



Neutral Citation Number: [2024] EWHC 1082 (Ch)

Case No: PT-2021-000785

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

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

Date: 8 May 2024

**Before :**

**THE HONOURABLE MR JUSTICE RAJAH**

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**Between :**

**Tajleena Islam**

**Claimant**

**- and -**

**(1) Sultana Jahan Islam**  
**(2) Rahit Islam**  
**(3) Sayed Zaynal Abedin**

**Defendants**

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**Emma Read** (instructed by **Middletons Solicitors**) for the **Claimant**  
**George Woodhead** (instructed by **BP Collins LLP**) for the **First and Second Defendants**

Hearing dates: 26, 27, 28, 29 February, 1, 4, 5, 6, 7, 8 March

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**APPROVED JUDGMENT**

## Mr Justice Rajah:

### Introduction

#### *The parties*

1. Mohammed Nurul Islam (“**Mohammed**”) died on 13 June 2017 aged 70. The Claimant (“**Tajleena**”) is his daughter. The First Defendant (“**Sultana**”) is her mother, Mohammed’s wife. The Second Defendant (“**Rahit**”) is Tajleena’s brother and only sibling. The Third Defendant (“**Mr. Abedin**”) has been appointed by court order to represent the estate of Mohammed. I refer to immediate members of the Islam family and Tajleena’s husband by their first names for convenience and clarity in distinguishing between them. No disrespect is thereby intended.

#### *The main issues*

2. Between 2000 and 2006 five residential properties in east London, and a plot of land in Billericay, were purchased (“**Fellows Court**”, “**Skiers Street**”, “**Louise Road**”, “**Litchfield Avenue**”, “**Cann Hall Road**” and “**the Billericay land**” – together “**the Properties**”). In respect of each of the Properties apart from Skiers Street, there is trust documentation before the Court that was signed (or purportedly signed) by Mohammed, Sultana and Tajleena declaring that those properties were held as to 50% for Tajleena and 50% for Sultana. Tajleena says that a deed in August 2006 (“**the August 2006 Deed**”) which reduced her interest in four of the Properties to a third was procured by undue influence. In 2008, Fellows Court was ostensibly transferred to Mohammed and Rahit. Tajleena says the HM Land Registry form TR1 transfer document (“**the 2008 Fellows Court TR1**”) is one of nine documents relating to the Properties where

her signature has been forged. By declarations of trust bearing the date 13 November 2016 (although it is disputed that this is the date the documents were signed) (“**the 2016 Deeds**”), Tajleena declared that she had no interest in Skiers Street, Louise Road, Litchfield Avenue and Cann Hall Road and that those properties were held for Mohammed and Sultana. Tajleena signed TR1s bearing the date (again disputed) 2 June 2017 (“**the 2017 TR1s**”) transferring Skiers Street to Rahit and Louise Road, Litchfield Avenue and Cann Hall Road to Mohammed and Sultana as beneficial joint tenants. Tajleena says that her signatures to the 2016 Deeds and the 2017 TR1s were obtained by undue influence. Tajleena’s claim is for declarations that she remains the 50% owner of the Properties, and orders consequential upon that.

3. Rahit and Sultana dispute the allegations of forgery and undue influence. They also say that, in any event, Tajleena never had any interest in any of the Properties which were at all times owned by Mohammed and Sultana. The trust and other documentation which suggest otherwise are sham documents intended to conceal Mohammed’s interest in the Properties from his creditors from a failed nursing home business. They counterclaim for declarations that Louise Road, Litchfield Avenue, Cann Hall Road and the Billericay land are now owned by Sultana, and Fellows Court and Skiers Street are owned by Rahit.
4. The estate of Mohammed takes a neutral stance.

*How the issues relate to each other*

5. Sultana and Rahit rely on the alleged sham to show that Tajleena never had a beneficial interest in the Properties. As I explain below, in the section headed “Sham”, whether and to what extent Sultana and Rahit may rely on the

allegations of sham, if there is one, depends on an application of the principles in *Patel v Mirza* [2016] UKSC 42.

6. If there was such a sham, which the Court permitted them to rely on, then Tajleena has no interest in the Billericay land.
7. If Tajleena's signature to the 2008 Fellows Court TR1 has not been forged, then whether her purported beneficial co-ownership of Fellows Court was a sham is not relevant. If, however, her signature has been forged, then the existence of a sham in relation to the beneficial ownership of Fellows Court, if Sultana and Rahit were permitted to rely on it by the Court, would mean that Tajleena would not have had a beneficial interest in Fellows Court before or after the purported transfer.
8. If there was in fact such a sham, then that would be relevant to the factual question of how disadvantageous the 2016 Deeds and 2017 TR1s really were when considering the allegations that these were disadvantageous transactions which Tajleena was unduly influenced into making. On that factual question, it does not seem to me that the principles in *Patel v Mirza* are engaged.
9. If either the 2016 Deeds or the 2017 TR1s are valid, then Tajleena's claims that she is a beneficial owner of Skiers Street, Louise Road, Litchfield Avenue and Cann Hall Road fail, regardless of whether the preceding declarations of trust are valid and are not shams.
10. If both the 2016 Deeds and 2017 TR1s are invalid and set aside, the existence of such a sham, if Sultana and Rahit were permitted to rely on it, would mean

that Tajleena, notwithstanding success in establishing undue influence, still had no interest in the Properties.

11. If the consequences which flow from the findings which are made are that an interest in any of the Properties remained vested in Mohammed on his death, then while Tajleena's claim in relation to that interest in these proceedings might fail, she might benefit under Mohammed's Wills or on his partial intestacy.

### **The Trial**

12. The Claimant's witnesses of fact were Tajleena and her husband Ludovic Simmerling ("**Ludovic**").
13. Sultana, Rahit, Shahidul Islam, Mahabub Rashed, and Mr. Abedin gave evidence for the First and Second Defendants in person. Laila Banu and Bakshi Ahmed gave evidence remotely from Bangladesh by video link.
14. In addition, expert reports and a joint report were filed by Ellen Radley for Tajleena and Stephen Cosslett for Sultana and Rahit. Ms. Radley was called to give evidence. Tajleena did not require Mr. Cosslett to be called for cross examination.
15. As far as documentation is concerned there are documents recovered from HM Land Registry, solicitors' files, banks and other institutions. There are some documents from Mohammed's papers and from the computer at Cann Hall Road. Sultana and Rahit say that Tajleena, who is now in occupation of Cann Hall Road and from which they are excluded, has not disclosed and is

suppressing or has destroyed relevant documentation from Mohammed's papers and the computer at Cann Hall Road.

## **Witnesses**

16. The approach I take to the assessment of the oral evidence is to weigh it in the context of the reliably established facts (including those to be distilled from contemporaneous documentation), the motives of the protagonists, the possible unreliability of human memory and ultimately, the inherent probabilities.
17. This is a case in which I have come to the conclusion that most of the key protagonists have not been truthful in the evidence that they have given the Court. I set out here some general observations and conclusions about the witnesses and their evidence. I deal with the specific evidence of witnesses on the issues as it arises elsewhere in the judgment.

### *Tajleena*

18. Tajleena was born in September 1980 and is now 43 years old. She studied medicine in the Czech Republic from 2002 to 2011. She did not pass her final exams. On her return to the UK she continued her science based studies. While in the Czech Republic she began a relationship with Ludovic and she married him in 2014 notwithstanding Mohammed's disapproval. She has two children and she does not work. Her relationship with Ludovic was turbulent, with violence in both directions. They both say that their relationship ended in 2016 or 2017 but they co-habit to parent their children. She appeared to me to be a confident, strong, independent lady.

19. She also has a fearsome temper. There are in the papers angry exchanges by email in 2010 and on MSN messenger in 2011. In the MSN messenger exchange she angrily berates Mohammed because he will not increase the allowance he was sending her for her maintenance while she was in the Czech Republic. She readily accepted in evidence that she had lost her temper. This was not a momentary loss of control. It is an exchange which must have lasted some time because it stretches over 11 pages. It is also a one sided loss of control. In that exchange Mohammed is restrained and mollifying. The email exchange is even angrier and relates to an incident in which Rahit used her bedroom at Cann Hall Road on his wedding night.
  
20. Both these exchanges show that by 2010 and 2011 at least, Tajleena's relationship with Rahit was foul. Tajleena was not invited to Rahit's wedding in 2010. Rahit obtained the keys to Tajleena's bedroom in Cann Hall Road and he and his wife used it, in Tajleena's eyes, "as their honeymoon suite". Tajleena's emails to her father on the subject were apoplectic. Her email on 10 August 2010 recounts to her father a raw, angry, exchange between Tajleena and Rahit in which insults were hurled. It reveals (from Tajleena's perspective) a long running and deep seated resentment of Tajleena by Rahit because the Properties were in her name and that Rahit told Tajleena that she was his enemy. According to Tajleena, Rahit had said that his appropriation of Tajleena's bedroom was "to take what should have been mine". The exchange is simply Tajleena's version of events in an angry email to her father, but I believe it corroborates Tajleena's evidence (which Rahit denied) that their relationship had been bad for years before this exchange.

21. From what I can see of her character, I do not think it would be very easy to force Tajleena to do something important that she did not want to do.
22. She gave her evidence over two days. When she gave evidence she was calm, confident and polite. She had plainly immersed herself in the case, the issues and the documents, and had thought about what her answers should be to obvious questions.
23. She would not accept any point which she thought might not assist her. Initially I thought she might simply be reviewing the past through a prism of perceived injustice which was colouring her evidence. By the end of her evidence I was satisfied that she was providing dishonest answers if she considered they would advance her case.
24. There were occasions where she paused to calculate what the best answer should be. She changed her evidence throughout and often gave answers which were inconsistent with her witness statement. To take one example, she was asked what interest she thought she had had in Fellows Court immediately after it had been purchased and before any declaration of trust. After a long pause, she said that it was intended to be owned as to 50% by her and 50% by her mother (i.e. as eventually declared by the relevant declaration of trust). When asked why, then, the property had been transferred into Mohammed's name as well as hers and Sultana's, she changed her evidence and said that the intention initially was that it be held in equal shares – i.e. a third for her and each of her parents. When it was pointed out that in paragraph 28 of her witness statement she had said that the initial intention was to hold as to 50% for her and 50% for (both) her



parents she changed her evidence again. There were therefore three different versions of her evidence on this issue in as many minutes.

25. She was caught out a number of times in cross examination. One example is when asked to explain why she had claimed to the Nationwide Building Society in 2000 that she had an income of £8,000. She initially tried to justify the figure as correct by calculating what she said her share of the rental income of the Properties would have been. When it was pointed out that in 2000 only Fellows Court had been purchased she was caught out and had no satisfactory answer, but persisted lamely in maintaining that it was unspecified rent from unspecified property. Watching her give this evidence it was clear to me that she knew that this was false evidence. She knew that she did not have an income of £8,000 in 2000. That was a lie to the Nationwide and her evidence on the issue in the witness box was also a lie.
26. Another example is that Tajleena confirmed that she had made a Will in 2003 which left her estate to Rahit if her parents predeceased her. She was asked why, in 2019, police records show that she had told the police that the Will was a forgery by Rahit and that it provided a motive for him to kill her. After much evasion about how much stress she had been under having just, she claimed, been assaulted by Rahit, she eventually maintained that the police had misconstrued what she had said. That was not credible.
27. I have come to the conclusion that much of Tajleena's evidence is simply concoction.

*Ludovic Simmerling*

28. Ludovic is an Operations Co-team leader and RMT Union Company Council Representative.
29. He was combative in cross examination and keen to argue the case on behalf of Tajleena. He posed rhetorical questions in his answers to questioning, and tried to refer Mr. Woodhead to documents in the bundle to make points in favour of Tajleena. At the end of his evidence he wanted to make a statement or submission from the witness box which I did not permit. He had immersed himself in the case and seemed to know the page numbers of the documents he wanted to refer to in the bundle by heart.
30. He was cross examined about communications he had had with social services which is unrelated to any of the issues in this case apart from his credibility. He readily accepted that he had lied to social services about where he was living to close down an investigation into his children's welfare.
31. Notwithstanding these observations, I concluded that he was seeking to tell the truth in the witness box. Although there are parts of his evidence which I think are not correct I regard him as an essentially honest witness.

*Rahit*

32. Rahit has a law degree. He was argumentative and condescending in his answers to Ms. Read, and there was a measure of play acting. His answers were always self-serving.

33. On 25 February 2019 there was a First Tier Tribunal Property Chamber (“FTT”) hearing which has nothing to do with this case. Rahit was asked about this hearing because the FTT clearly understood that Rahit and Mr. Abedin were working for Law Dale solicitors and representing a party called Jason Pienaar and said so in their written decision dated 26 February 2019. On 17 December 2019 the FTT issued a further decision to correct the 26 February 2019 decision, saying that it had since come to the Tribunal’s attention that Rahit was not employed by Law Dale solicitors, and Law Dale solicitors were not acting for Mr. Pienaar. Rahit was unable to explain why the FTT had received the mistaken impression it had, and his answers on this issue were unconvincing. I noticed that he lied fluently and with ease when downplaying his role as advocate at the hearing, saying that Mr. Pienaar was a friend and he had turned up as a favour to ask for an adjournment and that when it was refused he had no further participation in the hearing. If one reads the FTT decision it is clear that this is not true and that Rahit acted as Mr. Pienaar’s advocate and made submissions on the substantive issues. I suspect Rahit was lying because he did not have the qualifications or the regulatory authorisation to conduct such legal work.

