



Neutral Citation Number: [2021] EWHC 853 (Ch)

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
CHANCERY DIVISION  
PROPERTY TRUST AND PROBATE LIST (ChD)**

**Royal Courts of Justice  
Rolls Building,  
Fetter Lane,  
London, EC4A 1NL  
Date: 12 April 2021**

**BEFORE:-**

**MR RECORDER RICHARD SMITH  
(Sitting as a Judge of the Chancery Division)**

**BETWEEN:-**

IMRAN KANVAL

Claim No PT-2018-000579

**Claimant**

- and -

RIZWAN KANVAL

**Defendant**

**AND BETWEEN:-**

JAVAID KANVAL

Claim No PT-2017-000201

**Claimant**

- and -

(1) RIZWAN KANVAL  
(2) PRINCE EVANS SOLICITORS

**Defendants**

Nigel Woodhouse (instructed by Steadfast Solicitors) for the Claimants  
Elizabeth Fitzgerald (instructed by Dewar Hogan) for the Defendant/ First Defendant

**APPROVED JUDGMENT**

HEARING DATES: 2-5 and 12 February 2021

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## 1. INTRODUCTION

### (a) Background

1. This judgment concerns a dispiriting dispute between three of the Kanval brothers about the beneficial ownership of a property at 35 Sutherland Road, Ealing, London W13 0DX (“**Sutherland**”).
2. The immediate Kanval family members and their role (if any) in these proceedings are identified in the table below. I refer in this judgment to each family member by forename.

NAME	ROLE
<b>Kanval brothers</b>	
Javaid (04.02.1970)	Claimant/ witness for Claimants
Kamran (14.08.1971)	None
Imran (26.08.1972)	Claimant/ witness for Claimants
Urfan (20.08.1973)	Witness for Defendant
Rizwan (13.02.1977)	Defendant/ witness for Defendant
Raza (03.07.1978)	Witness for Defendant
Amar (13.11.1979)	None
Abid (10.05.1984)	Witness for Defendant
<b>Kanval parents</b>	
Abdul (father)	None (died 2017)
Naseem (mother)	Witness for Defendant

3. These proceedings comprise two closely related actions, one by Imran against Rizwan, the other by Javaid against Rizwan and their former solicitors. They follow a prior reference to the First-Tier Tribunal (Property Chamber) as a result of Imran’s application to register a restriction against Sutherland. Given the Tribunal’s more limited jurisdiction, that reference was stayed to allow the dispute to be resolved in the Chancery Division. On 1 June 2019, the two actions were ordered to be case managed and heard together. Javaid’s claim against the Second Defendant was subsequently compromised. The trial therefore concerned only the claims by Javaid and Imran against Rizwan.
4. The evidential phase of the trial took place in person over four days between 2 and 5 February 2021. I heard closing arguments remotely on 12 February.

### (b) The parties’ cases in outline

#### (i) Imran and Javaid’s case

5. Imran and Javaid claim that they were (and remained throughout) the joint legal and beneficial owners of 24 Osterley Views, Norwood Green, UB2 4UN (“**Osterley**”). They purchased this property using their own funds and their joint mortgage. Rizwan, Urfan, Raza and Abid came to live with them. Since the first three worked, they contributed to the household expenses but none of them enjoyed a beneficial interest in Osterley. Osterley was sold in 2004.

Following a period spent by the family in rented accommodation, part of the Osterley sale proceeds were used to purchase Sutherland. On this occasion, Javaid and Rizwan acquired legal title and held the mortgage jointly. However, it was agreed with Rizwan that the beneficial ownership of Sutherland would be held on the same basis as Osterley, namely for the joint benefit of Imran and Javaid.

6. In 2011, legal title to Sutherland was transferred into Rizwan's sole name. Javaid claims that this followed his offer to sell Rizwan his 50% share for £175,000. In the event, Rizwan said he could only afford £15,000. Javaid therefore agreed to sell Rizwan a small part of his 50% interest on the basis that Javaid would come off the Sutherland legal title and mortgage. Javaid now seeks to set aside that sale for deceit. Imran claims that he never parted with his 50% beneficial share in Sutherland and Rizwan therefore continues to hold this for his benefit.

**(ii) Rizwan's case**

7. Rizwan's account is very different. He claims that, following their purchase of Osterley, Javaid and Imran agreed that the working brothers who contributed to the household expenditure – Imran, Javaid, Rizwan, Urfan and Raza - would enjoy a beneficial interest in the property proportionate to their contributions and that Abid would enjoy a fixed share. Save in respect of Raza, the same agreement was later expressly repeated for Sutherland.
8. Javaid moved out of Sutherland in 2010, having indicated his desire to realise his beneficial interest in due course and purchase a new house. Rizwan agreed in 2011 with all the brothers, including Imran and Javaid, to acquire their beneficial interests in Sutherland. The brothers' shares were calculated by Javaid who committed them to a spreadsheet which he presented at a family meeting in August 2011 (“**the Spreadsheet**”). Having bought out all the brothers' shares on the basis of the Spreadsheet, Rizwan is now the sole legal and beneficial owner. Rizwan denies Javaid's deceit claims.
9. Imran and Javaid deny any agreement for all the brothers to share beneficially in Osterley or Sutherland, they claim that the Spreadsheet has been fabricated and, save for the sale of the small part of his 50% share in Sutherland (of which Javaid now seeks rescission), they deny that they have parted with their beneficial interests.

**(c) The 'beneficial interest' question**

10. The ascertainment of the beneficial interests enjoyed in Sutherland is therefore the key issue for my determination. The resolution of that issue and the related factual disputes will also supply the proper context within which the alleged disposal of Imran and Javaid's interests, and Javaid's related deceit claims, fall to be considered.
11. One notable feature of this case is that neither party argues that the beneficial ownership of Sutherland upon purchase in 2006 followed legal title. Imran and Javaid claim that Sutherland was held for their joint benefit even though

Imran was not on the legal title. Rizwan claims that Sutherland was held for the benefit of Imran, Javaid, Rizwan and Urfan in proportion to their respective financial contributions (with Abid enjoying a fixed share) even though none of Imran, Urfan and Abid was on the legal title.

12. Both parties say that the respective beneficial interests they contend for arose under a common intention constructive trust, whether expressly by agreement or inferentially by conduct. Given the different outcomes asserted, it is perhaps unsurprising that they have presented different accounts of their dealings. Those conflicting accounts and the parties' related submissions occupied by far the greatest time at trial and, therefore, this judgment. However, I have not addressed every twist and turn of the evidence rather than those issues that are material to my conclusions.

**(d) Common intention constructive trusts - legal principles**

13. Although the ascertainment of the parties' beneficial interests in Sutherland turns largely on the resolution of their factual disputes, and the parties were largely agreed on the applicable principles, I summarise here the legal framework within which I have applied my factual findings to reach my conclusions later in this judgment.

**(i) Express agreement to share beneficial ownership**

14. As Lord Bridge stated in *Lloyds Bank Plc v Rosset* [1991] 1 A.C. 107 at [132E-F]:-

*“The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially.”*

15. The starting point in the analysis is therefore whether there was an express agreement, arrangement or understanding between the parties that Sutherland was to be shared beneficially. According to Lord Bridge, a finding of such an agreement must be based on evidence of “*express discussions*” between the parties. In this case, both parties contend that there were such discussions albeit, as noted, in very different terms. The party asserting the claim for a beneficial interest must also show detrimental reliance to give rise to a constructive trust. The parties were agreed that matters could also be approached in terms of a proprietary estoppel, albeit this added little to the analysis which they, therefore, confined to one based on constructive trusts.

**(ii) Inferring a common intention to share beneficial ownership**

16. Lord Bridge went on to state that, in the absence of an express agreement or arrangement, an intention to share the beneficial interest could be inferred from the parties' conduct but he doubted whether anything less than “*direct*

*contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments” would suffice (at [133B]). However, the law appears to have moved on since Lord Bridge’s indication as to the narrow basis on which a constructive trust might be inferred (see Stack v Dowden [2007] UKHL 17 per Lord Walker at [25-26], [34-36], per Lady Hale at [63] and per Lord Neuberger at [139]); see too Abbott v Abbott [2007] UKPC 53 per Lady Hale at [19]: “[t]he parties’ whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to ownership”.*

17. The process is the ascertainment of “*the parties’ shared intentions, actual or inferred with respect to the property in light of their entire course of conduct in relation to it*”. That search is “*for the result which reflects what the parties must, in the light of their conduct, be taken to have intended*”; it “*does not enable the court to abandon that search in favour of the result which the court itself considers fair*” (Stack v Dowden per Lady Hale at [60-61]; see too Jones v Kernott per Lord Walker at [51-52]).
18. The court may only impute an intention to the parties in respect of the quantification of the shares. It may not impute an intention that the beneficial interest is to be shared in the first place. It is still a question of the parties’ actual shared intentions, express or inferred, whether the beneficial interests are to be shared at all (see Jones v Kernott per Lord Walker at [33]; see too Geary v Rankine [2012] EWCA Civ 555 per Lewison LJ at [21]).

**(iii) ‘Ambulatory’ beneficial ownership**

19. Rizwan claims that the precise shares in which Osterley and, later, Sutherland were held were never the subject of an express common intention rather than a general intention that they would each share according to their respective contributions. There is no conceptual difficulty with an “*ambulatory*” constructive trust, albeit “*compelling evidence*” might be required to infer an intention to change beneficial shares subsequent to acquisition (see Stack v Dowden per Lady Hale at [62] and per Lord Neuberger at [138]).

**(iv) Burden**

20. Although the principles summarised above were largely common ground, the parties did differ when it came to the question of burden, specifically the onus on the non-legal owner to show that beneficial ownership of the property did not follow legal title. That burden has been described as a “*heavy*” one (see Stack v Dowden per Lord Walker at [33] and per Lady Hale at [68]; see too Jones v Kernott per Lord Collins at [60]).
21. The Claimants emphasise the (apparently uncontroversial) fact that, prior to the agreement alleged by Rizwan to share in the beneficial ownership of Osterley, Imran and Javaid were sole legal and beneficial owners. Since that alleged agreement is said by Rizwan merely to have been repeated with respect to Sutherland, the “*heavy*” burden of showing that the beneficial interest does not follow the Sutherland legal title falls on him. By contrast, the Defendant emphasises the (again uncontroversial) fact that Rizwan is now sole

legal owner of Sutherland and says that the “*heavy*” burden therefore falls firmly on the Claimants.

22. In my judgment, the parties’ arguments overlook three important points: first, this case is concerned with the beneficial ownership of Sutherland, not Osterley; second, this is not a case in which Rizwan is, and has always been, the sole registered proprietor of Sutherland, with the Claimants seeking to persuade the Court that the parties intended for them to share in the beneficial ownership. To the contrary, the Claimants say that they have always enjoyed joint beneficial ownership and that nothing has changed in that regard (save with respect to a small part of Javaid’s beneficial interest); third, it is common ground, albeit for different reasons, that the beneficial interests in Sutherland upon acquisition in 2006 did not follow legal title.
23. To my mind, the pertinent questions are which of the parties, if any of them, is right as to why the beneficial interest in Sutherland diverged from legal title in 2006, who enjoyed that beneficial interest then and what, if anything, has happened to it since. The prior arrangements with respect to Osterley will obviously be relevant to those questions, as will Rizwan’s subsequent acquisition of legal title to Sutherland. As noted (at [16] above), “[t]he parties’ whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to ownership”. However, in the more unusual circumstances of this case, it seems to me that burden will not play as significant a role as otherwise it might.

**(e) Preliminary observations on the evidence**

**(i) The witnesses**

24. At trial, I heard evidence from eight fact witnesses, namely the six brothers identified as witnesses in the table (at [2] above), Naseem and Mr Kin Ching Yeung, whom I shall refer to in this judgment by his nickname, “Danny”. One consequence of the Tribunal proceedings was that, for most witnesses, two written statements had been prepared, the first for the Tribunal, the second for the Court. Both were referred to at trial. I refer in this judgment to paragraphs of the Tribunal statements as, for example, “(Javaid TWS at [X])” and the High Court statements as “(Javaid WS at [X])”.

**(ii) ‘Case building’/ ‘reverse engineering’**

25. The Claimants characterised key aspects of the Defendant’s evidence as brief or vague. They argued that this afforded Rizwan a ‘blank canvas’ to develop his evidence or ‘case build’. Other aspects were said to be ‘reverse engineered’, with Rizwan adapting certain parts of his story – conveniently, but implausibly - to meet difficulties elsewhere. I address those criticisms below as they arise in my analysis of the evidence.

**(iii) Naseem’s evidence**

26. Naseem’s statements were in English. The Claimants say that these were neither in her own words, nor in her own language (Urdu) and were, therefore,

not compliant with CPR, Part 32. Nor did Naseem have personal knowledge of the arrangements with respect to Osterley. Finally, following cross-examination, it was not apparent what first hand evidence she could give. As such, little or no weight should be accorded to her evidence.

27. I agree that the circumstances in which Naseem's statements were prepared should have been explained in the documents themselves. However, she provided an explanation in oral evidence from which it became apparent that she struggles to read and write in Urdu and that she required someone to assist to write down her account for her. She explained that Raza did so and that they took a number of weeks to complete the task. Given these difficulties and her candid explanation, which I accept, I consider it would be wrong to accord her statements no weight.
28. Naseem gave oral evidence in Urdu, through a translator. Although she was clear in her recollection on a number of points, including to an impressive level of detail for some, other aspects of her evidence were confused and difficult to follow. This was not due to a lack of cogency or co-operation on her part. Rather, in some instances at least, the questions put to her (by both parties) could have been framed more obviously as such and in briefer terms to meet the different needs of this particular witness, including her language, age and inexperience of formal settings such as these proceedings. Again, I therefore consider it would be wrong to attach no weight to her oral testimony but I have obviously only paid regard to those aspects on which I was sure as to her level of comprehension.
29. I also consider unfair the criticism that it was not apparent what first hand evidence she could give. There were a number of matters within her direct knowledge on which she could and did give evidence. To the extent she recounted matters she had heard second hand – and on some aspects she did - I have reflected this in my assessment of the evidence and accorded it appropriate weight in light of that limitation.

**(iv) Raza's evidence**

30. In closing argument, the Claimants invited me to exercise caution when considering Raza's evidence in light of a previous conviction connected with fraudulent invoicing. It was suggested that this might indicate a propensity to dishonesty. However, it does not follow from Raza's admitted dishonesty that he has, or may have, a propensity to lie. In my judgment, the Claimants were right not to put this point too highly. I was also invited to discount Raza's evidence based on his prior legal training but I found that submission unpersuasive.

**(v) November 2017 family meetings**

31. In assessing the witnesses' evidence, I have paid particular regard to those documents the authenticity of which is not disputed. These include the transcripts of two family meetings held in November 2017 secretly recorded by Imran. The statements he recorded have their limitations: they were made out of court and not on oath, when litigation was already on foot and in a

contentious environment and somewhat unfocused manner. However, they do concern important disputed matters in the case. I have therefore had regard to them in considering the accuracy of the witnesses' accounts, particularly of the Defendants' witnesses, since they were speaking most freely, unaware at the time that they were being recorded.

32. In referring to the transcripts, I have ascribed the rubric "T1" to the first meeting on 11 November 2017 and "T2" to the second on 18 November 2017.

**(vi) Evidence of Imran, Javaid and Rizwan**

33. Imran, Javaid and Rizwan stuck to their accounts throughout their oral evidence, albeit this sometimes suffered from (different) shortcomings. Imran, for example, downplayed a number of matters, some of little consequence to his case. Javaid was more measured but I also found him well prepared and unusually familiar with some of the documents such that, on occasion, I could not distinguish his true recollection from reconstruction. Initially, I found Rizwan to be a straightforward and direct witness, answering questions candidly and making appropriate concessions. However, as his evidence continued, his answers became increasingly prolix and justificatory in tenor. Despite these matters, I cannot say that any of them was obviously untruthful. The accuracy of their evidence therefore falls to be assessed by reference to, amongst other things, its consistency, plausibility and probability, the contemporaneous documents, the undisputed facts, motives and the evidence of the other witnesses.

**2. THE EVIDENCE**

34. I now analyse the evidence, approaching matters chronologically by reference to four broad phases.

**(a) Pre-Osterley**

35. In 1980 or 1981, Abdul and Naseem purchased 56 Devonport Road, Blackburn, Lancashire ("**Devonport**").
36. In 1997, Imran moved to London, intending to undertake a PhD, later deciding to work instead, initially at the accountancy firm, Gambrill & Co. and, from 1998, as a bookkeeper at a firm called Marble City. After completing his PhD, Javaid joined Imran in London in 1998. They were both in their late twenties at the time. Javaid secured employment in London quickly, initially as an analyst at Hay's Distribution before moving to Iron Trades in 1998.
37. Imran and Javaid initially shared a bedsit in Brent but decided to buy a property together in London in the expectation that the market would go up. Their budget was around £150,000. While looking for potential properties, they found Osterley. Although a bigger and more expensive property than they had been looking for, they decided to buy it. None of the other Kanval brothers was involved in their property search or the Osterley purchase.

**(b) Osterley - 1999-2004**

**(i) Imran and Javaid buy Osterley – June 1999**

38. Imran and Javaid completed the Osterley purchase on 1 June 1999. The property was registered in their joint names. The purchase price was £195,000. The associated purchase costs were £2,815.62. Imran and Javaid financed the purchase with a mortgage from Abbey National for £184,980 and £12,835.62 from their own funds, comprising their own savings and (part of) two personal loans for £10,000 each.
39. The Osterley mortgage was interest only, with initial monthly payments of £969.04 paid from Javaid’s personal HSBC account. Imran and Javaid took out separate endowment policies at an initial monthly cost of £138.65 each.

**(ii) Javaid, Urfan and Raza move into Osterley – 1999**

40. Shortly after the Osterley purchase, Imran and Javaid were joined by some of their brothers. Rizwan moved into Osterley in around June 1999. He was 22. On the evidence, it was common ground that Rizwan was invited to stay at Osterley because of the better opportunities afforded to him in London. Rizwan was followed by Urfan who came to London in around July 1999. Urfan was 26. Javaid said he was surprised to see Urfan turn up at Osterley (Javaid WS at [13]). However, I consider it unlikely that Urfan would have turned up unexpectedly. I preferred Urfan’s evidence that he was invited to move into Osterley for the same reasons as Rizwan. Raza moved into Osterley in around December 1999. He was 21. He too confirmed in oral evidence that Imran and Javaid had invited him to stay. Although none of them had jobs in London lined up before they arrived, Rizwan, Urfan and Raza soon found full-time employment, albeit Urfan ‘temped’ for some time.
41. In his statement, Rizwan said that, after he moved in, Imran and Javaid agreed with him and Urfan that the brothers would all be “*equity holders*” in Osterley based on their financial contributions (Rizwan TWS at [3]). Urfan said that, when he moved into Osterley, it was “*explicitly agreed*” that, by contributing to the mortgage and other household outgoings, the brothers would acquire a “*beneficial interest*” (Urfan WS at [3]). Raza too said that Imran, Javaid, Rizwan and Urfan agreed that the brothers would receive an “*equitable stake*” proportionate to their financial contributions to the Osterley expenditure (Raza TWS at [4]). The alleged agreement to share in the beneficial ownership of Osterley is a central issue in the case, with Rizwan, Urfan, Abid and Raza claiming the same arrangements obtained with respect to Sutherland (Rizwan TWS at [9]; Urfan WS at [3]; Abid TWS at [3]; Raza TWS at [8]). Since this came in for sustained criticism, I address in some detail below the written and oral evidence of Rizwan, Urfan, Abid and Raza concerning the alleged agreement for Osterley and the ‘renewal’ of that agreement for Sutherland. For present purposes, it suffices to say that Imran and Javaid reject their accounts (Imran WS at [46]; Javaid WS at [16, 23-24]). They did not agree to share the Osterley equity but they were happy to allow their brothers to stay until they “*got themselves on their feet and were able to purchase their own*

*properties*". In the meantime, Javaid charged them "rent" (Javaid WS at [15, 17]).

