REF/2021/0567

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) JOHN HENRY EBANKS (Snr)
(2) IRENE ANNE EBANKS

APPLICANTS

and

(1) SALCOMBE ROAD Ltd
(2) ONESAVINGS BANK Plc t/a KENT RELIANCE BANKING SERVICES
(3) NARESH CHOPRA

RESPONDENTS

Property Address: 25 Salcombe Road, London E17 8JH
Title Number: EX43328

Sitting at: 10 Alfred Place, London
On: 9th, 10th, 11th and 12th September 2024, 27th November 2024, 16th December 2024, 10th and 31st January 2025

Applicants' Representation:	Anwar Miah (Counsel, instructed by JP Law Solicitors)
First Respondent's Representation:	Aejaz Mussa (Counsel, instructed by OneLaw Chambers) for hearings on 9th, 10th, 11th and 12th September 2024 and part of hearing on 27th November 2024; Mr Naresh Chopra (Director of the First Respondent company, in person) for part of hearing on 27th November 2024 and for hearings on 16th December 2024, 10th and 31st January 2025

Second Respondent's Representation:	Kester Lees KC (Counsel, instructed by TLT LLP)
Third Respondent's Representation:	In person at hearings on 10th and 31st January 2025

DECISION

KEYWORDS

Alteration; rectification; fraud

Cases referred to:

Orakpo v Manson Investments Ltd [1978] AC 95
R v Lucas [1981] QB 720
Argyle Building Society v Hammond (1984) 49 P&CR 148
Ahmed v Kendrick (1987) 56 P&CR 120
Malory Enterprises Ltd v Cheshire Homes (UK) Ltd [2002] EWCA Civ 151; [2002] Ch 216
English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605; [2002] 1 WLR 2409
Great Future International Ltd v Sealand Housing Corp [2004] EWHC 124 (Ch)
In re B [2008] UKHL 35; [2009] 1 AC 11
Fiona Trust & Holding Corp & ors v Privalov & ors [2010] EWHC 3199 (Comm)
The Commisioners for Her Majesty's Revenue and Customs v Sunico A/S & ors [2013] EWHC 941 (Ch)
Petrodel Resources Ltd v Prest [2013] UKSC 34; [2013] 2 AC 415
Fitzwilliam v Richall Holdings Services Ltd [2013] EWHC 86 (Ch); [2013] 1 P&CR 19
Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm); [2020] 1 CLC 428
Park Associated Developments Ltd v Kinnear [2013] EWHC 3617 (Ch)
Royal & Sun Alliance Insurance Plc v Fahed [2015] EWHC 1092 (QB))
Menelaou v Bank of Cyprus Plc [2015] UKSC 66; [2016] AC 176
Swift 1st v Chief Land Registrar [2015] EWCA Civ 330; [2015] Ch 603
Kennedy v Cordia Services (LLP) [2016] UKSC 6; [2016] 1 WLR 597
Chen v Ng [2017] UKPC 27; [2018] 1 P&CR DG2
Martin v Kogan [2019] EWCA Civ 1645; [2020] FSR 3
Witt v Woodhead [2020] UKUT 319 (LC)
Victus Estates (2) Ltd v Munroe [2021] EWHC 2411 (Ch); [2022] 1 P&CR DG3
B (A Child) (Adequacy of Reasons) [2022] EWCA Civ 407; [2022] 4 WLR 42
Batt v Boswell [2022] EWHC 649 (Ch)
Muyepa v Ministry of Defence [2022] EWHC 2648 (KB)
Chopra & Ors v Katrin Properties Ltd & Anor [2022] EWHC 2728 (Ch)
FLR v Chandran [2023] EWHC 1671 (KB)
Griffiths v TUI (UK) Ltd [2023] UKSC 48; [2025] AC 374
Campbell v Cammarano [2025] UKUT 122 (LC)
Demanya v The General Medical Council [2025] EWHC 247 (Admin)

INTRODUCTION

1. The Applicants used to be the registered proprietors of the freehold interest in 25 Salcombe Road, having purchased it in October 1986. On 31st October 2018, the First Respondent company was registered as the proprietor, based on a transfer deed dated 10th October 2018, which had apparently been executed by the Applicants. At that time, one of the directors of the First Respondent company was their son. He, like his father, is called John Henry Ebanks. The decision that his parents took in choosing that name for him has come to have tremendous ramifications for them in this case.

2. On 11th June 2019, the Second Respondent bank lent money to the First Respondent, which was intended to be secured as a charge against the property. The Second Respondent applied to have that charge registered. According to the Applicants, this led to them discovering that ownership had been transferred to the First Respondent and they applied to alter the register by re-instating themselves as the registered proprietors and removing any charges, contending that they had not signed the deed purporting to transfer ownership to the First Respondent.

3. Those applications were referred to this Tribunal by HM Land Registry and heard by me over eight days (9th, 10th, 11th and 12th September 2024, 27th November 2024, 16th December 2024, 10th and 31st January 2025), after an abortive attempt to conduct the trial in March 2024. All hearings were conducted as face-to-face hearings at 10 Alfred Place, with some of them also set-up as hybrid hearings to allow the Second Applicant and her daughter to observe through a video-link.

4. By the time of the trial, it was apparent that the Respondents agreed that the First Applicant had not signed the relevant documents. Their position was that they had been signed by the Second Applicant and by the son. It was said that he was entitled to sign that transfer because there had been an earlier, unregistered, transfer from the Applicants to the Second Applicant and the son.

5. The two people called John Henry Ebanks are not the only important father and son in this case, because various documents relating to the First Respondent had been signed

by a Mr Aman Chopra who had, at one time, been listed at Companies House as a director of the company. His father, Mr Naresh Chopra is now a director and Companies House records have removed nearly all trace of Aman Chopra ever having been involved with the company. That is because he denies having signed any of the relevant documents relating to the company, as well as the First Respondent's Statement of Case and a witness statement in his name. Naresh Chopra was joined as the Third Respondent by my order of 28th April 2025, for reasons set out in that order.

6. For the sake of convenience and without intending any disrespect to anyone involved, in the rest of this decision I will adopt the following abbreviations.

   a. John Henry Ebanks Senior (the First Applicant): JHE.
   b. Irene Anne Ebanks (the Second Applicant): IAE.
   c. John Henry Ebanks Junior (the Applicants' son; he did not attend the trial): Junior.
   d. Faye Ebanks (the Applicants' daughter; she did attend the trial and gave evidence): FE.
   e. Salcombe Road Ltd (the First Respondent): SRL.
   f. Naresh Chopra (the director of SRL; he is also the Third Respondent): NC.
   g. Aman Chopra (Naresh Chopra's son): AC.
   h. OneSavings Bank Plc (the Second Respondent): The Bank.
   i. Cabot Financial (UK) Ltd (a company which had the benefit of a restriction and an interim charging order over the property): Cabot.
   j. Tertip Ltd (a company which is said to have loaned money to IAE and Junior): Tertip.
   k. TN (UK) Consultancy Ltd (another company that NC is a director of): TNUK.
   l. Together Commercial Finance Ltd (a company that loaned money to SRL before it borrowed from the Bank): Together.

7. I was greatly assisted during the course of the trial by Mr Miah, Mr Lees KC, and Mr Mussa, although the latter did not attend all of the hearing for reasons that I will address further below. In Mr Mussa's absence, NC represented SRL and did so carefully, courteously and with considerable skill despite his lack of advocacy experience.

8. This was a case with a large, and seemingly constantly increasing, cast of characters and a considerable volume of documentary material. The various legal teams responsible for the preparations, which included several volumes of bundles, deserve praise for ensuring that the case was properly organised and in a fit state for the Tribunal to hear it.

9. I did warn the parties that they might need to wait for some time before this decision could be circulated. That is because, in the circumstances that I will describe below, this trial vastly exceeded the revised time estimate of four days. This meant that there was considerably more material to examine than had been anticipated, and that the time that had been originally set aside for writing the decision had long-since passed when the hearing was concluding. I must still apologise to the parties that I have not been able to provide them with a final decision earlier than this.

10. In preparing this decision, I have been able to draw on the detailed, and very helpful, written opening and closing submissions provided by the parties, and I have also had access to the recordings of hearings where it has been necessary to check any witness's oral evidence.

11. I have also had regard to the Practice Direction issued by the Senior President of Tribunals on reasons for decisions, and will seek to deal with the key points in this judgment, but I can assure the parties that I have had all of the points raised in evidence and submissions (both written and oral) well in mind when considering my decision.

12. As this decision has taken so long to produce and is also such a lengthy decision, I will spare the parties any further suspense and state now that I have decided that the Bank's application should succeed and the Applicants' application should fail, although JHE retains a share of the beneficial interest in the property. I shall seek to explain why I have reached those conclusions in the rest of this decision, which is structured as follows.

    a. Factual background: §§13-36;
    b. The disputed documents: §§37-40;
    c. These proceedings: §§41-66;

d. The witnesses: §§67-262;
    1. The Tribunal's approach: §§67-86;
    2. Henry Onwubiko: §§87-97;
    3. Saba Rehman: §§98-108;
    4. Charanbir Sahni: §§109-119;
    5. Amy Beart: §§120-125;
    6. Madhu Bhajanahetti: §§126-135;
    7. Faye Ebanks: §§136-158;
    8. John Ebanks: §§159-169;
    9. Irene Ebanks: §§170-185;
    10. Naresh Chopra: §§186-222;
    11. Aman Chopra: §§223-244;
    12. Expert evidence: §§245-262;
e. The facts: §§263-372;
    1. 2017: §§265-306;
    2. 2018: §§307-354;
    3. 2019: §§355-367;
    4. 2020: §§368-372;
f. Consequences: §§373-447; and,
g. Conclusion: §§448-450.

FACTUAL BACKGROUND

13. In this section I will set out the key undisputed facts and the positions of the parties on the main factual issues that were in dispute.

14. JHE and IAE purchased the property in October 1986. They were registered as proprietors of the freehold interest in November 1986. The purchase was made with the assistance of a mortgage from Barclays Bank Plc, which was secured against the property.

15. JHE and IAE lived at the property initially with Junior and FE. Their position is that Junior moved out many years ago.

16. In addition to the mortgage with Barclays, which was reflected in a restriction and charge on the title in the usual way, there was a restriction in favour of Cabot, based on an interim charging order made against IAE's beneficial interest at Bow County Court on 4th December 2008.

17. SRL and the Bank claim that JHE also moved out of the property for several years following a breakdown of sorts in his relationship with IAE. SRL's position, which the Bank adopts, is that he and IAE executed a transfer of the property from JHE and IAE to IAE and Junior. No copy of that transfer has ever been produced in evidence in these proceedings. IAE and JHE deny that there was any such transfer. If there was a transfer, it was not registered at HM Land Registry.