34. I have come to the conclusion that Rahit was not an honest witness and his answers were intended to advance his case regardless of whether they were true or not.

*Sultana*

35. Sultana was in a wheelchair throughout the trial. She gave her evidence in Bengali through a translator. She struck me as a strong willed lady of 76 who

speaks better English than might appear from her need for a translator. There were times when she got exasperated with the translator, saying robustly in English that he should let her speak, and at one point when he was struggling to find the right word in English for the translation she supplied it.

36. Her evidence was careful and she was concerned not to be caught out. Ms. Read described Sultana's evidence in cross examination as following a script. I agree. I suspect that she and Rahit have spent many hours discussing this case and agreeing what Rahit and Sultana will say. Again, I do not feel that the truth was allowed to get in the way of self-serving answers.
37. When her evidence was interrupted for the first time by a break, I gave her the warning I always give to witnesses that she should not discuss the case with anyone until her evidence was concluded. Sultana confirmed that she understood. In particular, I told her not to discuss her evidence with Rahit, and she agreed not to. Rahit and his wife were in court and heard me give that direction to Sultana.
38. There were short comfort breaks during Sultana's evidence every hour or so when the Court rose. I have been told by counsel that on each occasion Sultana was wheeled to the ladies' lavatories by Rahit's wife. On two occasions shortly before the comfort break Sultana had given an answer which did not follow the script. One answer related to the TR1 for Fellows Court when it was acquired in 2000. The copy of the TR1 which is available has only been signed by the transferors and not the transferees. Sultana said she remembered that Mohammed, Tajleena and Sultana had signed it as transferees. That is Tajleena's case, which Rahit and Sultana deny, because it would mean that there

was a valid declaration of a beneficial joint tenancy by the TR1. When she returned from the comfort break she immediately recanted that evidence and said that she did not know whether they had signed the TR1. On the second occasion, she had conceded in cross examination that Cann Hall Road was intended to be family property (whereas Rahit and her case is that it was intended to be Mohammed and Sultana's property). The cross examination moved on. There was then a comfort break. Shortly after the hearing resumed, Sultana made a statement, unprompted by any question, changing her evidence on that issue. I asked her why she had chosen that particular point in time to make that statement and she said that she had forgotten to say it before. Of course, she had not forgotten to say it before, she had given different evidence. I have concluded that Rahit, either directly in person, or by telephone, or through his wife, spoke to Sultana during those comfort breaks to prompt her to correct her evidence.

39. I have come to the conclusion that like Rahit and Tajleena she is a dishonest witness whose answers have been given to advance her case regardless of whether they contain the truth or not.

*Mr. Abedin*

40. Mr. Abedin is a close friend of Rahit. They studied law together in Bangladesh. Mr. Abedin was initially called to the Bar as a non-practising barrister and is now a qualified solicitor.
41. Mr. Abedin attended every day of the hearing but he did not make submissions on behalf of the estate or cross examine the witnesses. Mr. Abedin is also fully

immersed in this case notwithstanding his neutral role. He knows all the documents and dates very well.

42. Mr. Abedin witnessed Tajleena's signature on six documents where she says her signature has been forged. Tajleena also says that Mr. Abedin was present on the occasion when she was made to sign the 2016 Deeds which she now seeks to set aside on the grounds of undue influence. Sultana and Rahit had pleaded in their Defence that Mr. Abedin would be a witness at trial. There was correspondence between Mr. Abedin and solicitors acting for the other parties in which Mr. Abedin maintained, apparently on the basis of undisclosed advice from counsel, that he could not be called to give evidence by either party without compromising his neutral position as the personal representative of the deceased in the proceedings. The other parties appear to have gone along with this, although Middletons solicitors said on behalf of Tajleena that they would invite the Court to draw inferences that Mr. Abedin had not witnessed Tajleena's signature if Rahit and Sultana did not call him as a witness.

43. Some of this history was explained to me at the start of the hearing on Thursday 29 February, and I made clear that I did not regard there being any difficulty in Mr. Abedin being called as a witness by one or other party while maintaining a neutral stance on behalf of the estate. It is commonplace for executors and personal representatives to provide the court with their factual evidence as witnesses for one of the contesting parties in the litigation while taking a neutral stance on behalf of the estate. The stance taken by the representative on behalf of the estate is a separate issue to the relevant factual evidence they might be able or required to give for one or other of the rival parties. In proceedings

under the Inheritance (Provision for Family and Dependants) Act 1975, for example, the CPR requires the personal representative to file and serve evidence, including evidence of “any facts which might affect the exercise of the court’s powers under the Act” notwithstanding the personal representative’s neutrality; see for example CPR 57.16(5), 57PD15 and 16.

44. I made clear that I felt free to draw whatever inferences I thought appropriate from the failure of either party to call Mr. Abedin as a witness.
45. On the evening of Sunday 3 March 2024 Mr. Abedin sent an email to the solicitors for both parties stating that he was now willing to provide evidence at trial if requested. I allowed an application by Sultana and Rahit to call him as a witness. A witness statement was prepared and served and he gave evidence on 6 March 2024.
46. I consider Mr. Abedin’s evidence below in connection with the challenges to the documents on the grounds of forgery and undue influence.

*Md Mahabub Rashed*

47. Mr. Rashed was a sales executive, but is now a full time carer for his son. He is a close friend of Rahit, having met him in Bangladesh while studying for his A levels. Through Rahit, Mr. Rashed has come to know the rest of the Islams having met them in 1998.
48. He was a witness to Tajleena’s signature on the 2008 Fellows Court TR1, the 2016 Deeds and 2017 TR1s. I consider his evidence below in connection with the challenges to those documents on the grounds of forgery and undue influence.

*Shahidul Islam*

49. Shahidul Islam is no relation of Mohammed, Sultana, Rahit and Tajleena. He is a solicitor and the principal at Law Dale Solicitors. He is a witness to Tajleena's signature to the 2017 TR1s and I consider his evidence below in relation to the challenge to those documents.

*Laila Banu*

50. Leila Banu is Sultana's sister. She gave evidence from Bangladesh, through a translator in court in London, about the succession to her mother and father's wealth. She was an honest witness.

*Bakshi Ahmed*

51. Mr. Ahmed is an advocate in Bangladesh who gave evidence from Bangladesh, through a translator in court, about certain documents which Sultana and Rahit say are counterfeit. His honesty was never in issue.

*The expert evidence*

52. In her pleadings, Tajleena disputed the authenticity of her signature on eight documents. At the beginning of the trial, I gave permission for Tajleena to further amend her Particulars of Claim to plead forgery of her signature on a ninth document. The disputed documents are: an NS&I form dated 15 November 2001 (**Q1**); a TR1 transfer of Skiers Street dated 24 October 2003 (**Q2**); a mortgage deed with Mortgage Express of the same date in relation to Skiers Street (**Q3**); a TR1 transfer of Skiers Street dated 30 November 2006



(Q4); a mortgage deed with Clydesdale Bank Plc (“Clydesdale”) of the same date in relation to Skiers Street (Q5); a mortgage deed with Clydesdale dated 8 March 2007 in relation to Louise Road (Q6); a mortgage deed with Clydesdale dated 15 March 2007 in relation to Litchfield Avenue (Q7); the 2008 Fellows Court TR1 which is dated 30 May 2008 (Q8); and a mortgage deed with Birmingham Midshires dated 5 May 2006 relating to Fellows Court (Q9).

53. Ms. Radley and Mr. Cosslett prepared reports on Q1-Q8 and they agreed a joint report on those documents. Ms. Radley has prepared a supplemental report on Q9. I consider their conclusions in the section below headed “Forgeries”.

### **The Background Facts**

54. Mohammed and Sultana were born in Bangladesh and moved to the UK in the early 1970s. Mohammed was a doctor and he worked in a hospital in Wakefield. Sultana worked as a machinist in a factory. As mentioned in paragraph 1 Mohammed died on 13 June 2017. He had for some years beforehand been suffering from ill health. Sultana says that he had a stroke in 2011 and a heart bypass operation in 2014.
55. Rahit was born in Bangladesh in 1973 and lived with his maternal grandparents in Bangladesh until he came to join his parents in the UK in 1978. Tajleena was born on 20 September 1980 in the UK. The family lived as a family unit only until 1990 when Rahit returned to Bangladesh to study law. Although he came back to the UK in 1997 Rahit shared a house with others in London, continuing to study law, and did not return to Wakefield. In September 2002 Tajleena went to the Czech Republic to study medicine returning to the UK in 2011. Tajleena

and Rahit spent little time together growing up and that may explain in part their bad relationship.

56. In Wakefield, Mohammed and Sultana acquired a number of properties and ran a number of businesses. Between 1979 and 1989 six properties were purchased in the joint names of Mohammed and Sultana and three were sold. Sultana says in this period they had two grocery shops which they sold. By 1989 Mohammed and Sultana owned in their joint names 7 Back Hatfield Street (“**Back Hatfield Street**”) and 16 College Grove Road (“**College Grove Road**”) in Wakefield and a property in Tottenham, London (“**Hermitage Road**”).
57. In 1989 Mohammed purchased 10 Church Street, Ravensthorpe (“**Church Street**”) with a business partner with a view to running a nursing home business from those premises. On 16 January 1991, Church Street was transferred into Mohammed’s sole name. It was then re-mortgaged by him to Chartered Trust Plc on 14 June 1991, for £337,000; the rights under the mortgage were later assigned to Standard Chartered Bank in July 2000. Willow Park Nursing Home (“**Willow Park**”) was first registered as a nursing home on 1 April 1993.
58. Willow Park failed as a business in about 1997. It is Sultana and Rahit’s evidence that, for years afterwards, Mohammed was pursued by creditors of the failed business. I make findings about this contention below in the section headed “Sham”.
59. At about this time Mohammed began opening bank and building society accounts in Tajleena’s name. During her adulthood some 25 accounts were opened in Tajleena’s name, or in joint names of her and one of her parents. Only one of those accounts was used by Tajleena.

60. On 4 February 2000, Fellows Court (whose full address is 472 Fellows Court, Hackney, London) – the first of the Properties – was acquired in the joint names of Mohammed, Sultana and Tajleena.
61. The TR1 for Fellows Court needed to be signed by Mohammed, Sultana and Tajleena not least because it contained a covenant by them to the vendors, and it contains signature blocks anticipating their signature. The relevant box on the TR1 form (Box 11) was ticked to declare that the transferees were to hold their legal interest on trust for themselves as beneficial joint tenants. However, the version of the form held by HM Land Registry is signed only by the vendors, and is unsigned by Tajleena, Sultana and Mohammed as transferees. This is likely because the copy signed by them was sent to the vendors – competent solicitors acting for the vendors simply would not have completed the transaction without a TR1 signed by Tajleena, Sultana and Mohammed. What has been registered at HM Land Registry by the solicitors acting for Mohammed, Sultana and Tajleena is the copy received by them from the vendor.
62. There is a dispute as to how the purchase of Fellow’s Court was funded. The purchase price was £96,500. Rahit and Sultana’s evidence is that the deposit of £50,000 was funded with the proceeds of sale of Hermitage Road which had been sold for £145,000 six months earlier. The remaining funds to complete the purchase were raised by mortgage backed borrowing from the Woolwich Building Society. Tajleena says the deposit was £10,000 (which would mean much larger borrowings) but Rahit’s evidence is consistent with a Woolwich mortgage statement in 2005 which shows that there was at that point only

£35,000 outstanding. There is no dispute that the mortgage was only obtainable because Tajleena was young, with a good credit score and some income.

63. The more significant dispute is Tajleena's contention that her parents were, with her agreement, looking after her wealth and it was a portion of this wealth which was being invested on her behalf in Fellows Court. It was that wealth, and her share of the rental income from each acquisition which was then invested in successive acquisitions of the Properties. The Properties were placed in her name, and declarations of trust made in her favour, she says, because she had contributed to their purchase. I make findings about this contention in the section below headed "Tajleena's Financial Contribution to the Properties".
64. On 8 January 2003 Tajleena and her parents signed their Wills. All three Wills were prepared by Michael Guest of Armitage & Guest and executed in their offices in Wakefield. Mohammed left everything to Sultana, but if she predeceased him, then Tajleena would take. Sultana left her estate to Tajleena. Both parents left nothing to Rahit unless Tajleena predeceased them. Tajleena left her estate to Sultana, but if Sultana had predeceased her, then she left her estate to Rahit.
65. Mr. Guest became Mohammed's solicitor and was involved in most of the subsequent transactions. Many of the transactional documents are signed by Mohammed, Sultana, and from time to time Tajleena, at his offices at 2 King Street, Wakefield.
66. On 24 October 2003, Skiers Street (whose full address is 11 Skiers Street, Stratford, London) was purchased for £190,000 with a mortgage of £161,500. It was transferred to Sultana and Tajleena as legal owners with no declaration

as to the beneficial ownership in the TR1. Sultana signed the document before a witness at Mr. Guest's office in Wakefield. Sultana says that Mohammed asked Tajleena, who was now based in the Czech Republic, to travel to London to sign the mortgage deed. Tajleena says her signature has been forged on the TR1 (Q2 in Ms. Radley's report) and the Mortgage Express mortgage deed (Q3) but she seeks no relief in respect of either. Her evidence is that she knew that this property was being purchased to be placed in joint names of her and her mother. Her signature on both documents was witnessed by Mr. Abedin. Sultana, Rahit and Mr. Abedin say that Tajleena's signature is not forged and was signed by Tajleena in front of them at Fellows Court. I make findings about this and the other alleged forgeries in the section below headed "Forgeries".