**(iii) The brothers' contributions to the Osterley household expenditure**

42. I first examine a key aspect of that alleged agreement, namely the brothers' contributions to the Osterley and Sutherland household expenditures. It is common ground that all the working brothers shared in the household expenditure for Osterley and, later, Sutherland, that they paid their respective contributions to Javaid and that he organised the household finances and settled most of the expenses. However, there was some debate as to whether, before January 2002, the brothers made fixed monthly contributions or whether these were variable throughout according to the actual expenditure incurred each month.

43. Imran and Javaid said that the brothers initially made a fixed payment towards the expenses (Imran WS at [36]; Javaid WS at [17-19]). Urfan and Raza said the same in oral evidence. Rizwan said the payments were variable from the outset. He relied on a schedule prepared by reference to cheque debits in his bank statements and his corresponding cheque stubs from which he had identified his payments for "mortgage". However, for the early period, Rizwan was missing the relevant cheque stubs as a cross-check against the cheque debits listed in his schedule. If all the payments relied on by Rizwan had been made towards the household expenditure, I agree with the Claimants that Rizwan would, in fact, have been overpaying, perhaps significantly, for some months. This seems unlikely. I therefore prefer the evidence of Imran, Javaid, Urfan and Raza that the brothers initially made fixed monthly contributions to the Osterley expenditure. I accept that these were £450 each per month, later increased to £550. I also reject Rizwan's evidence that £5,000 paid to him by Javaid in April 2004 represented an overpayment to the Osterley expenses (Rizwan WS at [15]).

**(iv) Osterley renovations – 2000-2002/ Abid moves in – 2001**

44. Renovation work on Osterley started in late 1999 or early 2000, with the smaller jobs tackled first, building up in 2002 to the more ambitious works.

45. In mid-2000, a £10,500 loan was taken out to fund some of the renovation works (Javaid WS at [loan table, loan 3]).

46. In about mid-2001, Imran stopped working at Marble City to concentrate full-time on the Osterley improvements. Imran did not contribute to the household expenditure during this period. Having sat exams in Blackburn, Abid (then 17) came down to London in Summer 2001 to help with the renovations.

47. There was some debate as to whether all the brothers assisted with the renovations. Imran said that the brothers would sometimes help but (Javaid and Abid apart) they did not do a lot (Imran WS at [32]) and, in oral evidence, that Rizwan and Raza, in particular, were not much help. It would not, of course, have been possible for them to dedicate as much time and effort to the renovations as Imran. Imran had temporarily given up work for that purpose.

Although the brothers may well have exhibited varying degrees of enthusiasm, they all shared the same house and they all benefitted from the improvements. In this regard, I found more persuasive the oral evidence of Urfan and Abid that all the brothers ‘mucked in’ even if, as Urfan put it, Imran was the “*lead architect*”.

48. In August 2001, Imran and Javaid obtained a £19,376 mortgage extension, adding approximately £80 to the monthly mortgage cost. This too was used to pay for the household improvements. Imran and Javaid’s monthly endowment payments increased to £233.67 each. In the same month, Imran and Javaid opened a new joint RBS account referred to at trial as the “house account”. This received the funds from the mortgage extension and, going forwards, handled the household expenditure and brothers’ respective contributions. However, the mortgage continued to be paid from Javaid’s personal HSBC account. Imran explained that the house account also operated as a ‘personal bank’ for the brothers (Imran WS at [39]). So, for example, in 2009, Imran borrowed £25,000 from RBS to make an investment. The monthly loan payments (£353.10) were then taken from the house account. Imran also used the account to make certain payments to his credit card. He would then ‘repay’ the account by depositing into it.
49. After returning to Blackburn to get his exam results, Abid moved back permanently to Osterley later in 2001, attending college in London. Naseem joined him, with Amar and Abdul joining later. Abid, Amar, Abdul and Naseem did not contribute to the household expenses.
50. Javaid got married in Pakistan in November 2001.
51. In early 2002, Javaid started charging the brothers a variable monthly amount based on the actual monthly household expenditure rather than a fixed sum, with the aim of splitting the outgoings between all the working brothers (Javaid WS at [48]).
52. Abid said that Imran, Javaid, Rizwan and Urfan all agreed to give him a fixed 8% share in Osterley (Abid WS at [3]). In oral evidence, Abid said that Raza was also present when they agreed this in early 2002. Imran and Javaid deny this alleged agreement as well (Imran WS at [47]; Javaid WS at [42]) and were critical in submission of Abid’s related evidence. I address those criticisms below as they arise in my analysis.

(v) **The Osterley “house notes”**

53. Each month, Javaid prepared manuscript notes showing the household expenditure and corresponding contributions due from the brothers. Javaid prepared these from 1999 but only retained the notes from January 2002 to May 2004. Javaid said he prepared these documents for himself although Rizwan and Urfan both testified that Javaid showed them to the brothers. Since they explained how the brothers’ contributions were calculated, I consider it likely that Javaid did show them. Although the notes are difficult

to follow in parts, they provide useful insights into the organisation, payment and reimbursement of the household expenditure. For example, these show:-

a. Outstanding amounts due from the brothers brought forward from prior months.

b. Loan payments due. For February 2002, for example, these were:-

JAVAID	200-99
HOUSE	239-39
IMRAN	269-00
RAZA	151-00

c. The monthly household expenditure. For February 2002, for example, this was:-

FOOD (JAVAID, URFAN, RIZWAN, RAZA) = 320-00  
CARPET 75-00  
ENDOWMENT 229-28 x 2  
MORTGAGE 1028-64  
COUNCIL TAX 119-00  
GROUND RENT 100-00/12  
SERVICE CHARGE 774-46 x 2/12  
BILLS (ELECTRICITY, WATER) = 21-00 + 266/6  
HOUSE INSURANCE 250-00/12  
CAR INSURANCE 400-00/12  
CAR MOT + ROAD TAX + REPAIR 300-00/12

d. The payments made (or to be made) by the brothers, split between Imran, Javaid, Rizwan, Urfan and Raza.

54. The monthly loan payment for “*HOUSE* - £239-39” (to which the brothers contributed) corresponds to loan 3 in Javaid’s loan table. As noted (at [45] above), this was taken out to fund the Osterley renovation works.
55. The other notes show other costs shared by the brothers such as telephone, television licence, furniture, petrol and other household expenses, some very small. They also show payments and receipts by both cash and cheque, monies owing between the brothers, personal expenses incurred by the brothers and expenses incurred by, and payments to, other members of the Kanval family, as well as payments to Pakistan.
56. In May 2002, a second mortgage extension of £32,000 was obtained, adding £120 to the monthly mortgage cost, bringing the outstanding mortgage balance to approximately £240,000. This was used to pay off some of the loans identified in Javaid’s loans table. The increased interest (and endowment) payments on account of both mortgage extensions were recorded in the monthly expenditure in the house notes and formed part of the variable contributions paid by the brothers each month.

57. In this regard, there was some debate about the brothers' financial contributions to the Osterley renovations. From reading Imran's and Javaid's statements, I had originally understood their evidence to be that the brothers did not contribute financially to these. In oral evidence, Imran accepted that all the brothers did contribute through the apportionment of certain costs of borrowing used to fund the works. Javaid accepted this too but denied that all the renovation costs were shared. He pointed, for example, to the cost of the stairs and splashbacks removed in one set of the house notes from the split of expenses between the brothers. Rizwan, Urfan and Raza testified to their understanding that the renovation costs were all split.
58. In the absence of a detailed accounting, it is not possible to isolate the precise Osterley renovation costs and the amount reimbursed by the brothers. However, this is not necessary. The Claimants accepted in closing submission that the brothers all contributed to some of the renovation costs. I agree and, based on the evidence, I consider it likely that their related contributions were significant. However, I also accept that Imran and Javaid (who 'fronted' the renovations costs and related borrowings) may have suffered a shortfall against their total outlay. The Osterley refurbishment was completed in 2002.
59. In August 2002, Raza married and moved out of Osterley. In December 2002, Javaid's wife moved into Osterley, followed by Imran's wife in August 2003.

**(vi) The sale of Osterley – January 2004**

60. Osterley was sold in January 2004. The completion statement shows a sale price of £357,000 and the redemption of the Abbey National mortgage (with an outstanding principal of £248,222.22). Deducting the other transaction costs left a completion balance of £91,284.26 payable. This was paid into the house account. In March 2004, £80,000 of that sum was paid into a Halifax savings account in Javaid's name, yielding a higher rate of interest.
61. Further sums relating to Osterley were paid after completion, including £5,000 retention monies and a £4,625 refund by Abbey National of an early redemption penalty for the mortgage. These were paid into the house account.

**(c) Pre-Sutherland (2004-2006)**

**(i) The alleged 'buy out' of Raza's share in Osterley**

62. Raza and Urfan claim that, following the sale of Osterley, the value of Raza's beneficial share of Osterley was 'paid out' to him, partly through satisfaction of debts due from Raza to Urfan, partly by payment of money to Raza (Urfan TWS at [14]; Raza TWS at [6]). The Claimants deny this and say that the only sum paid out to Raza was the repayment of a loan to Imran (Javaid WS at [58]). They also submit that Raza and Urfan's related evidence has changed to make the facts 'fit' the story better. Again, I address their criticisms below in my analysis of the evidence.
63. In February 2004, Rizwan and Urfan married their respective wives in Pakistan.

**(ii) The Kanval brothers' Queen's Drive rental**

64. In February 2004, Imran, Javaid, Rizwan and Urfan moved into a rented property identified by Rizwan at 12 Queen's Drive, West Acton, London ("Queen's Drive"). The initial deposit and six months' rent were paid from the house account using some of the Osterley sale proceeds. Javaid again organised the household finances and, as with the mortgage on Osterley, the Queen's Drive rent (and other household expenses) were split between the four working brothers. This included ongoing payments for the two Osterley endowment policies until surrendered later in 2004, realising £4,557.13 and £4,472.01 respectively. Those sums were also paid into the house account.

**(iii) The Kanval parents' Princess Gardens rental**

65. Following a trip to Pakistan, Abdul, Naseem and Amar moved into a different rented property at 57 Princess Gardens, West Acton, London ("Princess Gardens") in May 2004. The deposit and a rental payment were paid from Javaid's Halifax savings account. Imran and Javaid said that they also helped their parents with the further rent on Princess Gardens to the tune of some £22,600 and that their father promised to pay them back from the sale of Devonport (Imran WS at [53]; Javaid WS at [65]). Naseem disputed this and said that Abdul and Amar used to receive benefits and that her husband paid money to Javaid in cash or by cheque. In closing argument, both parties agreed that the issue of the Princess Gardens rent was a 'distraction' with which the Court need not be troubled. I agree.

**(d) Sutherland - 2006-2011**

**(i) The Sutherland purchase - 2006**

66. On 31 May 2006, the purchase of Sutherland was completed. Unlike Osterley, which had been registered in Imran's and Javaid's names, legal title to Sutherland was registered in the names of Javaid and Rizwan. The Sutherland purchase price was £485,000. This was funded with a Halifax mortgage of £440,970. The deposit, purchase expenses and balance of the purchase price (£56,203.56 in aggregate) were paid from Javaid's Halifax savings account. The mortgage was again interest only, with initial monthly payments of just over £1,600 paid from the house account.

**(ii) Rizwan and Urfan's involvement in the Sutherland acquisition**

67. Certain aspects of the evidence concerning the acquisition of Sutherland were controversial, including the extent of Rizwan's involvement in the purchase. It is common ground that Imran found Sutherland. Imran testified that it was only after he and Javaid decided to buy Sutherland that they discussed this with the rest of the family. Rizwan's evidence was different. He said the decision to buy another property was a collective one, taken by the family much earlier while they were still renting Queen's Drive. Rizwan also underlined his involvement in the purchase by pointing to an e-mail from Javaid with a suggested approach to be made by Rizwan to the vendors about the purchase price. Rizwan took this forward with the agents by negotiating a

reduction. Imran said that Rizwan “*wanted to be involved*” and only got involved in the negotiation “*at my instructions*”. Javaid said that Sutherland was not intended as a family home and he expected Rizwan and Urfan to move on shortly after the Sutherland purchase (Javaid WS at [67]).

68. I prefer Rizwan’s evidence in this regard: first, the email from Javaid and Rizwan’s response was forwarded by Javaid to Imran and Urfan with the comment “[f]or your reference and whether you wish to add any further comments.” If Rizwan and Urfan had not been meaningfully involved in the decision to buy Sutherland, it is unlikely that Javaid would have provided this exchange for Urfan’s information, let alone invited his further comment; second, if Rizwan and Urfan were expected to move out in short order, it is unlikely that Rizwan would have agreed to go onto the mortgage and assume long-term personal liability for the Sutherland borrowings.

**(iii) Reasons for Rizwan being on the Sutherland mortgage**

69. The brothers’ explanation for Rizwan going onto the Sutherland legal title (and, therefore, mortgage) also differed. Imran put this down to tensions with the wife of the proprietor of Gambrill & Co., the accountancy firm where he was working. According to Imran, the proprietor - “Laurie” - was absent from the business for health reasons. Laurie’s wife had expressed concerns about how the firm could sustain all the outgoings and that the Kanvals might be taking over the cash generating part of the business. Imran, in turn, was concerned that Laurie might pursue him and that is why he did not want the house (and, therefore, mortgage) in his name. The Claimants accepted in closing argument that Imran’s explanation was “*unusual*”.

70. Rizwan’s explanation was that Imran could not be on the mortgage because of historical debts, loan defaults and Imran’s unpredictable income. Imran testified that he had only one loan at the time, he denied any default and he said he was being paid regularly. Urfan also testified on this aspect. He was unaware that Imran had debt problems and, having worked at Gambrill & Co. himself at the relevant time, he could see that Laurie’s wife might have been suspicious. However, he offered a different insight into why Imran could not go onto the mortgage, again informed by his inside knowledge of Gambrill & Co.’s operations. Urfan worked at the firm all the time and was therefore paid regularly. Imran did not and his remuneration was therefore less regular.

71. It was suggested in closing argument that this different treatment of Urfan and Imran by the same firm made no sense. That submission overlooked Urfan’s evidence about their different working and, therefore, remuneration patterns. Urfan’s related evidence was balanced and straightforward. Imran’s was convoluted. I prefer Urfan’s and I find that Imran did not go onto the mortgage (and therefore legal title) because his income was unpredictable at the time and he could not satisfy the Halifax’s related lending requirements, not least for a mortgage more than double the size of that for Osterley.

**(iv) The alleged Sutherland agreement**

72. The final controversy surrounding the acquisition of Sutherland concerned what, if anything, the brothers agreed concerning the beneficial ownership of the property. As I have noted, Rizwan, Urfan, Abid and Raza said that the alleged agreement for Osterley also obtained with respect to Sutherland (at [41] above). Rizwan testified that, when the brothers decided to buy another house, it was expressly agreed that they would carry forward their interest from Osterley into any new property (save for Raza who had been paid out the value of his share in Osterley). The “*established mechanism*” for Osterley would also work in the same way such that the brothers would again enjoy a share in the new property proportionate to their contributions. Urfan testified similarly. He said that, when they were planning to market Osterley, they decided to rent while they waited to buy a new property for which they would use the Osterley proceeds and that they would share in the new property on the same basis as Osterley. Abid was away at university at the time of the Sutherland purchase. However, he said he knew that his brothers had decided to put the Osterley proceeds into the new property and that it was their collective decision to move and buy this together. Imran and Javaid claim that it was made clear to Rizwan when he went onto the mortgage (and legal title) that he would have no interest in Sutherland. Rizwan understood and agreed this (Imran TWS at [21]; Imran WS at [61]; Javaid TWS at [18]); Javaid WS at [69]). Like Osterley, Sutherland would be held for their joint benefit alone.

**(v) The Sutherland finances – 2006-2010**

73. Imran, Javaid, Rizwan, Urfan and their respective wives and children and Abid, Abdul and Naseem moved into Sutherland in around May 2006. Although there are no longer any house notes for Sutherland, it is common ground that the household expenditure was organised and reimbursed in the same manner as Osterley (and Queen’s Drive), with the working brothers dividing the expenses between them. The amount they paid again varied from month to month depending on the actual expenditure incurred.

74. Abid did not start contributing to the Sutherland expenses until late 2006, initially £800 per month, later reduced to £400 because he did not have a room of his own, later increased to £600 when Javaid moved out and Abid secured a room (Abid TWS at [3]). Raza moved in and out of Sutherland on two occasions when Javaid charged him £800 per month, later £400. He has since moved back into Sutherland again (Raza TWS at [7]).

**(vi) The Devonport renovations – 2007-2010**

75. In 2007, renovation works commenced on Devonport. As with the Osterley renovations, there was some dispute about the level of the brothers’ assistance with the work. Imran claims he bore the greatest burden, with the other brothers assisting early on but, Javaid apart, later losing interest. Rizwan, Urfan, Abid and Naseem testified that all the brothers helped. In my view, nothing turns on this, neither party pressed the point in closing and it is not necessary for me to resolve it. The Devonport renovations were completed in around January 2010.

**(vii) Imran's financial position in 2010**

76. There was some debate about Imran's financial position around this time. Rizwan said he discovered from Javaid that the house account was funding Imran's business ventures and that Imran had not made regular payments into the house account for some time (Rizwan WS at [19-20]). Urfan said that Javaid was angry with Imran about misusing the house account and how this had caused Javaid problems with his credit rating (Urfan TWS at [11]). In oral evidence, Imran denied that he was having financial problems, that his financial position affected Javaid's or that Javaid was fed up with him. Javaid accepted that Imran had started to take a lot from the house account for his own private use but denied this caused an issue. Javaid merely asked Imran to account for the money he had used.

**(viii) The crowded conditions at Sutherland - 2010**

77. It is no exaggeration to say that, by 2010, Sutherland was 'bursting at the seams'. By that stage, Sutherland was occupied by 16 people, namely:-

- a. Imran his wife and child;
- b. Javaid, his wife and child;
- c. Rizwan, his wife and two children;
- d. Abdul and Naseem;
- e. Urfan, his wife and child; and
- f. Abid (who slept in the lounge).

**(ix) The first disputed family meeting – February 2010**

78. This is the cramped context in which Rizwan says the first of four family meetings - all hotly disputed by Imran and Javaid - took place. The first was said to have taken place in February 2010, attended by Imran, Javaid, Rizwan, Urfan, Abid, Abdul and Naseem. Rizwan says that Javaid called the meeting, explained that his growing family needed more space and announced his intention to move out and rent a property for a year or so. This would allow enough time for arrangements to be put in place for his share in Sutherland to be bought out so that he could purchase another property. If he was not bought out, Sutherland would have to be sold (Rizwan TWS at [10]).

