acquisition constructive trust (resulting in unequal interests) that Dr Rowland contended for in the alternative to his primary case that Ms Blades had no interest at all in the Property. There was no suggestion, and no expert evidence, that any such payments on the part of the Dr Rowland had increased the capital value of the Property entitling Dr Rowland to a credit. Accordingly, insofar as such a claim was advanced in Dr Rowland's closing submissions, I find that Dr Rowland is not entitled to any credit on this account: see e.g. *Re Pavlou* at 1048G-1049B.

<u>The Evidence</u>

105. I heard live evidence from the following witnesses: Dr Rowland, Mark Roberts and Hanna Johnston, Dr Rowland's daughter, for the Claimant; Ms Blades, Stephen Blades, Jennifer Blades, Corrina Lyons and Karen Hall. In addition, Ms Blades

called Stuart Palmer, the conveyancing solicitor at B & B, who was the subject of a witness summons.

106. I propose to set out the gist of the most important parts of the parties' evidence together with the important evidence of Mr Palmer. The other evidence was of limited assistance but where appropriate I shall refer to it.

107. Dr Rowland verified his witness statement dated 24.5.19 and was then cross-examined. He described getting together with Ms Blades in 2006. At the time he was separated from his wife but not yet divorced. His principal residence was a flat in London. He said that he and Ms Blades did not set up home together but spent a lot of time together as a couple either at his flat or her house. He also accepted that they had gone on exotic holidays together which he had paid for and that he had bought Ms Blades a diamond necklace. He admitted that he saw his relationship with Ms Blades as a serious and potentially long-term relationship. He said he was not the sort of person to have short-term flings. He was asked whether he agreed that he was clever, literate and educated. He said he had a good understanding of some facets of life, particularly economics, but was naïve about other areas. When he met Ms Blades, he was working as a financial analyst for Dresdner Kleinwort Wasserstein. Whilst his earnings fluctuated considerably, he was consistently earning substantial six-figure sums. He said that he and Ms Blades began discussing buying a country house towards the end of summer 2008. They looked at a number of properties and eventually alighted upon Tadmarton House. He said that there had been some discussion about Ms Blades selling her house at Wooburn Green but she was concerned about being reasonably close to her work and also wanted to pay off her mortgage. He had the money available and funded the entire purchase price.

108. Dr Rowland was asked about the circle around the word "Joint Tenants" on the Joint Ownership of Property form and accepted that it was probably his handwriting. He was asked what the parties' intentions were and he said that there was a very clear common understanding that the Property was part of the inheritance for his daughter, Hanna. He said he understood that there would need to be a mechanism to pass the Property to Hanna and thought that mechanism would

be a will by Ms Blades. He said the Property had been bought as joint tenants purely to give Ms Blades the assurance that she could live there for the remainder of her life, in the event that Dr Rowland predeceased her. He said that Ms Blades promised to change her will to leave the Property to Hanna. He was asked about Mr Palmer's attendance note and said that the meeting on 23.3.09 had been a rather rushed affair, principally concerned with boundaries and the like. Whilst he accepted that he had no reason to believe that the attendance note had been made up, he did not accept that the note was full and accurate. He said he clearly recalled that he and Ms Blades explained to Mr Palmer what their intentions were, viz. that Ms Blades should be able to live in the Property after Dr Rowland died but that the Property would go to Hanna thereafter and that Ms Blades was going to re-write her will to give effect to that intention. He was asked whether there any specific agreement to this effect with Ms Blades to which he replied: "*Yes. We spoke about it, discussed it and agreed it. I am clear. I cannot tell you the exact date*". He said that Mr Palmer had not elaborated greatly on the difference between joint tenancy and tenancy in common at the meeting on 23.3.09 but had explained that joint tenancy was consistent with his wish that the Defendant should be able to live at the Property after his death. He said he understood the rule of survivorship and understood that the Property was as much owned by Ms Blades as by him but insisted that he had an assurance from Ms Blades that the Property would be left by to Hanna in her will. He was asked about the reference to a declaration of trust in the Joint Ownership of Property form and said that they did not need a declaration of trust because Ms Blades had committed to protecting Hanna by re-writing her will. It was put to him that the idea of Ms Blades re-writing her will only made sense if she had an interest in the Property to dispose of. Dr Rowland's answer was: "*I understand your point now but at the time I did not understand that point*". He accepted that no one had contacted Mr Palmer after the meeting on 23.3.09 to notify him of any change of plan. He maintained that there was never any intention that Ms Blades should have any beneficial interest in the Property. The only right that she was ever intended to have was a right to use the Property for her lifetime. He was asked why the purchase of the Property was not funded with contributions from both parties and his reply was this: "*I had cash resources available to me. Any offer of funds from Ms Blades would only be possible if she sold her property and she did*

not want to do this because the property was closer to her work. She also expressed a desire that she wanted to get to the point where she had paid off her mortgage".

109. He was asked about his relationship with the new partner. He said Ms Blades first found out about the relationship in November 2009 but matters came to a head in early 2011 when there was an altercation at his flat after Ms Blades found him in bed with the new partner. He said that following her discovery of the affair in November 2009, Ms Blades put restrictions on his use of the Property. He said he was prohibited from going to the Property with the new partner. He could go alone at times dictated by Ms Blades but Dr Rowland said that for much of the time with which we are concerned he was with the new partner and would have wanted to go to the Property with her. However, he feared "*a scene or something worse*" if he ignored Ms Blades' request and considered that he had to comply, albeit he considered the request unreasonable. Dr Rowland said he considered the restriction as applying to the new partner, the new partner's friends, and any other partner.

110. At the end of his evidence I asked Dr Rowland whether he had given any thought to what might happen to the Property if the relationship did not work out. His reply was: "*No, we were looking at things in a positive way. We did not discuss contingencies as to what might happen if the relationship did not work out*". However, he also reiterated his evidence to the effect that, whatever happened, the Property was to be bequeathed to Hanna.