18. SRL's case is that in around July 2017, Junior met with AC, NC, and a Mr Vidya Sharma at their offices at 902 Eastern Avenue, Newbury Park, Ilford. SRL did not exist as a company at that point, but SRL's position is that NC and AC carried out work there for various companies that they had interests in. Junior explained that IAE was in a car outside. He said that he and IAE needed an urgent bridging loan of £90,000 to repay the mortgage and the Cabot charge. AC told him that they would only consider a loan if there was an agreement that they could buy the property, which would be terminated if the loan was repaid. AC and NC then went to the car outside and met IAE, where this was discussed. This is all denied by IAE.

19. SRL's position is that following that meeting, Ewan & Co were instructed to deal with the necessary transactions, with the loan to be provided by Tertip (a bridging lender known to them) and the contract for sale to be agreed with TNUK. Junior and IAE instructed Grayfield Solicitors to deal with the other side of the necessary transactions. The contracts that were eventually prepared were for a loan of £70,000 from Tertip (the amount loaned was actually said to be £82,400 but the drawdown amount was £70,000 as fees of £12,400 were deducted at the outset), to be repaid within twelve months, and a contract of sale with TNUK for a sale to be completed on 29th August 2018 (being two days after the loan was due to be repaid). The purchase price was stated to be £320,000, with a deposit of £20,000.

20. Those contracts were duly entered into and £90,000 (*i.e.* £70,000 from Tertip under the loan and £20,000 from TNUK as the deposit) was transferred from Ewan & Co to Grayfield Solicitors on 29th August 2017. The Barclays mortgage was redeemed and the Cabot charge paid off. IAE disputes most of this, although she agrees that the mortgage was redeemed, albeit she says this was not with the aid of any money from Tertip or TNUK.

21. The Tertip charge was registered in February 2018. SRL's case is that shortly after that, Junior and IAE visited the offices at 902 Eastern Avenue again, seeking a further loan of £70,000 to carry out improvements to the subject property and for Junior's business. It was agreed that TNUK would loan them the money, subject to being granted a second charge over the property. The property was said to have been inspected by a Charanbir Sahni on behalf of TNUK, at which point only IAE was present in the property, apparently telling Mr Sahni that she lived elsewhere and the property was to be let out.

22. According to the loan agreement, on 22nd March 2018, TNUK agreed to lend £61,800, of which the drawdown sum was £56,000, with a repayment period of one month, *i.e.* 22nd April 2018. SRL's position is that TNUK advanced the funds under that loan, but that no further charge was executed. Again, this account is disputed by IAE.

23. The next step in SRL's case is that IAE and Junior sought refinancing from Century Capital in order to repay the loans to Tertip and TNUK. SRL does not contend that this came to fruition, but relies on a valuation carried out on behalf of Century Capital, which they say shows that the property was vacant, and documents provided to Century Capital, which they say show that IAE lived elsewhere. IAE denies all of this.

24. It appears from the documents that by a loan agreement dated 18th July 2018, Tertip agreed to lend a further sum of £17,000, repayable within 12 months, but this apparent agreement did not proceed.

25. Next, SRL says that in August 2018, with the loans unpaid and the completion date under the purchase contract approaching, it was agreed that a new company would be set up, so that Junior and AC, on behalf of TNUK, would own the property jointly. That, it is said, would allow refinancing to take place.

26. SRL was incorporated on 7th August 2018. The directors and shareholders were recorded as being AC and Junior, although AC now says that he was not involved. An application was made to Together for a buy-to-let mortgage.

27. The transfer to SRL is dated 10th October 2018. It purported to be signed by IAE and a John Henry Ebanks. JHE says that this was not him, and that is now accepted by all parties. SRL's position was that it was signed by Junior, and that he was entitled to do so because of the earlier, missing, transfer. This is denied by IAE and JHE.

28. SRL borrowed a sum of money from Together and granted the lender a charge over the property.

29. SRL became the registered proprietor of the property on 31st October 2018.

30. Junior resigned as a director of SRL in January 2019. SRL's case was that this meant that AC was the sole shareholder at that time and that Junior transferred his share in the company to AC. Before doing so, he insisted that IAE be allowed to move into the property as a tenant. Accordingly, a tenancy agreement was entered into between SRL, through Junior, and IAE. This is also denied by IAE.

31. On 11th June 2019, SRL purported to grant the Bank a charge over the subject property. The Bank applied to HM Land Registry on 8th July 2019 to register that charge. For day list purposes, it has been treated as having been made on 24th February 2020.

32. IAE and JHE say that at some point in the second half of October 2019, they received a notice under Housing Act 1988, s.21 from SRL. They say they did not respond to it as they assumed that it had come from fraudsters.

33. On 24th February 2020, the Bank also applied to cancel a Registrar's restriction that had been entered on 3rd May 2019. This did not feature in any great detail before me, but explains why HM Land Registry have treated the Bank's application to register the charge as being made on that date.

34. In early March 2020, they received a document from JMW solicitors concerning a restriction and charge being registered against the property. After making enquiries and taking some advice, they became aware of the purported transfer to SRL. Both SRL and the Bank dispute this account.

35. JHE and IAE applied to HM Land Registry on 13th May 2020. Both their application and the Bank's earlier application were referred to this Tribunal. The parties have, quite realistically, accepted that it is not possible to separate them out and it has not been suggested that the fact that the Bank's application has day list priority has any particular relevance.

36. To bring matters up to date, NC was appointed as a director of SRL on 1st January 2024. AC is no longer listed as ever having been a director. It appears that Companies House have taken administrative action to remove those details following contact made by AC. Up until around 28th October 2024 he was, however, listed as a director from SRL's incorporation. The effect of the administrative amendment made by Companies House would seem to mean that there was no recognised director of SRL from Junior's resignation in January 2019 until NC's appointment in January 2024.

THE DISPUTED DOCUMENTS

37. In this case, JHE and IAE say that they did not sign a number of important documents. Directions were given for expert handwriting evidence about those documents. I will say a little more about that expert evidence when I discuss the witnesses, but as it will be necessary to consider the authenticity of several of these documents in detail, I will borrow here from the list of documents identified by the expert witness and refer to them in this decision as follows.

    a. Document 1: Form RX1 for restriction in favour of Tertip, dated 23rd August 2017.
    b. Document 2: Loan contract with Tertip, dated 22nd August 2017, witnessed by Mr Onwubiko.
    c. Document 3: Deed granting legal charge to Tertip, dated 29th August 2017, witnessed by Mr Onwubiko.

d. Document 4: Contract for sale with TNUK, dated 29th August 2017.
e. Document 5: Form RX1 for restriction in favour of Tertip, dated 11th October 2017.
f. Document 6: Deed granting legal charge to Together, dated 2018 (the complete date and some details of the parties have not been entered), witnessed by Miss Rehman.
g. Document 7: A form described by the expert on the basis of her instructions as the signature page for Form AN2, but actually appearing to be page 3 of Form RX1, referring to the entry of a restriction in favour of TNUK, dated 12th January 2018.
h. Document 8: Deed granting legal charge to Century Capital Partners No. 1 Ltd, dated 2018 (the complete date has not been entered), witnessed by Charles Ewan.
i. Document 9: Loan contract with TNUK, dated 22nd March 2018 (not apparently witnessed, despite the form including a space for a witness to sign).
j. Document 10: Tenancy agreement for the subject property, with IAE and "Mr John Ebanks" as landlord, and a "Miss Kirsty McDermott" as tenant, dated 7th April 2018 (although apparently signed by the tenant on 24th October 2015).
k. Document 11: Century Capital Partners No. 1 Ltd loan offer, dated 26th June 2018, witnessed by Charles Ewan.
l. Document 12: Loan contract with Tertip, dated 18th July 2018, witnessed by Mr Bhajanehetti.
m. Document 13: Debenture between Together and SRL, dated 11th October 2018, witnessed by Charles Ewan.
n. Document 14: Form TR1, transferring the subject property to SRL, dated 10th October 2018, witnessed by Mr Bhajanehetti.
o. Document 15: Deed granting legal charge to Together, dated 11th October 2018, witnessed by Charles Ewan.
p. Document 16: Form ST5 to cancel restriction in favour of IAE and JHE/Junior as beneficial owners, dated 3rd December 2018.
q. Document 17: Tenancy agreement for the subject property, with SRL as landlord and IAE as tenant, dated 18th January 2019, witnessed by Miss Rehman.

38. To that list of documents can be added an extremely important document relied on by SRL and the Bank, which is an undated TR1 transfer form, signed by JHA and IAE, transferring the property from JHE and IAE to IAE and Junior. As this would have to have been the first document in time and therefore would need to have been executed before Document 1, I will refer to it as Document 0.

39. Given the identities of the parties involved in Documents 13 and 15, it is not suggested by anyone that these documents were signed by IAE, although both are said by SRL to have been signed by Junior and AC. Those documents, along with a couple of others, are said on their face to have been witnessed by Mr Charles Ewan. I did not have any evidence from him. There was no evidence before the Tribunal as to who may have witnessed the signatures on Document 0. All the other purported witnesses of signatures did attend and gave evidence to the Tribunal.

40. It is perhaps important to recognise at this juncture that although there are those 18 documents in dispute (the 17 considered by the handwriting expert, plus Document 0), not all of them are directly relevant to the questions of whether there is a mistake on the register and whether the Bank's charge should be registered. The relevance of those other documents is primarily in the extent to which, if they are genuine, they demonstrate a course of dealing with the property by IAE that is consistent with the case advanced by SRL (and the Bank). This can also be looked at from the other perspective, because to the extent that any of them are not genuine, that would demonstrate that documents purporting to bear IAE's signature were created by someone else, which would be consistent with, and provide support for, her case that she did not sign any of these documents. The Bank also relies on some of the documents to advance an alternative argument that, to the extent necessary, it should still be entitled to registration of a charge by way of subrogation.

THESE PROCEEDINGS

41. In order to explain how some of the issues arose during the final hearing, it is helpful to chart some of the progress of this litigation. I can start with the first attempt at a final hearing, and will skip over various costs orders made along the way.

42. The case was originally listed in March 2024, with a time estimate of two days. At that stage, the Statement of Case on behalf of JHE and IAE did not even mention NC, let alone make any allegations against him, and there was no statement from NC, although he had been mentioned in SRL's Statement of Case, which purported to be signed by AC, and in AC's witness statement. The case on behalf of JHE and IAE simply amounted to stating that they had not been involved in any of the relevant transactions and the signatures on various documents were not their signatures (a claim that found some support in the expert handwriting evidence).

43. At that hearing, it became apparent that the matter would need to be adjourned, with further directions given. I explained the background in the reasons for my order of 20th March 2024. The parties will be familiar with those, but other readers of this decision might not be, so I set out the relevant paragraphs here.