67. On 5 March 2004, Louise Road (4 Louise Road, Stratford, London) was acquired for £230,000 with a mortgage of £194,000. £38,000 was paid towards the deposit and conveyancing costs from a Leeds & Holbeck account in the joint names of Sultana and Tajleena which held £100,000 of cash from the sale of Hermitage Road. The property was transferred by TR1 to Mohammed, Sultana and Tajleena and by a declaration of trust of the same date they declared that the property was held as to 50% for Sultana and as to 50% for Tajleena. Sultana and Rahit say this was a sham declaration of trust, due to concern about Mohammed's creditors, and that the real intention of Mohammed, Sultana and Tajleena was that Mohammed and Sultana would be the owners of the property. Rahit says that Tajleena was added to the title to help her parents get a mortgage. I make findings about this and the other allegations that documents are sham documents in the section below headed "Sham".

68. On 12 March 2004 Mohammed, Sultana and Tajleena made a declaration of trust declaring that they held Fellows Court as to 50% for Sultana and as to 50% for Tajleena. The deed was also signed by Mr. Abedin as witness to Tajleena's signature. Clause 4 of the recitals to the deed of trust stated that this "shall be regardless of the parties [sic] respective contributions towards the purchase price of the property". Sultana and Rahit say this was also a sham declaration of trust.
69. On 15 March 2004, Litchfield Avenue (6 Litchfield Avenue, Stratford, London) was purchased for £230,000 with a mortgage of £195,000. This followed the same model as Louise Road, namely a transfer to Mohammed, Sultana and Tajleena followed by a declaration of trust that the property was held as to 50% for Sultana and as to 50% for Tajleena. Sultana and Rahit say this was also a sham declaration of trust.
70. On 15 January 2005 the Billericay land (a plot of freehold land known as Plot AE06 Lodge Farm, Ramsden Heath, Billericay) was purchased for £16,500 with no mortgage. Again it was put in the three names of parents and Tajleena and a declaration of trust made in favour of mother and daughter. The land is now thought to be worthless and was barely mentioned at trial. Sultana and Rahit say this was also a sham declaration of trust.
71. On 2 May 2006, Cann Hall Road (whose full address is 35 Cann Hall Road, Leytonstone, London) was purchased for £335,000 with no mortgage. The TR2 transferred the property to Mohammed, Sultana and Tajleena but it was not signed by them as transferees.

72. On 5 May 2006 there was a Birmingham Midshires remortgage of Fellows Court which appears to have been intended to release funds for the Cann Hall Road purchase, although that had already completed, possibly with temporary credit card borrowing. Tajleena says her signature on the mortgage deed (Q9) is a forgery. Mohammed and Sultana signed the document before a witness at Mr. Guest's office in Wakefield. Sultana says that Mohammed asked Tajleena to travel to London to sign the mortgage deed. Sultana, Rahit and Mr. Abedin say that Tajleena's signature is not forged and was signed by Tajleena in front of them and Mohammed at Fellows Court. Mr. Abedin signed the document as witness to Tajleena's signature.
73. In August 2006 (the precise date does not appear on the face of the deed), Tajleena, Sultana and Mohammed executed the August 2006 Deed by which they declared that they held Fellows Court, Louise Road, Litchfield Avenue and Cann Hall Road for themselves as tenants in common in equal shares. Tajleena seeks to set aside this transfer for undue influence. Sultana says that this document was also a sham. She says Mohammed had become worried about inheritance tax on the death of Sultana or Tajleena but he was also still worried about creditors. The August 2006 deed whereby Mohammed was recorded as being a co-owner with Tajleena and Sultana, rather than a co-owner with just Sultana, was intended to be "a middle ground". I make findings about the contention of undue influence in the section below on "Undue influence – the August 2006 deed". I make findings about the allegation of sham in the section below on "Sham".

74. On 30 November 2006, a TR1 form was executed (Q4) transferring Tajleena and Sultana's legal interest in Skiers Street to Tajleena, Sultana and Mohammed for no consideration. The relevant box on the TR1 form (Box 11) was ticked by which it was declared that the transferees were to hold their legal interest in accordance with a separate trust deed of the same date. This trust deed has, it appears, been lost. On the same date, Skiers Street was remortgaged to Clydesdale. Rahit says that the intended purpose of this transfer into Mohammed's name was to obtain a better interest rate on a remortgage. Both the TR1 form and mortgage deed (Q5) were signed by Mr. Abedin, as witness to Tajleena's signature. Tajleena says her signature on the TR1 and the mortgage deed has been forged and she seeks to set aside the TR1. Mohamed and Sultana signed the document before a witness at Mr. Guest's office in Wakefield. Sultana says that Mohammed then asked Tajleena to travel to London to sign the mortgage deed. Sultana, Rahit and Mr. Abedin say that Tajleena's signature is not forged and was signed by Tajleena in front of them and Mohammed at Fellows Court.
75. On 8 March 2007, Louise Road was remortgaged to Clydesdale. The mortgage deed (Q6) was also signed by Mr. Jayasekara, a retired nurse, as witness to each of Tajleena, Sultana and Mohammed's signatures. Tajleena initially said this document was a forgery but now accepts that it was signed by her.
76. On 15 March 2007, Litchfield Avenue was remortgaged to Clydesdale. The mortgage deed (Q7) was also signed by Mr. Abedin, as witness to Tajleena's signature. Tajleena says her signature has been forged.



77. On 30 May 2008, the 2008 Fellows Court TR1 (Q8) was executed transferring Tajleena, Mohammed and Sultana's legal interest in Fellows Court to Mohammed and Rahit for no consideration. The TR1 form contained a declaration of trust in their favour, as tenants in common in equal shares. Mohammed and Sultana signed this document in the presence of Tahlet Anwar, their pharmacist at 137 Cann Hall Road. The TR1 form was also signed by Mr. Rashed, as witness to Tajleena's signature and Rahit's signature. Tajleena says her signature is a forgery.
78. On the same date, Fellows Court was remortgaged by Mohammed and Rahit to NatWest. Mohammed and Rahit were registered as the proprietors of Fellows Court on 18 June 2008, as was NatWest's legal charge.
79. The last alleged forgery is an NS&I form wrongly dated 15 November 2001 (Q1). The date is clearly wrong because the document refers to terms and conditions dated 29 December 2010 and gives Tajleena's address as Cann Hall Road which was not purchased until 2006. The correct date should be 15 November 2011, which correlates to what can be seen on the post office date stamp and is when the account transaction history shows that the deposit the form relates to was made. Nothing turns upon whether this is a forgery except whether it helps show a pattern of forgery. There was no evidence of the circumstances in which this document was signed.
80. In January 2012, Tajleena returned permanently from the Czech Republic.
81. By four separate homemade deeds of trust dated 13 November 2016 ("**the 2016 Deeds**"), Tajleena declared a trust of her legal interest in Skiers Street, Louise Road, Litchfield Avenue and Cann Hall Road in favour of Sultana and

Mohammed, and, in the event of their demise, their heirs and/or dependents (as a matter of construction, therefore, as tenants in common). The trust deeds were also signed by Mr. Abedin as witness to Tajleena's signature, and by Mr. Rashed as witness to Sultana and Mohammed's signatures.

82. Clause 1 of the recitals to each of the 2016 Deeds states the reason for the trusts as being that Sultana and Mohammed had "paid the full deposit for the purchase of [the property the subject of the deed] and incurred all other related costs for this purchase"; clause 4 also states that "[i]t is intended that the 'Trustee' Tajleena Islam will never acquire beneficial interest in [the subject property] since [the original dates of transfer jointly into her name] and this deed is merely to confirm and to formalize that intention". Clause 4 (or, for the deed relating to Skiers Street, clause 5) of the deeds themselves records that "[i]f the 'Trustee' is under any obligation to pay any third party, this shall be satisfied by the 'Trustee' only and the 'Beneficiary' is not liable to pay or to satisfy in relation to any such obligation from the proceed of any sale of [the subject property] and/or [the subject property] can not be subject to any charge by way of any court order against 'the Beneficiary'".

83. Between 1 June 2017 and 10 June 2017, Mohammed and Sultana each executed three separate wills (bearing a typed date of 1 June and a manuscript date of 6 June), each dealing (only) with their respective interests in a separate property (Louise Road, Litchfield Avenue and Cann Hall Road). On 10 June 2017 Tajleena took photographs of Mohammed's wills using her mobile phone and at that date the wills were signed but the manuscript date of 6 June 2017 had not been added. The wills are homemade and not without their difficulties in

determining their meaning and effect. The wills dealing with Louise Road and Litchfield Avenue leave the whole of Mohammed's and Sultana's respective interest in those properties in the first instance to Tajleena beneficially but only until her two daughters reach 35 when they take the properties. The will dealing with Cann Hall Road divides half of Mohammed's and Sultana's respective beneficial interest in that property between Tajleena and Rahit and provides that they shall hold their shares on trust for their respective offspring. Mr. Abedin is appointed as the sole executor of each of these wills.

84. By four separate TR1 forms dated 2 June 2017 ("**the 2017 TR1s**"), signed at the offices of Law Dale Solicitors ("**Law Dale**"), at 124 Whitechapel Road, London, Tajleena, Sultana and Mohammed transferred Skiers Street to Rahit and Louise Road, Litchfield Avenue and Cann Hall Road to Sultana and Mohammed, for no consideration.
85. With the exception of the form relating to Skiers Street – which, being conveyed to Rahit alone, contained no declaration of trust – the TR1 forms each contained a declaration of trust in favour of Sultana and Mohammed as beneficial joint tenants. The TR1s were also signed by Shahidul Islam, principal solicitor at Law Dale, as witness to each of Tajleena, Sultana, Mohammed and Rahit's signatures.
86. Tajleena says that the 2016 Deeds and the 2017 TR1s were procured by undue influence. I deal with this contention in the section below on "Undue Influence".
87. None of these transfers has been registered. In July 2017, Middletons solicitors, instructed by Tajleena, entered restrictions at HM Land Registry in relation to

Skiers Street, Louise Road, Litchfield Avenue and Cann Hall Road, but no further action was taken.

88. In about the summer of 2019, Tajleena moved from Wiltshire to London to complete a pharmacy degree at Kingston University. She moved into Cann Hall Road with Sultana. The relationship between Tajleena and her mother and brother deteriorated. Incidents occurred where the police were called. There were proceedings in the Family Court at East London between Tajleena, Rahit and Sultana in December 2019 in which Tajleena sought non-molestation orders and an occupation order in respect of Cann Hall Road (“**the Family Proceedings**”). Sultana left Cann Hall Road to live with Rahit at Skiers Street.
89. On 5 January 2021 a letter of claim was sent by Middletons to Rahit and Sultana. These proceedings were commenced on 8 September 2021.

### **Tajleena’s Financial Contribution to the Properties**

90. Tajleena was aged 20 at the time of purchase of Fellows Court in 2000, and having finished her A levels was employed in a shop as she contemplated her future. Tajleena says that her parents were, with her agreement, looking after her wealth and it was a portion of this wealth which was being invested on her behalf in Fellows Court. It was that wealth, and her share of the rental income from each acquisition which was then invested in successive acquisitions of the Properties. This wealth is said to have three sources:
- i) Gifts of 22 carat gold jewellery and coins by her maternal grandparents in Bangladesh to Tajleena when she was a child;

- ii) A gift of about £150,000 in Bangladesh currency (Taka) by her maternal grandmother in 2001;
- iii) A few thousand pounds of savings from employment in a shop which was paying her £6 per hour.

91. Tajleena says she remembers being gifted gold on a visit to Bangladesh which was entrusted to her mother to look after. The gold comprised small bangles, earrings, chains and coins. In her witness statement she said that this happened in 1987. When it was pointed out that she was then six, her evidence shifted to her having been given gold on each of the three or four visits she made to Bangladesh. There is no suggestion that any other grandchild was given significant presents. Rahit, who was close to his grandparents, having lived with them while young, said he had received no significant presents from his grandparents. Tajleena was not able to explain why her grandparents would single her out for this generosity – and I would add that her grandparents do not appear to have been people of great wealth. Her grandfather was a teacher who owned some land. She did not know the value of the gold but says that in 2000 her parents asked her permission to sell her gold. There was no mention of this source of funds in Tajleena’s letter before action or Particulars of Claim. Sultana said this was a work of fiction by Tajleena and there was no gold, and no gold sold. I prefer Sultana’s evidence on this issue.

92. The gift of £150,000 also did not feature in the letter before action or Particulars of Claim. It was raised only after Tajleena discovered amongst Mohammed’s papers, documents purporting to be an Affidavit declaring an oral gift of 1.5 million Taka (approximately £150,000) by her grandmother to Tajleena and a

notarial certificate confirming the authenticity of the affidavit. Tajleena said that although she had not seen these documents until 2023, she remembered being told by her mother in 2001, when she was 21 years old, that her grandmother had gifted her £150,000, and that her mother would invest it for her future. Tajleena suggests that some of the monies in the many joint accounts which were opened may represent this inheritance. Sultana said that these documents are counterfeit documents which Mohammed had prepared in Bangladesh but she does not know why.