111. Mark Roberts, Dr Rowland's financial adviser, then gave evidence. He said he was surprised that the Property had been conveyed into joint names. He was asked why he was surprised and he said it was because there had been no mention of a gift and yet Ms Blades had become a co-owner with no financial input. He said he knew about the proposed purchase before 31.3.09 and had expressed his surprise to Dr Rowland before that date. I interpose that, notwithstanding that, no change of intention was communicated to Mr Palmer.

112. Finally, I heard from Hanna Johnston, Dr Rowland's daughter. She said that her understanding of the transaction was that it was primarily an investment by her father. Her earliest discussions with her father on this subject, she said, had been at

Glastonbury in the summer of 2009, i.e. after completion of the purchase. She maintained that in these conversations her father had said to her that the plan was for the house to be in both his and Sharon's names but they had an agreement that the Property would "fall" into her name once both he and Sharon died. She was asked whether she had had any contact with Ms Blades in 2008 or in the run-up to the purchase and she said she had not.

113. I then heard evidence from Ms Blades. Ms Blades verified her two witness statements dated 21.6.19 and 22.6.20. She was then cross-examined. It was put to her that she was embittered by the breakdown of the relationship and this had caused to give false evidence. She admitted that her life had been "*ripped apart*" by the breakdown but denied that she was bitter and insisted that she had always understood that she owned half the Property. She was asked about who paid for certain holidays that they took together and she accepted that she paid for a holiday to Norway. She accepted that Dr Rowland was generally careful and did not throw away his money.

114. She agreed that the parties had decided that they wanted to buy a house in the country in the latter part of 2008 and had seen a number of properties. She said they fell in love with the Property. She was asked what discussions the parties had had about the ownership of the Property and said that there were no actual discussions or specific conversations. She said: "*I thought it was agreed that we were joint owners*" but reiterated that there were no actual discussions. She said: "*I assumed his intention was the same as mine and that we were to be joint owners*". She was asked about the parties' discussions as to how they planned the purchase of the Property once they had decided to buy it. She said that they had initially discussed pooling resources with her selling her house. However, she said she still had a mortgage which she wished to pay off and was concerned about the distance she might have to travel from the Property to work. She explained that the sellers were keen to sell quickly, and they therefore put in an offer knowing that Dr Rowland had all the money available to purchase the Property. She said that the intention was that she would then sell her property at some point and buy some fields with a view to cultivating elephant grass but then the new partner had "*come on the scene*". It was put to her that she was an independent person who wanted to keep her property

at Wooburn Green separate. She accepted that she wanted to pay off the mortgage on that property but insisted, in relation to Tadmarton House, that "*the Property was a joint property for the rest of our lives. It was going to be our joint property*". She was asked whether Dr Rowland ever said that he wanted to gift her 50% of the Property. She replied: "*No, but it proceeded as a joint purchase*". She was asked whether the parties had, prior to the purchase, discussed Hanna's inheritance prospects. She said that they had not. She was pressed on what whether Hanna was discussed in the context of the Property and how it was to be funded and replied: "*I do not recall a conversation about Hanna when we discussed buying the Property with his money*". She was asked whether that meant she could not recall such discussions or whether they did not occur. She confirmed the latter was the position. She was asked about conversations with Mr Roberts, who had become her financial adviser too, in 2010 when (it was said that) Hanna's inheritance was discussed. She said she did not recall any such conversation. She said her concern at that time was a potential IHT liability.

115. She was cross-examined at length about the long undated letter she sent to Dr Rowland in or about February 2011 and it was put to her that that was only consistent with an acknowledgment on her part that the Property belonged entirely to Dr Rowland and that he had made no gift of 50% of the Property to her. She accepted that she did not mention the word "*gift*" but she insisted that she understood the Property to be "*half mine*" and that this understanding was consistent with the fact that the parties had been together for a long time and "*were moving to the next level*". She was also aware at this time or understood that Dr Rowland had received a very substantial bonus. She was again pressed on whether "*Hanna and her prospects formed any part of their discussions*" and she replied: "*I do not recall such discussions in the context of the acquisition of the Property*". She said the first occasion on which Dr Rowland suggested that Ms Blades only had a life interest was in his email dated 26.4.14. It was put to her that she had agreed and/or promised to make a will in Hanna's favour but she denied any such agreement or promise. She said: "*We never discussed wills. Wills were irrelevant. It was not a consideration at all at that time. They were not relevant because we were going to spend the rest of our lives together*". She was asked whether wills were

relevant to Dr Rowland, to which she replied: "*They may have been but he did not say anything*".

116. Ms Blades was then asked a series of questions about the Joint Ownership of Property form. She said that they had read it many times, it was very clear and they had both signed it on 26.2.09. She said she had a good recollection of the meeting with Mr Palmer on 23.3.09 at which Mr Palmer had reiterated the terms of the form and "*explained things very clearly*". She said that Mr Palmer explained the concepts of joint tenancy, tenancy in common and a declaration of trust and confirmed the basis on which he understood the parties wished to proceed whilst also inviting them to give further consideration to the issue. She said that there were no discussions between her and Dr Rowland on the subject of ownership between 24.3.09 and 31.3.09. She was asked again about Hanna and whether she formed part of the discussions with Mr Palmer on 23.3.09 and said that there was no mention at that meeting by Dr Rowland of any wish to secure Hanna's inheritance. She said she had no recollection of any discussion about her making a will, although she accepted that Mr Palmer may have raised the issue as a standard enquiry. She was asked about Dr Rowland's pre-purchase discussions with Mr Roberts and it was put to her that it was inherently improbable that Dr Rowland would have discussed Hanna's potential inheritance with Mr Roberts but not with her. She replied: "*I don't recall prior to purchase any discussion about Hanna's inheritance*".

117. She was asked about her subsequent correspondence with Dr Rowland and in particular her email of 30.4.11. She said she was in a highly emotional state at that time and assumed she would pre-decease Dr Rowland and that the Property would then pass to him and in due course to Hanna. She insisted that it was not until 2014 that Dr Rowland began discussing Hanna's inheritance and her (Ms Blades) only having a life interest. She was cross-examined at length about the post-acquisition correspondence and dealings with the Property, but maintained, notwithstanding the potential compromises that were discussed, that she always thought it was "*joint property*" and that she was "*an equal owner*" and that when she talked about buying the Property, she was talking about buying out Dr Rowland's interest.