> "2. … this is a case in which it is said by the Applicants that they have been the victim of fraud, without the identity of the alleged fraudsters ever having been particularised by the Applicants with any great degree of specificity. At a very late stage, the parties have focused in far greater detail than they had thus far on the nature and character of those allegations and a case theory as to how the fraud may have been perpetrated has started to emerge. …
>
> "15. … at 07:20 on 14th March, the First Respondent's skeleton argument was submitted along with an unsigned witness statement from Madhu Bhajanehatti. He was said to have been the paralegal who witnessed the signatures of the transferors on the TR1 transferring the property to the First Respondent in October 2018. The skeleton argument contained a very short application to rely on this evidence which said very little that could justify its extraordinary lateness. A signed copy of the witness statement, with exhibits, was filed at 12:17 on 18th March.
>
> "16. … at 11:51 on 15th March, the Applicants' solicitors filed a request for a witness summons in relation to a solicitor who had apparently acted for the Applicants in one of the transactions. Although the email title included the word 'Urgent' and the text included the words 'Very Urgent', it does not appear that

> the Applicants' solicitors made any attempt to telephone the Tribunal to ensure that this request was considered urgently. It was not referred to me until the afternoon of 18th March (*i.e.* the day before the trial was due to start). I therefore took the view that it was pointless to determine that application on the papers and it should be considered at the hearing the following morning. …
>
> "18. … during the hearing yesterday morning, I became aware that the Applicants were seeking to rely on a witness statement from their daughter, which was signed and dated 18th March 2024. This had been sent to the Tribunal at 14:36 on 18th March. Again, the Applicants' solicitors seem to have failed to take any reasonable steps to ensure that this was brought to my attention in advance of the hearing (I was only able to consider a copy of the statement during the hearing because the Second Respondent's representatives had thought to bring a spare copy). That witness statement contained a lot of material that could have been obtained earlier, but its potential importance in the context of the sequence of applications that I have set out was that it also included an allegation that the First Respondent's new witness had been convicted of tax fraud."

44. The "new case theory" referred to at para.2 of those reasons was one that started to focus intensely on the alleged involvement of NC (it is worth noting that NC attended the hearing, although AC did not). Various directions were given, including a direction for JHE and IAE to provide further and better particulars of any allegations of fraud.

45. Further allegations of fraud were provided by JHE and IAE. While not quite in the format that I had envisioned, they did set out a tolerably clear case, mainly pointing a finger at NC, but also clearly implicating AC. SRL and the Bank filed documents in response, which included a witness statement from NC.

46. Over the course of the summer, the parties sought several witness summons orders aimed at practitioners who had been involved in the conveyancing processes. Those were granted, and the re-listed trial commenced on 9th September 2024.

47. I should record here that AC did not attend the first day of the hearing, although NC did. I expressed some surprise that AC was not there, given that he had been a director at the material time (or so we all thought at that stage), while NC had not, and given that the case on behalf of JHE and IAE included some very serious allegations against him.

48. During the course of that first day, the Tribunal heard evidence from Henry Onwubiko, Saba Rehman, Charanbir Sahni, Amy Beart, and Madhu Bhajanahetti.

49. On the second day, the Tribunal heard evidence from FE, which took up the first half of the day, and from JHE.

50. JHE's evidence continued for around half an hour on the third day and then IAE gave her evidence. That took up the rest of the day.

51. Rather surprisingly, given what I had said about AC's non-attendance on day one (something which I repeated on other occasions), he did not attend on the second or third days either. At the end of day three, I was assured by SRL's counsel, on instructions, that AC would be in attendance the next day.

52. It was therefore extremely surprising to find that AC was not present at the start of the hearing on the fourth day, 12th September. That was intended to be the last day for hearing evidence (it had been intended to be the day for closing submissions, but it had become apparent during the week that further time would be needed for those).

53. Although Mr Mussa and NC made efforts to contact AC, these did not yield results. I was told that AC had been working on assignment at GCHQ, which meant that he had been staying in Cheltenham. He had, apparently, been planning on going into the office at 5am on the morning of 12th September, then travelling to London after that.

54. As NC was present and had given a witness statement, he gave oral evidence and was cross-examined. That evidence took up most of the day. I can pick up the story with para.9 of the reasons for an order I made on 13th September.

> "As nothing had been heard from Aman Chopra, I made some enquiries during the lunch adjournment and ascertained that there did not seem to be any major delays on the roads or rail routes from Cheltenham (it was subsequently made clear by Naresh Chopra that his son, who he had spoken to the previous day, had been planning to drive down from the Cheltenham area at 8am). I checked with Naresh Chopra but he did not have any concerns about his son's wellbeing and so he continued his evidence, which concluded that day."

55. The case was adjourned until 27th November. The Tribunal issued a witness summons directed at AC, which was sent to the home address that NC had given for him. The intention, as set out in my order of 13th September, was that AC would give evidence on 27th November, and closing submissions would be heard on a further date that was listed (16th December). Directions were also given for any witness statement explaining AC's absence, in case there was a good reason that SRL and NC had been unaware of.

56. As if there had not been enough twists and turns, what happened next was highly unusual. On 18th September, the Tribunal received a telephone call from someone claiming to be AC, saying that his father had been impersonating him, and an email also from someone claiming to be AC. That email said:

> "I've been requested to come to tribunal to give evidence to court of a case that I am unaware of. This case has been adjourned as I did not attend on the final day of the hearing on 12th September. Please could I be sent all documents of the proceedings thus far so that I can catch up on what has occurred.
>
> "I do not have any legal representation. I was asked to give evidence on a statement that I did not submit nor sign. I am expected to give a statement for my absence this Friday so I would need this urgently to understand what it is I am giving evidence for."

57. That email was passed to me. I was, naturally, rather sceptical about it, given the various allegations of fraud, and had considerable doubt as to whether this had really come from AC.

58. Copies of relevant documents were provided to the person who had emailed the Tribunal. The Tribunal then received a further email from them on 19th September, in which they provided a scanned copy of a driving licence in the name of AC. While that meant that this correspondent may have access to AC's identity documents, it did not mean that he was responsible for sending the emails, something that I remained rather dubious about at that stage, because what they were saying was so at odds with NC's evidence on oath. That email also included a copy of an email trail, apparently between AC and NC, and a draft witness statement for AC, which explained that his non-attendance had been because he was ill.

59. The Tribunal subsequently received signed statements from AC and NC, explaining that AC had been ill and the Tribunal was invited to reconsider a costs order that it had made as a consequence of AC's non-attendance.

60. At the reconvened hearing on 27th November 2024, AC did attend. Mr Mussa called him to give evidence. I think that what happened next was a great shock to Mr Mussa, because when he asked AC to confirm his signature on his two witness statements and SRL's Statement of Case, AC said that he had not signed them.

61. Mr Mussa, not unreasonably, asked for some time to consider his position and then explained to the Tribunal that he needed to withdraw for reasons of professional embarrassment. In those circumstances, fairness to NC and SRL meant that there was a limit as to what the Tribunal could deal with that day. As AC had been summoned to attend, the Tribunal heard some further evidence from him, which was primarily through cross-examination conducted by Mr Lees, but also involved AC assisting with some questions posed by the Tribunal in order to understand his position. The upshot was that AC's oral evidence was that he had not been working with or for GCHQ in September and had not been in Cheltenham, as the Tribunal had previously been told, and had also not been ill. At Mr Miah's request, I also directed another witness summons be issued for Saba Rehman, albeit with considerable reluctance as I explained in my order of 28th November. At the same time, two further days were identified in January 2025 to hear this matter.

62. The adjourned hearing recommenced on 16th December. Due to technical issues with the Tribunal's recording equipment, there was a delayed start. Saba Rehman gave further evidence, then AC was cross-examined for most of the rest of that day.

63. NC was recalled to give evidence on 10th January 2025. He began by confirming the accuracy of his September 2024 witness statement, in which he had explained that AC had been ill. He did, however, subsequently accept that the statement contained lies and that he had lied in his previous oral evidence.

64. At the conclusion of that day's hearing, JHE, IAE, and the Bank applied to have NC joined as a party. He objected and so out of fairness to him I directed that the other parties should set out their position in writing and I would then consider that application or give further directions for it at what was intended to be the final day of the hearing, on 31st January.

65. All parties were able to make their oral submissions on 31st January on both the substantive case and the application to have NC joined as a party. I reserved judgment, warning the parties that it would inevitably take me a great deal of time to prepare that judgment. The Tribunal subsequently sent to the parties an order joining NC as the Third Respondent. The reasons for making that order were set out there and do not need to be repeated in this decision.

66. I have set all this out in some detail because I think it is helpful to understand the process by which the case advanced on behalf of JHE and IAE developed, and because the rift that emerged between NC and AC acquired considerable significance in terms of issues around their credibility generally.

THE WITNESSES

The Tribunal's approach

67. I shall start this section of this decision with some preliminary observations on the Tribunal's approach to assessing witnesses and making findings of fact. I set this out in rather more detail here than is normally the case in Tribunal decisions, partly because

this is a case in which the Tribunal has heard a considerable volume of evidence and it is therefore helpful to ensure that I am directing myself in accordance with relevant guidance built up by the courts, partly because this is case in which the vast majority of witnesses are alleged by one party or another to have been thoroughly dishonest, and partly because this judgment will contain some severe criticisms about several witnesses and I think it only fair to them to explain how it is that the Tribunal has reached the conclusions that it has.

68. In what follows, I have borrowed extensively from the decisions of HHJ Paul Matthews in *Batt v Boswell* [2022] EWHC 649 (Ch); Cotter J in *Muyepa v Ministry of Defence* [2022] EWHC 2648 (KB); and, Dexter Dias KC (as he then was) in *FLR v Chandran* [2023] EWHC 1671 (KB).

69. The first point is to note that in determining disputes of fact, I am applying the civil standard of proof (*i.e.* the balance of probabilities or whether something is more likely than not).

70. That standard of proof still applies in civil proceedings even when serious allegations, such as allegations of criminal conduct, are made, but where a serious allegation is made then more cogent evidence may be required to overcome the inherent unlikelihood of what is alleged: see the helpful discussion from *Phipson on Evidence* (20th ed.) at paras 6-57 and 6-58. I was also referred by the parties to some cases on fraud allegations, making a similar point: see *Fiona Trust & Holding Corp & ors v Privalov & ors* [2010] EWHC 3199 (Comm), at [1438]-[1439]; and, *The Commisioners for Her Majesty's Revenue and Customs v Sunico A/S & ors* [2013] EWHC 941 (Ch), at [148].

71. The burden of proving something rests on the person who asserts it. If they are unable to discharge that burden by proving that it is more likely than not that it happened, then it is treated as not having happened, because the law operates a binary system so that an alleged fact either happened or did not happen, but there is no room for a finding that it might have happened: see *In re B* [2008] UKHL 35; [2009] 1 AC 11.