79. Urfan did not refer to this meeting in his written evidence but Abid and Naseem did (Abid TWS at [5]; Naseem TWS at [8]). In oral evidence, Abid said that this took place in about January or February 2010. Imran and Javaid deny the meeting and testified that Javaid left Sutherland for the simple reason that his family needed more space. They also said that Javaid had, in fact, approached Rizwan and Urfan in 2010 about them moving out but this had merely caused family tensions (Imran WS at [76]; Javaid WS at [79]).

80. In March 2010, Javaid's wife gave birth to twins.

**(x) Imran moves out of Sutherland – May 2010**

81. In May 2010, Javaid moved out of Sutherland and into nearby rented accommodation in Albany Road. Urfan moved out of Sutherland at around the same time. He rented as well. Both stopped contributing to the Sutherland household expenditure. The house account was closed and, as Javaid confirmed in oral evidence, Rizwan then arranged for the monthly Halifax mortgage payment to be made from his own account.
82. According to Rizwan and Abid, with Javaid and Urfan now gone, Abid agreed to increase his contributions from £400 per month, Imran agreed to pay what he could and Rizwan agreed to increase his payments from £800 to make up the shortfall (Rizwan TWS at [11]; Rizwan WS at [24]; Abid TWS at [4]). Imran testified that Rizwan took over financial responsibility for the mortgage, with a monthly payment of £2020. In May 2010, Imran paid £1,500 towards the Sutherland expenditure, to include £600 that Rizwan had paid in March 2010 to “*offset against his loans*”. Imran also testified that he contributed £800 thereafter, albeit not every month, and he denied defaulting on his loans, save on one payment.
83. I found Imran and Javaid’s evidence on this aspect problematical: on their case, they remained joint beneficial owners of Sutherland and, to use Javaid’s rubric, the ‘landlords’. If correct, they remained responsible for paying the mortgage and other household expenses and yet they passed that responsibility to one of their ‘tenants’ and required him (and Abid) to take on an even greater financial burden. Javaid did not seem to see the problem. His response in oral evidence to Rizwan and Abid paying more to the Sutherland expenses was to say “*as they should*”, resonating with his unrealistic view that they were merely paying ‘rent’ (at [41] above).
84. Imran did see the problem but more as a personal reflection on his financial difficulties rather than as one of the supposed joint owners of Sutherland. He initially tried to deflect his passive role in the management of the Sutherland household expenditure by saying that he had diabetes. As with his explanation for not going onto the Sutherland mortgage at the outset in 2006 (at [69-71] above), this was unconvincing. When questioned further, Imran accepted the (again) more plausible explanation: Imran was self-employed and he received money irregularly.

**(xi) The Devonport sale proceeds – July 2010**

85. In July 2010, Abdul and Naseem sold Devonport, realising net sale proceeds of £107,266.50. The Devonport sale is not immediately relevant to the present dispute but both parties rely upon it to support their arguments concerning the alleged agreement with respect to the beneficial ownership of Sutherland. The sale is also relevant in a different sense. Standing back from the detail of the evidence, the division of the Devonport sale proceeds between some of the Kanval family members seems to have marked the start of the breakdown of the relationship between Imran, Javaid and Rizwan.
86. Imran testified that his father wanted to give him the entirety of the Devonport sale proceeds. Although a very generous offer, Imran said he did not want to

take it up unless his father told everyone else about the decision first (Imran WS at [83]). Naseem testified that Imran was offered £10,000 but he declined this. He was not offered the whole amount.

87. There is no dispute that Rizwan was paid £45,000 from the sale proceeds and he used this to pay down the Sutherland mortgage by £44,747. Rizwan also received a further payment of £4,740. He could not explain this in oral evidence. Nor, initially, could Naseem although she did go on to testify that Rizwan had paid for a flight to Pakistan in June 2010 when a fight broke out in her in-laws' family. Rizwan also received further payments of £7,000 and £3,000. Rizwan and Naseem both testified that Abdul had asked Rizwan to hold onto this for him until it was needed back.
88. Urfan also received £10,000 from his parents. Although the Claimants submitted that Rizwan produced no documentary evidence of the payment, this does not appear to be disputed by the Claimants (Imran TWS at [34]; Javaid TWS at [31]). Urfan testified that he later paid this back to his mother.
89. Finally, it is common ground that Javaid received £40,000, albeit £2,230 of this represented repayment of Javaid's expenses on the Devonport renovation.

**(xii) Imran and Javaid's case on the Devonport sale proceeds**

90. Javaid and Imran testified that the intention of the Devonport renovation and sale was to allow the other brothers to buy their own properties but that Rizwan prevented this by 'misleading' his father to part with a large chunk of the sale proceeds to pay down the Sutherland mortgage. Based on a conversation with his father, Javaid said that Rizwan had managed to obtain the £45,000 payment by telling Abdul that the mortgage was in default and that the family might be 'kicked out' of Sutherland. Imran's evidence was to the same end, albeit he was not privy to the conversation between Javaid and his father, only learning this later. Both testified that using the money to pay down the mortgage by nearly £45,000 made very little difference to the monthly mortgage payments. However, the Claimants submitted that such a large payment against the capital would benefit someone who intended to redeem the mortgage, as Rizwan did the following year. Javaid testified that he received the £40,000 from his father to prevent Rizwan's demands of Abdul for more money (Imran WS at [84-86]; Javaid WS at [86-90]).
91. Attempting to unravel these points, I do not accept Javaid's testimony that he received the £40,000 to prevent Rizwan obtaining further money from Abdul. Unsurprisingly, Rizwan denied this but so too in oral evidence did Naseem - she was effectively one of the donors. Moreover, Imran and Javaid offered alternative explanations in their original statements. Imran explained that the £40,000 payment to Javaid represented (roughly) £27,500 for the historical rent on Princess Road (at [65] above), £2,500 for money spent by Javaid on Devonport and £10,000 to use towards a deposit for a house (Imran TWS at 34). Javaid said that the £40,000 payment was "*part repayment and part gift*" (Javaid TWS at [35]).

92. Although Imran attempted in oral evidence to reconcile the different explanations, and the Claimants disavowed in closing argument the historical rent explanation, I found both efforts unpersuasive. I accept that Javaid was upset when he learnt that Abdul had paid money to reduce the mortgage. Rizwan said as much in oral evidence when he explained that the £40,000 payment was made to “*calm down Javaid*”. Rizwan said Javaid needed calming that “*there will be a deposit for him when he buys.*” Naseem confirmed in oral evidence that Abdul paid Javaid the money to use as a deposit for a new house. Imran’s original statement also indicates the partial use of those monies for that purpose. Finally, Urfan stated in oral evidence that he accompanied his father to the bank when he transferred the £40,000 to Javaid and Abdul suggested to Urfan investing his £10,000 share into Javaid’s future property. In my view, that was the straightforward and correct explanation for Javaid receiving the £40,000 – to buy a house.
93. I also do not accept Javaid’s evidence that Rizwan ‘mised’ his father about the Sutherland mortgage. On the Claimants’ case, they were the sole beneficial owners of Sutherland and they, not Rizwan, would benefit from any mortgage reduction. Moreover, it is common ground that the mortgage payments were only reduced slightly such that, even on Rizwan’s case, the benefit to him was not significant. It therefore makes no sense for Rizwan to have gone out of his way to dupe his father into making a payment which would be of no or limited personal gain. Although Rizwan did take over legal ownership of Sutherland in late 2011, he could not have known this more than a year before it happened.
94. Nor do I accept that the intention of the Devonport sale was to allow the ‘other brothers’ (ie: Rizwan and Urfan) to buy their own properties. In this regard, I prefer Abid’s more considered oral evidence that his parents’ philosophy was to enable their children to buy a property, “*depending if they wanted to move out or not.*” When the Devonport refurbishment began, and for some considerable time thereafter, none of the Kanval brothers living at Sutherland had apparently intimated a desire to leave. By the time Devonport was sold, both Javaid and Urfan had moved out but they were still only renting. They later received nearly 50% of the Devonport sale proceeds between them. Javaid confirmed in oral evidence that he used his share of the Devonport sale proceeds in the later purchase of his new house.
95. In May 2011, Javaid renewed his tenancy on Albany Road.

**(xiii) The second disputed family meeting – August 2011**

96. Rizwan claims that a further family meeting was held in August 2011 attended by Imran, Javaid, Rizwan, Urfan, Raza, Abdul and Naseem. In his statement, he put the meeting at 3 August but changed this to 6 August in oral evidence, apparently realising it must have taken place at the weekend. Rizwan said it was here that Javaid presented the Spreadsheet showing each brother’s equity interest in Sutherland. Rizwan says he agreed to take over the mortgage and utility bills if the other equity holders agreed to give up their interest in Sutherland in return for a fixed payment calculated on the basis of the

Spreadsheet. Imran, Javaid, Urfan and Abid agreed to this proposal. Rizwan had also offered to give up his interest for £40,000 but Javaid declined this, preferring to buy his own property closer to his work.

97. In oral evidence, Rizwan also explained how he was surprised to see that the Spreadsheet showed Imran and Javaid with a higher equity share (26.2%) than him (20.0%), both because Imran had not contributed financially when he had taken time off to work on the Osterley renovations and because Rizwan had borne the burden of paying the Sutherland mortgage once Javaid had left in May 2010. Rizwan said that he was paying too much towards the mortgage himself. Javaid had done a 'hardstop' by ceasing to contribute and Imran was in financial difficulties and could not make the payments. Rizwan testified that he therefore queried the percentage shares. He also queried the suggested value of Sutherland put by Javaid at £650,000, with Rizwan suggesting £575,000 instead. Nevertheless, since Javaid was looking to buy and required a deposit, he accepted Javaid's value of £53,265 for his share.
98. No date was agreed for payment of the £53,265. It was a 'gentlemen's agreement'. He expected he would have the money by the end of the month but there were no guarantees. He had been waiting for money from the sale of his shares in Asperity Employee Benefits Ltd ("Asperity") for some time and his prior expectations in that regard had been disappointed. As for the other brothers (Imran, Urfan and Abid), their shares were agreed to be those stated on the Spreadsheet but, again, the payment date was not agreed. It was understood that they would be paid "*as and when*".
99. Urfan, Raza, Abid and Naseem referred to this meeting in their statements in similar terms (Urfan TWS at [3-6]; Abid TWS at [6]; Raza TWS at [8]; Naseem TWS at [10]) and in oral evidence, with some differences between their accounts. Urfan put the month of the meeting at August 2011 because of the date on the Spreadsheet which Javaid produced at the meeting. Urfan said that he had questioned why his equity share shown on the Spreadsheet (18.6%) was lower than the others. Javaid told him it was because of gaps in Urfan's contributions. Urfan did not recall any haggling at the meeting although he did refer in his statement to the difference between Rizwan and Javaid on the Sutherland value. Urfan also confirmed his understanding that he would receive the value of his share when Rizwan was in funds. Urfan testified that Javaid's use of the £40,000 from his parents to buy out his share was not discussed at the August meeting.
100. Abid said he remembered the meeting being in August 2011 because Javaid had popped over to Sutherland in July while the family was on holiday to organise the meeting and said he would prepare the Spreadsheet. Javaid later presented this at the meeting. Abid said there was no haggling about the equity shares but Rizwan did believe he deserved more. However, there was haggling about the value of Sutherland as used in the Spreadsheet. Abid's 8.9% share on the Spreadsheet was higher than the 8% originally 'gifted' so he was not 'going to complain'.

101. In oral evidence, Raza said that the meeting took place in August 2011 but he did not mention the month in either of his statements, merely stating it took place in “late 2011”. Although Raza did not have an interest in Sutherland, he had come back to see everyone and was told there was a family meeting. He was not surprised this issue came up. He knew Javaid was looking to buy a property. Raza too said that Javaid produced the Spreadsheet at the meeting.
102. Finally, Naseem’s related oral evidence was brief but she too confirmed that Javaid came to the house and gave the “paper” to everyone - apparently referring to the Spreadsheet. Javaid said that his share was valued at £55,000, less for the other brothers. Naseem was shown the Spreadsheet in the witness box. Although she could not read the whole document, she was able to read that part with the names of her sons and the allocation of their shares. She confirmed that this was the document produced by Javaid at the meeting.

**(xiv) The Spreadsheet**

103. The ‘original’ of the Spreadsheet produced by the Defendant on disclosure was made available at trial and inspected by the parties then and by me. On its face, this looked like an A4 print out of a landscape document produced electronically. It had fold lines and staining. According to Urfan, this was the copy of the Spreadsheet which he had retained after Javaid gave it to him at the August 2011 meeting. The Spreadsheet has the following heading:-

35 Sutherland Rd share 31072011.xls

104. The Spreadsheet has the following footer:-

03/08/2011 17:35

105. These references suggest that the document was created electronically as an excel spreadsheet on 31 July 2011 and that the version produced at trial was created or printed on 3 August 2011 at 17:35 hours.

106. The remainder of the document is contained within a rectangle and is divided into four sections. The first section comprises a row running along the top left side of the rectangle:-

Javaid	Imran	Urfan	Rizwan	Abid	
26.2%	26.2%	18.6%	20.0%	8.9%	100.0% Share

107. On its face, this suggests a division of Sutherland ownership into percentage shares, with Javaid and Imran each allocated 26.2%, Urfan 18.6%, Rizwan 20.0% and Abid 8.9%. Beneath that row is the following:-

Other properties sold prices  
 33 Sutherland Rd sold at £712,000  
 17 Sutherland Rd sold at £860,000  
 3 Sutherland Rd sold at £1,200,000  
 29 Sutherland Rd on sale at £825,000

108. This appears to list comparable properties in Sutherland Road and their respective sold or sale prices. Beneath that are the following workings:-

Option: If all the money from the sale of Blackburn was split and people with a share in 35 Sutherland Rd offset it against the mortgage

	650,000 My view of 35 Sutherland Rd
	447,000 New mortgage
	203,000 Profit
26.2%	<b>53,265 My share of Profit at 26.2%</b>
	11,826 Share from Blackburn
	2,620 Share from House account spend of Blackburn
	<b>14,447 Money from Blackburn</b>
	37,770 Money received from Dad regarding the sale of Blackburn
	23,323 Extra monies from Blackburn
	<b>29,942 Amount remaining and my share of the property</b>

109. On its face, the author of the Spreadsheet indicates “My view of 35 Sutherland Rd” – apparently its market value - as £650,000. The workings that follow then set out the additional money required for the purchase of “My share of Profit at 26.2%” in Sutherland assuming a prior share in the Devonport sale proceeds, a “New mortgage” balance of £447,000 (apparently disregarding the £45,000 paid down by Rizwan on the existing mortgage) and the prior receipt of £37,770 “from Dad regarding the sale of Blackburn.” The final section of the Spreadsheet (to the far right) contains further workings, principally about the Devonport sale proceeds:-

	Blackburn	
	109,000	
	40,000 Javid of which	2,230 Javid - items spent on Blackburn
?	45,000 Rizwan	44,500 Mortgage
	10,000 Urfan	
?	4,000 Rizwan - items spent on Blackburn	
?	10,000 Rizwan	Investment for Mum and Dad
	109,000 Blackburn Sale	
	4,000 Rizwan - items spent on Blackburn	
	2,230 Javid - items spent on Blackburn	
	9,987 House account spend on Blackburn	This payment is not paid anywhere
	10,000 Dad - savings	
	82,793	
	11,826 Each person	
	59,131 Money available from Blackburn for reinvestment (JK,IK,UK,RK,AK)	
	9,987 House account spend	
	69,118 Total available cash for reinvestment from Blackburn	
	402,000 Present Mortgage	
	45,000 Rizwan - money placed in Mortgage	
	37,770 Javid - money available for new property	
	82,770	

110. The reference in these workings to “£11,826 Each person” corresponds to, and appears to show the underlying calculation for, the “£11,826 Share from Blackburn” indicated in the prior workings, apparently assuming a prior split of the Devonport sale proceeds between seven (presumably Javaid, Imran, Rizwan, Urfan, Abid, Abdul and Naseem). It also records “£37,770 Javaid – money available for new property”, corresponding to “40,000 Javaid of which 2,230 spent on Blackburn” in the same workings and to “37,770 Money received from Dad regarding the sale of Blackburn” in the prior workings.
111. Putting the different sections together, the Spreadsheet therefore appears to indicate the allocation to Javaid of a 26.2% share in Sutherland, the calculation of the value of that share at £53,265 and one option for its realisation, including the use (after deduction of a prior split of the Devonport proceeds) of the £37,770 paid to Javaid. As already noted, Javaid and Imran vehemently deny that Javaid prepared the Spreadsheet or that there was any meeting in August 2011 at which this was produced.

### **3. ALLEGED AGREEMENT TO SHARE IN SUTHERLAND**

112. Having reviewed the evidence to August 2011, I now turn to the central question of whether, as Rizwan alleges, there was an agreement for all the brothers to share in the beneficial ownership of Sutherland or whether, as Imran and Javaid allege, it was understood and agreed by Rizwan that Imran and Javaid were the sole beneficial owners. I should add that a number of matters post-dating August 2011 are relevant to that question as well. I have taken fully into account “[t]he parties’ whole course of conduct in relation to the property ..... in determining their shared intentions as to ownership” (at [16] above) but, for convenience only, I have addressed those later matters below in their correct chronological order.

#### **(a) Factors supporting the alleged Osterley/ Sutherland agreement**

113. Since the agreement alleged by Rizwan with respect to Sutherland was said merely to repeat the agreement for Osterley, I accept the Claimants’ submission that Rizwan can only prevail on this central question if he satisfies me of the existence of the latter. I now examine the various matters relied on by the parties in support of their rival contentions on that central question, together with those further matters I consider material.

#### **(i) Limited equity**

114. Imran and Javaid did not come to Osterley with a large cash deposit. Although they used some savings to acquire Osterley, the vast majority of the purchase price came from secured and unsecured loans. They were highly leveraged. They acquired very limited equity in Osterley and they were not making capital repayments on the (interest only) Abbey National mortgage. They would therefore be making only a limited sacrifice by agreeing to share the beneficial ownership more widely among all the brothers.

**(ii) Interdependence**

115. When they came to Osterley, Imran and Javaid had not long been in London themselves and had not long finished their studies. Before they bought, they were sharing a bedsit. Although I accept that they opened up Osterley to their brothers to share with them the opportunity living in London afforded, I am satisfied that Imran and Javaid would have had difficulty managing Osterley financially without the other brothers' contributions. The flat was more expensive than the price at which they were looking to buy and, even then, it apparently needed renovation to the extent that Imran later had to give up work for a not insignificant period. Imran and Javaid could have rented rooms in the flat and Javaid said he had looked into that possibility but it seems doubtful at least whether they could have secured suitable tenants or rented when Osterley needed renovation, this would be disruptive to any tenants and the flat did not have some basic household items such as mattresses and certain furniture which were only bought later. By contrast, their younger brothers would be more likely to put up with more basic conditions and disturbance and would be able to help in the renovations at no cost. In this regard, I accept Rizwan's evidence that Imran and Javaid could not have managed Osterley by themselves. They needed their other brothers just as much as the other brothers needed Imran and Javaid.