93. Mr. Ahmed, a Bangladeshi advocate instructed by Sultana and Rahit, gave evidence that the documents were not authentic. That they are counterfeit documents is borne out by a number of indicia.

- i) The Affidavit purports to make a gift in the presence of the undersigned witnesses to Tajleena who accepts it in the presence of the witnesses. Tajleena accepts that she was not present when this document was made and she did not accept any gift in the presence of the witnesses.
- ii) The document envisages it will be signed by two witnesses but there is only one signature. Mr. Ahmed says there are ordinarily three witnesses to this type of document.
- iii) The Affidavit is intended to be sworn and signed by Tajleena's grandmother in the presence of an advocate of the Bangladeshi Supreme Court called Md Shanjanur Rahman, with Membership No 4426. However:

- a) it is not signed by Tajleena’s grandmother – which Mr. Ahmed confirmed, as one might expect, to be fatal to the validity of an affidavit;
  - b) Md Shanjanur Rahman has nevertheless signed and certified that “The deponent is known to me and identified by me and has signed in my presence”;
  - c) Mr. Ahmed was unable to trace any Advocate with the name “Md Shanjanur Rahman” and the Membership No 4426 belonged to a different, female, Advocate.
- iv) Notwithstanding these deficiencies, the Notarial Certificate purports to certify “the annexed Affidavit sworn and executed” by Tajleena’s grandmother.
- v) There are surprising typographical errors and mistakes in the standard text of the Notarial Certificate which one would not expect to see in a genuine document.
94. Ms. Read pointed out that Mr. Ahmed had not attempted to make enquiries of the Notary, although in circumstances where the notary, if he exists, has certified an unsigned affidavit, I do not see that such enquiries would have added much value. It was submitted that Sultana and Rahit had not instructed Mr. Ahmed to make an application to the courts of Bangladesh for a declaration that the Notarial Certificate and Affidavit were incomplete and under CPR 32.20 a notarial certificate may be received by the court without further proof as duly authenticated in accordance with the law unless the contrary is proved.

I am satisfied that the rebuttable presumption of due authentication has in this case been rebutted, not least because the Affidavit has not been signed by the deponent.

95. I have no hesitation in concluding that the Notarial Certificate and Affidavit are counterfeit documents which Mohammed has acquired in Bangladesh (and I will refer to them in this judgment as “**the counterfeit documents**”). The process of counterfeiting required further signatures to complete it and has been stopped for whatever reason. This seems like action to conceal Mohammed’s assets from creditors, possibly by providing an explanation for remission of funds from Bangladesh to the UK, possibly to be paid into an account in joint names with Tajleena.
96. I find there was no gift of 1.5 million Taka to Tajleena in 2001. I reject Tajleena’s evidence that she was told about this gift by her mother in 2001. This is a story which was concocted after she found the counterfeit documents in 2023, which is why it had not been mentioned earlier.
97. That leaves the savings of a 20 year old from working in a shop. Mr. Woodhead described the wages of £6 per hour in those days as exaggerated and considerably above the minimum wage at the time. I agree. I think it inherently improbable that Tajleena had any significant savings, highly unlikely that she had savings of a third or half of the £50,000 deposit for Fellows Court, and inherently improbable that her parents who had just sold Hermitage Road would have taken her savings as a 20 year old instead of the available proceeds of sale of Hermitage Road to make up the deposit for Fellows Court.



98. Before the battle lines in these proceedings had begun to be drawn, there were the Family Proceedings in 2019 which I have referred to. In her witness statement in those proceedings dated 6 February 2019 (“the 2019 Family Proceedings witness statement”) Tajleena relied on some of the allegations which are now relied on to set aside the 2016 Deeds and 2017 TR1s for undue influence. Significantly, Tajleena said:

*“In 2004, my father brought [sic] 4 properties...I believe the properties were put on mine and [Sultana’s] names solely for inheritance purposes.”*

This appears to be a reference to Fellows Court, Skiers Street, Louise Road and Litchfield Avenue which had been purchased by the end of 2004. She also said;

*“In 2008, my father brought [sic]... Cannhall [sic] Road”.*

These statements by Tajleena clearly show that Tajleena did not think the Properties represented investments of her own money. Although she tried to explain these statements away as mistakes made in a rushed statement, where the ownership of those properties was not the focus of her witness statement, I consider that they reveal in an unguarded moment the true nature of what Tajleena thought the position was in 2019.

99. I reject Tajleena’s evidence that she made any contribution of her money to the acquisition of Fellows Court, or any of the other Properties save for lending her name for the purposes of obtaining a mortgage. They were purchased, renovated and maintained with her parents’ money and income generated from the Properties, and bank borrowings. In the case of Fellows Court and likely

many of the other Properties, a favourable mortgage was only obtained because Tajleena was one of the purchasers.

## **Forgeries**

### *Expert evidence*

100. The experts had access to original versions of only three of the challenged documents (Q5-Q7). The rest were copy documents. As both Ms. Radley and Mr. Cosslett accepted, this restricts the examination possible of these documents; for instance, analysis of physical features such as pen pressure variation and the inks used, or identification of writing impressions on paper surfaces, which can reveal information about the history or creation of a document.
101. Ms. Radley analysed 38 of Tajleena's known authentic signatures to ascertain the range of natural variation in their production and compared the questioned signatures against these to identify any features falling outside this range. For seven of the questioned signatures (Q1-Q5, Q7 and Q8), she notes the existence of (but does not identify) a '*number and variety of significant differences*', as well as a distinct lack of fluency and line quality, relative to the known signatures.
102. She considered two alternative explanations to forgery for the discrepant characteristics in the questioned signatures: that they are the accidental result of unusual writing circumstances (e.g., writing on an uneven surface, interruption, loss of concentration, etc.), or are deliberate, to assist in the later refutation of their authenticity; but considers both of these explanations to be unlikely.

103. For these reasons, Ms. Radley concludes there is “strong” evidence that seven of the nine questioned signatures (Q1-Q5, Q7 and Q8) are forgeries, being either simulations or tracings of her genuine signature style; though she is not able to determine which of these is the more likely.
104. As for Q9, Ms. Radley in her supplemental report says she has taken a cautious approach to its examination on account of the copy provided to her being of fairly poor quality. Noting (but again not identifying) ‘*features of significant difference*’ between Tajleena’s purported signature and her known signatures, she concludes there is “*limited positive evidence*” that it is a simulated forgery, dismissing the alternative – that Tajleena was its author – as being fairly unlikely.
105. By contrast, Ms. Radley concludes there is “moderate” evidence Tajleena was the author of Q6, given its fluency and subtle similarities compared to the known signatures, notwithstanding limited features of difference (which are, again, unidentified in her report). She considers the alternative, that Q6 is a simulation of her genuine signature style, to be fairly unlikely.
106. Mr. Cosslet has also performed a comparative analysis. For the signatures on two of the original documents (Q5 and Q7), he identifies several differences in letter formation and proportioning (e.g., the shape of the loops on the ‘I’ and ‘J’, the quality and direction of travel of the pen strokes, and the presence of pen lifts), as well as lack of fluency, relative to the known signatures. He considers these features provide “*some limited evidence*” that Q5 and Q7 are forgeries, i.e., that it is more likely than not they are inauthentic. By contrast, Mr. Cosslet considers Q6 to be fluidly rendered, and – apart from one feature (an apparent

pen lift) – to correspond closely in character design and proportion to the known signatures such that it is unlikely to be inauthentic. He concludes there is “*strong*” evidence that Q6 is genuine.

107. Mr. Cosslet says he is unable to offer any strong opinions on the authenticity of the signatures on the copy documents (Q1-Q4, Q8). However, considering them alongside Q5 and Q7 in his view provides “*some limited evidence*” they too are forgeries, since they share similar differences in comparison with the known signatures.
108. Ms. Radley in her report set out a glossary of the terms she uses to communicate different levels of confidence of opinion. The scale ranges from “*conclusive*” evidence, to “*very strong*”, to “*strong*”, to “*moderate*”, to “*limited positive*”, to “*inconclusive*”. The first three, she says, are terms of high confidence, and represent narrow bands of opinion where alternative explanations can be realistically disregarded, or are considered to be (highly) unlikely. “*Moderate*” and “*limited positive*” cover a considerably broader band of opinion and have a significant degree of overlap; in both categories, alternative explanations are considered to be fairly unlikely, though the latter may be more appropriate where there is a particular limitation on the examination – e.g., a restricted comparison sample or poor-quality copy material. The category of “*inconclusive*” opinion is, again, a relatively broad band, covering cases where the available evidence does not enable an examiner to reach an opinion one way or another. Ms. Radley says that the inconclusive band straddles the 50% probability mark and so even an expression of limited positive evidence means

that the scales are tipped quite firmly in the direction of it being more likely than not.

109. Mr. Cosslet also set out the terms he uses in his report – “*very strong*”, “*strong*”, “*limited*” and “*inconclusive*” – although he does not explain the differences between these categories. Notably, he does not have a separate category of “*moderate*”.

110. In Ms. Radley’s categorisation, therefore, “*strong*” evidence is near the top of the range between conclusive and inconclusive evidence – apparently differing somewhat from what Lewison LJ said in *Kingsley Developments Ltd v Brudenell* [2016] EWCA Civ 980, at [27], that “[s]trong evidence in the jargon of the expert is half way up the scale between weak and conclusive.” Ms. Radley explained, in oral evidence, that – given the considerable overlap between “*moderate*” and “*limited positive (evidence)*” in her categorisation – she considered there to be only one grade of difference between her and Mr. Cosslett’s opinions about Q1-5, Q7 and Q8.

111. As they record in their Joint Report, the experts therefore agree that there is evidence which in their view makes it more likely than not that Tajleena’s signature was forged on each of the questioned documents Q1-5, Q7 and Q8 albeit Ms. Radley’s opinion is of a higher level of confidence than that of Mr. Cosslett. Mr. Cosslett was not asked to advise on Q9.

#### *Criticism of Ms. Radley’s reports*

112. Mr. Woodhead was critical of Ms. Radley’s report because of the paucity of her explanation of her process of reasoning. Her reasoning, summarised above at

paragraphs 99 to 101 is contained in just eight paragraphs of a 134 paragraph report.

113. In *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, [2016] 1 WLR 597 the Supreme Court gave guidance on the use of expert evidence in civil cases. At paragraph 48 Lords Reed and Hodge observed:

“An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or ‘bare ipse dixit’ carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371:

‘an expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.’

As Lord Prosser pithily stated in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: ‘As with judicial or other opinions, what carries weight is the reasoning, not the conclusion.’”

114. Ms Radley's opinion is premised on there being significant differences between the questioned signatures and the known signatures (as well as a lack of fluency and line control). So it might be said that there is a high level explanation of the process of reasoning. However, unlike the approach taken by Mr. Cosslett, Ms. Radley's report is silent on what significant differences she had identified. Mr. Cosslett could not have known what differences Ms. Radley had identified and relied upon to form her view. The Court does not know what differences Ms. Radley has identified and relied upon to form her view. When challenged on the failure to identify the differences she had relied upon, Ms. Radley said that she had not been asked to do a full "*technical report*" which would have been costly and time consuming. With respect, that is not an answer to the point. A report filed by an expert pursuant to CPR Part 35 must be as full and detailed as is required to discharge the expert's duty to the court. I note also that Mr. Cosslett was able to produce a much shorter report which did explain clearly his process of reasoning, including the key differences he had identified.
115. Had there been a substantive dispute between the experts as to whether or not the signatures on Q1-8 were forged, the position would have been wholly unsatisfactory. As it happens, there is no substantive dispute between the experts as to whether in their opinion these signatures are forgeries. They do, however, have different levels of confidence. In light of the justified criticism of Ms. Radley's report, and the fact that where Mr. Cosslett's evidence differed from Ms. Radley, it was not challenged by Ms. Read in cross examination, I prefer Mr. Cosslett's evidence, including that in his opinion there is limited positive evidence that Q1-5, Q7 and Q8 are forgeries.

116. Mr. Cosslett was not instructed to advise on Q9. Ms. Radley's supplementary report again fails to identify or explain what differences she has identified. I take it into account, but keep in mind its limitations.
117. I observe that an expert opinion that it is more likely than not that a signature is a forgery recognises that it is possible, albeit in the expert's view improbable, that it is not a forgery. It is for the Court to determine having considered all the evidence whether or not on the balance of probabilities the signatures are forgeries.