72. The Tribunal's findings of facts need to be based on the evidence and any inferences that can be legitimately drawn from that evidence, but cannot be based on suspicion or speculation.

73. In assessing the evidence, it is important that I take into account all the evidence and consider each piece of evidence in the context of the evidence as a whole. In so doing, an iterative process is required, considering all of the evidence recursively before reaching any final conclusion.

74. I should point out here though that "a judgment is not a summing-up in which every possibly relevant piece of evidence must be mentioned": *B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407; [2022] 4 WLR 42.

75. The assessment of evidence may involve measuring it against recognised forensic yardsticks, such as the internal consistency and coherence of the evidence, any historical consistency or self-contradiction, the witness's credit, and any known facts that it can be tested against. When considering consistency, Cotter J has observed that it is ordinarily harder when being cross-examined to lie in a consistent and plausible way than it is to tell the truth: *Muyepa*, at [20](f).

76. As part of the reasoning process, the Tribunal also needs to take into account the inherent probability or improbability, as the case may be, of a particular event having happened.

77. It is now very well-established in the courts that human memory is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but is a fluid and malleable state of perception concerning an individual's past experiences, and therefore is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration: see para.1.3 of the Appendix to Practice Direction 57AC of the Civil Procedure Rules (and *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm); [2020] 1 CLC 428).

78. A proper awareness of the fallibility of human memory does not relieve judges from the task of making findings of fact based on all of the evidence: see *Martin v Kogan* [2019]

EWCA Civ 1645; [2020] FSR 3. As Floyd LJ said in *Kogan*, where a party's sworn evidence is disbelieved, the court (and, I would respectfully suggest, the Tribunal) must say why that is and cannot simply ignore that evidence.

79. Along similar lines, where there are irreconcilably competing accounts from witnesses, it is essential that the fact-finder assesses and compares their credibility: see *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605; [2002] 1 WLR 2409; and, *Demanya v The General Medical Council* [2025] EWHC 247 (Admin).

80. The fallibility of memory means that contemporaneous documents can acquire a greater significance, as in *Gestmin*. In commercial cases, in particular, the contemporaneous documents may be very important, but it may be unrealistic to expect private individuals to record all of their interactions in documents: see *Kogan*, at [89].

81. While professionals, such as solicitors, may deal with many similar events over the course of their career, such that there is little reason for them to remember any routine transaction in any great detail, witnesses who are personally and emotionally involved may have greater cause to remember events.

82. It is particularly important in this case, for reasons that will become apparent, to remember that if the Tribunal concludes that a witness has lied about something, it does not follow that they have lied about everything: see, *e.g.*, *R v Lucas* [1981] QB 720 (although a criminal case, this point is also very relevant in civil proceedings).

83. I must also bear in mind that a witness may lie to bolster a true story as well as a false one. It is also important to remember that a witness's evidence may be wholly wrong without them having lied as their recollection might be distorted by reinterpretation of what happened (which is perhaps another way of making the same point as above about the fallibility of human memory).

84. Conclusions about credibility should not be reached solely on the basis of the witness's demeanour. Although that does not mean that demeanour is irrelevant, care should be taken not to attach disproportionate weight to demeanour: see *Muyepa*, at [16]-[17].

85. I should also say that several witnesses were reminded by the Tribunal about their right under Civil Evidence Act 1968, s.14, to refuse to answer any question if to do so would tend to expose them to proceedings for an offence or the recovery of a penalty.

86. I will now turn to consider each witness in the sequence that they first gave evidence. I will summarise some key points of their evidence and set out my general impression of each witness and their credibility. As part of that discussion, I will explain some findings of fact. My further findings of fact will be set out in the next section of this decision, but I have made the findings in both this section and the next section by testing each of them against each other, so that the findings in this section are influenced by the findings in the next section, and vice versa. It is not always realistically possible to set out in the form of a structured narrative the interlinking factors that have led me to arrive at each factual conclusion, but as Peter Jackson J, as he then was, said in *Re A (A Child: Findings of Fact)* [2022] EWCA Civ 1652; [2023] 1 FLR 999, a judge has to start somewhere.

Henry Onwubiko

87. The significance of Mr Onwubiko's evidence is that he apparently witnessed the signing of Documents 2 and 3.

88. Mr Onwubiko has practised as a solicitor since November 2007, working at Grayfield Solicitors since February 2012. He is now a director at Grayfield. In his witness statement he refers to "Mr John Henry Ebanks". It is clear that he means Junior, rather than JHE, because he gives Junior's date of birth and explains that he first met him in August 2017 when Junior worked on the execution of a warrant for him. He says that Junior asked if the firm did conveyancing and was told that they did and that he should come to the office and ask for Theresa Quartey.

89. In the course of his statement, Mr Onwubiko explains that the firm acted for Junior and IAE between 22nd August and 11th December 2017. They produced identity documents, being a driving licence for Junior and passport for IAE, which were certified by Mrs Quartey.

90. He goes on to say that instructions were taken directly from Junior and IAE, whom he personally met. In response to a question from Mrs Quartey, IAE had said that the purpose of the loan was to assist her son in investing in some business that would assist the family as a whole. At para.10, he says this:

> "I can confirm that contracts were exchanged on 29 August 2017 and were signed by the Clients [Junior and IAE] at our office. I confirm further that the Legal Charge with Tertip Ltd was also executed on the same date at our office before me, and that I witnessed its execution. I refer to pages 10-20 of HO1 for a true copy of the contracts and Legal Charge executed by the Clients in our office and before me."

91. He then explains that £90,000 was received from Ewan & Co and how that was dealt with.

92. The documents that Mr Onwubiko referred to at pages 10-20 of the exhibits to his statement were Documents 3 and 4. Those are both dated 29th August 2017, which is consistent with para.10 of his statement. He does not make any mention in his statement of Document 2, although it records on its face that he witnessed it being signed on 25th August. He was asked about this in his oral evidence and was adamant that he had witnessed IAE signing that contract.

93. Mr Onwubiko's approach to this dispute had not been entirely helpful. Despite several requests to provide the full conveyancing file, he had not done so. Nonetheless, he willingly agreed to provide the whole file to the Tribunal when I asked if he would be able to do so and that file was then duly made available. I am very grateful to him and his office for ensuring that this was eventually done. The contents of that file are interesting for what they do and do not show in terms of correspondence with Ewan & Co, which I will deal with later. The file also included some handwritten file notes, as one would expect, copies of some mortgage arrears letters, and copies of various authorisations apparently signed by IAE.

94. I formed the impression that at times Mr Onwubiko's evidence was a little evasive. I have reached the conclusion that this is because he recognises that his firm should have

picked up on the problem with Junior's age and raised some enquiry about this, because the office copy entry that his firm was provided with showed that the property was purchased at a time when Junior was aged eleven. That was a fairly obvious problem that should have been addressed. Mr Onwubiko acknowledged this in his oral evidence, and could only explain that he did not think that the issue of Junior having been a minor at that time was spotted.

95. In my judgment, Mr Onwubiko realised that this did not reflect well on the firm. He was therefore on his guard when giving evidence and could fairly be described as a rather reluctant witness. In fairness to him, he was being asked to give evidence about transactions that had taken place around seven years before the trial and which had involved a fairly limited interaction with the clients. It is quite understandable that he might not recall all details and there might be a degree of speculation about parts of his evidence.

96. Despite the points that I have identified, I consider that on the core issues of what he himself witnessed, Mr Onwubiko's evidence was truthful. In particular, his evidence about IAE was that her passport and the person (meaning IAE) were in his office at the same time. He described her as a "frail elderly lady" accompanied by her "very tall" son and said that "the idea that it didn't happen is insane". In my judgment, that evidence all had the ring of truth about it.

97. In his oral evidence, Mr Onwubiko pointed out IAE as the lady that had come to his office and signed documents. He said that the other person was not JHE but had looked a bit like him.

Saba Rehman

98. Miss Rehman apparently witnessed the signing of Documents 6 and 17.

99. She is a solicitor at TTS Solicitors. In her short statement she refers to "Mr John Henry Ebanks" (sometimes calling him "E Banks" or "E bank"), but does not make clear if this is intended to mean Junior or JHE. It was, however, made very clear in her oral

evidence that she was referring to Junior and I will summarise her statement by reading any reference to Mr Ebanks as meaning Junior.

100. In that statement, Miss Rehman explains that IAE and Junior attended the office on 24th September 2019 to seek independent legal advice in relation to a third party charge. She describes explaining to IAE and Junior individually the extent of their liability and the contents and effect of the legal charge. Miss Rehman exhibited completed solicitor's certificates for advice given to Junior and IAE. She also exhibited copies of certified identity documents for Junior and IAE. She thought that both of them were familiar with the details of the transaction and signed the charge of their own free will.

101. Miss Rehman next says that Junior and IAE attended the office on 27th February 2019 with a tenancy agreement that they wanted to have witnessed.

102. In her oral evidence, Miss Rehman said that she had not seen JHE before. She also pointed out IAE as a person who had attended her firm's office on two occasions. She described IAE as having assistance from her son and as using either a walking frame or walking stick.

103. Miss Rehman stated very clearly that it was not her practice to say that she had witnessed something if she had not.

104. During their first cross-examination of Miss Rehman, the Applicants did not put to her that she was lying. Mr Miah sought to remedy this shortfall by applying during the 27th November hearing for another witness summons to be issued. I acceded to that application for reasons that were given in my order of the following day. I shall not repeat those here, other than to record that I stated that I was persuaded "by the barest of margins" that the Applicants should be allow to put to Miss Rehman their argument that her evidence had been untrue and that she had not witnessed IAE signing the relevant documents.

105. Miss Rehman did attend again and Mr Miah put those allegations to her, suggesting that she knew that there was a fraud and that the documents were not genuine. She denied those allegations. She acknowledged that it was possible that another fee earner in her

firm might have carried out work for NC, but said that she did not do any work for him and did not even think that she had ever met him.

106. My impression of Miss Rehman was that she gave her evidence in a clear and careful manner. She explained how the solicitor's certificates had been completed, with some of the information pre-populated and some added by her. She explained the identity documents that had been seen and how documents were signed. Her evidence was consistent and inherently credible. When I assess it against the competing evidence of IAE, I have no hesitation in being satisfied that Miss Rehman's account is correct, because of the quality of her evidence and the problems with IAE's evidence (which I will address below).

107. I consider that the Bank accurately described her denial of being involved in property fraud and lying to the Tribunal as emphatic and heartfelt. I do not attach much weight to that, for the reasons given above in the discussion about demeanour, but I do find that this provides some support for my assessment.