118. Finally, she was cross-examined about matters relating to the claim for an occupation rent. She accepted that she effectively excluded Dr Rowland from going to the Property with the new partner from November 2009 because she regarded the Property as "*our place in the country*" and "*made it plain from November 2009 that [the new partner] would not be welcome*". However, she said that the "prohibition" only lasted until July 2012 by which time she had "*come to terms with the relationship*", although she accepted that she never lifted the "prohibition". She also said that she was not generally at the Property during the week but tended to spend Saturday and Sunday there. She denied that she generally made a long weekend of it to embrace the Friday and/or the Monday.

119. I then heard from Mr Palmer, the conveyancing solicitor at B & B. He had not made a witness statement, not out of any reluctance to do so, but because he had not been asked. He was therefore examined in chief by Mr Roe and cross-examined by Mr Dipré. Mr Palmer said that he had qualified in 1998 and specialised in property law, in particular residential conveyancing and commercial property. He became a partner at B & B in 2000. He described himself as "*an experienced property lawyer*". He described the Joint Ownership of Property form as a standard form sent out at the start of the transaction to clients who are purchasing in joint names designed to capture their wishes and intentions in relation to ownership but also to explain the options available to them. He said his understanding of how the purchase was being funded was that both parties were contributing, albeit by the time of his meeting with the parties on 23.3.09, he understood the contributions were unequal. He did not know what the respective percentage contributions were and did not ask.

120. He was asked about his attendance note of 23.3.09 and said he made that note on the evening of 23.3.09. He was asked about his general practice in such circumstances and said this:

> *"The advice in relation to joint ownership is not one size fits all. The advice depends on the circumstances of the transaction and the parties themselves. I do generally have a core advice which I give in relation to joint ownership and it broadly follows the format of the form we sent out. Essentially I would explain what it means to be owners as joint tenants, I would explain survivorship and that in the event of the parties splitting up the equity is*

> *owned on a 50:50 basis. I then go on to explain the alternative where survivorship does not apply and their defined share passes under their will or intestacy rules. I then go on to explain that if you own as tenants in common, it is not necessarily 50:50 and that it is possible to define the division of the equity in any proportions by means of a declaration of trust. I would explain that the net equity means the proceeds of sale after repayment of any mortgage and the costs of sale. In particular I would discuss the position if the parties were making unequal contribution, in which case it would strongly advisable to have a Declaration of Trust which records those unequal contributions so that net proceeds are divided in accordance with the initial contributions. In the event that they intend to own as tenants in common, I would suggest that it is strongly advisable that they make wills to ensure that their defined share is left to their intended beneficiary rather than leaving it to be dealt with by the intestacy rules".*

121. He was asked what advice he gave on 23.3.09 and said that there would have been a very similar discussion, although, perhaps unsurprisingly given the passage of time, he said he now relied to a large extent on his attendance note and disclaimed any precise recollection of what was discussed. He said it was apparent from his attendance note and believed that he discussed joint ownership in the terms set out above and discussed with the parties that if they owned as joint tenants, there was a presumption that the equity would be owned on a 50:50 basis.

122. He was asked whether he knew that Dr Rowland was funding the whole purchase. He did not recall being told that Dr Rowland was funding the whole of the price but said this:

> *"In the course of the meeting it became clear that Dr Rowland was intending to make a larger contribution to the purchase price, and it was for that reason that I asked them to think long and hard about their choice to own as joint tenants. I can see that from the fact that I essentially gave them a cooling off period. I asked them to think carefully about their choice and let me know if they changed their mind".*

123. He confirmed that neither party thereafter intimated any change of plan. It was put to him by Mr Dipré that it had been made clear to him during the meeting that the Property would ultimately be owned by Dr Rowland's daughter but Ms Blades would have right to live in it. He replied as follows:

> *"No. There was no reference to his daughter at the meeting. If Dr Rowland had said that was his intention, my file note would have reflected that and my advice would have been that joint tenancy was not appropriate".*

124. He described the omission to complete Panel 10 on the TR1 as a clerical error and considered that it could be completed as it was without reference back to the clients. He said that in his view he was authorised to tick the first box in panel 10 as being in accordance with his clients' instructions.

125. It was put to him again that Hanna was discussed at the meeting on 23.3.09 but he denied this and was firm in his recollection that she was not discussed and that had she been discussed in the terms suggested the advice would have been very different. He was asked how the subject of whether Ms Blades needed a will came to be discussed and he said this:

> *"When we meet with clients in a conveyancing transaction, we have an opportunity to generate work for the private client team. That's not the overriding intention but it is always good advice for clients to make a will and my standard question is do you have a will? I think I asked both if they needed a will. It was a general question we ask clients – it was just a general question. There was no mention made of Hanna".*

126. Ms Blades also called her brother, Stephen, and sister, Jennifer, to give evidence together with her friend, Corrina Lyons and her former psychotherapist, Ms Hall, but with the exception of Jennifer, I do intend to refer to their evidence as it has not assisted me in coming to my conclusions. However, I should, briefly, refer to Jennifer's evidence because she witnessed the parties' signatures on the TR1. As to that she said this: "*At no time did either the claimant or the defendant mention any intention or understanding on the part of either, or both of them that the house that they were buying was for Hanna in any form. When I witnessed them signing the TR1 form, they were both so extremely happy and excited about buying their new house. There were no comments, statements, discussions at that time to me of the house being bought other than for them both*".

Overall Assessment of the Evidence

127. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at §§15-22, Leggatt J (as he was then) reminded judges of the fallibility and unreliability of human memory and emphasised the fact that memories are "*fluid and malleable, being constantly rewritten whenever they are retrieved*" (§17). He reminded us that "*external information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection*"; in particular it can happen that "*our memories of past beliefs are revised to make them more consistent with our present beliefs*" (§17). He observed that "*the nature of litigation is such that witnesses often have a stake in a particular version of events*" (§19), most obviously where that witness is a party, and he concluded his valuable observations by reiterating the importance of the contemporaneous documents and the need to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth (§22).