*Analysis of other documentary evidence*

118. In September 2002 Tajleena went to the Czech Republic to study medicine on a 6 year course. She took her final state exams in May 2008 although she says there were other exams in later months. She failed those exams but remained enrolled to resit her exams and, as far as her family were concerned, did not return from the Czech Republic until January 2012. While she was based in the Czech Republic she made frequent trips back to the UK to visit her parents. In the later years she was also making secret visits back to the UK to visit Ludovic, and she says by 2011, living with him in Wiltshire, but with her family believing she was still in the Czech Republic.
119. During this period there is no dispute that Tajleena signed a number of legal documents on her visits back to the UK.
120. Most of these documents were signed by Tajleena in or near Wakefield, as she was staying with her parents. So she signed a power of attorney in favour of her mother on 23 December 2002 before a solicitor, apparently in Leeds. On 8



January 2003 she signed her Will at Armitage & Guest in Wakefield. In January 2005 Tajleena signed the TR1 and Declaration of Trust in respect of the Billericay land before Mr. Guest in Wakefield. The Cann Hall Road deed of trust was signed by Mohamed, Sultana and Tajleena in Wakefield in front of Mr. Guest. The August 2006 declaration of trust of Fellows Court, Louise Road, Litchfield Avenue and Cann Hall Road was signed by Mohamed, Sultana and Tajleena in front of Mr. Guest in Wakefield. Tajleena now accepts that she did sign the Louise Road mortgage deed with Clydesdale dated 8 March 2007 (Q6) which the experts think it is likely that she did sign. Mohammed, Sultana and Tajleena signed before an old friend, Mr. Jayasekara in Wakefield.

121. All of the challenged documents are documents signed while Tajleena was still based, as far as her parents were concerned, in the Czech Republic, though all are said to have been signed by Tajleena in London. In respect of all but one of the challenged documents Sultana and Mohammed signed the documents first, in Wakefield, and it is said that Mohammed then summoned Tajleena to come to London to sign these documents. It is said that Sultana and Mohammed travelled down with the documents on each occasion to meet Tajleena and for her to sign them at Fellows Court where Rahit was living and where Mr. Abedin witnessed her signature. In respect of the 2008 Fellows Court TR1 (Q8), by which date Mohammed and Sultana were living in Cann Hall Road, Mohammed and Sultana signed the document in the presence of their pharmacist. Sultana and Rahit say that Tajleena was summoned to London and signed the document at Cann Hall Road in the presence of Mr. Rashed.

122. There is no dispute that Tajleena signed the TR1, mortgage deed and trust deed for Louise Road dated 5 March 2004, the Declaration of Trust in respect of Fellows Court dated 12 March 2004 and the TR1 mortgage deed and trust deed for Litchfield Avenue dated 15 March 2004. Her parents signed these documents before Mr. Guest in Wakefield while Tajleena signed before Mr. Abedin, apparently in London. These are the only documents which Tajleena accepts she signed in London before her permanent return from the Czech Republic.
123. The challenged documents are interspersed amongst the documents that Tajleena accepts she did sign while based in the Czech Republic. They are:
- i) the 24 October 2003 TR1 for Skiers Street (Q2) and the Mortgage Express mortgage deed of even date (Q3) – significantly Tajleena’s evidence is that she knew that this property was being purchased to be placed in joint names of her and her mother and she seeks no relief in respect of either.
  - ii) the Birmingham Midshires remortgage of Fellows Court dated 5 May 2006 (Q9).
  - iii) the Skiers Street TR1 form dated 30 November 2006 (Q4) and the Skiers Street mortgage deed with Clydesdale of the same date (Q5).
  - iv) the Litchfield Avenue mortgage deed with Clydesdale dated 15 March 2007 (Q7).
  - v) the 2008 Fellows Court TR1 dated 30 May 2008 (Q8) transferring the property to Mohammed and Rahit as tenants in common in equal shares.

vi) The NS&I form which should bear the date 29 November 2011 (Q1).

124. Some light on Tajleena's whereabouts on the dates of the challenged documents can be obtained from her Nationwide bank statement as it records her purchases and withdrawals of cash and where and when these took place. However, this evidence has to be treated with caution because (a) it is possible that documents were signed on an unknown, probably earlier, date, and then dated later and (b) there are periods in which the account is inactive for a few days, and it is possible that Tajleena flew back to the UK for a brief visit and did not use her Nationwide card during that visit. Nevertheless I make the following observations.

i) The statements suggest that Tajleena was not in London to sign the Birmingham Midshires remortgage (Q9) on or around 5 May 2006. Her Nationwide bank statements show regular cash withdrawals being made in the Czech Republic between 20 April and 29 May.

ii) There is no sign of any use of Tajleena's card in the UK between 3 October 2006 and 25 December 2006 – the period when the 30 November 2006 Skiers Street TR1 (Q4) and mortgage deed of the same date (Q5) must have been signed – although there is a payment to Easyjet on 16 Nov that sheds no light on when the flight was, and may have been for her flight at Christmas.

iii) Tajleena's statements show regular use of her card in the Czech Republic, and no use of her card in the UK, between 11 March 2008 and 3 July 2008. There is no sign of any return to London to sign the 2008 Fellows Court transfer dated 30 May 2008 (Q8).

125. I draw some of these threads together as follows.

- i) Between 2002 and 2008 Tajleena was regularly and (except for the August 2006 deed which is disputed for undue influence) willingly signing transactional documents at her parents' behest for the acquisition or refinancing of the Properties. There is no dispute that she was not involved in the sourcing, acquisition or management of these properties which was done by Mohammed and Rahit.
- ii) While living in Wakefield Mohammed and Sultana invariably signed documents relating to the Properties in the offices of Mr. Guest. So did Tajleena when she was staying with them.
- iii) The evidence is that Tajleena on her visits back to the UK went to stay with her parents at the family home in Wakefield (until they moved to Cann Hall Road in December 2007).
- iv) Prior to Mohammed and Sultana's move to Cann Hall Road, if Tajleena came to sign documents in London and not Wakefield it is because she was making a special trip for the specific purpose of signing the documents before returning to the Czech Republic, and not visiting her parents in Wakefield. That seems to have happened in February or March 2004 when a raft of documentation in relation to the acquisition of Louise Road, Litchfield Avenue and the declaration of trusts over those properties and Fellows Court needed to be signed. They are dated between 5 and 15 March 2004 and it seems likely were all signed by Tajleena on the same occasion and the dates subsequently added. The significance of the documents justified a special trip back.

- v) It is improbable that Tajleena flew back to London, not as part of a visit to her parents in Wakefield, but as a specific trip simply to sign documents in respect of routine remortgages to obtain a better interest rate such as the Clydesdale Mortgage (Q7) or the tiny Birmingham Midshire remortgage (Q9) or on Rahit and Sultana's case, the 2006 Skiers Street TR1 (Q4) and Mortgage (Q5).
- vi) If, as is being asserted by Sultana and Rahit, Tajleena was regularly summoned to sign documents in London with Mohammed and Sultana travelling to join her there to obtain her signature, it is odd that they did not all sign the document on the same occasion, as they did when they were together in Wakefield. Sultana and Mohammed have, in respect of each of the challenged documents (except Q1 which is only purportedly signed by Tajleena), signed the document on a different occasion either in Mr. Guest's offices in Wakefield, or in the case of Q8, in the presence of their pharmacist at 137 Cann Hall Road. No explanation was proffered for this anomaly.
- vii) The documents are consistent with Tajleena's signature being forged on routine documents if she was not present in the UK to sign herself either with her contemporaneous knowledge that this was happening or on the basis of a prior blanket approval that this could happen.
- viii) Tajleena would likely have signed the challenged documents had she been in the UK, most of which are on their face to her advantage or are routine refinancing. The only document which I am not satisfied that she would have signed if she was in the UK is the 2008 Fellows Court

TR1 by which Fellows Court was transferred to Mohammed and Rahit. This is because her relationship with Rahit appears by this stage to have been very bad, and I think she would have resisted doing anything which benefitted him. It is unlikely that she would have flown back to London to sign this document, or would have done so willingly and happily (as Sultana, Rahit and Mr. Rashed assert in their evidence). By the time of the 2016 Deeds and 2017 TR1s, however, Tajleena must have known that the property was no longer in her name, else it would have been dealt with in those documents (see my findings below in relation to the 2016 Deeds and 2017 TR1s). The 2008 Fellows Court TR1 is the only alleged forgery in respect of which Tajleena seeks relief.

126. Together with the expert evidence and the movements of Tajleena, so far as they can be distilled from her bank statements, the weight of the evidence points to Tajleena's signatures having been forged on the challenged documents. Against that must be weighed the oral evidence of Mr. Abedin who witnessed Tajleena's signature on 6 documents, Mr. Rashed who witnessed Tajleena's signature on 1 document and the evidence of Rahit and Sultana who support them. They all say that Tajleena signed those documents in their presence in London.

*Mr. Abedin's evidence*

127. Mr. Abedin has signed Q2, Q3, Q4, Q5, Q7 and Q9 as the witness to Tajleena's signature. Mr. Abedin's evidence was evasive and non-committal except when asked about the circumstances in which the challenged documents were executed. He (and Sultana and Rahit) said that those documents were signed on four separate occasions between 2003 and 2007 by Tajleena, on each occasion

in front of them and Mohammed at Fellows Court. Mr. Abedin claimed to have a vivid recollection of the execution of each of those documents which it is said that he witnessed. This was not credible evidence. It would be an extraordinary feat of memory for any lawyer asked about the witnessing of 6 documents on four separate occasions between 18 and 21 years ago. His memory then lapsed when he was asked whether he had written his name and occupation under his signature on the 2006 Birmingham Midshires mortgage (Q9) and the 15 March 2007 Clydesdale Mortgage (Q7). He did not feel able to confirm or deny whether he had written the word “Barrister” although he confirmed that the rest of his details had been written by him. This was bizarre evidence arising, it seems, from a concern that he had failed to describe himself as a non-practising barrister. There is no other candidate for having written the word “barrister”; it all appears to be in the same handwriting and I am satisfied that he did write it.

128. The fact that Mr. Abedin claimed to have such a perfect memory of Tajleena signing the documents is not something which it seems to me can be explained as an honest but false or corrupt or embellished memory. I am satisfied it was false evidence.

129. He was asked about correspondence in March 2022 with Middletons who were acting for Tajleena. Middletons asked him to confirm his involvement, amongst other things, in the execution of the conveyancing and trust documentation in this case, including most of the challenged documents where he acted as a witness (Q2, Q3, Q4, Q5). His response was that he would not consider answering that question unless he was provided with copies of the relevant documents. In fact he had been provided with the relevant documents with

Tajleena's letter of claim in January 2021. He became agitated and strident when this was pointed out to him. His answer, that he had not looked through the documents (even though he is a party to these proceedings and represents the estate of Mohammed), was not credible. It was also quite clear from his cross examination that Mr. Abedin knows all the relevant documents in the bundle very well. In my judgment Mr. Abedin was being evasive in correspondence. There was no reason for Mr. Abedin to be evasive over whether or not it was his signature on the questioned documents if he had nothing to hide and had not been party to assisting with a forgery.

130. I do not accept his evidence.

*Mr. Rashed's evidence*

131. As for Mr. Rashed, he said he remembered being asked by Mohammed to attend at Cann Hall in May 2008 and being picked up by Rahit to go there. He said he remembered Tajleena being there and signing the 2008 Fellows Court TR1 (Q8). His son was at that time four months old and he says he talked with the Islams about his son and his wife on this occasion. Again I did not find it plausible that he could remember this unexceptional occasion so many years ago so clearly. This is particularly so, as he could not remember the details of *any* other occasions when he had met Tajleena, or *any* other occasions when he had visited Cam Hall Road, although he knew that he had. The TR1 has the same date as a contemporaneous remortgage by Mohammed and Rahit as the new owners. Mr. Rashed witnessed Rahit's signature on both documents and it is likely both documents were signed and witnessed at the same time. Unlike the implausibly specific memory of the TR1, however, Mr. Rashed had no



memory at all of the Mortgage Deed. He recognised his signature but had no memory of signing it. It follows he had no memory of Rahit signing it. I do not find his evidence of a specific recollection of witnessing Tajleena's signature credible and I do not accept his evidence that Tajleena signed the TR1 (Q8).

*Sultana and Rahit's evidence*

132. The evidence of Rahit and Sultana was similarly adamant that they had specific recollections of Tajleena signing Q2, Q3, Q4, Q5 and Q9 at Fellows Court with Mr. Abedin as witness and Q8 at Cann Hall Road with Mr. Rashed as a witness. I similarly do not accept their evidence.

*Conclusion on Forgeries*

133. I find on the balance of probabilities that Tajleena's signature was forged on each of the challenged documents, namely:

- i) the Skiers Street TR1 form dated 24 October 2003 (Q2);
- ii) the Skiers Street mortgage deed with Mortgage Express of 24 October 2003 (Q3);
- iii) the Fellows Court mortgage deed with Birmingham Midshires dated 5 May 2006 (Q9);
- iv) the Skiers Street TR1 form dated 30 November 2006 (Q4);
- v) the Skiers Street mortgage deed with Clydesdale dated 30 November 2006 (Q5);

- vi) the Litchfield Avenue mortgage deed with Clydesdale dated 15 March 2007 (Q7);
- vii) the 2008 Fellows Court TR1 (Q8); and
- viii) the wrongly dated NS&I form from 15 November 2011 (Q1).

134. The 2008 Fellows Court TR1 is the only alleged forgery in respect of which Tajleena seeks relief. Rahit has pleaded in his defence and counterclaim that he is in any event the owner of Fellows Court under a constructive trust or proprietary estoppel. This is premised on assurances he was given by Mohammed and Sultana, on which he says he relied and acted to his detriment on, including in making mortgage payments. There was very little exploration of these issues at trial which appear linked to the contention which I have rejected that the trust documentation in favour of Tajleena was a sham and that Mohammed and Sultana were the true beneficial owners of the Properties. No reliance is placed on anything said or done by Tajleena. Tajleena's interest in Fellows Court is not affected by representations made by Mohammed and Sultana. To the extent that Rahit has made mortgage payments or incurred expenditure on Fellows Court, I will hear argument as to what relief by way of equitable accounting is required.