108. In my judgment, Miss Rehman's evidence was all completely credible and I accept her evidence in its entirety. She emerges from this process without a stain on her character. As she was the subject of a witness summons on two occasions and had to address extremely serious allegations of professional misconduct, crossing over into criminal behaviour, which I have decided are wholly unfounded, I will direct that a copy of this decision be sent to her so that she is made aware that that this Tribunal's decision has cleared her of any wrongdoing.

Charanbir Sahni

109. Mr Sahni attended pursuant to a witness summons. He had not provided a written statement.

110. In his oral evidence he explained that he was a self-employed property developer and rental agent. He had known NC for a very long time. He became involved with the subject property in early 2018 when he was asked by NC to view it. He said that this

standard procedure with a bridging loan proposal. There was no formal instruction as such. Instead he received a telephone call from NC.

111. Mr Sahni explained that the purpose of viewing the property was to see if was occupied, how many rooms it had, and what it was like in general.

112. He could not recall if he had made an appointment for the viewing, although he thought that one may have been made for him by NC's office. He said that when he attended, IAE opened the door and he told her that he was there on behalf of Mr Chopra and had come to inspect the property. He looked around the property, but did not take any photographs. IAE did not follow him around, but he said that they had a discussion in which she had said something about coming from the E1 area and having been stuck in traffic as her son gave her a lift. The property seemed to him to be furnished but unoccupied, based on his observations of general things, including a lack of clothes in the property.

113. Mr Sahni told the Tribunal that he had visited the property a second time in October 2019. He had received a telephone call from NC. He explained that he could remember that it was October because he was going away. He had prepared a notice to quit, which Mr Sahni delivered by hand. His evidence was that he knocked on the door and IAE answered. He described her as being very kind. He took a picture of the notice being served, and he was able to show the Tribunal a picture on his mobile phone of a document being handed to someone resembling IAE. The file name included "16.10.19", which would tend to suggest that the photograph was taken on 16th October 2019. IAE told him that she was expecting the notice.

114. It was not suggested to Mr Sahni that his oral evidence was in any way dishonest. In closing submissions, Mr Miah argued that it did not matter if an accusation of lying was not put to the witness, as he could still make the submission that the evidence was unreliable.

115. I agree with him up to a point. There is a general principle that if a witness's evidence is not accepted by a party then it should be challenged in cross-examination. Although sometimes referred to as a "rule", it is not an absolute rule, as explained by the Supreme

Court in *Griffiths v TUI (UK) Ltd* [2023] UKSC 48; [2025] AC 374, but it is particularly important where the opposing party intends to accuse the witness of dishonesty, even if the rule is not confined to case of dishonesty: see [70](vi). The rule is not an inflexible rule, and there are exceptions: see *Griffiths*, at [61]-[69], and [70](vii)-(viii); and *Chen v Ng* [2017] UKPC 27; [2018] 1 P&CR DG2.

116. I accept though that the Applicants are still entitled to make general submissions about the reliability or otherwise of Mr Sahni's evidence without having to put to him in cross-examination that he was lying. What they could not do, absent extremely unusual circumstances that do not exist in this case, is make the submission that he had lied in his evidence. In line with that, Mr Miah did not, as I understood his submissions, go as far as to argue that Mr Sahni had lied or been dishonest.

117. I am satisfied that Mr Sahni was attempting to assist the Tribunal with his honest evidence to the best of his recollection. It is plainly apparent from the photograph that someone handed a notice to IAE in October 2019 and I accept Mr Sahni's evidence that it was him.

118. I did consider that some of his evidence was rather vague. This can readily be explained by the passage of time and the fact that he had not been asked to prepare a witness statement, a process which can sometimes assist a witness with recalling facts, but it does mean that I must exercise caution before accepting his evidence on factual details.

119. By way of example, Mr Sahni referred to giving a notice to quit to IAE, but the document that could be seen in the photograph was a notice under Housing Act 1988, s.8, seemingly in the prescribed form applicable at that time. It is possible that there was another notice with that document, although Mr Sahni did not suggest that there had been more than one notice. It is possible that it was misdescribed to him by NC, but I consider that unlikely as NC is very experienced in property matters and would know the difference between a notice to quit and a s.8 notice. On balance, I consider it most likely that Mr Sahni is simply mistaken, no doubt because he is asked to serve a variety of different notices on many different occasions and cannot now remember quite what he was instructed to do in relation to this property in October 2019.

Amy Beart

120. Mrs Beart is the Bank's Head of Underwriting. She had worked at the Bank for seven and a half years at the time of her statement in May 2022, and so this was presumably closer to ten years when she gave her evidence in September 2024. In that time she has also worked as an Underwriter and Underwriting Manager for the Bank.

121. Her witness statement explained how it was that the Bank lent the sum of £382,500 to SRL, which was intended to be secured by way of a first legal charge over the subject property.

122. An application was made to the Bank, seemingly by AC, for a buy-to-let mortgage. At that time, HM Land Registry showed SRL as the registered proprietor of the property, subject to a first legal charge in favour of Together. An Equifax search revealed that the directors of SRL were AC and a John Henry Ebanks. The date of birth given means that this was Junior, not JHE.

123. The Bank carried out its due diligence, which did not reveal anything unusual. A valuation was carried out on behalf of the Bank, which recorded that the property appeared to be tenanted, but the Bank was not provided with a copy of the tenancy agreement showing that the tenant was IAE, and considered that the valuation report did not reveal anything unusual for a buy-to-let property.

124. Mrs Beart gives further details of the application, the underwriting process, and the mortgage offer, which all appear to be entirely standard. She also explains that the conveyancing file held by the Bank's solicitors reveals that they carried out priority searches on 10th April and 31st May 2019, which did not reveal any adverse entry. Mrs Beart goes on to explain that HM Land Registry admits a mistake in at least the latter of those searches as there should have been some entry recording that the Applicants had contacted HM Land Registry and made allegations of fraud. As that was not revealed to the Bank, there was nothing in the process which showed that SRL was not entitled to be the registered proprietor or that anyone else had any legal or beneficial interest in the property. This appeared to be a typical re-mortgage transaction.

125. Mr Miah quite properly and fairly asked Mrs Beart some questions in cross-examination, but these were really seeking further detail about her evidence rather than challenging or disputing it. It was not suggested by anyone in closing submissions that any aspect of her evidence was incorrect, thus making her unique as a witness in this case. Having heard her give evidence, albeit quite briefly, I unhesitatingly accept all Mrs Beart's evidence.

Madhu Bhajanahetti

126. Mr Bhajanehetti apparently witnessed the signing of Documents 12 and 14. Document 14 is particularly important as that is the form TR1 for the transfer to SRL. His signature also appears on Document 10, but only in the context of certifying a copy.

127. In his statement, he explains that in September/October 2018, he was working as a paralegal at Ewan & Co. He received instructions to act for SRL in the mortgage of a property owned by "Mr & Mrs Ebanks". The lender was to be Together. Mr Bhajanehetti had experience of dealing with Together and their solicitors, so he was familiar with their requirements. He prepared a TR1 to transfer the property to SRL, because Together would require that. He then had a face-to-face meeting with the Ebanks in Ewan & Co's offices. He explained the effect of the TR1 and obtained identity documents. He says that IAE asked a couple of questions although he was unable to remember what they were. Both Ebanks signed the TR1 in his presence. He says that he gave them a copy of Together's standard charge document for them to take to their own solicitors for advice.

128. Finally, he explains that he dated the signed TR1 on 10th October 2018 when completion took place.

129. His involvement in the case seems to have generated considerable excitement on the part of the Applicants, because he had previously been convicted of a criminal offence. The Bank, seemingly correctly, complained that he had not been convicted of fraud despite that having been suggested by the Applicants. He did, however, accept in oral evidence that he had committed an offence of dishonesty.

130. Mr Bhajanahetti was noticeably nervous when giving evidence and rushed some of his answers.

131. Mr Bhajanahetti was one of the witnesses who was given a warning against self-incrimination. He continued to answer questions for a little while after that warning, but then opted to give "no comment" answers to some questions, although he still continued to provide full answers to other questions.

132. The Bank make the point that although Mr Bhajanahetti was provided with a warning against self-incrimination, he was not told of the risk of adverse inferences being drawn if he refused to answer a question. No-one suggested that there was any authority requiring such a warning to be given in civil proceedings and plainly the warning required by Criminal Justice and Public Order Act 1994, s.35, is not required as that is only needed at the trial of a person for an offence, *i.e.* a trial in criminal proceedings (and see *Great Future International Ltd v Sealand Housing Corp* [2004] EWHC 124 (Ch); and, *Royal & Sun Alliance Insurance Plc v Fahed* [2015] EWHC 1092 (QB)). It is clearly permissible in civil proceedings to draw any appropriate inference from a refusal to answer a question even, where relevant as to possible criminal conduct (but only where it is relevant to the civil proceedings, and bearing in mind that any finding of fact will only be on the balance of probabilities): see *Sealand*; and, *Petrodel Resources Ltd v Prest* [2013] UKSC 34; [2013] 2 AC 415.

133. That being said, the nature of the questions that Mr Bhajanahetti opted to provide "no comment" answers to does not really allow the Tribunal to infer very much.

134. In closing oral and written submissions, Mr Lees described Mr Bhajanahetti's evidence as a "mixed bag".

135. In my view, the Tribunal should adopt a relatively cautious approach to Mr Bhajanahetti's evidence as by his own admission he has a history of dishonesty and was unwilling or unable to answer all questions.

Faye Ebanks (FE)

136. FE first produced a statement shortly before the March hearing, and then an amended version of that statement, which had been filed in April 2024.

137. In FE's evidence, she explains that she has lived at the subject property since 1986. She said that she had not moved out because she could not afford to. She went on to say that her parents were happily married, although they had had a "heated argument when the fraudulent transfer of our home came to light" (the same phrase appears in both statements). She also said that JHE would sometimes work outside of London and would stay at his work location during the week when he did. She was clear though that her parents had never been separated.

138. FE also explained that IAE was receiving treatment for Parkinson's disease and described some of the symptoms, which include poor mobility, muscle rigidity, and tremors of the hands. It is plainly an extremely unpleasant condition and must be very difficult for IAE and her family. FE explains some of the ways in which she and JHE care for and support IAE.

139. She goes on in her statements to say that Junior moved out of the family home when he was 18 (which would mean 1993 or 1994). She says that between 2017 and 2018, Junior had worked as a bailiff for a friend who was a director of an estate agency. Junior relocated to the USA following a relationship breakdown.

140. FE next says that they received a s.21 notice from AC on 14th October 2019 (in the first version of the statement she describes a visit from a man who she now knew was the First Respondent, but that party is SRL, and it makes more sense if she intended to refer to AC as she did in the amended statement). In her statements she describes having queried the reason for the notice with AC and being told that Junior was indebted to SRL and had used the property as collateral.