128. I also remind myself of what Baroness Hale said, to similar effect, but directed to this specific context, in *Stack v Dowden* at §68:

> *In family disputes, strong feelings are aroused when couples split up. These often lead the parties, honestly but mistakenly, to reinterpret the past in self-exculpatory or vengeful terms.*

129. I shall set out my detailed findings of fact below but before I do so, I should set out my overall conclusions on the reliability of the evidence which I heard, in particular that of the parties and Mr Palmer.

130. I have concluded that none of the witnesses were deliberately lying. Insofar as Dr Rowland and Ms Blades both mounted a direct challenge to the other's credibility, I am not persuaded that either has made good on their challenge. However, on the central issue of common intention, I do not accept Dr Rowland's evidence and prefer the evidence of Ms Blades and Mr Palmer.

131. Dr Rowland's evidence was straightforwardly given and generally clear and consistent. However, that does not mean I accept everything he says. On the contrary I have concluded that his evidence about what was discussed in the run-up to the purchase, and critically his evidence of what was discussed at the meeting with Mr Palmer on 23 March 2009, is unreliable. I am not persuaded it is tainted by ill-will but I am clear that he has misremembered the important pre-purchase discussions and conversations from 2009. Whether this is because external information has intruded into his memory and caused a significant change in recollection or whether his memories of these past events have been revised to make them consistent with his present beliefs does not ultimately matter; I am satisfied that his evidence that Hanna's potential inheritance was part of the discussion with Mr Palmer on 23.3.09 when the parties were discussing the ownership of the Property is something that Dr Rowland has come to believe but was not part of the discussions at that time. Similarly, I am not persuaded by his evidence that the issue was discussed with Ms Blades in the run-up to the acquisition of the Property, still less that there was any express agreement or understanding such as to displace the presumption that, following a purchase in joint names, equity follows the law. That is not to diminish in any way the importance of Hanna to her father; indeed Ms Blades said more than once, that Hanna was a central figure in Dr Rowland's life and he would want to ensure that she was well provided for. However, I am satisfied she was not uppermost in his mind at this time. Dr Rowland is and was a generous man and at the time of the transfer the parties were very much in love. In those circumstances, I have concluded that Dr Rowland's evidence on the issue of common intention up to and including completion of the Transfer is unreliable. I have no doubt that he regrets his earlier generosity but I am satisfied that nothing he did or said at the material time to either Ms Blades or Mr Palmer could or would have caused either of them to think that he intended anything other than that which is to be deduced objectively from his conduct, namely an intention that he and Ms Blades would own the Property jointly at law and in equity, and intending that, on the death of one of them, the surviving joint tenant would become the sole owner by right of survivorship. He may have had some different, private and uncommunicated "understanding" about how Hanna fitted into all this, which may have been genuinely held on a subjective basis but I am satisfied that there was no express

common intention at variance with that which one would naturally infer from the parties' words and conduct proximate to the transaction.

132. Ms Blades' evidence was also reasonably clear and consistent, although she plainly found the process of giving evidence more difficult and was very keen, perhaps overly keen, to get her points across, and in doing so almost descended into legal submissions. She also had a tendency to ramble, and this gave an appearance of evasiveness at times. However, on balance, I have concluded that her evidence was broadly reliable and on the critical events of 23.3.09 and what happened at the meeting with Mr Palmer, her evidence was corroborated by that of Mr Palmer. I was at one stage concerned that her oral evidence was in conflict with her written evidence but on further consideration I have concluded that that is not the case. Her evidence is, and always has been, that Dr Rowland did, and more to the point, said nothing to displace the natural inference from their pre-acquisition conduct, namely that they were buying the Property in joint names because, having been advised about the different forms of joint ownership, they intended to share equally in the net proceeds of sale, as the Joint Ownership of Property form had explained, and each intended that, in the event of the other predeceasing them, the survivor would become the sole owner of the Property.

133. In assessing Mr Palmer's evidence, it is important to recall that Mr Palmer was not an altogether disinterested witness; his firm have been threatened with legal action by both parties. I have reminded myself of this fact in considering his evidence. However, I have concluded that his evidence is reliable and should be accepted. It was clear, forthright and consistent and tallied with the contemporaneous documents. There may be legitimate cause for concern on the part of both parties that he did not see fit to go back to them for their express instructions on how he should complete panel 10 in the TR1 and, had he done so, this litigation might have been avoided. There may also be cause for concern that, having discovered by the time of the meeting on 23.3.09, as Mr Palmer admitted he had, that the parties were contributing in unequal shares, he did not enquire further or suggest that Dr Rowland take independent legal advice. However, those issues form no part of this litigation, and I do not intend to express any view on these matters. I have approached Mr Palmer's evidence with care, bearing in mind that he has a stake in

one particular version of events, but have concluded that he is a witness whose evidence I should accept.

Findings of Fact and Conclusions

134.*Issue 1: Beneficial Interests*. Towards the end of February 2009 the parties received from B & B the Joint Ownership of Property form which explained "*the different types of joint ownership available*". The form explained that joint tenants are "*each entitled to share equally in the net proceeds of sale*". It also explained the right of survivorship. I find as a fact that the parties both read it and largely understood it. I accept that it did not explain, as it might have done, that joint tenants at law could be tenants in common in equity but there was a clear explanation of tenancy in common and the circumstances in which that might be appropriate, including where the parties had contributed in unequal shares to the purchase price.