135. I have already said that Tajleena must have known in 2016 that Fellows Court was no longer in her name. Although Mr Woodhead says that she has unreasonably delayed in asserting the forgery of her signature on the 2008

Fellows Court Transfer there is no plea of an estoppel or limitation period or laches or other legal basis for a defence to the claim of forgery.

## **Sham**

### *Law*

136. The classic statement of a sham is to be found in *Snook v London & West Riding Investments Ltd* [1967] 2 QB 786 per Diplock LJ at 802:

*“it means acts done or documents executed by the parties to the ‘sham’ which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. One thing I think, however, is clear in legal principle, morality and the authorities ..., that for acts or documents to be a ‘sham’, with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a ‘shammer’ affect the rights of a party whom he deceived.”*

137. The *Snook* statement was affirmed by the Court of Appeal in *Hitch v Stone* [2001] EWCA Civ 63. Arden LJ stated at paragraph 63:

*“It is of the essence of this type of sham transaction that the parties to a transaction intend to create one set of rights and obligations but do acts or enter into documents which they intend should give third parties, in this case the Revenue, or the court, the appearance of creating different rights and obligations.”*

138. In *Shalson v Russo* [2003] EWHC 1637 Rimer J concluded that the principles laid down in *Snook and Hitch v Stone* (concerned with bilateral transactions) were applicable to a trust created by a disposition by a settlor to a trustee.

*“When a settlor creates a settlement he purports to divest himself of assets in favour of the trustee, and the trustee accepts them on the basis of the trusts of the settlement. The settlor may have an unspoken intention that the assets are in fact to be treated as his own and that the trustee will accede to his every request on demand. But unless that intention is from the outset shared by the trustee (or later becomes so shared), I fail to see how the settlement can be regarded as a sham. Once the assets are vested in the trustee, they will be held on the declared trusts, and he is entitled to regard them as so held and to ignore any demands from the settlor as to how to deal with them. I cannot understand on what basis a third party could claim, merely by reference to the unilateral intentions of the settlor, that the settlement was a sham and that the assets in fact remained the settlor's property. One might as well say that an apparently outright gift made by a donor can subsequently be held to be a sham on the basis of some unspoken intention by the donor not to part with the property in it. But if the donee accepted the gift on the footing that it was a genuine gift, the donor's undeclared intentions cannot turn an ostensibly valid disposition of his property into no disposition at all. To set that sort of case up the donee must also be shown to be a party to the alleged sham. In my judgment, in the case of a settlement executed by a settlor and a trustee, it is insufficient in considering whether or not it is a sham to look merely at the intentions of the settlor. It is essential also to look at those of the trustee.”*

139. In *A v A v St George's Trustees* [2007] EWHC 99 (Fam), Munby J agreed with the decision and reasoning of Rimer J. He made a number of further points, including that the shamming intention must be present when the trust is purportedly created. A trust which is valid when created does not subsequently become a sham because the trustees and the settlor agree to ignore the terms of the trust. That is simply a breach of trust; no more and no less; see paragraph 42.
140. Determining whether the parties have a shamming intention is not a question of construction of the impugned document, but a matter on which extrinsic evidence is admissible to prove or disprove the existence of the requisite subjective intention. In determining whether the shamming intention was there at the outset it is therefore perfectly proper to consider how the parties have subsequently acted; *National Westminster Bank plc v Jones* [2001] 1 BCLC 98 at paragraph 42.
141. The shamming intention in an alleged “sham trust” requires both (a) an intention that the assets are to be held on different terms to those set out in the trust deed and (b) an intention to mislead others as to the true intention. The general rule is that, for a transaction to be a sham, all the parties to it must share the necessary intent. In the context of a “sham trust”, a number of cases have concluded that a trustee who goes along with a sham with reckless indifference will have the necessary common shamming intention; see *A v A* at paragraph 50 to 52 for a review.
142. Intention is not the same as motive. All transactions are carried out for a reason. An improper motive, such as to put assets out of the reach of creditors, is not

without more, proof of a sham. Such a motive can be fulfilled by a genuine transfer of the assets out of the ownership of the debtor. That is why there are statutory provisions such as section 239 and section 423 Insolvency Act 1986 which permit the court (where the conditions are satisfied) to clawback for the benefit of creditors some or all of the value lost to the debtor's estate by these genuine dispositions. If a trust is created, and the assets are intended to be held on the terms of the trusts expressed, then it is a valid trust even if the ulterior motive was that by creating the trust, assets would then not be available to creditors of the settlor.

143. In assessing the evidence as to the existence of the shamming intention, it is important to bear in mind the words of Neuberger J in *National Westminster Bank plc v Jones* at para [59]:

*“there is a very strong presumption indeed that parties intend to be bound by the provisions of agreements into which they enter, and, even more, intend the agreements they enter into to take effect....”*

*Because a finding of sham carries with it a finding of dishonesty, because innocent third parties may often rely upon the genuineness of a provision or an agreement, and because the court places great weight on the existence and provisions of a formally signed document, there is a strong and natural presumption against holding a provision or a document a sham.”*

144. A conclusion that a document, agreement or provision is a sham or pretence does not make it void, or of no effect, for all purposes. The parties will not be able to rely on it as representing the true position as to the rights and obligations they have created and the court is free to ignore it and determine what those

rights actually are; see *Re Yates (a bankrupt)* [2005] BPIR 476 at paragraph 219. The court has some flexibility as to what the consequences should be. This is because where there is a sham the illegality principle is engaged.

145. “No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act”. Lord Mansfield’s statement in *Holman v Johnson* (1775) 1 Cowp 341 is said to be the font of the illegality principle in English law. The question of what constitutes an “immoral or illegal” act for the purposes of the illegality principle was addressed by the Supreme Court in *Les Laboratoires Servier v Apotex Inc* [2014] UKSC 55. Lord Sumption made clear that the principle applied not just to criminal acts, but also to quasi-criminal acts which engaged the public interest. The latter category “includes cases of dishonesty or corruption, which have always been regarded as engaging the public interest even in the context of purely civil disputes”; *Les Laboratoires* at paragraph 25. As Neuberger J observed in the quote above from *National Westminster Bank v Jones*, all shams involve a finding of dishonesty. Shams to dishonestly conceal assets from creditors have always been regarded as engaging the illegality principle; see e.g. *Gascoigne v Gascoigne* [1918] 1 KB 223, *Tinker v Tinker* [1970] P 136 at page 143, *Tribe v Tribe* [1996] Ch 107, *Collier v Collier* [2002] EWCA Civ 1095 at paragraph 48 and *Re Yates* [2005] BPIR 476 at paragraphs 250 and 251.
146. In *Patel v Mirza* [2016] UKSC 42 the Supreme Court swept away the previous reliance based approach to the illegality principle, but did not question the correctness of Lord Sumption’s analysis in *Les Laboratoires Servier v Apotex Inc* of what constitutes an act which engages the illegality principle. Any

consideration of the consequences of a conclusion that there is a sham must now consider the trio of considerations identified in Lord Toulson's speech in *Patel v Mirza*. He summarised the way forward at paragraph 120:

*“The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary (a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact and (c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather by than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate.”*

147. Illegality is an issue which the court can take of its own motion even where, as here, it is not pleaded; *Otkitrie International v Urumov & Ors* [2013] EWCA Civ 1196 at paragraph 11, *Les Laboratoires* at paragraph 23.

### *Discussion*



148. Sultana and Rahit maintain that Tajleena never had any interest in any of the Properties.
149. By 15 June 2006 there was a separate declaration of trust by Mohammed, Sultana and Tajleena in respect of each of Louise Road, Fellows Court, Litchfield Avenue, the Billericay land and Cann Hall Road declaring that each Property was held on trust as to 50% for Sultana and 50% for Tajleena. In addition Skiers Street had been purchased in the joint names of Sultana and Tajleena apparently on the terms of a declaration of trust which has been lost. I will refer to these as “**the pre-2006 Declarations of Trust**”. Sultana and Rahit say that these were shams to conceal Mohammed’s interest from his creditors, particularly the Standard Chartered Bank, and that the Properties were intended to be owned by Mohammed and Sultana.
150. In August 2006 there was a declaration of trust in respect of Fellows Court, Louise Road, Litchfield Avenue and Cann Hall Road declaring that those properties were held as to 33% for each of Mohammed, Sultana and Tajleena. Sultana and Rahit say that this document is also a sham and the real intention was that the properties would be owned by just Mohammed and Sultana. Sultana says that Mohammed had become worried about inheritance tax on the death of Sultana or Tajleena and so his introduction as a beneficiary was “a middle ground”. She says that Mohammed was still worried about creditors although he had been told by his financial advisor that Standard Chartered Bank was no longer pursuing him. The November 2006 transfer of Skiers Street into the joint names of Mohammed, Sultana and Tajleena to hold as tenants in common on the terms of another declaration of trust which has not been found is also alleged

to be a sham. Tajleena was not intended to have any interest, they say. I refer to these as “**the post-2006 Declarations of Trust**”.

*Pre-2006 Declarations of Trust*

151. Sultana and Rahit must prove that there was both (a) an intention that the Properties were actually to be owned by Mohammed and Sultana, and not as set out in the pre-2006 Declarations of Trust, and (b) an intention to mislead others as to the true intention. They must show that all of Mohammed, Sultana and Tajleena had the shamming intent, or possibly that if one had that intent, the others went along with the transaction with reckless indifference.
152. I consider it likely that the pre-2006 Declarations of Trust were driven by a desire by Mohammed to protect his assets from his creditors. It is Sultana and Rahit’s evidence that for years after the failure of the Willow Park nursing home in 1997 Mohammed was pursued by creditors of the failed business. I accept that evidence, although there is very little documentary evidence to support it. Rahit and Sultana say this is because Tajleena has suppressed the documentary evidence which they say is under her control. Nevertheless there is a clear pattern of asset protective behaviour at this time which emerges from the documents.
- i) On 6 April 2001, Standard Chartered Bank was registered as the proprietor of Church Street, having realised its security against the property as mortgagee. On 14 March 2002, Church Street was sold by Standard Chartered Bank for £200,000. As at 25 November 2002 a collection agency had been appointed to collect £307,773.35 from Mohammed and was demanding immediate payment. On 11 December

2002 the collection agency wrote to Mohammed giving 72 hours to pay that sum of money failing which they would recommend to Standard Chartered Bank that legal action be taken (but for whatever reason it does not seem that legal action was taken).

- ii) At about this time Mohammed began divesting himself of his assets. On 15 May 1995, College Grove Road was transferred by Sultana and Mohammed into Sultana's sole name, for a purported consideration of £20,000. Mohammed transferred all his interest in land he owned in Bangladesh to Sultana by way of gift. On 30 July 1999, Hermitage Road was sold for £145,000. On 8 December 2000, Back Hatfield Street was sold for £34,000.
- iii) Mohammed prepared the counterfeit documents dated 2001 to give the false impression that Tajleena had inherited money from her grandmother in Bangladesh.
- iv) At the same time Mohammed began opening bank and building society accounts in Tajleena's name. During her adulthood some 25 accounts were opened in Tajleena's name, or in joint names of her and one of her parents. Only one of those accounts, the Nationwide account I have referred to in the section headed "Forgeries", was used by Tajleena.
- v) The pre-2006 Declarations of Trust themselves, are at pains to make clear that Mohammed had no interest in those properties, regardless of any contributions he may have made (see the 12 March 2004 declaration of trust for Fellows Court at recital 4) and are consistent with Mohammed being fearful of creditors.

153. It does not, however, follow that that the pre-2006 Declarations of Trust were shams. While one of Mohammed's motivations in making the pre-2006 Declarations of Trust may have been to protect his assets from his creditors it does not follow that he, Sultana and Tajleena had the necessary intention that the declarations of trust they signed should be shams to mislead Mohammed's creditors. Intention is not the same as motive. All transactions are carried out for a reason. Mohammed's motive could be fulfilled by a genuine transfer of the assets out of his ownership. If Mohammed (or Sultana or Tajleena) intended the Properties to be owned beneficially by Sultana and Tajleena, then the pre-2006 Declarations of Trust are not shams even if the ulterior purpose was that by creating the trusts, assets would then not be available to Mohammed's creditors.
154. I am satisfied that Mohammed hoped to protect his assets from Mohammed's creditors by gifting them to Sultana and Tajleena. Mohammed and Sultana did not intend Tajleena to receive any immediate benefit from the gift by way of rental income; nevertheless, the Properties were intended to be her assets for her future security, and her inheritance after her parents had passed away. Tajleena understood this. The Properties were transferred into Tajleena's name because, as Mohammed said to Mr. Guest in 2012, they trusted her and were "planning to help her in our absence".
155. There is other evidence that until the arrival of Ludovic on the scene, the Properties were destined for Tajleena.
- i) As stated above at paragraph 64 in January 2003 Tajleena and her parents made Wills. The combined effect of those three Wills was that

if her parents predeceased her, Tajleena inherited their joint estate. Rahit inherited nothing unless and until Tajleena died. At least two points can be made from this.