141. FE then states that she contacted Junior about this, but he denied having used the property for a loan. Junior returned to the UK for a funeral in July 2019, and she showed

him the s.21 notice (it might be immediately apparent that this was three months before FE says that the s.21 notice was received; I will return to this further below). He again denied having anything to do with it and returned to the USA straight after the funeral. According to FE, he has been avoiding any attempts to contact him since then and she has heard that he may have relocated again, this time to Australia.

142. Finally, for present purposes, FE explains how in March 2020 they received correspondence that must have concerned the Bank's application to HM Land Registry.

143. When it came to her oral evidence, FE was not an impressive witness.

144. She was hopelessly inconsistent about how many visits there had been to the property and what documents had been received. Her written statements only describe one visit in October 2019, which was said to have been by AC, to deliver a s.21 notice. In cross-examination, she referred to the person who had given evidence the day before her, meaning Mr Sahni. FE said that he had gone to the house and had spoken with her, telling her that he was giving her mother a tenancy agreement. She also said that there was a second visit by someone else in March 2020.

145. Even if this new account about a second visit in March 2020 had been correct, it did not provide any sort of explanation for how FE was able to show her brother a notice in July 2019 that was not received until October 2019. When confronted with this obvious point, FE resorted to arguing that some guy had come round to the house a few times. By this point in her oral evidence, she was suggesting that there had been at least three visits, despite having only referred to one in her statements.

146. I am afraid that I found that her oral evidence on this point was not believable. FE was not able to adequately explain the sequence of any visits, who had come on each occasion, or what they were doing. It would make no sense for Mr Sahni to deliver a tenancy agreement, and it was never put to him that he had done so.

147. I have considered carefully whether FE has been mistaken or become confused over time. That might be possible, particularly if she has been desperately trying to make sense of the position that the family find themselves in. In my judgment, however, the

answer is simply that she was not being honest in this part of her evidence. It was a curious feature of her written statements that they attributed precise quotes to Junior despite the conversations having supposedly taken place about five years before she made the statements. I do not accept that she could be so sure of the exact words that he had used while at the same time being so unclear about the sequence of events. In my view the most probable explanation is that she did not have the conversations that she claimed to have had with Junior and that she has invented these other visits in order to support her account of those conversations, particularly when it became apparent that the timeline in her statements did not work.

148. While I remind myself of *Lucas*, my view about FE's evidence on that particular point is supported by my impression of other aspects of her evidence in which I consider that she was being dishonest.

149. The most significant example involves looking at some aspects of her parents' evidence slightly out of sequence. In her father's first statement in support of the application, made as far back as 8th May 2020, he had said that IAE and FE were currently in occupation and that he had been in "occupation of the said property from November 1986 until last 3 years due to difficult relationship with my estranged wife" (see paragraphs 6 and 7). Her mother's first statement, made on the same day, referred to FE and IAE as being in occupation, but did not say that JHE was (see paragraph 6).

150. In JHE's later statement of 25th May 2022, he again identified IAE and FE as being in occupation (see paragraph 6). In IAE's statement from around that time (26th May 2022), she does not suggest that JHE was in occupation (see paragraph 7).

151. In JHE's amended statement of 7th February 2023, he once again identifies IAE and FE as being in occupation (see paragraph 8). IAE's amended statement of the same date similarly does not suggest that JHE was in occupation (see paragraph 8).

152. It is fair to note that the Applicants' Statement of Case, which was dated 18th November 2021, did plead that the "Applicants have been in physical occupation of the said Freehold property since October 1986 to date" (see paragraph 5), but this did not match their witness evidence from 2020 to 2023.

153. This changed in 2024 when FE's first witness statement, dated 18th March 2024, described her parents' relationship in the way that I have set out above (which can be summarised as saying that they had always been happily married and consistently living at the property together, although JHE sometimes stayed away for work (see her statement at paragraphs 5-6)). FE said the same thing in her amended statement (again at paragraphs 5-6). JHE and IAE also submitted a joint statement, dated 5th April 2024. I will comment further on the joint statement below, but for present purposes the significant point is that at paragraph 3 they said that "we are happily married and have never been separated".

154. FE was, understandably, cross-examined at length about these various statements. She disputed the various ways that her parents had described the situation prior to 2024. She said that her father had stayed away sometimes for work, as she had described in her witness statements, and had also been looking after his brother for three years when he was suffering with cancer. She explained that this had been from 2017, until her uncle died in July 2019.

155. There were several problems with FE's explanation in her oral evidence. First, she stated in her oral evidence that her father did move back after his brother's death. But if he moved "back" then he must have moved out in the first place in order to be able to return. Secondly, JHE's earliest statement was around ten months after his brother's death, but in that he was saying that he was not in occupation. Thirdly, and perhaps most significantly, her attempt to paint a picture of a happy marriage where both parents had always been living in the same property was thoroughly torn apart when JHE accepted in his oral evidence that the earlier statements were correct (other than the word "estranged") and that paragraphs 3 and 4 of the Applicants' addendum statement were not true.

156. In my judgment, FE's written and oral evidence about her parents' relationship and their occupation of the property was thoroughly dishonest. I reject that evidence in its entirety.

157. Returning to *Lucas*, this still does not mean that I should necessarily treat all aspects of FE's evidence as dishonest. In my judgment, FE has found herself and her family in a desperate position concerning their home. The effects of this have doubtless been made worse by her mother's health conditions. I detected in FE's evidence a sense of puzzlement as to how any of this could have come about. I consider that she genuinely does not believe that her mother could have signed any of the relevant documents or been involved in any way with the transfer to SRL, which is one reason why her only answer to any alternative account was that everyone else was lying (including a bizarre suggestion at one point that a valuer had lied in their valuation report). That has led to her creating an untruthful account of some matters in an attempt to support that which she does believe to be true.

158. While I should still be extremely cautious with other aspects of FE's evidence, I am satisfied that it is not all tainted by dishonesty. In particular, I accept that the subject property has been FE's only home since 1986. As I will describe elsewhere, there were indicia of continued occupation despite the views expressed by Mr Sahni and the valuation reports, and there was no evidence that suggested that FE had lived anywhere else.

John Ebanks (JHE)

159. Both JHE and IAE had submitted earlier witness statements in these proceedings, but at the trial they only confirmed in their oral evidence their joint addendum statement dated 5th April 2024 (although at paragraph 2 of that joint statement they had indicated an intention to rely on the earlier statements as well).

160. It might be observed here that so-called "joint" witness statements are bad practice (see, *e.g.*, *Ficcara v James* [2021] UKUT 38 (LC); [2021] HLR 30, at [43]). There are several obvious reasons why this is so. Identifying just a few should suffice to demonstrate the point.

    a. There is a danger that one witness may be attesting to matters that are outside of their knowledge;

b. Both witnesses may need to be cross-examined on every disputed issue as it is not possible to know which of them is the origin of any particular alleged fact;
c. Any party wishing to cross-examine may be deprived the opportunity to test discrepancies between individual witness statements that might otherwise be apparent;
d. If there is a demonstrable inaccuracy in a joint written statement, it is open to each witness to seek to put the blame for that aspect on the other witness; and,
e. Each witness could give different oral evidence and explain it on the basis that the other one was responsible for the point in the witness statement.

161. In the present case, the Tribunal had the benefit of detailed and careful cross-examination of JHE and IAE, with Mr Lees taking the initiative, ably supported by Mr Mussa, and helpful re-examination by Mr Miah. I am therefore satisfied that the Tribunal's assessment of the evidence has not been hampered by the unsatisfactory form in which it was submitted.

162. I have already set out some significant parts of JHE's earlier statements and the joint addendum statement in the discussion of FE's evidence.

163. So far as the rest of JHE's evidence is concerned, he simply denies any involvement with or knowledge of the alleged transactions. The addendum statement also introduces allegations against various parties, primarily NC and Mr Bhajanahetti. I have already referred to Mr Bhajanahetti's criminal convictions and will consider some of the case against NC when I come to his evidence.

164. JHE's oral evidence followed straight on from FE's, in which she had argued strenuously that the property had been the consistent family home for her and her parents. JHE maintained that line very briefly, before accepting that there had been a difficult relationship with his wife and he had moved out in early 2017. His main difficulty seemed to be with the word "estranged", although he eventually said that he was not familiar with that word and did not know what it meant. Although it is a word that can bear several connected meanings, it seems to me that the most natural meaning when it is used as part of the phrase "estranged wife" is that it means a wife who no

longer lives with her husband. Given JHE's evidence of their living arrangements, it is my view that this was a perfectly good description.

165. It is, to a limited extent, to JHE's credit that he did accept the need to resile from parts of the joint addendum statement. It is, nonetheless, problematic that he was prepared to confirm the contents of that statement as true when he knew that they were not. His explanation was not particularly impressive, as the best that he could say was that he and IAE were getting on fine at that point. That does not in way justify the wrong and misleading statements that were made and that were supported by a signed statement of truth.

166. As with FE, this does not mean that I should discount all of JHE's evidence. People can lie for many reasons, although as I indicated above, his explanation for the joint addendum statement was not a persuasive one.

167. Other aspects of his evidence were also unimpressive, such as his explanation that he would sometimes stay at his sister's property and sometimes at the subject property, depending on where he could get parked. I reject that as entirely fanciful.

168. I also note that JHE's recollection of dates was not always inaccurate. He said in oral evidence that he first became aware of the suggestion of a tenancy of the property in 2018 when there was contact with HM Land Registry. The other evidence shows that this was in 2020 and so he must be mistaken about the date. JHE insisted that he still had a clear memory of 2017, 2018, and 2019, but I consider that I must exercise some caution with his recollection, which may be mistaken.

169. Again though, much as with FE, my impression of JHE was of someone who was genuinely bemused and puzzled as to how these various transactions could be genuine. When I evaluate his evidence against all of the other pieces of evidence, I find that he is a witness who has been willing to lie to the Tribunal in order to bolster an account that he believes to be true. I need to exercise extreme caution with his evidence, but I do not consider that I can safely reject it all as false when it is challenged (some of his evidence being accepted by SRL and the Bank to be correct in any event).

Irene Ebanks (IAE)

170. IAE's evidence in the joint addendum statement can be summarised fairly efficiently in quite short form. That statement affirms that JHE and IAE were happily married and had never been separated or contemplated a divorce. In March 2020, they received some papers suggesting that the property had been transferred to SRL without any consideration. They were distressed and confused because they had not transferred or sold their home to anyone. IAE then denies any involvement with Tertip, Ewan & Co, Grayfield Solicitors, or TTS. She also denies signing any TR1 or obtaining any credit facility.

171. I start my assessment of IAE's evidence by noting that her health is affected by a number of what are described as active major problems, including a diagnosis of Parkinson's disease.