**(iii) The nature of the brothers' contributions**

116. I reject the suggestion that the brothers' financial contributions were, as Javaid put it, 'rent'. Rents are determined by market forces and not generally fixed by reference to, or do not vary with, the level of household expenditure. That the brothers' contributions were much more than 'rent' and, in fact, evidenced their common intention to share rateably in Osterley (later Sutherland) is evident from the following:-

- a. The brothers contributed to the fullest range of household expenditure, including that necessary to maintain ownership of the flat, namely the mortgage, the endowments, the ground rent and the service charge;
- b. The expenses also included items of a 'capital' nature such as the Osterley renovation costs. Although Imran and Javaid may not have recouped all they money they 'fronted' for the renovations, as noted (at [58] above), their brothers contributed significantly towards them. Those renovations likely increased the value of Osterley;
- c. To the same end, the brothers also contributed, without charge, their time and labour to assist in those renovations;
- d. The contributions also reflected the shared familial nature of their arrangements, with all the brothers contributing to family expenses beyond those immediately benefitting Osterley or themselves;
- e. Despite the informality of their dealings and forbearance for late payment, the expenses were carefully recorded in the house notes

down to the smallest of items, split between the working brothers, payment demanded monthly and payment shortfalls carried forward;

- f. A 'landlord' does not generally pay rent to himself but Imran and Javaid shared with all the other working brothers in the mortgage, food and utility bills; and
- g. When Raza moved out in 2002, he ceased contributing to the Osterley household expenditure. Abid apart, his brothers who remained shared the increased financial burden by paying a larger share.

**(b) Factors militating against the alleged Osterley/ Sutherland agreement**

117. The above matters are consistent with an agreement for the brothers to share in the beneficial ownership of Osterley and, later, Sutherland in proportion to their respective contributions. However, the Claimants identified a number of matters arising in the evidence which they say indicated otherwise.

**(i) Fixed contributions**

118. The Claimants argued that a fixed payment regime such as that initially operating at Osterley militated against shared beneficial ownership. Whether that is so will depend on the nature and amount of the payments concerned, as well as the context in which they were made. Having regard to the level of costs shown in the later house notes, but factoring in the reduced mortgage and endowment payments for much of the earlier period, I consider it likely that, with five working brothers contributing, their fixed payments generally did cover the Osterley expenses. Moreover, as I have found, the brothers contributed to the fullest range of expenses, including those incidental to the ownership of Osterley and those of a capital nature.

119. In these circumstances, the fact that, for some months, there may have been shortfalls (for example, on account of the increasing level of renovation costs or exceptional items such as the unexpected service charge referred to in evidence) does not prevent a finding of a common intention to share in the Osterley equity in proportion to their contributions. To the contrary, the fact that the brothers moved, without apparent demur, to a variable split of the expenses once such shortfalls became more likely with the increasing financial impact of the Osterley renovations is consistent with such an intention.

**(ii) Use of bank accounts not controlled by the brothers**

120. In a similar vein, the Claimants argued that the use of Javaid's personal HSBC account for payment of the Osterley mortgage and of the house account in the joint names of Imran and Javaid for payment and reimbursement of the house expenses also militated against a common intention to share in the beneficial ownership. However, as Imran explained, the brothers used the house account as their 'personal bank account'. Although not signatories to, or exercising formal authority over, that account, they were still able to use it, apparently freely, for their benefit. In my view, this too is consistent with such a common intention. The same cannot be said for Javaid's HSBC account, from

which the mortgage payments were made. However, the brothers all paid into the house account, including for the mortgage. The fact that the person in charge of the household expenses then paid that particular expense from a different account in his name seems of little consequence, as shown by the later switch to the house account for payment of the Sutherland mortgage (at [66] above) and, later still, once Javaid had moved out, to Rizwan's account (at [81] above).

**(iii) Ignorance of Osterley sale proceeds/ equity share**

121. Urfan testified that he did not know the precise amount of the Osterley sale proceeds and how the majority had been paid into Javaid's Halifax savings account. However, he knew the price at which Osterley had been marketed. Likewise, he did not know, or enquire about, the size of his share in Osterley. He said he did not need to know because he was not in a position to buy a property. Similarly, when Raza moved out of Osterley in 2002, there was no attempt by him to 'tally up' his share and obtain payment for it then. Nor was he informed of the amount he contributed to Osterley, although he testified that Javaid did inform him of the value of his share. Finally, Rizwan confirmed that a running tally of the brothers' relative contributions to Osterley was not maintained. He said this was not required because Javaid had all the information. He also could not recall if he knew that the majority of the Osterley sale proceeds had been paid into Javaid's Halifax savings account. He was also unaware of the later payment of the £5,000 retention.
122. The Claimants say that their brothers' ignorance of these matters is inconsistent with them sharing beneficially in Osterley. However, as noted, Urfan testified that, when the brothers were planning the marketing and sale of Osterley, they decided to rent while they looked for a new property, to use the Osterley sale proceeds for that new property and to continue the same relationship in the new property as they had previously enjoyed at Osterley (at [72] above). Urfan also testified that his parents wanted the brothers to stay together and to use the Osterley proceeds to get a new property together. As also noted, Abid testified that, although he was away at Sheffield University, he knew his brothers had decided to put the Osterley sale proceeds into another property (at [72] above). When he came down to London later in 2006, Imran confirmed the equity arrangements and how the Osterley proceeds were 'in the pot' in the new property. If their evidence is correct, the brothers did not need to know the precise amount of the Osterley sale proceeds or into which account Javaid - who remained in charge of the household finances - happened to have paid them. Nor would they need to know the percentage or value of their equity share until they sought to release it. According to Rizwan, Urfan and Raza, Raza's share was paid out after Osterley was sold. Raza testified he did not need the money earlier. Rizwan, Urfan and Abid also testified that Javaid was the first brother to seek the release of his interest in Sutherland in August 2011 when he identified the brothers' respective shares in the Spreadsheet.

**(iv) Use of the Devonport sale proceeds**

123. The Claimants suggested that, if Rizwan was right about the alleged agreement for Sutherland and Javaid's indication in February 2010 of his desire for his share to be bought out, the obvious thing to have done would be to use the Devonport sale proceeds for that purpose. The Claimants also made a related but more specific submission that the £40,000 payment to Javaid in July 2010 to buy a new property made no sense in light of Rizwan's claim that Javaid, Rizwan, Abdul and Naseem agreed in October 2011 that this sum could be used as part of the purchase price for Javaid's interest in Sutherland.
124. I found these submissions unpersuasive: first, on Rizwan's case, Javaid announced his intention to move out of Sutherland in February 2010 but he did not realise his share in the property until November 2011 when he was purchasing his new house. The parties (including Javaid himself) would therefore not have known Javaid's requirements for his release from Sutherland until much later than the Devonport proceeds became available in July 2010; second, this submission seemed somewhat 'binary' in approach - his parents' allocation to Javaid of part of the Devonport proceeds in July 2010 is congruent with both its use to buy out his interest in Sutherland and as a deposit for a new house. Although Javaid denies any hand in its preparation, this is also indicated by the Spreadsheet and the option it shows for the realisation of Javaid's share in Sutherland involving the use of part of the £37,770, described there as "*Javaid – money available for new property*".

**(v) Javaid's renewal of his Albany Road tenancy**

125. The Claimants also argued that Javaid's renewal of his Albany Road tenancy in May 2011 is inconsistent with Rizwan's claim that Javaid indicated in February 2010 his intention to move out of Sutherland and to rent for a year before buying a property and realising his Sutherland share for that purpose. Although Javaid renewed for a further year, he had already indicated to his landlord in March 2011 his intention to move out of Albany Road by early 2012. That was only 7 months later than, on Rizwan's case, Javaid had intimated in February 2010. Such a delay may be explicable simply as slippage in Javaid's timescales. I therefore did not find this point compelling. In fact, I found Javaid's related evidence more problematical in this regard.
126. Javaid originally said that he had moved out of Sutherland because he needed more space and wanted to buy but could not remove himself from the mortgage until 2011 (Javaid TWS at [29] and [33]). Imran's original evidence was similar (Imran TWS at [35]). In his further statement, Javaid developed his account, suggesting that, before he moved out of Sutherland, Rizwan said he would be able to leave and buy a property of his own once his money from the sale of his Asperity shares came through. Javaid pressed Rizwan thereafter as to when he would move out. The implication was that Javaid moved out in May 2010 in anticipation of moving back in at a later date (Javaid WS at [78-79, 83]). Imran's further statement was again to the same end (Imran WS at [89]). In oral evidence, Javaid also testified that he renewed his tenancy in May 2011 because he had asked Rizwan whether his money had come through yet and Rizwan said it had not. Imran testified similarly.

127. In my view, it is improbable that Javaid decided to move out of Sutherland in May 2010 and rent contingent on Rizwan himself moving out when he finally received his Asperity money. It is even more unlikely that, a whole year having passed without Rizwan receiving his money, Javaid would then renew his tenancy again on the same contingency, only then – five months later in October 2011 – to have a change of heart, to start looking for his own place to buy and to sell Rizwan a small part of his interest in Sutherland for only £15,000. I found Javaid’s account implausible and I consider much more probable Javaid and Imran’s original iteration that Javaid moved out of Sutherland in May 2010 because it was too cramped and he rented while he found a property to buy. This is also consistent with my finding that the £40,000 Devonport sale proceeds were paid to him in July 2010 as a deposit for a new house (at [92] above). His plans to purchase may have taken longer than anticipated and he renewed his tenancy for another year but, as his March 2011 e-mails with his landlord show, he knew he could move out sooner and he planned to do so by the beginning of 2012.

**(vi) Cumbersome nature of the alleged Osterley/ Sutherland agreement**

128. As to the alleged agreement itself, the Claimants suggest that a proportionate equity split would have been unduly complex to operate and, therefore, improbable, not least when all the working brothers contributed equally to the expenses. I agree it would have been easier for any agreement to share in the beneficial ownership of Osterley to operate on a straight split. However, before the other brothers came onto the scene, Imran and Javaid had already made some contributions from their own funds (borrowed and saved) to buy Osterley. Moreover, the other brothers moved in at different times. As I have also found, Imran and Javaid may have covered some of the household expenses themselves during the fixed contribution period, as well as some of the renovation costs. An equal equity split would have disadvantaged Imran and Javaid because of their own greater contributions. Keeping track of the household expenditure to the detailed level that Javaid did was, no doubt, a significant burden but the house notes show he undertook this conscientiously.

**(vii) Lack of legal documentation**

129. The Claimants suggested that, if there had been such an agreement, the brothers would have documented it. In oral evidence, Rizwan said this was on his mind and he raised this with Imran and Javaid but, in the event, he did not push it. However, the absence of such a document does not render improbable the alleged agreement. When Rizwan and Urfan moved in, there was very little equity in Osterley. Any incentive for incurring further legal costs (having only recently incurred these on the purchase itself) would have been small. In my view, the point operates more strongly against the Claimants. Even when Sutherland was bought and put into the joint names of Javaid and Rizwan with the assistance of solicitors, Imran did not insist on matters being more fully documented despite his claim that he enjoyed a 50% beneficial interest in that property and Javaid’s apparent concerns about Rizwan going onto the title (Imran WS at [61]). Nor, when legal title to Sutherland was transferred to Rizwan in December 2011, again with the assistance of solicitors, did Javaid insist on the arrangement being more fully documented

despite his claim that he had only sold a small part of his 50% beneficial interest to Rizwan.

130. It was also suggested that, as a recent law graduate, Raza could have documented the arrangement once he had moved in. In this regard, I found Raza's evidence persuasive. A law degree did not give Raza the practical ability to draft legal documents. He has never trained or practised professionally. He also testified that all the brothers trusted each other and he would not have felt it appropriate to suggest documenting the agreement.

**(c) The Defendant's 'vague' case on the alleged Osterley agreement**

131. Although Rizwan, Urfan, Raza and Abid testified as to the existence of the alleged agreement for Osterley and, later, Sutherland, the Claimants say that this was explained in the pleadings and written evidence in vague terms, affording Rizwan a 'blank canvas' so that he could 'tailor' his story to avoid evidential difficulties he might encounter. In other instances, Rizwan had to resort to 'reverse engineering' to make the evidence fit his story, albeit obviously so given some of the improbable outcomes to which it led.

**(i) Rizwan's pleaded case**

132. As to the pleadings, I found these criticisms unwarranted. Rizwan responded to claims from Imran and Javaid, principally about Sutherland. Although Imran and Javaid both referred to Osterley in their respective Particulars, they did so briefly and by way of introduction to the dispute about Sutherland. Nevertheless, Rizwan set out in his defence to Imran's claim the arrangement alleged with respect to Osterley (at [3(d)-(e)]). He addressed matters more briefly in his defence to Javaid's claim (at [7]) by explaining that Osterley was held on trust for the brothers but he provided further information about the trust (at [2]). Although the defence to Imran's claim and his response to the request for further information expressed matters in slightly different terms, and not all material facts relied on were pleaded in both, they do not appear inconsistent. Put together, Rizwan's pleaded case on the alleged Osterley agreement can be summarised as follows:-

- a. a trust subsisted with respect to Osterley for the benefit of all the brothers who contributed to the outgoings;
- b. such trust was created by an oral agreement between Imran, Javaid, Rizwan and Urfan in August or September 1999;
- c. that trust was later extended to Raza in January 2000 and to Abid at a later date which Rizwan could not recall;
- d. the terms of the trust were that the brothers would enjoy a beneficial interest reflecting their contributions to the Osterley purchase price and outgoings, including the mortgage; and
- e. the contributing brothers would share the proceeds of the sale of Osterley proportionate to such contributions.

133. In my view, read together, the pleadings were not ‘vague’ but were sufficient for Imran and Javaid to know the case they had to meet concerning the alleged agreement for Osterley and, therefore, Sutherland (save only in respect of Abid’s alleged fixed share (at [144-150] below).

**(ii) Rizwan’s evidence**

134. As to the Claimants’ criticisms of the evidence, it is fair to say that Rizwan’s written account (Rizwan TWS at [3]) provides little more detail than his pleadings. In oral evidence, Rizwan additionally explained that the discussion about the Osterley agreement happened in the lounge, initiated by Imran and Javaid, that Rizwan told Imran and Javaid that he had secured a full-time job and could now contribute more than the lower amount initially charged and that Javaid said that he could have an interest in the Osterley equity if he contributed equally to the food and bills. Although not mentioned in his statement, I cannot say that these matters were so significant that their omission warrants criticism of his account. Rizwan also said that Imran and Javaid had foreshadowed earlier the alleged agreement on a trip to see him in Norwich. Although I agree that this merited mention in his statement, it accords with Javaid’s oral evidence about a trip to Norwich when it was suggested Rizwan should come to London because of the better job opportunities there. Nor was its omission so significant that I can conclude that Rizwan’s account was ‘tailored’.

**(iii) Urfan’s evidence**

135. Although Urfan mentioned Osterley and his contributions to the expenditure briefly in his Tribunal statement (Urfan TWS at [2]), he did not refer to the alleged Osterley agreement until his High Court statement (Urfan WS at [3]) and, only then, to explain that this was agreed when he moved in, it was reiterated before they bought Sutherland and that it envisaged the acquisition of a beneficial interest in Osterley by contributing to the mortgage and other household outgoings. The Claimants say that Urfan’s written evidence too was vague.

136. In oral evidence, Urfan recounted a meeting in the Osterley lounge after he had moved in when the agreement was discussed with Imran, Javaid, Rizwan and Raza. Urfan reiterated the nature of the agreement and expanded upon it by explaining that the brothers’ beneficial interests in Osterley would vary depending on their contributions. I found his oral evidence (on this aspect and more generally) to be balanced and careful. In particular, he was conscious of the limits of his recollection after so many years. Those limits were apparent from his recollection of Raza’s presence at the meeting, suggesting that (unlike Rizwan) he did not recall meeting to discuss the agreement before Raza came to Osterley. Again, the brevity of Urfan’s statements about the alleged agreement does not cause me to question his account.

137. The Claimants also criticise Urfan’s evidence concerning his receipt of the money for his share in Sutherland. Urfan testified that he received £35,000, made up of a £25,000 payment from Rizwan and a further £10,000 paid (at

Urfan's request and as part of a larger sum) by Rizwan to Naseem. These sums were not paid until November 2017 and April 2018 respectively, after litigation was already on foot. Urfan said that he was paid the £25,000 then because he was looking to buy a property at that time (which he eventually did in September 2018). Urfan acknowledged Rizwan's admitted miscalculation of Urfan's share and said that Rizwan had agreed to pay the related shortfall. However, Urfan denied that there was a short payment of the agreed 10% profit on the value of his share. He said that this had been paid in cash.

138. I am invited to infer that the complexity of these arrangements for the payment of Urfan's alleged 18.6% share in Sutherland, and the related explanation, are further examples of Rizwan 'case building' to create the evidential trail to match the (untrue) story he ran at trial about the alleged Sutherland agreement. I agree that, on their face, these arrangements seem complicated. I also accept that the ongoing dispute with Imran and Javaid may have precipitated Rizwan's payments to Urfan and Naseem in November 2017 and, again, to Naseem in April 2018, possibly to make his position look 'cosmetically' more attractive. However, I am not able to accept that these matters indicate 'reverse engineering'. I say this for two reasons: first, this manner of dealing (including cash payments, payments on behalf of others and not reimbursing money immediately, but only doing so when possible or the money required) is consistent with the informality revealed elsewhere in the evidence about the organisation and conduct of the family's financial dealings; second, if Rizwan had engaged in 'case building', it is doubtful that his execution would be as poor as the Claimants' related criticisms suggest it was.

**(iv) Raza's evidence**

139. The Claimants accepted that Raza's statement concerning the alleged Osterley agreement was the fullest of all the witnesses' accounts. I agree. Raza also testified to his knowledge of the alleged Osterley agreement being carried forward into Sutherland on the same basis, albeit he was not himself involved. However, the Claimants urged caution in light of Raza's prior conviction. As noted (at [30] above), although Raza was convicted of a dishonesty offence, it does not follow that he has a propensity to lie. Likewise, I do not accept that the Court should be more circumspect about his evidence merely because he has a law degree or worked as paralegal. To the contrary, as with Urfan, I found Raza's oral evidence to be balanced and straightforward, including on the alleged Osterley and Sutherland agreements.
140. Raza moved out in 2002 before Osterley was sold. In his Tribunal statement, Raza said his share of the Osterley proceeds was paid out by the settlement of debts incurred by Raza on Urfan's credit card (Raza TWS at [6]). In his statement for these proceedings, Raza said he could not remember the exact amount settled but thought it was about £6,000 (Raza TWS at [3]). In his Tribunal statement, Urfan said that Raza's share was paid out by settlement of a £6,600 debt on Urfan's credit card and a further £1,000 payment to Raza (Urfan TWS at [16]). Both brothers corrected their statements in oral evidence, Raza to refer to the payment to him and to make clear that his debt was settled by a payment to Urfan. Urfan corrected the amount of the

payment to him as £6,700 (not £6,600) and the payment to Raza as £2,000 (not £1,000).

141. The Claimants suggested that these corrections represented a crude attempt to increase the amount paid to Raza because the first (written) attempt did not ‘fit in’ with the Osterley net sale proceeds. However, even with the corrections, there remained a mismatch. Urfan explained in oral evidence that he made the corrections because he had reviewed Javaid’s statement and the bank statements and realised his error on the figures. Urfan’s ‘corrections’ do appear to correspond with the figures for loans 4 and 7 in the schedule to Javaid’s statement, both relating to Raza, albeit Javaid described these as, respectively, loans taken out by Raza for Javaid (£6,700) and a loan from Raza to Imran (£2,000).
142. Although the net effect of Urfan’s ‘corrections’ is to increase the amount Raza received for his share of Osterley, the mismatch suggested by the Claimants in closing argument appears to assume an equal split of the Osterley sale proceeds between the brothers. However, as noted, Imran and Javaid contributed more to Osterley than the other brothers (at [128] above). As such, any mismatch appears to be overstated. Accordingly, although I accept that there are inconsistencies between and within Raza and Urfan’s evidence on this point, in my judgment, they are the result of error rather than what, again, would be a rather clumsy attempt at ‘reverse engineering’.