- a) At this point Fellows Court was held by Mohammed, Tajleena and Sultana as beneficial joint tenants under the declaration of trust in the TR1. £100,000 of the proceeds of sale of Hermitage Road (Mohammed and Sultana's investment property) was now in a Leeds & Holbeck account in the joint names of Tajleena and Sultana. College Grove Road, the family home in Wakefield, was now in Sultana's sole name. There were other joint accounts in the names of some combination of Mohammed, Sultana and Tajleena. All this wealth was, at the time of the Wills, destined ultimately to be solely owned by Tajleena. The lifetime transfer of joint ownership of money and property to Tajleena is consistent with that long term intention.
  - b) Tajleena was 23 years old and a medical student being supported by her parents. There was no need for Tajleena to make a Will unless it was thought that she owned the above assets. She had no others. Mr. Woodhead did not suggest that Tajleena's Will was itself part of the sham arrangement.
- ii) In the 2010 argument evidenced by the email exchange between Tajleena and her father both Rahit and Tajleena have the common understanding that the Properties are intended for Tajleena. While this is only Tajleena's side of the argument, there is no reason for her to have

made up the underlying theme of Rahit's resentment that she was getting more than Rahit. Rahit, she says, said

*"You have your name in everything what do I have?"*

*"Why should one child get more than another think about it"*

*"You do nothing for those houses...I do everything WHAT DO I GET your name is in everything"*

*"Your assets in life are you [sic] degree, the houses, what do I have?"*

- iii) That Tajleena understood the Properties were security for her future may be glimpsed in the angry culmination of her message to her father:

*"Take my name out of the houses and give it to that bastard. ...I can look after myself in life."*

156. The legal effect of the pre-2006 Declarations of Trust was to vest the beneficial interest, and the right to enjoyment of the income of the Properties, in Tajleena and Sultana immediately. Nevertheless Mohammed clearly trusted Sultana and Tajleena to allow him control of the Properties while he was alive, and to respect his wishes as head of the family as to what should become of them. In the cultural context of a South Asian family, that is unsurprising. Sultana referred to Cann Hall Road as "family property" and in the context of a South Asian family the practice of the head of the family having de facto control over the pooled assets of the family is not unusual. Relying on trust, or the bonds of love, blood and culture, to control and enjoy the property of another does not mean that the other is not still the owner in the eyes of the law of this

jurisdiction. And if those bonds are severed the owner is, in principle, and subject to the operation of other aspects of the law such as equity, entitled to vindicate his ownership through the courts.

157. In her 2019 Family Proceedings witness statement (see paragraph 98 above) Tajleena said that she believed “*the properties were put in mine and [Sultana’s] name solely for inheritance purposes.*” This supports my view that Tajleena did not expect to benefit from the Properties while Mohammed was alive, but expected to do so after the death of Mohammed, or Mohammed and Sultana. If the vesting of title in joint names and the Declarations of Trust were intended to secure that Tajleena could benefit from the Properties when both of her parents were dead, that could only be achieved if they were not shams as alleged.
158. Mr. Woodhead emphasised a passage in the 2011 MSN exchange between Tajleena and her father where, after she had angrily declared her intention to cut all ties with her family, she said:

*“i don’t want yr houses*

*or any of yr money*

*i will find a lawyer and take my name out of yr houses”.*

These statements appear to me to be the words of a petulant child rejecting a parent’s gift. They are consistent with Tajleena understanding that the Properties were in her name because her parents wanted her to own them after they had died.

159. So far as the post-2006 Declarations of Trust are concerned, whereby some of the Properties were declared to be held for Mohammed, Sultana and Tajleena equally, it seems to me that the argument that these were shams is completely untenable. Declaring that Mohammed had a third share of the Properties is not consistent with the assertion that there was a sham to hide his assets from his creditors. Sultana's evidence is that by this stage Mohammed knew that the Standard Chartered Bank was no longer pursuing him for the debt he owed in respect of the mortgage on the nursing home. Unsecured creditors would long since have been time barred from bringing claims. The suggestion that, nevertheless, some nervousness on his part led him to hide his true ownership of half of the properties, but reveal his ownership of a third, is just not believable.
160. The reality is that the Properties were declared to be held in three names so as to be able to get better interest rates as Mohammed now had a pension income and as inheritance tax planning. When in May 2006 Mohammed sought advice from Mr. Guest on inheritance planning, that advice was provided on the basis that Tajleena was a beneficial owner of the Properties and on the basis that Mohammed had no interest in the Properties. There is no record of Mohammed disputing this. There was a concern that Tajleena's interest in the Properties was such as to give rise to an IHT charge on her death. In June 2006 Mohammed was advised by Mr. Guest that Tajleena's interest in the Properties should be reduced to bring her estate below the IHT nil rate band and that consideration should be given to changing the shares of Mohammed, Sultana and Tajleena in the Properties. Placing the Properties in the equal beneficial ownership of the three of them reduced Tajleena's estate and took advantage of Mohammed's



unused nil rate band for IHT. It is not in my judgment a coincidence that the post-2006 Declarations of Trust in the ensuing months changed the shares in four of the Properties so that they were divided equally between Mohammed, Sultana and Tajleena.

### *Illegality*

161. In light of these findings that there was no sham the illegality doctrine does not arise, and the principles in *Patel v Mirza* do not need to be applied.

### **Undue Influence**

#### *Law*

162. The leading authority on the equitable doctrine of undue influence is the decision of the House of Lords in *Royal Bank of Scotland Plc v Etridge (No.2)* [2002] 2 AC 773. Lord Nicholls explained the first principles of the doctrine at paragraph 6:

*“Undue influence is one of the grounds of relief developed by courts of equity as a court of conscience. The objective is to ensure that the influence of one person over another is not abused. In everyday life people constantly seek to influence the decisions of others. They seek to persuade those with whom they are dealing to enter into transactions, whether great or small. The law has set limits to the means properly employable for this purpose.”*

163. That boundary between proper persuasion and undue influence is crossed when the intention to enter into a transaction has been procured by the exercise of influence in circumstances where the consent thereby procured “*ought not fairly to be treated as the expression of a person’s free will*”; *Etridge* at para 7. There

are broadly two types of conduct which have been identified as capable of amounting to undue influence (see *Etridge* at paras 8, 151 and 152).

164. The first comprises overt acts of improper pressure or coercion such as unlawful threats. If such acts induce consent to be given to a transaction, then undue influence has been affirmatively proved. This is usually called “actual undue influence”.
165. The second arises out of a relationship between two persons where one has acquired over another a measure of influence or ascendancy, of which the ascendant person then takes unfair advantage. In such cases there is scope for misuse of influence without any specific overt acts of persuasion. The relationship between them may be such that, without more, one of them is disposed to agree a course of action proposed by the other.
166. Typically a relationship of this type of ascendancy or influence is one where one party reposes trust and confidence in the other to look after the complainant’s affairs and interests, but there is no single touchstone for determining whether the principle is applicable; *Etridge* at paragraphs 9, 10 and 11. In some types of relationship, such as parent and child, trustee and beneficiary, solicitor and client, and medical advisor and patient, the law presumes, irrebuttably, that one party has influence over the other so no further proof that the relationship falls within this principle is necessary; *Etridge* at paragraph 18.
167. Proof of a relationship of the requisite ascendancy or influence, coupled with a disadvantageous transaction which calls for explanation (because it is not readily explicable by the relationship between the parties), will normally be

sufficient to allow an inference to properly be drawn that on the balance of probabilities, the transaction must have been obtained by an abuse of the influence held by the defendant in the relationship. The evidential burden then falls on the defendant to show why that inference should not be drawn by the court. The term “presumed undue influence” describes the evidential burden on the defendant to dispel the inference that has arisen; see *Etridge* at paragraphs 14, 16 and 17. The weight of the evidential inference of undue influence and the weight of the evidence needed to rebut it will vary from case to case: *Etridge* at paragraph 24 and 152. In every case the court will draw appropriate inferences of fact upon a balanced consideration of the whole of the evidence at the end of a trial in which the legal burden of proof rested throughout upon the complainant. There will either be proof of undue influence or the complainant will fail; see *Etridge* at paragraphs 16 and 93.

168. “Actual undue influence” and “presumed undue influence” therefore describe different methods of proving that a complainant has entered into a transaction in consequence of undue influence.
169. In this case Tajleena relies on both actual and presumed undue influence. In relation to presumed undue influence she relies on a relationship of trust and confidence but also on an irrebuttable presumption of influence of her parents over her as their child. How long such a presumption continues is a question of fact and degree as to whether the child is emancipated and not under the dominion of the parent but it normally lasts only a short time after the child has attained majority; see *In re Pauling’s Settlement Trusts* [1964] 1 Ch 303 at 337.

*The August 2006 Deed*

170. Tajleena says this deed was procured by undue influence. She says she attended Mr. Guest's offices with her parents and signed the document without knowing what it was because she trusted her parents. In her witness statement she said that she had not been allowed to read it but in cross examination she admitted that she had not been prevented from reading it and had at least skimmed through it. There was some backtracking to suggest that her father had hurried her along and that she had read the first and last page, but not the middle page which makes it clear what the document is. There was no credible explanation why she had not read the middle page of this simple document. I reject her evidence. I find that she knew the contents of the document and understood what it did.

171. By this stage, when she was 26 years old and a medical student living independently in the Czech Republic any presumption of influence by reason of the relationship of parent and child had in my judgment ended. I do, however, accept that at this stage Tajleena reposed trust and confidence in Mohammed in relation to dealings with the Properties and there was the required relationship of influence.

172. I do not regard the transaction as one which calls for explanation. This is not a transaction of which it could fairly be said that it is so disadvantageous that it can only be explained on the basis that improper influence was used to procure it. On the contrary, this document is simply one of many documents that Tajleena has willingly signed between 2002 and 2008 at the behest of her parents. Taken together those transactions were hugely advantageous for Tajleena as she is thereby gifted a substantial interest in the Properties by her

parents. The legal effect of the August 2006 Deed may have been to return some of that gift to her father, but it was at this stage still intended that Tajleena should inherit the Properties on the death of her parents, and the transaction was merely intended as inheritance tax planning.

### *2016 Deeds*

173. The relationship between Tajleena and her parents had changed by 2016. She had failed to obtain her medical degree in 2008 and that had caused disappointment and upset. The angry exchanges in 2010 and 2011 both ended with her declaring that she was cutting herself off from her family. During this period she had formed a secret relationship with Ludovic which involved a deception of her parents that she was still in the Czech Republic when she was actually visiting and then living with him in Wiltshire. When the relationship was revealed to her parents in 2012 I imagine it further damaged the relationship between parents and daughter.
174. In May 2012 Mohammed emailed Mr. Guest worried that Tajleena was being influenced by Ludovic who was interested in her wealth, and expressing concern that he and Sultana might face claims from “third parties” in relation to Cann Hall Road in the event Tajleena was “jilted/divorced”. He asked Mr. Guest for ideas as to how to “achieve deletion of her name from all 5 properties”. Mr. Guest responded that the only way would be for Mohammed, Sultana and Tajleena to sign a formal document declaring that the equity in each property belonged to Mohammed or Mohammed and Sultana. He clearly doubted Tajleena would sign such a document and Mohammed appears to have had the same view. They agreed to leave things as they were for the time being.

175. Tajleena's relationship with Ludovic was turbulent and violent from before their marriage in 2014. There are emails from Mohammed to Ludovic in 2013 encouraging him to patch things up and stay with Tajleena. By August 2016 Mohammed was writing secretly, and on the basis his identity would not be revealed, to Children's Social Care asking for their intervention to protect Tajleena's two children.
176. By October half term in 2016 Ludovic had left the matrimonial home. Tajleena had brought the children to Cann Hall Road to stay. While she was away Ludovic moved back into their home and changed the locks. He sent her an email on 26 October 2016 informing her of this and proposing they agree terms for a divorce, to avoid the expense of solicitors. His proposals included proposals for maintenance payments from him to Tajleena to support her and the children and a timetable which included commencement of divorce proceedings on 2 December 2016.
177. Tajleena says she showed Mohammed this email and this was the catalyst for the 2016 Deeds. I accept her evidence. Mohammed had been concerned about the position of the Properties in the event of the breakdown of Tajleena's relationship with Ludovic since 2012. It is likely that the topic of transferring the Properties out of Tajleena's ownership had been discussed with her before.
178. It follows that I do not accept Sultana's and Rahit's evidence that neither of them, nor Mohammed, knew or were concerned about a divorce. In light of the history of matrimonial problems, and the letters to Children's Social Care, it is highly unlikely that Mohammed, Sultana and Rahit were not all expecting the relationship to fail. I do not believe Rahit's evidence that he had not seen

Ludovic's email despite the fact that he helped Tajleena craft a reply. Nor do I accept their evidence that the motive for the 2016 Deeds was to set the record straight while Mohammed was still alive. The terms of the 2016 Deeds themselves, containing an express and unnecessary provision that Tajleena never had an interest in the Properties, and an express and unnecessary provision that they are not available meet any obligation she had to pay "any third party" (see above at paragraph 82) reveal that the real concern was Tajleena's divorce.