135.The key to understanding joint tenancies and tenancies in common is always to consider the legal estate separately from the equitable interest. Thus A and B may be legal joint tenants but equitable tenants in common. The effect of A's death in those circumstances is that B is solely entitled to the legal estate but A's equitable interest passes under his will or intestacy. I note that Dr Rowland specifically says in his witness statement that "*The conveyancing solicitor never explained the difference between joint tenants in law and joint tenants in equity*" and I am prepared to accept that evidence. To that extent Dr Rowland may have had a less than complete understanding of the law. There are, potentially, other complaints that can be made about the legal advice he received from B & B, particularly once Mr Palmer knew (as he accepted that he did) that the parties were contributing to the purchase in unequal shares. Mr Palmer said he did not know the extent of the inequality (100:0) but it might be said that he should have asked, and had he done so, matters would have taken a different course. However, as I have previously indicated, this is not a professional negligence claim against B & B and nothing I say should be taken as an adverse finding against the firm. However, Dr Rowland's understanding of the consequences of a conveyance into joint names is clearly relevant to the present claim, albeit in no way decisive (see e.g. *Stack v Dowden* at §67), and I have therefore carefully considered the extent to which he understood

the possible consequence of a conveyance into joint names. Having done so, I am satisfied that he did in fact understand and intend joint beneficial ownership with the right of survivorship and he did so because he was in love with Ms Blades at the time and saw his long term future as being with her. Importantly, I reject Dr Rowland's evidence that he made any mention of Hanna (or a desire to leave the Property to her) to Mr Palmer on the occasion of their meeting on 23.3.09. Had he done so, I am satisfied that, as Mr Palmer said, his "*file note would have reflected that and my advice would have been that joint tenancy was not appropriate*". Having carefully considered what the parties did and said in the run-up to completion, and pointedly, what they did not say, I have concluded that the only intention discernible to Ms Blades or reasonably understood by her to be manifested by Dr Rowland's words and conduct at the material time was a common intention to own the Property as beneficial joint tenants. The conveyance into joint names was not an accident; it was a conscious decision. The conveyance into joint names, in the context of parties who were then in love and saw their future together, and who had previously read, digested and signed the Joint Ownership of Property form (and circled "*Joint Tenants*") and returned it to B & B saying that "*our intention is to purchase Tadmarton House as Joint Tenants*", is the best evidence of what was intended. Nor should it be forgotten that, even after exchange of contracts, Mr Palmer in his letter dated 24.3.09 gave them a "*cooling-off period*" as he described it and invited them to let him know of any change of plan before completion. They did not do so.

136. Dr Rowland relied heavily on the mention in Mr Palmer's attendance note of the fact that Ms Blades needed a will as supporting his contention that he was concerned to protect Hanna's inheritance. I am satisfied, however, that Mr Palmer raised the issue of a will as a matter of general routine in an effort, as he said, to generate work for his private client team. When pressed in cross-examination as to whether Hanna and the need to protect her inheritance had been mentioned at the meeting on 23.3.09, Mr Palmer was insistent, and in my judgment entirely credible, when he replied:

> *"No, I can be quite clear on that. If he had revealed that, the file note would have said so; it would have been a significant factor and the advice would*

have been that tenancy in common and a declaration of trust would have been appropriate".

137. The relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that person's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party: *Jones v Kernott* at §51(3). What the parties said and did in the run-up to completion only bears one interpretation and no one could or would have reasonably understood that the parties' conduct evinced any other intention than joint beneficial ownership. True it is, as Dr Rowland said and Ms Blades accepted in evidence, he never said in terms that he was gifting half of the Property to Ms Blades. However, he never said that he was not, and insofar as Dr Rowland had some different intention at odds with the intention reasonably to be divined from his words and conduct, I am satisfied and find as a fact that he did not communicate it to Ms Blades or Mr Palmer. In any event, there is, it seems to me, a palpable lack of clarity as to what this different intention may have been, beyond some kind of general wish to ensure that Hanna was well provided for. Dr Rowland made much of his last-minute exchange with his financial adviser, Mr Roberts, on 31.3.09 when mention was made of Hanna and a possible "*second inheritance tax liability*" but Ms Blades was not copied into this email and Mr Roberts appeared to be proceeding on the basis that the parties were buying as joint tenants in equity because he said: *"... the basis of ownership i.e. joint tenancy and a new tenancy-in-common arrangement can be set up (and it doesn't have to be a 50/50 split)*". I am satisfied that if Dr Rowland had some different intention, he did not communicate it to Ms Blades and it was not a common intention.

138. It is quite possible that, with the passage of time, Dr Rowland has convinced himself that he had some clear contrary intention which he communicated to Ms Blades and Mr Palmer, but I am satisfied that he said and did nothing to disabuse them of the conclusions that they would naturally have drawn from what he said and did prior to 31.3.09. Listening to Dr Rowland's evidence, and Mr Dipré's closing submissions, and I intend no disrespect to either, I was reminded of what Baroness Hale said in *Stack v Dowden* at §62 where she said this:

> *62. Furthermore, although the parties' intentions may change over the course of time ... at any one time their interests must be the same for all purposes. They cannot at one and the same time intend, for example, a joint tenancy with survivorship should one of them die while they are still together, a tenancy in common in equal shares should they separate on amicable terms ... and a tenancy in common in unequal shares should they separate on acrimonious terms ...*

139. Ultimately, Dr Rowland's evidence on the critical issue of common intention just did not hang together and fit with the contemporaneous documents. Accordingly, insofar as his evidence is inconsistent with the evidence of either Ms Blades or Mr Palmer, I reject it and prefer their evidence.

140. In coming to this conclusion, I have not ignored the later correspondence and its possible impact on any conclusion about what the common intention was. However, I have concluded that there is, on a careful analysis, nothing in that material which should cause me to revisit my conclusion. Both sides can point to correspondence which might be thought to lend some support their case. The high-point of Dr Rowland's case based on this material is probably Ms Blades' email dated 30.4.11 where, at the end of that email, she said: "*At the end of the day, TH is an investment for you and Hanna*". However, that has to be read in context. The context was that Dr Rowland had "*lost all interest in the house*" as Ms Blades had recorded in the earlier part of the email. It was therefore nothing more than an investment for him. However, I am satisfied for the reasons I have already given no mention was made of Hanna at the time of acquisition and it is to be recalled that the Buyers Questionnaire had been completed on the basis that the Property was *not* an investment purchase. I would also note that only a few days later, on 3.5.11, Ms Blades was reminding Dr Rowland that "*TH belongs to us both*" and within a month, on 1.6.11, Dr Rowland was confirming that "*it's at least as much yours as mine*".

141. It is true that Dr Rowland also, in 2014, made reference to the fact that "*we sort of had an agreement*", but I confess I find this correspondence singularly unpersuasive as to the fact or terms of any such agreement. In Dr Rowland's own words, "*that*

agreement probably needs some details filled in", but as a matter of fact I reject the suggestion that that there was any agreement of the kind that he now alleges.