**(v) Naseem’s evidence**

143. The Claimants submitted that, since Naseem was not involved in the Osterley agreement, she had no relevant evidence. It is common ground that she was not involved. Naseem confirmed the same in oral evidence. However, she also explained how she and Abdul had come down from Blackburn, Javaid talked about Osterley, the mortgage, the brothers paying Javaid every month for the household expenses and how Javaid had agreed with Imran, Rizwan, Urfan and Raza that they would each have a share in Osterley. She did not know the details of the agreement or who paid how much to the Osterley expenses, nor did Javaid mention Abid having a share. Accordingly, although Naseem had no direct knowledge, she did have some, albeit limited, relevant evidence supportive of the alleged agreement.

**(vi) Abid’s evidence**

144. Abid gave evidence that he too had enjoyed a share in Osterley, albeit the related agreement with him was different from the other brothers. He said that Imran, Javaid, Rizwan, Urfan (and, in oral evidence, Raza) agreed with him in early 2002 to ‘gift’ him a specific percentage share in Osterley, initially mooted as a 10% share but ultimately agreed at 8%. The Claimants point out that Abid did not mention in his statements any alleged agreement for Osterley with Rizwan, Urfan and Raza. However, this is unsurprising. Abid was the last brother to move into Osterley and he would not have been present when any prior agreement with those other brothers was allegedly made.

145. Raza did not mention in his statements Abid benefitting from a share in Osterley. However, the focus of Raza's evidence was what had been agreed in respect of his equitable interest when he moved in. At that stage, Abid was still in Blackburn. Likewise, Javaid not informing Naseem about Abid sharing in Osterley may be unsurprising since Abid said his fixed share was not agreed until early 2002.
146. The Claimants also pointed out that Rizwan did not mention Abid's 8% fixed share in either of his statements. Moreover, the impression given by Rizwan's written evidence was that the arrangement to share in Osterley was the same for all brothers (Rizwan TWS at [3]). This was contradicted by any fixed share agreement with Abid. In oral evidence, Rizwan denied any contradiction. He was focusing in his statement on the older brothers' financial contributions which, as a student, Abid did not make. Rizwan confirmed that there was an agreement for Abid to be awarded an 8% share in recognition of his hard work on the Osterley renovations.
147. Likewise, Urfan did not mention in his statements any agreement with Abid. However, Urfan too confirmed in oral evidence that Abid was given a share in Osterley because of his good job on the refurbishment although, making clear again the limits of his recollection, he could not now remember that this had been fixed at 8%.
148. The Claimants say that the alleged agreement to 'gift' Abid a fixed share only arises because of the 'problem' that he was not a 'working' brother and did not make any contribution to Osterley at all or to Sutherland until 2006. However, the idea of giving a 17-year old boy an 8% share of a flat in London is absurd. I agree it would be unusual but, as I have already mentioned, there was little equity in Osterley when it was acquired. House prices may well have increased by the time of any alleged agreement with Abid in 2002 but any related equity increase would have been (or would be) offset by the extensions to the Abbey National mortgage. In those circumstances, an 8% share would not be so outlandish. Abid had worked on the renovations over Summer 2001, apparently without payment, and, in doing so, had helped increase the value of Osterley.
149. Abid testified that he did not want to re-invest the value of his Sutherland share into Rizwan's development project. He was in his twenties at the time and wanted the money to go out. Rizwan therefore paid him the value in cash (£18,067). The Claimants submitted that the payments look 'manufactured': the first payment on 5 September 2011 (for which there was no record) was supposedly for the specific sum of £4,067 from cash held by Rizwan at home even though later cash payments also supposedly attributable to Abid were withdrawn from Rizwan's Barclays' account (for which withdrawals there were records). The first payment was also supposedly made before Javaid had yet sold his interest to Rizwan. Finally, before the last cash payment was made, Abid received other (supposedly unrelated) bank transfers from Rizwan's Halifax account.

150. It is common ground that there are no documents specifically tying any of the cash payments to Abid. I also accept that it was unlikely that the first cash payment was for the exact amount of £4,067 rather than, as Abid said in oral evidence, “*around £4,000*”. However, as I have noted, payment by cash was one of the informal methods by which the family transacted with each other. Moreover, although Javaid had not yet parted with his share in Sutherland at this stage, on Rizwan’s case, he had agreed to do so in principle at least. Finally, as with the evidence of Urfan and Raza, I found Abid to be a straightforward witness whose evidence was fair and balanced and whose explanation of his lifestyle and use of money at that time (and need for cash) was persuasive and consistent with Rizwan’s evidence in this regard.

**(vii) Conclusion on the Defendant’s evidence**

151. Accordingly, although I accept that a number of the points raised by the Claimants concerning the Defendant’s evidence on the alleged agreement are more than merely forensic and, although they properly identify certain inconsistencies or raise questions which Rizwan cannot answer conclusively, I am unable to conclude that these are of such significance, either individually or taken together, that they undermine Rizwan’s account.

**(d) Difficulties with the Claimants’ evidence**

152. In this regard, Imran and Javaid’s related evidence suffered shortcomings of its own, albeit of a different nature given their denial of the alleged agreement. In particular, they downplayed certain matters said to support its existence. As I have found, Javaid’s evidence concerning his ‘surprise’ about Urfan moving into Osterley was unpersuasive (at [40] above). They also appeared to understate the extent of their brothers’ assistance with, and in their statements at least, financial contributions to, the Osterley renovation works (at [57] above). They also downplayed Rizwan and Urfan’s involvement in the Sutherland purchase (at [67-68] above). However, I am again unable to conclude that these matters are of such significance as to undermine their accounts.

153. That said, I found much more troubling certain important aspects of Imran and Javaid’s related evidence, including about (i) the other brothers merely paying ‘rent’ for Osterley and Sutherland, a point pressed dogmatically by Javaid in his evidence (at [41] above) (ii) Imran not going onto the Sutherland legal title (and mortgage) in 2006 (at [69-71] above) (iii) Javaid’s seemingly evolving reasons for leaving Sutherland in May 2010 (at [126-127] above) (iv) Rizwan taking responsibility for the Sutherland household expenditure after Javaid moved out (at [83-84] above) and (v) Imran and Javaid’s claims concerning the Devonport sale proceeds, including the reason for Javaid being paid £40,000 (at [90-94] above). The brothers sharing in the fullest range of household expenditure for Osterley and Sutherland, the interchangeability of the holder of the Sutherland title (and mortgage), Javaid’s original simple explanation for why he moved out of Sutherland (ie: to buy another property), Imran and Javaid taking a ‘backseat’ role with the household expenses when Javaid moved out and Javaid’s need for a deposit for a new home are all consistent with Imran and Javaid sharing in the Sutherland equity with their

other brothers. Seemingly aware of the problems these points created, Imran and Javaid proffered unrealistic, convoluted or improbable explanations which, in my view, did undermine their accounts as to the beneficial ownership of Sutherland.

**(e) The Spreadsheet re-visited**

154. On its face, the Spreadsheet, supposedly produced at the August 2011 meeting, presents compelling evidence of the alleged agreement, purporting to show a split of equity in Osterley between all the brothers, an option for Javaid's share to be bought out and Javaid as its author. The Claimants say that this has been fabricated and, to that end, they level certain criticisms of the document. For example, they say that the different percentage shares shown for each brother (at [106] above) do not add up to 100%. Although correct, I found this point unconvincing. The numbers in that row, in fact, add up to 99.9%. It is unlikely that the calculation of a split of the Osterley equity according to the brothers' contributions would produce a whole number but the author would likely not want to present figures to multiple decimal places. As such, the individual percentage shares in the Spreadsheet have been rounded. This also appears to explain the further criticism that the £53,265 value for Javaid's share in the Spreadsheet is not 26.2% of the assumed net value of Osterley (£203,000). However, the author appears to have used the unrounded figure to produce £53,265. By my calculation, £53,265 is 26.23891 ... % (or 26.2% rounded to one decimal place) of £203,000. There therefore does not seem anything to this point.
155. The Claimants also say that the Devonport sale proceeds were not £109,000 (net) as shown in the Spreadsheet. Javaid knew the correct figure - £108,000 (gross) - and would not have inserted this if he had produced it. By contrast, Rizwan, for example, testified that he did not know the Devonport sale price such that he (or the other brothers in a similar position) might have inserted the incorrect figure. Again, I found this point unconvincing. On its face, the Spreadsheet was prepared in July 2011. The Devonport sale completed a year earlier. It is not hard to believe that Javaid could be mistaken about the sale price after a year and that he might get it wrong by £1000 or so. Imran appears to have done just that, albeit much later at the 11 November 2017 meeting, when he used the £109,000 figure (T1/line 514). In my view, it is unlikely that someone fabricating a document would insert an unknown figure, not least when it would have been easy to obtain the correct one.
156. Javaid also says that the "*House account spend on Blackburn*" was not £9,987 as shown on the Spreadsheet but was, in fact, £10,330. Only Imran and Javaid had access to the house account, so only they would know the correct figure and neither would insert the incorrect one into a document they had produced. However, again, the Spreadsheet was purportedly prepared in July 2011. It seems likely that, if Javaid had produced this Spreadsheet, he would have gone back to the bank statements to reconstruct the exact expenditure incurred. It is again not hard to believe that Javaid might miss, and therefore inadvertently not include, £343 of Devonport expenditure. It seems less likely

that someone fabricating the document would hazard a guess, let alone one so close to the actual figure - only £343 adrift.

157. Nor would there be any reason to guess the Devonport expenditure (or the Devonport sale price). The Devonport workings were only necessary to show a potential option to realise Javaid's share in Sutherland on the basis of a notional split of the Devonport sale proceeds. That option was ultimately not pursued. There was no need for anyone fabricating the document to go down that route at all rather than simply refer, if at all, to that part of the Devonport sale proceeds which Javaid had received, as appears to have been more widely known and as was also stated in the Spreadsheet.
158. Finally, I also accept Rizwan's submissions that it would not have been necessary for him (or his brothers) to fabricate the Spreadsheet. It would have been perfectly possible for Rizwan to rest his case upon his other evidence as to the existence of the agreement, as supported by that of Urfan, Raza, Abid and Naseem. Although Imran and Javid steered clear in their evidence of calling them 'liars', they are effectively arguing, not only that their brothers and mother put their heads together to invent a story about an alleged agreement, but that they also conspired in the fabrication of a document to the same end. Both would, of course, be very serious matters tantamount to fraud, or worse. Having heard their evidence, I cannot accede to that submission.

**(f) The two November 2017 family meetings**

159. There is a final part of the evidence to which I turn briefly, namely the transcripts of the family meetings in November 2017. It appears from the transcript of the first meeting on 11 November 2017 that only Imran had commenced legal proceedings by that stage, with Javaid portraying himself as a 'neutral' as between Imran and Rizwan, attending ostensibly to protect Naseem's interests as a potential witness in the case. It is notable that, when Imran ventilated his complaint at the first meeting, he did not say that he and Javaid owned (or had owned) Sutherland beneficially to the exclusion of all the other brothers. Rather, his principal point was that there was no good reason for him to have parted with his share in Sutherland in September 2011, that he had not done so and that he should, therefore, benefit from its rise in value since. I address the sale issue later in this judgment but the premise of much of the discussion at both November 2017 meetings is that all the brothers shared in Sutherland. Although there was no explicit acceptance of this by Imran and Javaid, there was little 'pushback' either. At the second meeting on 18 November 2017, Imran and Javaid did reject the idea that the brothers all shared in the £56,000 Osterley proceeds of sale used to buy Sutherland and said that these belonged to them equally (T2/lines 235-236). However, Javaid's response on the same point was more equivocal at the first meeting (T1/lines 480-482).
160. Moreover, with Urfan now present at the second meeting on 18 November 2017, Imran 'sounded him out' about whether he and Imran had agreed in September 2011 to sell Rizwan their shares in Sutherland. Urfan was clear in his recollection that both he and Imran had done so, leading to a somewhat

intemperate reaction from Imran (T2/lines 150-159). In this regard, Urfan was, of course, not aware that he was being recorded. Nor were Rizwan, Abid and Naseem and, as such, their reactions are likely to be more spontaneous and authentic. The following comments from the two meetings are, therefore, particularly notable:-

- a. Rizwan's statement that he paid Urfan what Javaid had put on the "sheet" (indicating a reference to the Spreadsheet, its author as Javaid and Rizwan's purchase of Urfan's share in Sutherland) (T1/line 490);
- b. Abid's statement that "*everyone knows what everyone share is*" in the context of Imran and Javaid asking Urfan how much money he had received from Rizwan (indicating again that Sutherland was shared between all the brothers) (T2/line 95);
- c. Naseem's statement (repeated in similar terms throughout) that: "*.. he (Rizwan) asked, can you buy this house, you said no, I (Javaid) want to buy a separate house. Then he (Rizwan) asked him (Imran) and he said Laurie doesn't give me money*" concerning Javaid's unwillingness and Imran's inability to buy Sutherland in 2011 (T1/line 348). If Imran and Javaid had owned Sutherland outright, there would be no need for either of them to buy the property;
- d. Urfan's statements that he and Imran both agreed to sell their shares in Sutherland and re-invest the proceeds (T2/lines 4-15), again indicating that Sutherland was beneficially owned by all the brothers; and
- e. To the same end, Urfan's statement that he got £25,000 for his share in Sutherland (T2/line 96).

**(g) Motives**

161. Finally, I have also considered the motives of the parties and of the witnesses for advancing the claims, and/ or giving the evidence, they have. Although Urfan, Raza and Abid have a financial interest in not paying back any money they might have received from Rizwan if I find they did not enjoy any beneficial interest in Osterley or Sutherland (or both), the prospect of a claim in restitution seems remote. Likewise, although Raza, Abid and Naseem might have concerns about potentially losing their home depending on the outcome of this litigation, it seems unlikely that Imran and Javaid would render them homeless. As such, they all seem to have little personally to gain from giving the evidence they have, not least evidence which, if untrue, would implicate them in a conspiracy to fabricate the Spreadsheet. Although the Claimants say that Raza has shown himself capable of acting dishonestly before, I consider it more likely that Raza would have been keen to avoid cross-examination on his past conviction for an offence involving fraudulent invoicing and, particularly in light thereof, on any suggested association with the fabrication of documentary evidence in this case. I also apprehend more generally that Urfan, Raza and Abid would have been keen to avoid testifying

against Imran and Javaid. They were all brothers who had lived under the same roofs for many years, apparently getting on well.

162. Nor would Naseem have wanted to 'take sides' either. Although in various parts of their evidence (and at the 11 November 2017 meeting), Imran and Javaid portrayed Naseem as having been 'brainwashed' by Rizwan, I found that criticism unwarranted and unfair and that she was independently minded. It was also apparent from the evidence about Abdul and Naseem's dealings with their sons, including Imran and Javaid, that they both sought to nurture a close and loving family. Moreover, both Javaid and Rizwan acknowledged at the first November 2017 meeting that Naseem is Haji and namazi and that she does not lie (T1/lines 206, 422).
163. Finally, Imran, Javaid and Rizwan each have an obvious interest in advancing their respective claims to the beneficial ownership of Sutherland. On this basis, there is little to differentiate them when it comes to considering their financial motives. However, the transcripts show an additional consideration apparently weighing heavily on Imran and Javaid. Although the first meeting was convened ostensibly to resolve the dispute between Imran and Rizwan, the majority of the discussion concerns what Javaid described as something he had been "*holding inside me for a number of years*". That concern was whether Rizwan had been a "*millionaire*" when "*we were working really hard, struggling on Blackburn*" (T1/line 53). In a similar vein, Javaid complained about Rizwan asking Abdul for money to pay down the Sutherland mortgage (T1/lines 57, 68). The 'final straw' appears to have been Rizwan's characterisation of the £40,000 paid to Javaid by Abdul as a 'loan' (T1/lines 158, 193). It is therefore apparent from the transcripts that both Javaid and Imran were upset by what they saw as Rizwan effectively appropriating all the Devonport proceeds even though he was a "*millionaire*" (T1/line 193).
164. That concern surfaced again in Imran and Javaid's evidence that Rizwan had 'misled' Abdul concerning the use of part of the Devonport proceeds to pay down the Sutherland mortgage and that Javaid had also received £40,000 from Abdul to avoid Rizwan bothering him for further cash. I have already rejected that evidence as implausible (see at [93] above). Imran and Javaid put matters too highly. Coupled with the evidence from the November 2017 meetings as to what was really troubling Imran and Javaid, I am satisfied that the claims they have advanced in these proceedings have been motivated by a belief that Rizwan acted egregiously in relation to Devonport and that, in light of Rizwan's independently acquired wealth, they are deserving of more.

#### **4. CONCLUSIONS ON BENEFICIAL OWNERSHIP**

165. Drawing these many threads together, I find that:-
  - a. there was an express agreement between Imran, Javaid, Rizwan and Urfan in 1999, later extended to Raza, that they would share in the beneficial ownership of Osterley proportionate to their respective contributions to the household expenses;

- b. there was an express agreement between Imran, Javaid, Rizwan, Urfan, Raza and Abid in 2002 that Abid too would enjoy a share in the beneficial interest of Osterley, at that stage fixed at 8% of the equity;
- c. Raza's beneficial interest in Osterley was extinguished in 2004 after Osterley was sold and Raza 'paid out', partly in money, partly in settlement of his debt to Urfan;
- d. Imran, Javaid, Rizwan, Urfan and Abid expressly agreed that their arrangements with respect to the beneficial ownership of Osterley would also apply to Sutherland, albeit now excluding Raza;
- e. there was, accordingly, no agreement or understanding that Javaid and Rizwan would hold the Sutherland equity for Imran and Javaid alone;
- f. Javaid did declare to his family in or about February 2010 his intention to move out of Sutherland with a view first to renting before buying a property of his own, for which purpose he would need in due course to release the value of his share in Sutherland;
- g. once Javaid's plans for purchasing his own property were sufficiently well advanced, he prepared the Spreadsheet and produced this at another family meeting in August 2011;
- h. the respective beneficial shares enjoyed by the brothers in Sutherland were agreed by them at that August 2011 meeting to be as stated on the Spreadsheet, namely:-

<b>Name</b>	<b>Share</b>
Imran	26.2%
Javaid	26.2%
Rizwan	20.0%
Urfan	18.6%
Abid	8.9%

- i. Rizwan offered then to be bought out from his share in Sutherland but Javaid declined that offer;
- j. Javaid agreed in principle then to have his 26.2% share in Sutherland bought out by Rizwan for £53,265, albeit no payment date was set; and
- k. The other brothers also agreed then that Rizwan would buy out their Sutherland shares as stated in the Spreadsheet, albeit on the understanding that they would be paid when Rizwan was in funds.

166. I make these findings based on my analysis of the evidence and, in particular, on my view that (i) although there were some unremarkable differences between their evidence, Rizwan, Urfan, Raza, Abid and Naseem presented a consistent account as to the formation, existence and operation of the

agreement with respect to Osterley and/ or Sutherland (ii) the brothers' conduct in relation to Osterley, Queen's Drive and Sutherland, particularly with respect to their contributions to the household expenses, showed a common intention to share beneficially in Sutherland, consistent with that agreement (iii) the matters relied on by the Claimants to criticise the Defendant's evidence were insufficient to undermine Rizwan's account (iv) important aspects of the Claimants' evidence were more troubling and did undermine their accounts (v) Javaid was the author of the Spreadsheet, a contemporaneous document evidencing that agreement (vi) many of the statements of the Defendant's witnesses made spontaneously at the November 2017 meetings are consistent with that agreement (vii) Imran and Javaid were motivated in bringing these claims by additional concerns they harboured (viii) although Rizwan had an obvious financial interest in defending the claim in the manner he did, Urfan, Raza, Abid and Naseem did not, and would have been reluctant to 'take sides' and (ix) the other matters identified below in the chronological narrative, and considered as part of the parties' entire course of dealings, also support the existence of the Sutherland agreement.