172. It was not suggested by any of the very experienced legal representatives acting in this case that IAE either lacked capacity or was otherwise not competent to give evidence. Nonetheless, I must make allowances for IAE's condition when assessing her evidence. In particular, I take into account that in her oral evidence IAE explained that Parkinson's disease can cause a sufferer to forget things, and I have considered carefully the *Equal Treatment Bench Book* entry on Parkinson's disease.

173. I also take into account what I was told by other witnesses, particularly FE, about IAE's condition, and the medical information that the Tribunal has received, including in several requests for her to be able to attend the later stages of the hearing by video-link.

174. Having made all possible allowances, I formed the clear view that IAE's evidence was unreliable and that on key points she was not telling the truth.

175. This began at almost the very start of her oral evidence. She was asked to confirm her signature on her latest witness statement (again, skipping the earlier statements). She immediately protested "That's not my signature". While IAE did then accept that she had signed this witness statement, this phrase was a refrain that she repeated many times during her evidence. It was said so readily, and with so little consideration of each new

document, that it could not possibly have been accurate. Indeed, IAE subsequently used the same refrain when confronted with other documents which she eventually accepted that she did sign.

176. In my judgment, IAE used this phrase as a mantra to hide behind when giving evidence, so as to avoid becoming involved in any scrutiny of the key documents. I agree with the way that the Bank characterised this evidence in cross-examination, when it was put to IAE that she had come with a "script".

177. When I assess her evidence in this respect against the evidence of other witnesses who I consider to be more reliable, I am readily satisfied that at least in some respects IAE's evidence about not having signed documents was not truthful. In particular, I accept Miss Rehman's evidence that she witnessed IAE signing Documents 6 and 17. I reject IAE's evidence to the contrary as untruthful and also reject her accusation that Miss Rehman was lying. I find on this point that it was IAE who was lying in her evidence. This gives me some cause for concern when it comes to evaluating IAE's denials of having signed other documents.

178. As with other witnesses, I should be careful not to conclude that IAE was dishonest about everything just because she was dishonest about something. Having considered her evidence carefully though, I find that she was not telling the truth on other points.

179. For instance, IAE was insistent that she had not been estranged from JHE, although her evidence was also that there was a time when he did not have a key to the house. Her explanation that he had got lazy and would not use his key makes no sense if he was living at the property, coming and going as he pleased, and their relationship was going well. Her evidence was also undermined by JHE's oral evidence as I have already described. In my judgment, her evidence on this point was not truthful.

180. By way of further example, IAE's evidence about her finances and gambling was not credible. Her bank statements showed numerous payments to online gambling services. It is not the place of this Tribunal to judge IAE for that. It is well-known that many people struggle with gambling, and there was some evidence that addictive tendencies could be a side effect of some of the medication that IAE was taking and that this

problem was addressed when her medication was changed. In all of those circumstances, rather than criticising IAE for that conduct, the Tribunal is naturally rather sympathetic. IAE was reluctant to acknowledge that she had had a gambling problem, preferring to label it as "enjoyment". I think she was wrong about that, but again I am not critical of her in this respect. That seems to me to be a common reaction amongst people who have struggled with addiction of any sort.

181. What I am concerned with, however, is the effect that this had on her finances and her evidence about that. In my judgment, that evidence was not truthful. It was quite clear from the bank statements that direct debit payments were frequently being returned due to a lack of funds. IAE protested in her oral evidence that all returned direct debit payments were paid the next day, but the bank statements show that this was not true.

182. This also becomes relevant when considering the mortgage on the property. JHE gave IAE money to pay the mortgage, but she accepted that she used some of that for gambling and only paid a minimum amount towards interest. She also accepted in her oral evidence that she had lied to JHE about this at the time. In this regard, I consider that she was at least being truthful to the Tribunal, even if she had lied to her husband.

183. Where her evidence to the Tribunal about the mortgage becomes untruthful is her explanation for how the Barclays mortgage was paid off. I have seen letters showing that the mortgage was in arrears in 2017 and there was a balance of over £19,000. IAE's evidence was that she was only paying the minimum interest, although she also suggested that there were some months where she paid a bit more. Even if that was the case, she must have known that she was not paying enough for the mortgage to suddenly be cleared, and yet it was. She was not able to offer any convincing explanation for this, even saying that she had not known that it had been paid off and had continued to make the usual monthly payment in January 2018. Had she done so, there would have been an overpayment on the mortgage, but there was no evidence of any such over payment. I do not accept IAE's evidence about the mortgage and how it was paid off. She would have been aware that there was still a five figure sum owing and that this had then been paid off with money received from another source.

184. I am left with the impression of a witness whose evidence was untruthful in a number of respects. I remind myself again of the effect of *Lucas*, but so far as IAE is concerned I consider that her evidence to the Tribunal was so affected by dishonesty that I should be slow to accept any of her challenged evidence unless it is supported by other evidence.

185. NC submitted that the motivation for IAE to lie is that she and Junior must have conspired from the outset to defraud Tertip and TNUK. I consider that it is far more likely that the explanation is that IAE was not involved in any sort of conspiracy but now bitterly and deeply regrets having entered into the alleged transactions. I understood NC to agree that this was a more plausible explanation.

Naresh Chopra (NC)

186. NC is now the sole director of SRL. He is also a shareholder and director of TNUK.

187. NC explains in his statement that TNUK used to provide unregulated bridging loans and that they work with other similar lenders, including Tertip. He says that TNUK and Tertip are "reluctant careful private lenders, only lending if fully secured against commercial or buy to let properties and no lending to owner occupiers". He illustrates this reluctance and care by saying that out of around 50 loan enquiries received in 2017, "we only lent monies in 8 cases, including the loan to the Ebanks".

188. NC's statement does not otherwise contain as much detail about the relevant facts as AC's statement. NC effectively adopted that statement, which he had drafted, in his oral evidence, explaining that there was a mistake in his statement about the sequence of events and that what he had put in AC's statement was the correct sequence of events. The mistake was a relatively minor one, but NC was right to correct it and I accordingly proceed on the basis that he relies on what is set out in AC's statement. As AC was subsequently to entirely disavow that statement, it is appropriate to deal with it here, because NC maintained that it was true.

189. The statement begins by explaining that AC was a shareholder in TNUK, and that his father and mother were directors of that company. TNUK was said to be involved with

providing unregulated bridging loans and helping clients to rescue properties from repossession by lenders. TNUK works with other similar lenders, such as Tertip.

190. In that statement, it was said that in around July 2017, NC, AC, and Mr Sharma met in their offices at Newbury Park with Junior. He told them that he had a buy-to-let property owned by JHE and IAE. He said that his mother had a mobility problem and was waiting in the car outside. He explained to them that his mother and father had separated and that the property was to be transferred to him and IAE as part of a "divorce" settlement. He produced a TR1 transfer deed, which had been signed by JHE and IAE as transferors and by IAE and Junior as transferees.

191. The statement goes on to say that Junior told them that he and IAE required an urgent bridging loan of £90,000 to repay a mortgage and a charging order in favour of Cabot, so that the property could be transferred. The terms of the loan were discussed and AC said that they would only consider a loan as long as a they could enter into a contract to buy the house and when the loan was repaid the contract would be terminated. Junior agreed and said that he would instruct his solicitors to deal with the matter, including the payment of the two charge holders out of the loan funds and then transfer the property to him and IAE.

192. NC and AC then went to Junior's car, where they met IAE. The agreement was discussed with her and she agreed. She told them that the property belonged to her and to JHE and that he had signed it over to her and Junior.

193. The statement continues to explain that "We" (presumably meaning Tertip and AC and NC on behalf of TNUK) instructed Ewan & Co to act for Tertip in giving a loan for £70,000 and for TNUK to exchange contracts for the purchase of the property with a £20,000 deposit. On 29th August 2017, £90,000 was sent by Ewan & Co to Grayfield Solicitors. This is said in the statement to be to pay Barclays and Cabot and to transfer the property to Junior and IAE.

194. The statement then goes on to say that after redemption of the Barclays mortgage and payment of the Cabot charge, the property had been transferred to Junior and IAE. A charge in favour of Tertip was registered in February 2018. I interpose here to observe

that the delay in registration of the charge seems to have been because Barclays returned the first payment that was made in an attempt to clear the mortgage.

195. Returning to AC's statement as adopted by NC, it continues that in March 2018, Junior and IAE visited the offices again and asked for a further advance of £70,000 for home improvements and Junior's business. The statement says that "We" (this time, presumably AC and NC) agreed that TNUK would lend money and take a second charge, subject to an inspection of the property. Mr Sahni carried out that inspection. When he did so, only IAE was present. She told Mr Sahni that she did not live there and gave him another address. TNUK decided to advance the sum of £61,800 (according to the loan agreement, the drawdown sum was to be £56,000).

196. Next, it is said that in April 2018, Junior and IAE decided to refinance with Century Capital so as to pay off the existing loans. In the end, that did not go ahead, but an inspection was carried out for valuation purposes. The statement notes that the property was vacant. I will return to that later, but merely observe here that I do not read the valuation report as saying this.

197. The statement then moves on to August 2018. The Tertip loan was due to be repaid and the completion date in the contract for sale was approaching. A compromise agreement was reached for setting up a new company, SRL. This would allow Junior and AC, on behalf of TNUK, to own the own the property jointly. The property could then be refinanced taking into account their incomes and the rent. Junior and IAE agreed to this. SRL was accordingly formed with AC and Junior as directors. That company made an application to Together for a buy-to-let mortgage. Together had insisted that Junior and IAE should obtain independent legal advice, which TTS provided. The property was then transferred to SRL on 10th October 2018, with a mortgage from Together.

198. According to the statement, Junior decided to transfer his share of the property to AC in January 2019, so AC paid him for his share. Before resigning as a director, Junior insisted that his mother be allowed to move into the property and so an assured shorthold tenancy agreement was entered into.

199. Like Mr Bhajanehetti, NC's involvement in the case has generated great interest amongst the Applicants and he has been the focus of some of the most serious allegations.

200. The Applicants said that NC (and AC, although they focussed their attention on his father once they had heard AC's oral evidence) had had a close working relationship with Mr Charles Ewan of Ewan & Co. They point out that the Solicitors Regulation Authority had become involved and had fined Mr Ewan for his dealings with TNUK. They also point out that Ewan & Co had ceased trading after an SRA investigation had been opened.

201. The Applicants also relied on NC's background. That is because he was previously a solicitor and has had the misfortune to be struck off the roll not once, but twice.

202. The Applicants also pointed to a decision of Chief ICC Judge Briggs in *Chopra & Ors v Katrin Properties Ltd & Anor* [2022] EWHC 2728 (Ch). NC was not formally a party to that case, although his wife and AC were. NC did, however, prepare much of the evidence in that case (see [9]; he also confirmed this to the Tribunal). The principal significance of that case for the Applicants was that in those proceedings AC and TC had asserted that personal guarantees allegedly signed by them and witnessed by Mr Ewan had in fact been forged.