142. Both parties made what might be termed declarations against interest but I have to consider the whole course of dealing and reach an overall conclusion. When all is said and done, the post-acquisition correspondence and conduct is coloured by the fact that the parties' relationship was breaking down or had broken down. It is no surprise that Dr Rowland's priorities had changed and Hanna's interests appear to have been uppermost in his mind but that was not the position in February/March 2009. Hanna's own evidence does not really shed any light on what the common intention of these parties was in February/March 2009.

143. I am satisfied that both parties expended reasonably substantial sums of money on the Property after the relationship had broken down but in the circumstances and having regard to the terms in which these matters were discussed I infer nothing about the common intention beyond a sensible and pragmatic determination on the part of both parties to look after the Property. I accept that Ms Blades had an obvious interest in paying the running costs because she was using the Property but I do not consider that the agreement on the part of Dr Rowland to pay for structural items bears any great significance. Nor do I consider the fact that Dr Rowland paid more than Ms Blades to be of any significance. According to the parties' respective schedules, Dr Rowland paid about £208,000 whilst Ms Blades paid about £141,000 towards the costs of running and maintaining the Property. There was no challenge to Dr Rowland's figure. Mr Dipré suggested that Ms Blades' figure was inflated by what he submitted were gratuitous overpayments by Ms Blades to her brother, Stephen, who did the gardening at the Property. I do not need to and do not intend to resolve that dispute. It makes no difference to the outcome of the case. On any view, Ms Blades made a substantial financial contribution to the upkeep and running costs of the Property which was probably in excess of £100,000, the precise figure is immaterial, and it is not therefore right to say, as the Particulars of Claim alleged, that Dr Rowland had made an "*unmatched contribution*" to the costs associated with the Property. Insofar as the suggestion was that Ms Blades had contributed nothing, I reject that suggestion and am satisfied that she had expended in excess of £100,000 on the Property between 2009 and 2018. This averment on

the part of Dr Rowland was made to support an allegation that the Claimant was the sole beneficial owner, alternatively was entitled to "*a total of 60% at least*" on the basis of his "*additional contributions*" and that the Court should impute such an intention. I find that Dr Rowland paid more because he was much wealthier than Ms Blades and could afford to do so. It was no more complicated than that. However, I am satisfied that in expending money on the Property, both parties did so in the belief that they had an interest in it and thus an interest in maintaining it. In the circumstances, I neither infer nor impute some other common intention at variance with that established at the time of acquisition.

144. The die was cast on 31.3.09. The parties could have formed a different intention thereafter but I am satisfied that they did not. Mr Dipré could not point to any post-acquisition agreement to this effect and could not claim that expenditure incurred by Dr Rowland was in reliance on any such agreement and to his detriment. I am satisfied that there was no express agreement to vary the existing beneficial interests and in the absence of such an agreement, the court should be slow to infer from conduct alone that the parties intended to vary existing beneficial interests established at the time of acquisition: see e.g. *James v Thomas* [2008] 1 FLR 1598 at §24. When I asked Mr Dipré to clarify when the variation he relied on occurred, he said "not later than April 2011". In my judgment, there is nothing in the whole course of conduct after acquisition, whether before or after this date, to support any inference that the parties intended to vary the existing beneficial interests. The parties' conduct is readily explicable by reference to their pragmatic agreement to share the running costs in the manner agreed and in any event is not such as to warrant any inference. I would also note that as late as November 2017, Dr Rowland's then lawyers had prepared a draft Declaration of Trust which recited that the parties were "*beneficial joint tenants*". I reject Dr Rowland's alternative case and am satisfied that the parties' post-acquisition conduct is not such as to warrant any inference or imputation varying the beneficial interests. Nor does it affect my conclusion as to what the common intention was at the time of acquisition.

145. In one sense, the outcome is a harsh one for Dr Rowland who contributed the whole of the purchase price in acquiring a country house to be used as a weekend and holiday retreat by a couple who each had their own properties and who never saw

fit to pool their resources. Before *Stack v Dowden*, the result may have been a different one and I have not overlooked the fact that in *Stack v Dowden* the Court actually departed from the presumption of joint beneficial tenancy principally on the basis that the contributions to the purchase were unequal and the parties had never pooled their resources. However, that was a case where the Court had to fill the void left by the complete absence of any indication of what the parties intended. In the present case, there was very clear evidence as to the advice given to the parties at the time of the transfer and what they did in response to that advice, and I am satisfied that this sheds decisive light on what they intended and what would reasonably be deduced as their intentions. Whilst a number of the factors referred to as relevant in *Stack v Dowden* (§69) might be thought to point in the opposite direction, I am satisfied that the cumulative weight of the signed Joint Ownership of Property form, Dr Rowland's email dated 27.2.09 confirming (having read that form) that the parties intended to purchase as joint tenants and Mr Palmer's attendance note of 23.3.09, coupled with the lack of any response to his letter dated 24.3.09, is such that I should conclude that the parties intended to be joint owners at law and in equity. Whatever I may think about the fairness of the result is irrelevant; *Stack v Dowden* and *Jones v Kernott* marked a decisive break and move away from the presumed resulting trust in this context and as Baroness Hale famously said in *Stack v Dowden*, "*in law, context is everything*" and "*cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual*" (§69).

146. *Issue 2: Occupation Rent*. The claim for an occupation rent covers the period from September 2009 until the end of October 2018, a period of 110 months ("the Full Period"). Mr Edward Briggs FRICS, the single joint valuer, provides three different valuations as follows for the Full Period: (1) the total annual rent payable assuming an assured shorthold tenancy ("AST") is put at £584,000; (2) the total rental income for occasional weekend and short usage for short term licenses is put at £495,000; (3) the average daily rate for occasional weekend and holidays during the period is £260 per day for long weekend (3 days) and bank holiday use and £104 per day for other days.

147. I have to consider whether an occupation rent is payable in principle and if it is, on what basis and over what period it should be paid. In their closing submissions the parties proposed and I agreed that I would decide the issue of principle and find the necessary facts and the parties would then file brief written submissions (limited to 2 pages) to deal with quantum by reference to the valuation evidence of Mr Briggs.