167. I understood that if, as I have found, the brothers shared beneficially in Osterley and Sutherland on the basis asserted by Rizwan, the presence of detriment was not in issue. However, I also confirm my finding that each of Imran, Javaid, Rizwan, Urfan and Raza did rely to their detriment on the agreement to share in Osterley through their contributions to the household expenditure. Similarly, Imran, Javaid, Rizwan, Urfan and Abid relied to their detriment on their agreement to share in Sutherland through their contributions. It follows that Imran and Rizwan held the benefit of Sutherland for all the brothers pursuant to a common intention constructive trust in the agreed shares identified (at [165(h)] above).

## 5. DISPOSAL OF EQUITABLE INTERESTS - FORMALITIES

168. Imran denies that he disposed of any part of his (50%) beneficial interest in Sutherland to Rizwan. Javaid accepts that he agreed to sell a small part of his (50%) beneficial interest in November 2011, albeit he now seeks rescission of that agreement. As I have found, Imran or Javaid each had a 26.2% interest in Sutherland, not 50%. As I have also found, Imran and Javaid agreed in August 2011 to be bought out by Rizwan. Before considering whether they went on to dispose of their equitable interests, I first examine the related formal requirements. These are set out in section 53 of the Law of Property Act 1925. This provides in relevant part that:-

**“53. Instruments required to be in writing.**

(1) *Subject to the provision hereinafter contained with respect to the creation of interests in land by parol:-*

.....

(c) *a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.*

(2) *This section does not affect the creation or operation of resulting, implied or constructive trusts.”*

169. Rizwan advanced certain arguments as to why the sale by Imran and Javaid of their interests in Sutherland would satisfy, or not fall foul of, section 53(1)(c). He argued that Imran’s beneficial interest under the constructive trust was ‘surrendered’ or ‘extinguished’ by Rizwan taking Sutherland as full owner. Such ‘surrender’ is not a disposition within the meaning of section 53(1)(c). The position with respect to the disposal by Javaid was more straightforward, his beneficial interest having been transferred to Rizwan in writing by the form TR1 (at [246] below). The Claimants disagreed with this analysis but accepted that, if they had agreed to sell their respective interests to Rizwan for £55,000, the related disposals would not fall foul of section 53(1)(c). In those circumstances, the exception for “*the creation or operation of resulting, implied or constructive trusts*” at section 53(2) would be engaged. I agree with this analysis. It also accords with the approach adopted in *Neville v Wilson* [1996] 3 WLR 460 at [157-158], *Singh v Anand* [2007] EWHC 3346 (Ch) at 144(j)-(l) and, most recently, *Hasan Dalkilic & another v Metin Pekin & another* [2021] EWHC 219 (Ch) at [308-309] (none of which was cited to me).
170. I now consider whether, having agreed to do so, Imran and Javaid did, in fact, dispose of their respective beneficial interests in Sutherland to Rizwan as well as Javaid’s related claims in deceit. Since the factual narratives are relatively discrete, I consider these matters separately, starting with Imran.

## **6. DISPOSAL OF IMRAN’S SHARE**

### **(a) Rizwan’s new-found wealth – August 2011**

171. On 31 August 2011, Rizwan received £1,175,074.03 from the sale of his Asperity shares.
172. On 19 September 2011, Rizwan purchased 20 Range Road, Manchester (“**Range Road**”) as a property development project for £270,000.

### **(b) The third disputed family meeting – September 2011**

173. Rizwan claims that, after buying Range Road in September 2011, there was a further family meeting with Imran, Rizwan, Urfan, Abdul and Naseem when Rizwan offered to pay Imran and Urfan outright for their interests in Sutherland at the value calculated in accordance with the Spreadsheet, alternatively to invest that sum in Range Road with a 10% net return. Imran and Urfan both agreed the alternative proposal (Rizwan TWS at [19]).

174. Urfan confirmed Rizwan's account in his statement (Urfan TWS at [12]) and in oral evidence. Naseem also confirmed Rizwan's account in her statement (Naseem TWS at [12]). In oral evidence, Naseem said that her husband had told her that Rizwan paid £142,000 for Imran's share in Sutherland. However, that figure was not contended for by either party and did not make obvious sense. When questioned further, she testified to her presence at a meeting at Sutherland when Imran and Urfan agreed to invest £30,000 and £37,000 respectively in Range Road for a 10% return. Again, these figures were awry but, at the 11 November 2017 meeting, she also said:-

Mum: "*He (Rizwan) paid money to him (Imran) (translated from Punjabi).*

Javaid: *How much?*

Mum: *65,00 when money came from Manchester.*" [translated from Punjabi] (T1/lines 234-236).

**(c) Imran had no reason to sell**

175. Imran denied this September 2011 meeting or any agreement to sell his share in Sutherland. He argued that there was no need for him to sell. His only property was Sutherland where he and his family lived, he was expecting house prices to rise and he would not have agreed to the valuation of Sutherland Road in the Spreadsheet (Imran WS at [102]). Moreover, he had no personal interest in investing in Range Road. Although he received £65,000 from Rizwan in February 2017, this represented the agreed profit on loans he had procured for Rizwan to finance Range Road, not the return of, and 10% profit on, his Sutherland share.
176. I accept that Imran was not looking for a new home, he did not need to realise his share and he would have likely benefitted if he had simply 'sat it out' and let Sutherland rise in value. However, this looks at matters from Imran's narrow perspective only. With Javaid and Urfan gone, there were now only three contributing brothers still living in a property with a substantial monthly mortgage payment. On the evidence, some conflicting, it is not possible to ascertain the level of Imran's income or his contributions to Sutherland following Javaid's departure. However, Imran conceded in evidence that the payments he received from his self-employment were irregular, he was unable to make contributions every month and he was only starting to get back on his feet financially (at [82, 84] above; Imran WS at [102(c)]). Even with the mortgage due to fall significantly in November 2011, I accept that the burden of the monthly household expenditure fell disproportionately onto Rizwan.
177. In those circumstances, anticipating that he might soon come into money from the sale of his Asperity shares, it would be perfectly understandable for Rizwan to want to buy his own house or to buy Sutherland for himself, as he says he discussed at the August 2011 meeting. If Rizwan did move out and buy his own place, Imran and Abid would be left in a property the upkeep of which they could not afford. Once that point was reached, Sutherland would

have to be sold because Imran was in no position to step in and buy it. That this point was reached by August 2011 is evident from the transcripts of the November 2017 meetings, including Naseem's statements that:-

*"You said I don't want to buy, he said he does not want to buy, he paid the full amount and bought the property, what's the problem. [translated from Punjabi]" (T1/line 391).*

*"He asked you to buy this property, you said no, he asked Imran and Imran said no because Laurie didn't give him money so he bought the property. What's the fight?" (translated from Punjabi] (T1/line 423).*

178. As to September 2011 meeting itself, although Imran denies this took place, Rizwan confirmed at the 11 November 2017 meeting that:-

*"This is very simple, Imran was present, Urfan was present, mum was present, I said to them, simple, either I can buy something myself or I can take this one" (T1/line 219).*

179. Moreover, as noted (at [160] above), Imran and Javaid specifically 'sounded out' Urfan about the September 2011 meeting at the 18 November 2017 meeting:-

*"Imran: Yeh, Rizwan mentioned that he was mum Rizwan You and me in Sep 2011 that we, that I sold my share of this property for 55 thousand. Can you remember this meeting?"*

*Urfan: We had a meeting saying that mmm these are the shares we are gonna put into Manchester and*

*Imran interrupts ..... Which, you had a meeting to put*

*Urfan: Shares of the property, you would invest into Manchester and then we would get*

*Imran: I never had that meeting. .... So why would I sell my share of this property to put in Manchester*

*Urfan: You said that he would give you the profits for it*

*Imran: But would I sell my share out of this when I got nothing out of Blackburn. Because I am going to take Rizwan to court so I want you to be truth.*

*Urfan: Look, we had a discussion right, we were saying that we would use the share we have in the property to invest in Manchester and from that you got the profit from it that's what he said*

*Imran: So you said that you you you would forget about this house and that he, give you £3000 grand saying that he*

Urfan: *No no no he said that he would use that money to invest in Manchester and he will give you profit share I think it was 10%*

Javaid: *10% for 3*

Imran interrupts: *3 grand for 6 years*

Urfan: *That's what he said"* (T2/lines 4-20)

180. Imran and Javaid did not stop there. They pressed Urfan further to tell them how much he had received for his share (T2/lines 93-104):-

Javaid: *How much has he given you. It's a simple question, simple question, how much has he given you?*

Javaid: *Simple question, I am asking very nicely. You asked me, I said 15000. How much has he given you?*

Abid: *How much has he given you, everyone knows what everyone share is.*

Urfan: *Ok I got 25 then*

Javaid: *You got 25, he gave you 25*

.....

Imran: *He gave you 25000 for your investment apparently, yeh*

Javaid: *Of this house?*

Urfan: *How much did he give you?*

Imran: *Me, he gave 65 in 2017*

Urfan: *Well, that's a lot more what I got*

181. Imran did not explain to Urfan that the £65,000 he had received from Rizwan represented profit on the Range Road loans but, after Rizwan arrived, he said that this sum represented his “cashback” on those loans (T2/line 200).

**(d) Imran’s ‘disinterest’ in investing in Range Road**

182. Rizwan confirmed in oral evidence that neither Imran nor Urfan had seen Range Road before they agreed to invest and would only be paid the 10% profit at the end of the development project. Urfan said in oral evidence that he invested his share in Range Road because he was not in a position to re-invest the money himself. In oral evidence, Rizwan said that Imran told him he would only spend the money if he took it straightaway. Imran said that

Rizwan had no prior experience of property development, the property did not have planning permission for use as flats and Rizwan did not have funding in place. Imran would therefore not have been interested.

183. It is not possible for me to resolve the dispute about Imran's interest (or otherwise) in investing in Range Road based on this contested evidence alone. Imran's answers to certain incidental lines of questioning did, again, understate matters improbably. So, for example, I found implausible Imran's evidence that he only found out about Range Road during a car journey to Manchester in November 2011 even though Rizwan had texted Abid in September 2011 to tell Imran about an October trip to Manchester in light of the impending Range Road completion. Range Road was clearly no secret and Imran, Rizwan and Abid all lived together in Sutherland.
184. Likewise, I found unconvincing Imran's answers to an incidental line of questioning concerning his knowledge of Rizwan having paid off the Sutherland mortgage. Imran said he only became aware of this in 2014 but he had introduced Rizwan to a mortgage broker in 2012 and, in the context of gathering financial information, the broker asked Imran: "*Did your brother have any mortgage on 35 Sutherland Road before?*" If the broker introduced by Imran knew that Sutherland no longer had a mortgage, Imran would also have known.
185. In a similar vein, I also found implausible Imran's further evidence that he was "*extremely angry*" with Rizwan when he found out the Sutherland mortgage had been paid off and yet went on to assist him to obtain a further mortgage over Sutherland and other financing for Range Road (Imran TWS at [50]). Although implausible, Imran's evidence on these matters does not answer the question why Rizwan paid him £65,000 in February 2017.

**(e) Imran's explanation for why Rizwan paid him £65,000**

186. It is common ground that Imran provided loans to Rizwan in 2015 and 2016 to finance Range Road. There is some dispute as to the amount of those loans, whether £50,000 or £54,000. Either way, it does not appear to be disputed that the principal was repaid. However, there is a dispute as to why Imran received the sum of £65,000 in February 2017, whether as the return on Imran's investment of his Sutherland share in Range Road plus the agreed 10% profit and some (limited) profit on the loans, as Rizwan alleges (Rizwan WS at [33]), or pure profit on the loans as Imran alleges (Imran WS at [149]).
187. In his Tribunal statement, Imran did not mention Danny as the source of loans. In his statement for these proceedings, Imran said Danny provided funding between November 2015 and January 2016, with Imran indicating to him at the time of the second tranche that they would get at least £25,000 if Rizwan made £100,000 on the project, more still if Rizwan made more. Imran said his "*aim was to take a share of profit and give Danny something too*" (Imran WS at [124]). Ultimately, Rizwan paid £65,000 profit on the loans, which Imran split £30,000 to himself and £35,000 to Danny (Imran WS at [149]). In oral evidence, Imran testified that it was Danny who said he wanted £35,000.

188. Just before he paid the £65,000, Rizwan texted Imran to say:-

*“You gave me £50K. I’ve given two sets of £25K, rest on Monday which is profit for you.”*

189. This text does not assist in resolving the dispute as to the reason for the payment of the £65,000. It could be referring to the prior repayment of Imran’s loans to Rizwan, with the “rest” being the profit thereon. Alternatively, it could be referring to the prior repayment of Imran’s loans to Rizwan, with the “rest” being the return of Imran’s share in Sutherland plus profit thereon. Rizwan’s banking payment reference – “*Repaid Investment*” – is similarly ambiguous. It could refer to the repayment of Imran’s “investment” in Range Road by way of loan or by investment of the value of his share in Sutherland.

**(f) Danny’s evidence**

190. Danny testified that he had known Imran for 16 or 17 years. They had worked together in business. Danny did not know Rizwan. Danny had lent money to Imran before but not often, charging interest on business loans, not for short term “*friendly lending*”. Danny lent Imran £50,000 in cash between November 2015 and January 2016. Danny was expecting the first tranche of £30,000 to be repaid in two to three months. He was not expecting interest. Danny was more hesitant lending the second tranche of £20,000 but Imran told him he would receive 25% of the Range Road net profit which he would share. Danny lent him the second tranche because he trusted him. There was no risk because he had known Imran a long time. The first tranche was repaid in June 2016 to a third party designated by Danny. The second tranche was repaid in February 2017, partly to Danny, partly to a different designee. Danny said that Imran told him in February 2017 that he had received £65,000 profit but that there were some problems with his brother and would be some delay in payment. Danny believed it was then that Imran told him his share would be £35,000. He was pleased since he was only expecting £25,000. In September 2017, £25,000 of his profit share was paid at Danny’s direction to his designees. The remaining £10,000 is still unpaid.

191. I found Danny’s evidence to be straightforward but he was also detached from key parts of his statement. So, for example, Danny said in his statement that he “*got frustrated and asked for my return*” after a few months of not receiving his profit share (Yeung WS at [11]). In oral evidence, he did not recognise the reaction he described there. Likewise, in his statement, he described the unpaid £10,000 specifically as a “*loan to Imran on the 8 December 2017*” which Imran used to pay Bark & Co (Yeung WS at [11(c)]). However, when asked in oral evidence whether he had lent £10,000 to Imran, he said he did not know. Nor could he remember the reference to Bark & Co., merely that he remained unpaid.

192. I found most problematical of all Danny’s evidence about the tax return exhibited to his statement. This contained a purported tax computation for his

£35,000 share of the profit. However, Danny had no familiarity with, or understanding of, this document. He did not know what it was. When asked if it was his tax return, he said it “*should be*” but he could not say if it had been filed. Nor did Danny understand the tax computation apparently prepared by his accountants. A cursory review of this raises many questions:-

- a. The £35,000 profit appears to be shown as a capital gain. It is not clear why this profit has been treated as a capital item. Danny was making a loan, not taking a share in Rizwan’s project or business;
- b. The “*disposal proceeds*” are shown as £115,000. If this is adding the total loan (£50,000) and the ‘profit’ paid by Rizwan (£65,000), it makes no sense. Even if the repayment of a loan is a ‘disposal’, Danny received only £35,000 ‘profit’ - in fact, £25,000;
- c. The “*allowable costs*” are shown as £80,000. If this is deducting the total loan of £50,000 and the £30,000 share of ‘profit’ received by Imran, this makes no sense either. Even if the grant of a loan could be treated as a ‘cost’, Danny did not incur any cost to Imran;
- d. The “*asset*” is shown as having been “*acquired*” on 1 December 2016 but the loans were granted between November 2015 and January 2016;
- e. The “*asset*” is shown as having been “*disposed of*” on 6 April 2017 even though Rizwan paid £65,000 to Imran in February 2017 and Danny said his share of the ‘profit’ was paid in September 2017;
- f. The return is not signed or dated; and
- g. Danny has not exhibited any notice of assessment confirming the tax computation as submitted to, and accepted by, HMRC.

193. Although I accept that Danny may well have had dealings with Imran over the relevant period, and may even have been the source of funds for the Range Road loans, I am satisfied that this tax return was a crude attempt to lend corroboration to Imran’s story about the £65,000. My view in that regard is reinforced by Danny’s complete detachment from the document (and the other matters in his statement at [191] above) as well as the lack of any other corroborating documentation for the loans. Although the Kanvals exhibited significant informality in their dealings and, although Imran and Danny were trusted friends, I would still have expected some record of the loans. There was none.

**(g) Other improbabilities**

194. There are other difficulties with Imran’s account:-

- a. If Imran was unwilling to invest his own money in Rizwan’s project because of his inexperience, its apparent unattractiveness and its lack of funding, I venture to say that he would be even more unwilling to

‘invest’ into the project on an unsecured basis the money of someone whom he trusted and with whom he had worked for 16-17 years;

- b. The rate of return implied by Imran’s account – a £65,000 profit on a £50,000 loan for between six months and a year - is staggering. Imran said in oral evidence that this was a distressed project (on which he had provided assistance beyond these loans), commanding a higher rate of return. However, Rizwan was his brother and Danny was apparently not expecting any return, at least in relation to the first tranche;
  - c. Danny’s oral evidence was that his capital was not at risk because he knew Imran would return this. There was therefore no need to pay Danny such a large part of this profit;
  - d. Imran said in oral evidence that Danny asked for £35,000 but Danny said Imran told him that number. This contradiction is significant and supports my view that this attempted corroboration is ‘case building’;
  - e. Imran’s evidence as to Rizwan’s initial indications of potential return and Imran’s suggested “*aim*” of obtaining a profit and sharing this with Danny seem a vague basis for committing Danny’s funds;
  - f. If Rizwan had initially indicated a return of 25% of the net project profit, he is unlikely to have volunteered paying much more, not least on a project which, according to Imran, had been so fraught; and
  - g. Danny said he was told there would be some delay in payment of the £65,000 after Imran received this in February 2017 but the long delay until September 2017 was not satisfactorily explained.
195. Finally, the Claimants submitted that, even rounding the value of Imran’s share as shown on the Spreadsheet from £53,265 up to £55,000, adding 10% for the agreed profit only gives a total of £60,500, not £65,000. Although Rizwan did not deal with the point convincingly in cross-examination, his evidence was that the £65,000 also included 10% interest on the loans (Rizwan WS at [33]). The loans were of limited duration and a 10% ‘profit’ is a much more plausible return than the 130% or so implied by Imran’s case.