179. Tajleena's account of signing the 2016 Deeds is that on or about 27 October 2016 she was ushered into the living room of Cann Hall Road by her mother who locked the door behind her and she found herself in the room with Mohammed, Rahit, Mr. Abedin and Mr. Rashed. She says her father told her she must sign or he would throw her out of the house. She says she felt frightened and intimidated and she signed the documents put in front of her not knowing what they were. I do not accept this account. Sultana says there is not even a lock on the living room door – a plausible assertion and not an obvious one to concoct. I have seen nothing to suggest that Mohammed would force Tajleena to do something she did not want to do. As I observed at an early stage in this judgment, I do not think it would be easy to make Tajleena do something important she did not want to do. I do not think she would sign documents without having some idea what she was signing. I do not think the situation she describes would have frightened her into submission. She is a tough lady. The threat of being thrown out of Cann Hall Road was not as fearsome as she made out – the email from Ludovic contemplated that she might not agree to his proposals on accommodation in which case he would change the locks back, and indeed the draft email she discussed with Rahit on 27 October made clear

that she was proposing to return on the Sunday so the children could go to school, and she did go back with the children.

180. It is more likely that Tajleena signed the 2016 Deeds willingly. The email from Ludovic seems to have been the final straw which made Tajleena agree. She still expected to receive the Properties on the death of her parents. In her 2019 Family Proceedings witness statement she volunteered that her father promised to leave her a “*a larger portion of inheritance*” if she signed the 2016 Deeds and showed her a draft Will. Although that was not her evidence to me, I consider that once again that is closer to the truth than her evidence now. She and Ludovic say that Tajleena told Ludovic at about this time that she had had to sign papers in relation to the Properties, and that she blamed Ludovic for the fact that she had to do so. If that conversation took place it was likely because Tajleena wanted to make clear to Ludovic that the Properties would not be available in a divorce. It is telling that once she was back in Wiltshire after signing these documents she made no attempt to see a solicitor or go to a Law Centre or to seek any advice. If she had been made to sign these papers against her will, she would have done so.

181. This does not mean that I accept the account of Sultana, Rahit, Mr. Abedin and Mr. Rashed. Their account is that the 2016 Deeds were signed after 7pm in the evening on Sunday 13 November 2016 in the living room in a friendly environment in which Tajleena signed the documents willingly and stayed and chatted socially with Mr. Rashed and Mr. Abedin. The problem is the date and time. Sultana confirmed Tajleena’s evidence that the children were with her on the day she signed the 2016 Deeds. Although Ludovic and Tajleena visited Cann



Hall Road that weekend with the children, they would not have still been in London at that time on a Sunday night because of the need to get the children to school the next day in Wiltshire. There was evidence that in this period the children did not miss school. On the other hand, there is a Google Maps Timeline which does seem to show that Mr. Rashed, Mr. Abedin and Rahit congregated at Cann Hall Road on the evening of Sunday 13 November 2016 and that Mr. Rashed did not go to Cann Hall Road on 27 October 2016.

182. Nothing may turn on precisely when the 2016 Deeds were signed, but I consider the most likely explanation is that Tajleena signed the 2016 Deeds on or about 27 October, and Mr. Rashed signed them (in her absence) on 13 November 2016. This reconciles the discrepancies outlined above. It is also supported by anomalies in the HM Land Registry Form RX1s also dated 13 November 2016 which Rahit and Tajleena say were signed at the same time as the 2016 Deeds (Mr. Rashed and Mr. Abedin could not recall). The Form RX1s are Mohammed's applications to enter a restriction on the register to protect his and Sultana's interest under the 2016 Deeds. There are four RX1s, one for each of Cann Hall Road, Louise Road, Litchfield Avenue and Skiers Street. Tajleena signed the RX1s to consent to the entry of the restriction. Those documents are typed except for the pages signed by Tajleena and the typed part of the documents refer to the 2016 Deeds being dated 13 November 2016. The page signed by Tajleena contains the box in which the wording of the proposed restriction is set out, and this is filled in in manuscript writing instead of type. This is all consistent with the RX1s having been signed by Tajleena on an earlier date in blank and the page with her signature being inserted into a word processed document prepared later, after the 2016 Deeds had been dated. Had

the 2016 Deeds and RX1s all been signed on 13 November, it would be surprising if the RX1s were readied for signature with that date typed in for the 2016 Deeds while the 2016 Deeds themselves left the date for completion in manuscript. Had the 2016 Deeds and RX1s all been signed on 13 November the text on the page signed by Tajleena would have been in type. No one attempted to give an explanation of why it was not. The RX1s are therefore consistent with the 2016 Deeds and the RX1s being signed by Tajleena before 13 November 2016.

183. I am satisfied therefore that there was no improper pressure exerted on Tajleena to sign the 2016 Deeds. By this stage Tajleena was a 36 year old lady, educated, married with two children and, as I have previously described, a tough lady. I accept that she still reposed trust and confidence in her father to look after her interests in many respects, for example to give effect to what they agreed in respect of the Properties, but not in relation to what she should do in respect of her interest in them. Mohammed, in 2012, did not think she would sign documents which took her name off the title to the Properties which shows his view of her independence of mind and his lack of influence on this issue. Although the legal effect of the 2016 Deeds was to deprive her of any interest in the Properties, I find that Tajleena signed them, not because of improper pressure, but willingly, because she thought that by doing so she would protect the Properties from Ludovic and she would get them, or most of them, back on the death of her parents. She signed the 2016 Deeds because she made her own assessment that it was in her interests to do so.

184. I also reject an alternative contention on behalf of Tajleena that the 2016 Deeds were shams to conceal her beneficial interest from the Court in a divorce. Tajleena and her father had agreed to transfer the Properties out of Tajleena's name, with the intention that she would inherit some of them under her parents' Wills. The motive may have been to put assets out of the reach of Ludovic, but that was to be achieved by the 2016 Deeds having effect. If the 2016 Deeds were shams, there was no need for the Wills which were subsequently prepared. It was also argued that the 2016 Deeds were only intended to take effect in the event of a divorce, but a deed takes effect when it is signed and delivered as a deed, and as a matter of construction the 2016 Deeds clearly take effect from their date.

#### *2017 TR1s*

185. The 2017 TR1s were signed at the office of Law Dale solicitors and witnessed by Shahidul Islam. His evidence was that Mohammed contacted him in late May 2017 and made an appointment to see him. On 2 June 2017 Rahit and Tajleena climbed the stairs to the third floor where the office was located and signed in front of him. Mohammed could not climb the stairs and so Shahidul Islam came downstairs and witnessed Mohammed's signature in the back of the car. Later that day Sultana came to the office and signed in front of him. Shahidul Islam took photocopies of their passports and proof of address and the TR1s and filed them in a file he kept for that purpose. His file of these documents, as they relate to Tajleena, has been disclosed in these proceedings. There is a copy of Tajleena's passport and a utility bill for Cann Hall Road in

the name of Sultana and Tajleena on the file. He made a short manuscript attendance note recording that he had witnessed four TR1s for the Islams after checking their passports and proof of address and that he had given no advice and charged no fee. Shahidul Islam says that each of the Islams seemed happy and normal.

186. Shahidul Islam's advice is in line with Rahit and Sultana's evidence.
187. Tajleena's evidence is very different. She says that the TR1s were not signed on 2 June 2017 but were signed the day after the 2016 deeds were signed in October 2016. She says she was told by her father to accompany him to solicitors to finalise documents to protect the Properties against any claim made by Ludovic in a divorce. Rahit drove them, picking up Mr. Abedin on the way. Rahit and Mr. Abedin had escorted her upstairs to Law Dale's office in silence which she found intimidating. She says she told Shahidul Islam that she did not know why she was there. Rahit had told her to keep quiet and do as she was told, and that this was for the divorce. She says she felt overwhelmed and said that she needed her father, but was ignored. The papers were put before her and she signed without an opportunity to read them and she was not given a copy. After they were signed she was told that she could go and she ran down the stairs to the car where her father was waiting and asked him to explain what she had signed. He became very emotional and she did not press him further. Rahit, Mr. Abedin and Shahidul Islam had come downstairs about 20 minutes later chatting and shaking hands, before Rahit and Mr. Abedin returned to the car and they drove back to Cann Hall Road. On her account, Shahidul Islam did not

come to the car and witness her father's signature. Tajleena says Shahidul Islam is lying in his witness statement and his evidence to the Court.

188. I prefer Shahidul Islam's evidence to Tajleena's. His evidence was straightforward and credible and supported by his file. It was not suggested to him that his file was concocted for the purpose of this case. It would have to have been a fabricated file if Tajleena's evidence is correct. There are other reasons for my conclusion that Tajleena is lying about this account. Tajleena gave evidence that she did not have her passport with her when she went to Law Dale. This is consistent with her account of the visit taking place unexpectedly in the October half term as she would have had no reason to have her passport with her on her visit to London. However, Tajleena's 2019 Family Proceedings witness statement recounts her trip to Law Dale to sign the TR1s but volunteers that she went with her passport on that occasion. She has changed her story in her evidence to me. Her witness statement in these proceedings says that she brought her passport to London in June 2017 because her parents had told her that they needed it for their Wills and she gave it to her father to copy. I think it more likely that she brought her passport to London in June 2017 because she was going to Law Dale to sign the TR1s in Shahidul Islam's office.

189. The 2017 TR1s were a continuation of the plan the Islams had settled upon to transfer the Properties out of Tajleena's name, with the intention that she would inherit some of them under her parents' Wills. The Wills bear the typed date 1 June 2017 and it seems to me highly likely were discussed with and shown to Tajleena prior to her visit to Law Dale to sign the 2017 TR1s. As I have said above, Tajleena's 2019 Family Proceedings witness statement said that she had

been promised a larger inheritance by Mohammed and she had been shown a draft Will to persuade her to sign the 2016 Deeds. The Wills purport to leave Mohammed's interest in each of Litchfield Avenue and Louise Road to Tajleena and her children and half of Mohammed's interest in Cann Hall Road to Tajleena and her children. Sultana's Wills are identical in disposing of her interest. It seems to me that the preparation of these Wills was an implementation of an agreement that Tajleena would inherit her father's share in the three Properties on his death, and her mother's share on her death. The 2016 Deeds themselves, while opaquely worded, appear to envisage that Mohammed's and Sultana's share would pass to their respective "heirs" on their respective deaths; see clauses 1, 2 and 10. There is nothing in the Wills to indicate that Tajleena was to inherit only on the death of the survivor of Mohammed and Sultana. On the contrary, the way in which Mohammed's Will makes express provision for Cann Hall Road not to be sold until Sultana's death, provides a further internal indication that Mohammed intended Tajleena to have an interest in these Properties on his death before Sultana, and that it would pass under these Wills.

190. The 2017 TR1s, however, provided for the three properties to be held by Sultana and Mohammed as beneficial joint tenants and not as tenants in common. The consequence is that nothing passes under Mohammed's Wills because of the doctrine of survivorship in a beneficial joint tenancy.
191. It is not clear who drafted the Wills, the 2016 Deeds, the RX1s and the 2017 TR1s. Rahit said that Mohammed drafted all these documents himself.

192. In my judgment the 2017 TR1s fail to implement what Tajleena had agreed to. On my findings of fact it is a transaction which calls for an explanation. Something has clearly gone wrong here. In the context of what had been agreed it was clearly disadvantageous to Tajleena to sign the 2017 TR1s. She cannot have understood their legal effect. I have no doubt that she signed the 2017 TR1s because of the trust and confidence she reposed in her father to protect her interests, at least in relation to implementing things she had agreed with him. It seems to me that her signing of the 2017 TR1s, without a proper understanding of their effect, and without seeking advice, is only explicable by the exercise of influence by her father. That is sufficient, in my judgment, to give rise to a presumption of undue influence.
193. The presumption of undue influence having been raised, it is for Sultana and Rahit to rebut it. It seems to me that they cannot show that the 2017 TR1s were the exercise of full free and informed thought by Tajleena. She cannot have understood what she was doing. Tajleena signed the 2017 TR1s against the assurance that she would inherit her father's share in the three Properties on his death, and her mother's share on her death. If Tajleena had understood that the wording of the TR1s meant that this would not happen I am satisfied that she would not have signed any of them (including the transfer to Rahit of Skiers Street, a property which she did not expect to inherit,) until the position had been corrected.
194. I have not had to determine whether the TR1s were deliberately or inadvertently drafted so as to defeat Tajleena's expectations. If the 2017 TR1s were deliberately drafted to defeat Tajleena's expectations, then her signature was

obtained by an unfair exploitation of her relationship with her father and is properly categorised as undue influence. The proper remedy for an inadvertent mistake might not be under the doctrine of undue influence, but under the law of misrepresentation, or rectification, or mistake. No attempt was made at trial by either side to explore whether or not the TR1s were deliberately or inadvertently drafted in this way. In the end, a presumption of undue influence having been raised, it is for Sultana and Rahit to prove that that the disadvantageous transaction was not the result of improper influence, including, if it be the case, that it was caused by an unfortunate mistake, and this they have failed to do. Had the case been argued on that basis, then alternative claims based on misrepresentation, rectification or mistake might have been pleaded and proved.

### **Concluding Remarks**

195. In conclusion:

- i) the allegations of sham fail;
- ii) the 2008 Fellows Court Transfer is invalid as a forgery;
- iii) the allegations of undue influence in relation to the August 2006 Deed fail;
- iv) the allegations of undue influence in relation to the 2016 Deeds fail;
- v) the 2017 TR1s are set aside as having been procured by undue influence.



196. There will be a consequential hearing to determine the form of the order, including the form and extent of any accounts and inquiries, costs and any other matters consequential upon this judgment.