148. There is no question here of an actual physical exclusion or ouster as it used to be called. At one time the prevalent practice appears to have been that a co-owner in sole occupation would only be required to give credit for an occupation rent if he had actually ousted the other co-owner from the jointly-owned property but the more recent authorities made it plain that an occupation rent may be ordered in any case where this was necessary to do broad justice or equity between the parties: see e.g. *Re Pavlou* (above). However, the law has again moved on and I must apply the statutory principles derived from ss.12-15 of TOLATA, rather than the old rules of equitable accounting, even if the result is likely to be the same. As Lightman J explained in *Murphy v Gooch* [2007] EWCA Civ 603 at §14:

> *"The wider ambit of relevant considerations means that the task of the court must now be, not merely to do justice between the parties, but to do justice between the parties with due regard to the relevant statutory considerations".*

149. It is the duty of the court applying the statutory principles to do justice between the parties with due regard to the statutory considerations. The first and second of these considerations are the intentions of Dr Rowland and Ms Blades as creators of the trust and the purposes for which the Property is held. The trust was created so that the Property should be their joint weekend/holiday home (a purpose that had failed by November 2009) and from that date I am satisfied that Ms Blades used the Property to the effective or constructive exclusion of Dr Rowland, at least so far as weekend usage is concerned. I say that for the following reasons. Ms Blades accepted in evidence that she "*made it plain from November 2009 that [the new partner] would not be welcome*". True it is, that on occasion she "invited" Dr Rowland to provide her with dates when he might want to visit the Property, but Ms Blades was very much in control of the agenda and in situ at the Property, certainly

at weekends (which was the only time that Dr Rowland could realistically go), and any invitation was always subject to the clear proviso that Dr Rowland was not to attend at the Property with the new partner. That stipulation is perhaps understandable on one level, given Ms Blades' strong feelings on the subject, but I consider it to have been an unreasonable restriction and Ms Blades never withdrew it. I accept that Dr Rowland acknowledged Ms Blades' sensitivity around this subject, and agreed not to take the new partner to the Property, but I do not believe that I should hold this against Dr Rowland and find that he thereby voluntarily excluded himself. It seems reasonably clear that had Dr Rowland ignored Ms Blades' wishes and taken the new partner to the Property, there is every risk that there would have been another altercation of the kind that occurred in early 2011 when Ms Blades turned up at Dr Rowland's flat unexpectedly.

150. It is, it seems to me, a matter of fact and degree in any particular case whether there has been an exclusion or an unreasonable restriction within the statutory sense and on balance I consider that there has been, as from 1 November 2009. Ms Blades said that she had come to terms with Dr Rowland's relationship with the new partner by the summer of 2012 and that any liability (none being accepted) should cease as from that date but she never informed Dr Rowland then or at any other time thereafter that he was free to use the Property with the new partner. However, Dr Rowland's relationship with the new partner ended in October 2015 and there was, I find, nothing to stop Dr Rowland from making fair use of the Property from 1 November 2015. Dr Rowland said he regarded Ms Blades' restriction as applying to any new partner but it was not put in those terms and I propose therefore to take 1 November 2015 as the cut-off point.

151. Having regard to the statutory considerations, the breakdown of the parties' relationship, Ms Blades' prohibition of user by Dr Rowland in the company of the new partner and the weekend use made of the Property by Ms Blades since then to the effective exclusion of Dr Rowland, I consider that it is just that Ms Blades pay an occupation rent to Dr Rowland.

152. The period for which Ms Blades is liable to pay an occupation rent will be the period from 1 November 2009 until 30 October 2015, a total of 72 months. During that period I find that Ms Blades' use to the exclusion of Dr Rowland was, on average, for 3 days a week, being a Saturday and a Sunday and either a Friday or a Monday. Ms Blades maintained in evidence that, in general, she only used the Property for the Saturday and Sunday but in an email to Dr Rowland dated 2.5.14 she confirmed, referring to the Property, that she was "*often here Monday's and Friday's as well as the weekend*". I note too that when in the course of 2014 it was necessary to tell insurers about the Property's occupation, Dr Rowland informed the broker, with Ms Blades' agreement, that "*Sharon is there just about every weekend and those weekends normally cover Fridays and Mondays (as she works from home)*". I accept there were variations in the pattern of usage, sometimes more and sometimes less (because Ms Blades was away on business), and nor have I forgotten the fact that on rare occasions after November 2009 the parties spent a limited amount of time *together* at the Property, but doing the best I can I am satisfied that an average of 3 days' use by Ms Blades taking in the weekend is a reasonable basis upon which to proceed. I do not consider it likely that Dr Rowland would have wished to, or been able, to use the Property during the week and I therefore do not consider it just to award compensation on the more expansive basis advanced by Dr Rowland in his Particulars of Claim. However, for the avoidance of any doubt, I am satisfied that Dr Rowland would have wished to and would have been able to use the Property for 3-day weekends when it was his turn, but for the unreasonable exclusion/restriction. I would invite Counsel to address me on the appropriate daily rate in their written submissions on quantum. There would have been 4 such 3-day periods per month, but Ms Blades as a beneficial co-owner was entitled to use the Property 50% of the time in any event, and this will need to be reflected in any calculation. I hope the parties will be able to agree quantum in the light of these findings but if they cannot, I will determine the issue on the papers in the light of the parties' submissions. The calculation of an occupation rent in such circumstances is more of an art than a science but I am satisfied that the approach set out above does broad justice to the facts of this case.

153. The result is that Ms Blades succeeds on Issue 1 and Dr Rowland succeeds to a limited extent on Issue 2.

Post-Script

154. After the circulation of a draft of this judgment in the usual way pursuant to Practice Direction 40E of CPR 40 and pursuant to paragraph 147 above, I received further written submissions from the parties dealing with the quantum of the claim for an occupation rent in the light of my findings above and the valuation evidence of Mr Briggs, together with submissions on costs. I now determine those two outstanding issues and certain minor consequential matters relating to the final form of order.