**(h) Conclusion as to the sale of Imran’s share**

196. Drawing these threads together, I have concluded that Imran did agree in September 2011 to invest the value of his share in Sutherland (£53,265) into Range Road, with a fixed 10% return, that his share in Sutherland was thereby extinguished and that he received the agreed amount in February 2017 in discharge of Rizwan’s related liability to Imran. I make these findings based on my analysis of the evidence, in particular, my view that (i) Imran’s argument that there was no reason for him to sell his Sutherland share was unsustainable when, as the evidence shows, the burden of expenses fell on Rizwan, Rizwan had decided to buy his own property and Imran could not buy Sutherland himself (ii) Rizwan, Urfan and, despite her numerical errors,

Naseem gave consistent evidence that Imran had agreed to sell his share in Sutherland by re-investing into Range Road (iv) their evidence is corroborated by their statements at the November 2017 meetings (v) Urfan and Naseem had no obvious motive for saying these things and they would, again, have been reluctant to ‘take sides’ (vi) Danny’s evidence was a transparent attempt at ‘case building’ and (vii) the other improbabilities of Imran’s account.

**(i) The sale of the other brothers’ shares**

197. For completeness, I should also add that I accept the evidence of Urfan and Abid that they sold Rizwan their respective shares in Sutherland in September 2011. Like Imran, Urfan did so by re-investing the value of his share in Range Road (at [174] above). Abid was paid the value of his share in cash (at [149-150] above). Their respective shares were thereby extinguished. Raza, of course, had no share to sell, having been paid out in 2004 for his share in Osterley (at [140-142] above).

**7. DISPOSAL OF JAVAID’S SHARE**

**(a) Effect of my findings on Javaid’s case concerning his Sutherland share**

198. I have already found that Javaid only had a 26.2% interest in Sutherland as he himself had calculated in the Spreadsheet produced at the August 2011 meeting. It follows from this finding that I do not accept Javaid’s account of the meeting he says he had with Rizwan (alone) in October or November 2011 when they agreed a value of £175,000 for Javaid’s 50% share of Sutherland and the sale of only a small part of that share given Rizwan’s stated ability to pay only £15,000 at the time. Moreover, even assuming (contrary to my findings) that Javaid did own 50% of Sutherland, I would still have found Javaid’s account improbable. This contemplates the unlikely scenario of Rizwan agreeing to take over the outstanding Sutherland mortgage liability of more than £400,000 so that Javaid could get a new mortgage of his own. In return, Rizwan would only get a 4.3% share of Sutherland. More unlikely still is that, having acquired such a small interest, Rizwan would then (as it is common ground he did) pay off that mortgage completely. Far more likely in that scenario is that Rizwan would have bought Javaid’s 50% share outright for £175,000. On this basis too, I would, therefore, reject Javaid’s account. Although this does not foreclose his claims in deceit, in light of my findings as to his beneficial interest, the context in which they fall to be considered is obviously very different from the case advanced by Javaid at trial.

**(b) The fourth disputed family meeting – October 2011**

199. Rizwan accepted that there was a meeting with Javaid in October 2011, albeit also attended by Abdul and Naseem. Rizwan says it was agreed then that the £37,770 previously paid to Javaid in July 2010 from the Devonport sale proceeds would constitute part-payment for Javaid’s share in Sutherland and that Rizwan would pay an additional £15,000 (Rizwan TWS at [17]). Naseem confirmed Rizwan’s account in her statement (Naseem TWS at [11]). She was not asked about this meeting at trial. However, when asked whether the

money paid to Javaid from the Devonport sale proceeds was a gift or a loan, she said neither. It was paid so that he could put down a deposit for a new house. Abdul told Javaid to give it back whenever he had the money. I have already accepted Rizwan and Naseem's evidence that £37,770 was paid to Javaid as a deposit for a new house (at [92] above). I have also rejected the Claimants' related submission that such use was incongruous with its further use as a means to buy out Javaid's Sutherland share. That there was congruity is shown by the option presented by Javaid himself in the Spreadsheet (at [123-124] above).

200. Drawing these threads together, I find that there was a further family meeting in October 2011, this time attended by Javaid, Rizwan, Abdul and Naseem, at which it was agreed that Rizwan would pay Javaid £15,000 in addition to the £37,770 he had already received from his parents. In return, Rizwan would acquire Javaid's 26.2% share in Sutherland and take over the mortgage. Although, strictly, this left a shortfall of £495 against the value of Javaid's share shown on the Spreadsheet (£53,265 - £37,770 - £15,000 = £495), this small difference seems immaterial and consistent with the informal manner of the Kanvals' dealings. Finally, it is common ground that Rizwan paid Javaid £15,000 on 14 November 2011 (at [240] below). Having been bought out by Rizwan, Javaid's entire share was therefore extinguished. I consider below (at [203-257]) whether that sale is liable to be set aside for deceit.

**(c) The status of the £37,770 payment to Javaid**

201. It may not be necessary for me to resolve the precise status of the £37,770 paid to Javaid, whether a gift or a loan from his parents. In oral evidence, Rizwan said it was a loan to Javaid, repayable at a later date. Urfan said that the £10,000 paid to him from the Devonport proceeds was a gift. However, I prefer the oral evidence of Naseem that it was neither - Javaid was expected to pay it back when he could. In other words, it was not an outright gift, nor was it a loan repayable on demand or over a specific term. If Javaid did not need the money after all or could afford to pay this back, the expectation was that he would repay it. Abdul and Naseem had limited funds. 'Recycling' their capital in this way meant the benefit enured to the wider family.
202. When the assistance Javaid (and Urfan) received from their parents is viewed in this light, the Claimants' related submission of incongruity falls even flatter. Likewise, the related complaint that Rizwan benefitted by £37,770 also falls away. In the short term, Rizwan did not have to stump up immediately an additional £37,770 of his own to buy out Javaid's share but the expectation that Javaid should repay this when he could then switched to Rizwan. In this way, consistent with their philosophy described by Abid (at [94] above), the parents could help two of their children - Javaid and Rizwan - buy a property.

**8. JAVAID'S DECEIT CASE**

**(a) Javaid's deceit case in outline**

203. In his Particulars, Javaid pleaded multiple misrepresentations. At trial, Javaid narrowed the misrepresentations relied on to two and acknowledged that his case was fundamentally one based in deceit. He did not therefore press his related claims in negligent misrepresentation. In his skeleton argument, Javaid summarised his ‘live’ claims in deceit in the following terms:-

“44. *Rizwan represented that he could only afford £10,000 later increased to £15,000 and that such representation was knowingly false when made given Rizwan’s payment from the sale of his shares in Asperity. Alternatively that such representation was a continuing representation that became knowingly false and was not corrected by Rizwan. Alternatively that owing to the fiduciary relationship between him and Rizwan (it is common ground that Rizwan at all material times was a trustee of Javaid’s beneficial interest in Sutherland), Rizwan’s failure to disclose the payout was fraudulent.*

45. *Further or alternatively Javaid says that Rizwan represented that Rizwan intended to take over the mortgage on Sutherland Road and that such representation was false as Rizwan had no intention of taking it over and intended to redeem it. Alternatively that such representation was a continuing representation that became knowingly false and was not corrected by Rizwan. Alternatively that owing to the fiduciary relationship between him and Rizwan, Rizwan’s the [sic] failure to disclose, indeed to actively conceal, the redemption of the mortgage was fraudulent.”*

204. As a result of these representations (or non-disclosures), Javaid says he was induced to sell Rizwan part of his beneficial interest in Sutherland. He now seeks rescission of that sale and/ or damages.

**(b) Deceit – legal principles**

205. Save for certain aspects of inducement, there was little difference between the parties as to the applicable legal principles.

**(i) Nature of the representation**

206. To found an action in deceit, the claimant must show a misrepresentation of present fact or law. A representation of present intention is a sufficient representation of existing fact to found an action for deceit (*Edgington v Fitzmaurice* (1885) 29 Ch. D. 459; *Re Eastgate* [1905] 1 K.B. 465).

**(ii) Falsity**

207. It is an obvious requirement of misrepresentation that the statement relied on be false. As to what is meant by ‘false’, in *Avon Insurance v Swire* [2001] 1 All ER (Comm) 573, Rix J adopted (at [16]-[17]) the test of truth set out in section 20 of the Marine Insurance Act 1906, holding that:-

*“... a representation may be true without being entirely correct, provided it is substantially correct and the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in the position of the claimants to enter into the contracts...”.*

**(iii) Fraud**

208. Derry v Peek (1889) 14 App. Cas. 337 laid down the essential elements of the deceit in the following propositions:-

*“First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. .... To prevent a false statement from being fraudulent, there must, I think, always be an honest belief in its truth.”*

209. Fraud is a serious charge that must be clearly and distinctly proved (The Kriti Palm [2006] EWCA Civ 1601 at [259]).

**(iv) Inducement**

210. To claim for deceit based on fraudulent misrepresentation, it must be shown that the defendant made a materially false representation that was intended to, and did, induce the representee to act to his detriment. It is not necessary, as a matter of law, to prove that the representee believed that the representation was true. That is not to say that the representee’s state of mind may not be relevant to the issue of inducement. It may be very relevant. For example, if the representee does not believe that the representation is true, he may have serious difficulty in establishing that he was induced to enter into the contract or that he has suffered loss as a result (Zurich Insurance Co plc v Hayward [2017] UKSC 48 at [18]). Rizwan also relies on Holyoake v Candy [2017] EWHC 3397 at [388] for the proposition that a representee who knows the representation to be false cannot succeed. However, as Nugee J himself recognised, that puts matters too highly as a statement of law (see Zurich Insurance Co plc at [43-45]), albeit in the ‘paradigm’ case - as in Holyoake itself - that proposition would be difficult to resist.

211. Questions of inducement and causation are questions of fact (per Lord Clarke in Zurich Insurance Co plc v Hayward at [25]).

212. The burden of proof of reliance is on the claimant (per Longmore LJ in BV Nederlandse Industrie van Eiproducten v Rembrandt Enterprises Inc [2019] EWCA Civ 596 at [13]). However, Javaid points to the ‘presumption of reliance’ - perhaps better expressed as an ‘inference of fact’ - that is very difficult to rebut. Chitty on Contracts summarises this as follows:-

*“Once it is proved that a false statement was made which is “material” in the sense that it was likely to induce the contract, and*

*that the representee entered the contract, it is a fair inference of fact (though not an inference of law) that he was influenced by the statement, and the inference is particularly strong where the misrepresentation was fraudulent” (Chitty at [7-041]; see too Zurich Insurance Co plc v Hayward at [34], citing this paragraph of Chitty; see too Nederlandse Industrie van Eiproducten v Rembrandt Enterprises Inc at [41-45] per Longmore LJ).*

213. It is not necessary for the representation to be the sole cause of the representee entering into the contract (per Lord Clarke in Zurich Insurance Co plc v Hayward at [33]).
214. In the case of innocent or negligent misrepresentations, a strict ‘but for’ test applies, namely would the claimant have acted differently if the representation had not been made (per Longmore LJ in BV Nederlandse Industrie van Eiproducten v Rembrandt Enterprises Inc at [15]). Rizwan submits that the same is true for fraudulent misrepresentation, relying on Lord Sumption’s dictum in Versloot Dredging BV v HDI Gerling Industrie Versicherung AG [2016] UKSC 45 at [29] (in the context of the “fraudulent claims” rule in insurance) that:-

*“In the law of deceit, it is fundamental that the representee must have acted on the misrepresentation. If he would have done the same thing even in the absence of the misrepresentation, a claim based on it will fail. The same applies in a claim to rescind a contract for misrepresentation, fraudulent or otherwise” (emphasis added).*

215. Javaid submits that a representee in a rescission case is not required to show that he would not have entered the contract ‘but for’ the misrepresentation; it suffices to show that he was materially influenced by the misrepresentation merely in the sense that it had some impact on his thinking (Chitty at [7-040]). I accept Javaid’s submission. Read in context, it seems that Lord Sumption was saying no more than that a misrepresentation must induce the representee to act on it (by contrast with the “fraudulent claims” rule which has no such requirement). I did not understand Lord Sumption to be expressing a wider proposition as to the precise causative effect of that inducement, let alone aligning different categories of misrepresentation in this regard.

**(v) Continuing representations**

216. Where there is an interval between the representation and the time it is acted on, and the representation relates to an existing state of things, the representation is deemed repeated throughout the interval. If it is false to the maker’s knowledge at the time relied on, there will be a deceit at that time. If, during that interval, the defendant discovers it to be false or he knows that circumstances have changed so it is now untrue, he may therefore be liable in deceit (Slough Estates Plc v Welwyn-Hatfield DC [1996] 2 P.L.R. 50; Fitzroy Robinson Ltd v Mentmore Towers Ltd [2009] EWHC 1552 (TCC); Concept Oil Services Ltd v EN-GIN Group LLP [2013] EWHC 1897 (Comm)).

**(vi) Duty of disclosure in fiduciary relationships**

217. Although the general rule is that mere silence, however morally wrong, will not support an action of deceit, there may be a duty to reveal information where there is a fiduciary relationship between the parties so that non-disclosure may make any resulting transaction voidable (*Conlon v Simms* [2006] EWHC 401 (Ch) (upheld on appeal on this aspect [2006] EWCA Civ 1749); *JD Wetherspoon v Van De Berg & Co Ltd* [2007] EWHC 1044 (Ch)).

**(vii) Causation**

218. Whichever remedy is sought for misrepresentation, a causal link between the relevant statement and the consequences from which the representee claims relief is required. If the claim is for damages, the question is whether the statement caused the loss. If the claim is for rescission, the inquiry is as to the causal link between the statement and the claimant's entry into the contract. A false statement, even one made fraudulently, will not be actionable if it had no impact on his actions, nor otherwise caused him loss (*J Cartwright, Misrepresentation and Non-Disclosure* 5th Ed., 2019 at 3-51).

**(viii) Remedies**

219. Finally, Rizwan also relies on affirmation, delay, impossibility of restitution and the accrual of third party rights as bars to rescission in this case. Javaid resists these arguments, including on the basis that (i) delay is not fatal if the representee acts within six years of becoming aware of the fraudulent representation (*Armstrong v Jackson* [1917] 2 K.B. 822) and (ii) rescission may still be ordered even if *precise* restitution is not possible (*Erlanger v New Sombrero Phosphate Co* (1878) 3 App. Cas. 1218, 1278-1279).

**(c) Javaid's first deceit claim – Rizwan's available funding**

**(i) Introduction**

220. In his Particulars, Javaid pleaded that he agreed in October 2011 to sell Rizwan his 50% interest in Sutherland for £175,000. Following that agreement, Rizwan represented to Javaid that he was "*impecunious*", "*did not have access to funds*", "*was unable to pay to the Claimant the sum of £175,000*" and (as remained live at trial) that "*the only sum that the First Defendant was able to pay was £15,000*" (at [23.1-23.4]). Relying on these representations, Javaid agreed to accept only £15,000 in return for a 4.3% share in Sutherland and he later executed the form TR1.

221. In his Tribunal statement, Javaid said that Rizwan only paid him £15,000 "*as he was unable to raise the finance for £175,000*" (Javaid TWS at [35]). The timing of any related representation is unclear but would predate 15 November 2011. In his statement in these proceedings, Javaid said that Rizwan told him in late October 2011 that "*he did not have that sort of money and could only give me £10,000*", later increased to £15,000 but with Rizwan then saying that "*he could not get anymore*" (Javaid WS at [99-101]).

222. Rizwan was asked in evidence whether the use of the £40,000 Javaid received from his parents was discussed at the August 2011 family meeting. He confirmed it was. He was then asked in this context whether he told Javaid that he could *only* raise £15,000. Rizwan replied in the affirmative, continuing that he said this was the amount he could be “*assured*”. He also confirmed that he did not tell Javaid later that he could get more than £15,000. Rizwan subsequently sought to ‘clarify’ that he had told Javaid that he could raise £15,000, not that he could *only* raise £15,000. Javaid submitted that this was a transparent change of evidence and he invited me to reject it.

**(ii) Javaid’s first deceit claim – discussion**

223. I accept that Rizwan thought he had ‘misspoken’ in his evidence in a manner unhelpful to his case, leading to his ‘clarification’. However, I did not discern Rizwan’s original admitted representation to be as unequivocal as Javaid’s related submission suggested. Although Rizwan did say “*yes*” to whether he could *only* get £15,000, this was not unqualified. He continued that this was the amount he could be “*assured*”. Ultimately, however, little turns on whether the representation was that Rizwan could raise £15,000 or that he could *only* raise that amount. Both are potentially actionable.

224. As to the timing of that representation, Rizwan was clearly speaking about the August 2011 family meeting. Given that Javaid himself presented an option in the Spreadsheet for how his share in Sutherland might be paid for, I consider it likely, and I find, that Rizwan made that representation then. Later in his evidence, Rizwan indicated that he thought the discussion about the use of his parents’ £40,000 payment to Javaid to buy out his share, with Rizwan providing the £15,000 balance, took place in October 2011, rather than August. However, I am unable to infer from this that Rizwan repeated that representation in October 2011.

225. To the contrary, I find it improbable that he did so. By October 2011, Rizwan had received his Asperity share sale proceeds. Any attempt to conceal his financial position would be fraught with difficulty. Rizwan had just bought Range Road for £270,000. Abid and Imran knew this by September 2011 at the latest (at [183] above). Likewise, in September 2011, Rizwan offered to buy out Imran and Urfan from Sutherland for £55,000 and £35,000 respectively (at [196-197] above). Although Javaid had moved out of Sutherland, he was still living nearby. Javaid and Imran are close (Javaid TWS at [39]). I am therefore satisfied, and again I find, that both matters got back to Javaid quickly in September 2011 and that Javaid knew Rizwan had finally come into the Asperity money, as Javaid himself said had been expected for some time (Javaid WS at [78]).

226. I did not understand it to be disputed that Rizwan’s admitted representation was true when made in August 2011. Rizwan said his assumption at the August 2011 meeting was that his Asperity money would come in at the end of the month (which it did on 31 August) but, given his past (disappointed) expectations, there was no “*guarantee*”. It was apparent from the evidence

that the Asperity sale was protracted. I accept Rizwan's evidence in this regard and find that the representation was true when made in August 2011.

**(iii) Javaid's first deceit claim – inducement/ materiality**

227. To make good his first deceit claim, Javaid must therefore establish that he acted upon Rizwan's August 2011 representation after it became untrue. In my judgment, this is where Javaid's claim starts to run into difficulty. Based on the October 2011 agreement pleaded by Javaid, one can see that an (untrue) statement then by Rizwan about the (limited) amount of money he could raise (£15,000) might have induced Javaid's decision to sell (part only of) a 50% share in Sutherland worth some £175,000. However, I have rejected Javaid's account and found that he only had a 26.2% interest in Sutherland and that he agreed at the August 2011 meeting to sell his entire share to Rizwan for the more modest sum of £53,265. In that context, inducement is much more elusive. Javaid had already received £37,770 from his parents towards his house purchase. With the further £15,000 of which Rizwan said in August 2011 he could be "*assured*", Javaid could, in turn, be assured of receiving the full amount for his entire share (in contrast to the position on his pleaded case which I have rejected). Javaid needed only to know (as remained the position throughout) that Rizwan could raise at least £15,000. Rizwan's ability (or otherwise) to raise more was not material to him.

228. I should address one further point in this context. Although obviously not argued in these terms, if Javaid had claimed that Rizwan's August 2011 representation induced the further agreement in October 2011 between Javaid, Rizwan and his parents concerning the split of funding for the purchase of Javaid's Sutherland share (at [200] above), including the amount Rizwan should contribute, I would not have acceded to that claim either. First, Javaid told his mortgage adviser at the end of October 2011 that he could put down a 25% deposit of £77,500 and pay stamp duty of £9,300. Javaid therefore had access to funds beyond those he was assured from the sale of his interest in Sutherland. Second, the option presented by Javaid himself in the Spreadsheet indicated the use of the majority of the £37,770 to buy out his share. Third, as I have found, his parents' expectation was that Javaid would repay the money they had provided. To the extent that money was used to buy out his share, that burden of repayment switched to Rizwan (at [201] above). Finally, as noted (at [225] above), I have found that Javaid was aware in September 2011 that Rizwan had already come into money and, despite this, Javaid went on to agree the funding split in October 2011. Although belief or knowledge that a representation was (or had become) untrue does not preclude reliance as a matter of law, it presents a "*serious difficulty*" in establishing inducement (at [210] above) - in my view, an insurmountable one here.

229. Accordingly, Rizwan's representation in August 2011 as to the money he could raise did not induce Javaid's agreement then to sell his Sutherland share. Nor was that representation a 'continuing' one, inducing Javaid's subsequent agreement in October 2011 to the funding split used to buy his share. Nor did it induce Javaid's later execution of the form TR1 - the form merely put into

effect the August 2011 agreement. In sum, the August 2011 representation had no “*impact on [Javaid’s] thinking*” (at [215] above).

230. Javaid says that, even if the August 2011 representation was not a ‘continuing’ one, and although mere silence will not generally support an action of deceit, there may be a duty to reveal information if the parties are in a fiduciary relationship (at [217] above). Two preliminary questions arise: first, although Rizwan accepted in evidence that he was Javaid’s trustee until legal title was transferred to him, given Javaid’s agreement in August 2011 to sell his share and Rizwan’s £15,000 payment on 14 November 2011, it seems possible that Javaid’s equitable interest vested in Rizwan, or was held for his benefit, earlier; second, even if Rizwan remained Javaid’s fiduciary until the execution of the form TR1, this does not mean that he would be subject to fiduciary obligations for the purpose of all his dealings with Javaid.
231. These matters were only touched upon in argument and I do not decide them. I do not need to. Although the authorities indicate that non-disclosure may found an action in deceit in the context of a fiduciary relationship, a duty of disclosure is only engaged with respect to those facts which are *material* (see, for example, *Conlon v Simms* [2006] EWCA Civ 1749 at [127-128]). This leads back to the above discussion and my findings, equally applicable in this context, that Rizwan’s stated inability in August 2011 to raise more than £15,000 did not induce Javaid to act. It was not material to him then or at any point thereafter.
232. For these reasons, I reject the first deceit claim.

**(d) Javaid’s second deceit claim – intention to ‘take over’ the mortgage**

**(i) Introduction**

233. The second representation relied on by Javaid is more factually complex. In October 2011, Javaid’s wife spotted a house at 31 Sundridge Avenue, Welling, for potential purchase. As noted (at [228] above), Javaid got in touch with his mortgage adviser at the end of that month to help him find a mortgage, with Javaid anticipating at that stage putting down a 25% deposit of £77,500 against a purchase price of £310,000.
234. On 3 November 2011, Javaid e-mailed his mortgage adviser to inform him that he wished to purchase 31 Sundridge Avenue. In response to his adviser’s earlier query as to whether Javaid would be “*out from that mortgage liability*” (for Sutherland), Javaid also informed him “[a]s part of me coming off I will still have a [sic] asset within the property without a liability”. On its face, the e-mail supports Javaid’s account that he was only selling Rizwan part of his interest in Sutherland. However, in reaching my related conclusions above, I have considered this e-mail exchange carefully and concluded that it does the opposite. The exchange includes Javaid’s explanation that “*I am presently a joint owner of the at [sic] Sutherland Road and the price of the property at resale with investment in private shares.*” Although not easy to discern, Javaid appears to be saying that he is a joint (legal) owner of Sutherland but that he also had an interest in the re-sale price held in “*private shares*” (ie: the

beneficial interest). If Javaid did own half the Sutherland equity, he would have said so in much fewer words. The complex words he used reflect the complex agreement between all the brothers to share in Sutherland, not the simplicity of Javaid's claim that he held a 50% share.

235. As for Javaid's response that he would still have "*a [sic] asset within the property*" after he comes off the mortgage, although it is clear that Javaid had set in train the process for the mortgage transfer which he was "*being told*" (presumably by the Halifax) would occur within the next two weeks, he would, of course, continue to share in the beneficial ownership of Sutherland until Rizwan had actually bought him out. At this stage, Rizwan had not yet done so, even though the price had been agreed in August 2011. Rizwan did not pay Javaid the balancing sum of £15,000 until 14 November 2011.
236. Although there was some discussion at the hearing about the date and particular branch in the City of London, it is common ground that, at some point in late 2011, Javaid and Rizwan visited the Halifax to arrange for the transfer of the mortgage to Rizwan. Given the dates of the related documents in the trial bundle, I consider it likely the meeting took place on about 7 November 2011, as Javaid said (Javaid WS at [105]). In oral evidence, Javaid said he had already spoken to a Halifax mortgage consultant who had told him what identification documents to bring to the meeting. That meeting was quick, Javaid signed a document transferring the mortgage to Rizwan and, after he left, Rizwan stayed behind to deal with various things.
237. On 7 November 2011, Rizwan contacted the Second Defendant firm of solicitors, informing them that Javaid had agreed to "*remove his name from the deeds*" for Sutherland and, having "*completed the Halifax forms*", Rizwan now required "*legal representation to liaise with the Halifax legal team*".
238. On 9 November 2011, Rizwan completed the solicitors' "Information Sheet" identifying the property and its value as £650,000, consistent with the value stated on the Spreadsheet. The Information Sheet also identified the consideration for the transaction as £55,000, approximating to the value of Javaid's share (£53,265) also stated on the Spreadsheet. The inclusion of these figures reinforces my conclusions above concerning the Spreadsheet, the August 2011 meeting and, therefore, the brothers' agreement to share in the Sutherland equity.
239. On 10 November 2011, Rizwan redeemed the Sutherland mortgage. On the same day, Javaid made a revised offer of £295,000 for 31 Sundridge Avenue. On 12 November 2011, the vendors accepted an offer of £296,000.
240. On 14 November 2011, Rizwan paid Javaid £15,000. On the same day, Rizwan informed the Second Defendant that he had paid off the mortgage but he did not want them to tell Javaid because he didn't "*want to go down the route of extra cash*". Rizwan wanted it to be portrayed that "*I'm taking full ownership of the property and nothing else*". Such portrayal of "*full ownership*" is again consistent with Rizwan buying out Javaid completely, not partially as Javaid claimed, reinforcing my related conclusions above. On the

same day, the Second Defendant responded that, if the mortgage had been paid off, they would have to remove the mortgage at the Land Registry. They also said “*we do have to have complete disclosure between the 2 of you so that I can advise you fully.*” Rizwan responded, asking them not to remove the mortgage from the title because he intended to keep the facility open for six months, reiterating that he did not wish to tell Javaid about the mortgage because it would “*probably cost me another £15-20K.*” The Second Defendant replied that they needed to advise Javaid fully about the transfer, including all the financial implications and, if they could not, they may not be able to complete the transaction.

241. On 15 November 2011, Javaid and Rizwan attended the offices of the Second Defendant to execute the form TR1, transferring legal title to Sutherland to Rizwan. The form showed the consideration as £55,000. Rizwan said in oral evidence that they did not have the Spreadsheet when executing the form and Javaid told him then that his share was valued at £55,000. However, it was pointed out to Rizwan that the figure of £55,000 was used in the “Information Sheet” completed earlier (at [238] above). I accept that Rizwan may have been mistaken as to the sequence of how the £55,000 figure came to be used but, as noted, it did approximate to the £53,265 figure in the Spreadsheet. Rounding up that figure to £55,000 is not inconsistent with the informal manner of dealing by the Kanval family and it does equate to the gross figure received by Javaid from his parents (before deducting his Devonport expenses) plus the £15,000 ‘balancing figure’ to be paid by Rizwan. In my view, of greater significance is the fact that the form TR1 did not show consideration of £15,000 which Javaid said was the agreed price for part of his share in Sutherland. In oral evidence, Javaid confirmed that he saw the £55,000 figure at the time and that this “*looked odd*”. He had no idea what that figure was but he had a deal with Rizwan and he was coming there to sign. I found Javaid’s evidence in this regard unconvincing. Javaid is clearly an intelligent man. If the £55,000 figure looked odd to him, he would not have hesitated to question it. In my view, the reason he did not was because it was the figure he had agreed at the August 2011 meeting, albeit now rounded up, further reinforcing my relate conclusions above.
242. The solicitor’s attendance note of the meeting refers to the need to give both clients “*full advice*”, the option to take independent legal advice and their consent to proceed with “*full disclosure*”. That language reiterates the language of the Second Defendant in their e-mail to Rizwan concerning the need for complete disclosure between Javaid and Rizwan, although it does not state whether Rizwan (or the Second Defendant) disclosed that the mortgage had been paid off. In any event, Javaid and Rizwan signed the TR1 and this was forwarded to the Halifax for their execution.
243. On 21 November 2011, the Halifax wrote to Javaid and Rizwan at Sutherland advising of the repayment of the mortgage on 10 November 2011, the closure of the mortgage account and their intention to inform the Land Registry they no longer had a charge. Rizwan’s handwritten annotations to this letter indicate that he sent it to the Second Defendant and questioned whether, in

light thereof, the Halifax still needed to execute the form TR1. Since he no longer lived at Sutherland, it appears Javaid never saw this letter.

244. On 24 November 2011, Javaid chased Rizwan for a progress report. In response, Rizwan told Javaid that the Land Registry documents may take two weeks to process but he should be free to pursue his own mortgage “*as the mortgage for 35 Sutherland has been transferred to me*”.
245. On 25 November 2011, the Halifax wrote to the Second Defendant saying that they had “*been informed that the transfer is no longer required*”. The Second Defendant raised this with Rizwan and Javaid on 1 December 2011. Rizwan responded (including to Javaid) confirming the intention to “*proceed with sole ownership*”. This is again consistent with Rizwan buying out Javaid completely, not partially, reinforcing my related conclusions above.
246. Javaid and Rizwan executed a second form TR1 over the weekend of 10 and 11 December 2011, now without reference to the mortgage. On 12 December 2011, Rizwan confirmed to Javaid that he had spoken to the Halifax and that “*they have now moved the mortgage over to my name and closed our existing joint mortgage Roll Account.*” Rizwan was registered as the sole proprietor of Sutherland on 15 December 2011.
247. On 10 February 2012, Javaid completed his purchase of Sundridge Avenue for £296,000, with a mortgage of £222,000 (75%) and Javaid paying the balance of £74,000 (25%).

**(ii) Javaid’s second deceit claim – discussion**

248. Javaid pleaded his second deceit claim on the basis of a false representation that “*the Mortgage was extant*” (Javaid Particulars at [23.5]). This was framed differently in Javaid’s skeleton as a false statement of Rizwan’s intention to ‘take over’ the mortgage (at [203] above). I accept that a statement of intention can found an action in deceit (at [206] above). Although not argued, there is a potential issue whether redeeming a mortgage is, in fact, inconsistent with an intention to ‘take it over’. Being a statement of present intention as to what was to happen in the future, it may be of a type that Rix J had in mind in *Avon Insurance v Swire* when he said that a representation may be true without it being “*entirely correct*”, provided it is “*substantially correct*” (at [207] above). However, in light of the issues that were argued, and since Javaid associated more closely in closing with his pleaded case, I need not resolve this either.
249. It is common ground that Rizwan did not tell Javaid at any point that he had paid off the mortgage. Rizwan testified that the Halifax required him to pay this down before it could be transferred into his sole name. The Claimants suggested that, since he was employed and now had substantial funds from the Asperity share sale, there was no impediment to him taking on the full mortgage. However, Rizwan testified that he could not show recent employment income. Rather than pay down the mortgage, he decided to pay it off completely. I did not share Javaid’s incredulity that Rizwan was unable to

satisfy the Halifax's lending criteria for taking on the full mortgage. Although Rizwan had a large capital sum from the Asperity share sale, this was not collateralised and would not have provided comfort to the lender that a mortgage of more than £400,000 would continue to be serviced by one borrower alone, particularly if, as I accept, Rizwan could not demonstrate recent employment income. Imran had similar problems coming onto the Sutherland mortgage, even as a joint borrower (at [69-71] above). However, I do not accept (entirely) Rizwan's evidence that he still intended to keep open the Halifax mortgage account after paying off the mortgage. His e-mails with the Second Defendant on 14 November 2011 indicate that this may have been his original intention but Rizwan would have understood from the Halifax's letter of 21 November 2011 that the mortgage account had been closed and that this course was not open to him.

250. Moreover, based on that 14 November 2011 exchange with the Second Defendant, I am satisfied that Rizwan sought to conceal from Javaid the redemption of the mortgage. Although the Second Defendant stated that full disclosure was required between their two clients, the attendance note of the meeting at the solicitors' offices the next day does not mention redemption of the mortgage. If Javaid had been told about this, Rizwan is unlikely to have e-mailed him in the terms he did on 24 November and 12 December 2011, suggesting (wrongly) that the mortgage still existed, albeit now in Rizwan's name only. In this regard, I accept that those e-mails contained representations of fact that Rizwan knew to be false.

**(iii) Javaid's second deceit claim – inducement/ materiality**

251. By the time Rizwan decided to redeem the mortgage in November 2011, Javaid had stopped contributing to the Sutherland mortgage some 18 months earlier. He had also agreed three months earlier to sell his entire Sutherland share. Javaid's goal in selling was to achieve the price on the Spreadsheet and to remove himself from the Sutherland mortgage and title. Javaid's e-mails with his mortgage adviser in late October 2011 show what mattered to him - coming off "*35 Sutherland Rd ... with no mortgage liability*". Javaid was not concerned in August 2011 with the mechanism for his removal from the mortgage and title. It was not until November 2011 that he and Rizwan met the Halifax adviser to arrange the mortgage transfer and that Rizwan then instructed solicitors. In the context of what influenced Javaid's thinking in agreeing to sell his Sutherland share, it would have made no difference to him if the mortgage was transferred into Rizwan's sole name or if Rizwan simply paid it off. Either way, Javaid would come off "*35 Sutherland Rd ... with no mortgage liability*".

252. Javaid's evidence illuminated what really underpins this second deceit claim (not dissimilarly from the first). In his statement, Javaid said (emboldened emphasis supplied):-

*"I am now aware that Rizwan had paid off the mortgage on Sutherland Road on 8<sup>th</sup> November 2011. **If I had known that Rizwan could repay***

*£400,000, I would have insisted he moved out of Sutherland and I would never have bought Sundridge Avenue” (Javaid WS at [107]).*

253. Javaid’s supposed concern was not that Rizwan had redeemed the mortgage as distinct from transferring it into his sole name. Javaid’s concern was that Rizwan had acquired the financial wherewithal to redeem in the first place. To the same end, in the context of Rizwan redeeming, Javaid was asked in oral evidence “*so what*”? Javaid’s response was that Rizwan was only buying a share of his share (of Sutherland) because Rizwan said he could only afford £15,000. In other words, having been told by Rizwan in October 2011 that he did not have the money to buy Javaid’s 50% share said to be worth £175,000, Javaid discovered that Rizwan did have the money after all. However, I have already rejected Javaid’s claim that he had a 50% share and only agreed to sell part of it. I have also found in relation to Javaid’s first deceit claim that Rizwan’s ability to raise more than £15,000 was not material and that his related representation did not induce the agreements in August and October 2011 or the form TR1 (at [229-231] above).
254. As such, Rizwan’s decision on or around 7 November 2011 to redeem the Sutherland mortgage instead of transferring it into his own name did not warrant disclosure either, whether on the basis of a continuing representation or any fiduciary relationship. Likewise, although I accept that Rizwan’s representations on 24 November and 12 December 2011 were untrue, these did not induce him to execute the second form TR1. To the contrary, Javaid had already executed the first form TR1 on 15 November 2011 before either representation had been made. He did so because he wanted to buy his own house, he needed the money from Sutherland for that purpose and he needed to be off the Sutherland mortgage and title. The method of his removal from the mortgage again had no “*impact on his thinking*” (at [215] above). I therefore reject Javaid’s second deceit claim as well.

**(e) Causation**

255. Given these findings, Javaid’s deceit claims also fail for lack of causation. In his Particulars (at [30]), Javaid pleaded that, if Rizwan had not made the representations, he would not have executed the form TR1. Instead, he would have insisted the TR1 be modified to show the consideration as £175,000 and would have demanded Rizwan’s immediate payment of those sums (as he also said in oral evidence with respect to the first deceit claim). Alternatively, he would have refused to sell his (part) share in Sutherland (as he also said in oral evidence with respect to the second deceit claim). I have found that Javaid did not own 50% of Sutherland and did not agree to sell part of that share to Rizwan. Javaid agreed in August 2011 to sell his entire 26.2% share in Sutherland for £53,265. The representations (or non-disclosures) did not cause him to enter into that agreement or the form TR1, and they did not cause him any loss. Javaid obtained exactly what he had sought – the price as stated in the Spreadsheet and his removal from the Sutherland mortgage and title.
256. In this regard, I should address Rizwan’s apparent concern that, if Javaid had found out about the redemption, he might have asked for more money – “£15-

£20K” was the figure Rizwan mentioned to the Second Defendant. Given Javaid’s eagerness to be off the Sutherland mortgage and title, it is unlikely that he would have delayed the latter by exploiting the former to haggle for more money. To the contrary, although I accept that Javaid did not know that Rizwan had redeemed the mortgage until after he had signed the form TR1, I have found that he knew in September 2011 about Rizwan finally coming into his Asperity money (at [225] above) and yet Javaid was content to agree in October 2011 the split of the purchase price for his share without seeking any greater contribution from him then.

**(f) Remedies**

257. Finally, had it been necessary for me to decide the point, I would have declined to order rescission. Although I accept that Javaid did not know about the redemption of the Sutherland mortgage until after executing the form TR1, the real complaint underlying both deceit claims was that Rizwan failed to disclose receipt of the Asperity proceeds. Given my finding that Javaid was aware in September 2011 that Rizwan had come into money (at [225] above), I would have found that Javaid’s failure to assert any claim in deceit for more than six years amounted to affirmation of the agreement to sell his Sutherland share.

**9. JAVAID’S BREACH OF CONTRACT CLAIM**

258. Javaid pleaded an alternative claim for breach of contract for Rizwan’s alleged failure to pay the balance of the consideration (£55,000) stated in the form TR1 (Javaid Particulars at [32]). This claim was not pursued at trial but, in the absence of amendment, I must address it briefly. Javaid claims that, having only paid £15,000, Rizwan is liable to Javaid in debt or damages for the £40,000 balance. However, I have already found that Javaid, Rizwan, Abdul and Naseem agreed in October 2011 that the price for Javaid’s share would be paid from the monies received by Javaid from the Devonport sale proceeds, with the £15,000 balance coming from Rizwan (at [200] above). Those sums have been paid and I find that Javaid has accepted them in full discharge of Rizwan’s liability for the purchase price of Javaid’s share. No claim therefore lies for breach of contract either.

**10. FINAL CONCLUSIONS AND DISPOSAL**

259. In light of the conclusions I have reached, neither Imran nor Javaid is entitled to the relief sought. I dismiss their claims. I also declare that Rizwan is the sole legal and beneficial owner of Sutherland. I now invite the parties to agree for my consideration a draft order encapsulating my findings. If they are unable to do so, or there are any consequential matters requiring my input, I will hear from them further.