155. *Occupation Rent*. I am bound to say that I was unpersuaded by either of the parties' submissions in relation to quantum. In my judgment, the Claimant's figures were unrealistically high contending for a daily rate of £650 per day and a total figure of £288,800 and the Defendant's figure were unrealistically low, contending for a daily rate of £83.34 (or £250 per 3-day weekend) and a total figure of £36,000.

156. I remind myself that having found that Ms Blades should pay an occupation rent to Dr Rowland, my task in ascertaining the amount of such rent is to do justice between the parties with due regard to the relevant statutory considerations and having regard to my findings of fact above. It seems to me that the fairest way to arrive at the appropriate figure in the particular circumstances of this case, dealing as we are with a holiday home (albeit a very grand one) and an exclusion at weekends (including a Monday or a Friday) only, and having regard to the principles on which mesne profits are calculated by way of analogy, is to ascertain a daily rate for such weekend usage that reflects the open market value of such usage.

157. On my findings the Defendant unreasonably excluded Dr Rowland and thereby had the exclusive use of the Property every weekend (including a Friday or a Monday)

for 6 years. She was of course a beneficial joint tenant and the figures must therefore be adjusted accordingly but, in my judgment, the appropriate calculation is 6 years x 52 weeks x 3 (days) x the appropriate daily rate x 50%.

158. In arriving at the appropriate daily rate, I must have regard to the expert evidence of the joint expert, Mr Briggs. In considering the evidence of the joint expert, I consider that Mr Briggs' Valuation 3 is the most relevant and helpful in the present circumstances. This valuation considers "*the rent that would be payable for occasional weekend and short usage of Tadmarton House from September 2009 to October 2018*". At paragraph 24.3.1 of his Report Mr Briggs says this:

> *"I am of the opinion that the Rental Value that would have been payable over the period September 2009 – October 2018 for the occasional weekend and short usage of the Property over the period is as set out in the table below:*

Date	*Yearly*	*Monthly*	*Daily*
Sep-18	*£62,550*	*£5,212*	*£171*
Sep-17	*£60,191*	*£5,016*	*£165*
Sep-16	*£57,922*	*£4,827*	*£159*
Sep-15	*£55,739*	*£4,645*	*£153*
Sep-14	*£53,637*	*£4,470*	*£147*
Sep-13	*£51,615*	*£4,301*	*£141*
Sep-12	*£49,669*	*£4,139*	*£136*
Sep-11	*£47,797*	*£3,983*	*£131*
Sep-10	*£45,995*	*£3,833*	*£126*"

159. It seems to me that that these are the figures I should adopt. I reject the Claimant's submission that I should use his suggested figure of £650 per day. This figure is based on a starting point of £2500 for a 3-day weekend and hence an initial daily rate of £833 which is then discounted as explained at §§13-16 of Mr Dipré's quantum submissions. However, it seems to me that in adopting this figure, Mr Dipré is not properly reflecting the evidence of Mr Briggs, in particular the evidence which he gives at paragraph 24.3.1 of his Report in relation to Valuation 3 which he confirms as correct at page 9 of his Addendum. I also reject the Defendant's submission that these daily rates should be discounted by 40% because "*these are full market rates likely to have been secured from holidaymakers booking through, e.g., booking.com and who by definition are therefore likely to be*

paying for a special treat". I consider the open market rate to be the appropriate rate, having regard to the analogy with mesne profits. I had previously mentioned the figure of £260 per day (paragraph 146 above) but on reflection I agree with the Defendant's submissions that this is not the appropriate daily rate for the reasons explained by Mr Briggs at page 10 of his Addendum.

160. Applying the appropriate daily rates for the 6 years in question produces the following:

2009-2010: £126 per day x 3 days = £378 x 2 per month = £756 x 12 = £9,072

2010-2011: £131 per day x 3 days = £393 x 2 per month = £786 x 12 = £9,432

2011-2012: £136 per day x 3 days = £408 x 2 per month = £816 x 12 = £9,792

2012-2013: £141 per day x 3 days = £423 x 2 per month = £846 x 12 = £10,152

2013-2014: £147 per day x 3 days = £441 x 2 per month = £882 x 12 = £10,584

2014-2015: £153 per day x 3 days =£459 x 2 per month = £918 x 12 = £11,016

Total £59,958

161. I therefore assess the occupation rent or compensation payable under s.13(6) of TOLATA in the sum of £59,958. In my judgment, this figure does justice between the parties, giving due regard to the relevant statutory considerations and my findings of fact above.

162. ***Costs***. The Defendant has succeeded on the main issue, Issue 1, relating to the beneficial interests in the Property. That issue took up the lion's share of the time and evidence and argument (and preparation). I remind myself too that the dispute was over a property now worth in excess of £2m. The Claimant has succeeded (in part) on Issue 2 but by comparison, in terms of value, his "success" is a relatively modest one. He has not succeeded in full by any means (and I do take this factor into account) but it is a meaningful success, not a pyrrhic victory, and I do have regard to the amount of time spent on Issue 2, as reflected in the papers, the course

of argument and my judgment. Neither party has drawn my attention to any relevant offers in relation to Issues 1 or 2 that bear on the issue of costs. There is no doubt whatever that the overall winner and successful party is the Defendant. On that basis, Mr Roe submits that she should be awarded all her costs and I should not be too ready to depart from the general rule that the unsuccessful party pays the successful party's costs: see e.g. *Fox v Foundation Piling Ltd* [2011] EWCA Civ 790. I have carefully considered that submission but reject it; I consider that such an order would not properly reflect the fact that Ms Blades resisted making any payment at all by way of an occupation rent and lost that argument. The order for costs that I make in the exercise of my discretion, having regard to all the circumstances of the case, is an order that the Claimant do pay 90% of the Defendant's costs of the action to be subject to detailed assessment if not agreed. I order the Claimant to make an interim payment on account of costs in the sum of £100,000 by a date to be agreed between the parties or settled by me, and the Claimant may satisfy the first £59,958 of this liability by setting off against it the sum owing to him by way of an occupation rent.

163. It only remains for me to thank Counsel and the parties for the sensible and cooperative manner in which this remote trial was conducted.