203. As scandalous and sensational as much of this was, I am unconvinced that it was of great significance in the assessment of NC's evidence. Although the Solicitors Disciplinary Tribunal had found that NC had acted dishonestly, I do not think that I can rely on that finding as having any probative value in this case. Even if I did, the circumstances are different and the effect of *Lucas* might mean that any value was extremely limited. In the *Katrin Properties* case, Judge Briggs was concerned with applications to set aside statutory demands and did not hear any live evidence, so the most serious allegations in that case were not the subject of any findings of fact.

204. In my judgment, the better approach in the present case is to consider and assess NC's evidence on its own merits and in the light of the other evidence available in this case.

205. I have already explained how NC came to step into the shoes of SRL's former counsel, Mr Mussa, and commended him on how he conducted that task. I am afraid to say that I found his performance as a witness to be rather less impressive.

206. That is because my assessment of NC is that he is thoroughly dishonest. He is a practiced and habitual liar.

207. I recognise that this is an extremely serious assessment and finding. Let me try to explain why I have reached this conclusion about NC. I will set out some key reasons below, but I will also explain elsewhere when I have found that NC's evidence was not truthful.

208. NC's witness statement said that he "first met [Junior] round July 2017". According to his oral evidence, however, he had first met Junior before this. When he was quite rightly asked about this by Mr Miah, his response was "Let's not split hairs". When the Tribunal sought clarification as to whether NC accepted that his witness statement was not correct, his response was to explain that the way that the statement was worded was "how we write witness statements". He then explained by "we" that he meant lawyers, or at least former lawyers. This was a most unimpressive explanation. The contents of witness statements should be accurate and, most importantly, true. NC's reaction was to shrug this off as unimportant.

209. Later on, when asked about the details in his statement concerning the TR1 form supposedly signed by JHE, NC again sought to explain away an inaccuracy on the basis that it was just the wording in his statement. This showed a worrying lack of concern for the need for accuracy and honesty in a witness statement.

210. NC frequently objected that Mr Miah was giving evidence when cross-examining him and also sought to avoid answering some questions or asking for them to be rephrased. It is only fair to note that some of the questions in cross-examination had a tendency to morph into long speeches, comprising multiple observations and questions. I formed the clear impression that NC was using this tendency to his advantage to avoid engaging with some difficult issues. He complained about questions that were clear enough, which was only an attempt to stave off those questions.

211. As unsatisfactory as all of that was, there was far worse in NC's evidence. His explanation to me during the hearing on 12th September for AC's non-attendance was not true. He made that worse by submitting a further signed statement that set out an entirely false explanation. He then confirmed the accuracy of that statement in his oral evidence, despite it having been glaringly obvious to him by that point that his fabricated line could not hold, before rather begrudgingly admitting that he had lied to the Tribunal during that hearing and that his second witness statement contained lies. He described this as unfortunate.

212. There was simply no credible explanation from NC as to why he opted to lie during his September oral evidence or in his signed statement that followed it. In my judgment, the answer is clear. He lied, because that is what he does.

213. I also find as a fact that NC's deception about AC's absence goes deeper than this, because I am satisfied on the balance of probabilities that NC signed AC's September witness statement.

214. It was quite clear that NC was ready to sign AC's statement, as he wrote an email suggesting just that. NC's explanation for this was that he had meant that he could do his own statement explaining what had happened. I reject that explanation as an outright lie that finds no support whatsoever in the email that NC himself sent.

215. The content of the signed statement was different to the draft statement that clearly had been sent to AC by email. AC was adamant that he had not signed it. It would make no sense for him to sign it, because at the same time he was contacting the Tribunal to complain that he was being asked to sign a statement that was not true. NC was unable to produce any evidence to show that he had sent the expanded draft witness statement to AC or that AC had returned a signed copy to him. He instead first said that this email "should" be in the email trails that had been produced. In my view, he chose that word quite deliberately, knowing that it was not in the chain of emails that had been put forward. He then came up with an entirely new explanation that some emails may have been sent to and from another email account that he no longer had access to. That would be a remarkably convenient explanation for the lack of any emails demonstrating that AC had returned a signed copy of the expanded statement. I reject as wholly false NC's

explanation. In my judgment, NC signed AC's statement and proceeded to lie about that too.

216. NC also added additional details about AC's illness to the witness statements. When he was asked where he got those details from, his response was "nowhere". He did not accept that this meant that he had made them up, arguing that they could have been true. I reject that explanation, which is totally nonsensical. Those additional details could not have been true, because there was no illness, as NC knew. This was another lie. Of course, even if AC had been ill, it is simply unacceptable to add details to evidence on the basis that they could be true. That sort of reckless disregard for accuracy and honesty is to be deprecated.

217. As with IAE, it is still important to remember the approach set out in *Lucas*. I readily recognise and remind myself that just because NC has lied about those matters it does not follow that he has lied about matters. He sought to draw a distinction between lying about matters raised in the hearing and being otherwise truthful about the substance of the dispute.

218. I have given this point extremely careful consideration and ultimately I have come to much the same conclusion in relation to NC as I did with IAE, *i.e.* that his evidence to the Tribunal was so tainted by dishonesty that I should be slow to accept any of it where it is challenged unless it is supported by other evidence.

219. That is because his evidence about matters that did go to the heart of the dispute was quite unsatisfactory and demonstrate a complete lack of concern for the truth, as I have described above.

220. It is also because his deception over AC's non-attendance was so calculated and protracted that I cannot have any confidence in anything NC says. His attempt to cover up his lies during the September hearing involved a dishonest witness statement from NC, an attempt to persuade his son to give dishonest evidence, and then when that attempt failed NC signed AC's statement and pretended that his son had signed it.

221. Indeed, that is such a serious level of dishonesty, going to the very heart of the integrity of the Tribunal proceedings, that I do not think that NC could really have any fair basis for complaint if the Tribunal took the view that the rest of his evidence should be treated with extreme caution solely on that basis. As it is, however, there are other solid reasons that demonstrate that NC is not to be trusted, as I have set out above and will also address in other parts of this decision. In my view, Mr Miah summarised NC very well when in his closing submissions he described him as having a narcissistic disposition to believe that he can get away with everything. That strikes me as an astute observation about NC's character. This will doubtless mean that NC will be incapable of recognising himself in this Tribunal's description of his evidence and integrity.

222. As I have indicated, I have reached my view about NC without relying on any previous findings made by the SDT.

Aman Chopra (AC)

223. AC had, seemingly, made two statements that SRL sought to rely on. The first, dated 15th December 2020, was SRL's witness statement to HM Land Registry by way of objection to the Applicants' application for rectification. The second was a statement, dated 19th September 2024, explaining why he did not attend the hearing in September.

224. AC had also purportedly signed SRL's Statement of Case, dated 6th January 2022, but this was a rather curious document in form and SRL did not seek to rely on it as evidence.

225. I have already described the circumstances in which AC's oral evidence was given. In his evidence he said that he had not signed either witness statement or, for that matter, the Statement of Case. He told me that he did not know who had signed the documents.

226. He said that he worked from home as a software developer, having previously worked as a business analyst at Barclays Capital between 2015 and 2019. He had not been in Cheltenham during the September hearings, nor had he ever been to the GCHQ offices. He had not been undertaking any work for a GCHQ client in September and he did not operate out of the offices at 902 Eastern Avenue. He said that he had not met IAE and

that he did not know any John Ebanks. He also said that the signature on Document 15 was not his.

227. When AC returned to give further oral evidence, he was cross-examined first by NC. He accepted that he was sometimes asked by NC to sign documents relating to loans and charges for various companies. He also agreed that he would sometimes sign such documents when asked without raising any questions about them.

228. NC suggested to him that this was what had happened with his witness statement in this case. AC responded with incredulity, saying that he could recognise his own signature, that NC knew it was not him, and that this was "just silly".

229. AC said that he did not remember signing these loans and that someone had been signing loans with his name. He said that although he had signed some loan documents for other companies and properties, he knew that he had not signed for this property because he made a note of those that he had signed. He made the astute observation that signing these sorts of documents at home had not been a good idea, but said that he had trusted NC as he was his father and a solicitor.

230. He agreed with NC that the company that he worked for had done some work for the Ministry of Defence, but said that he found it surprising that his father did not know where he worked.

231. NC put it to his son that his objective in all of this was to escape liability, but AC disagreed with that. He said that he was never a director of SRL. In his oral evidence, he also said that he believed that he may have some liability. NC also suggested that AC was trying to get revenge for other family issues, but AC denied this, saying that he was telling the truth.

232. When NC suggested that AC had signed the 15th December 2020 statement, AC responded that he had definitely not signed it and that NC knew that he (NC) had signed it (as I have recorded above, at the earlier hearing, AC had said that he did not know who had signed, but by this stage he was blaming NC). He also said that he had not signed the 19th September 2024 statement.

233. NC then asked some questions about a chain of emails between him and AC in September. He pointed out that he had asked AC to sign the September statements. AC responded by noting that in those emails, NC had told him what his signature should look like, so that it matched the signature on Document 15. He asked somewhat rhetorically why NC would need to tell him to sign his signature similar to another document. AC remained steadfast in his evidence that he had not signed the September statement, saying that it was "ludicrous".

234. Mr Miah then cross-examined AC. During the course of that cross-examination, he asked AC about the key passages in the December 2020 statement. AC said that none of them were correct.

235. Mr Lees then cross-examined AC on behalf of the Bank. He asked AC about his involvement with various companies and the process by which he would sign documents when asked by NC. That established that AC was unsure of the details of the companies and documents that he had dealt with.

236. It was put to AC that he could not say that he had never seen anything to do with the subject property as he did not know. He seemed to accept this point, saying that he would need to have a think about it to remember what he had signed for, although he was sure that he had not attended a solicitor's office to sign any documents for this property or SRL, as those visits had been memorable. That seemed to me to be a realistic and sensible concession on AC's part.

237. AC also agreed that he had not been particularly inquisitive about what his father was doing and that he would send him payslips and bank statements when NC requested them.

238. Mr Lees fairly put NC's case to AC, which is that AC was a director and did sign documents for NC, and that NC had prepared statements for him which AC had signed. It was suggested that the most that AC could say is that he did not remember. AC responded very clearly that it was not his signature on the statements.

239. It seems to me important in assessing AC's oral evidence to remember that, if he is correct, he had not actually given a written statement and was not immersed in the detail of this case in preparation for cross-examination (I made a similar point about Mr Sahni, above). This is something to bear in mind when considering areas where his evidence was unclear or possibly inconsistent.

240. My impression of AC was that he was a truthful witness, doing his best to assist the Tribunal. Wherever his evidence conflicts with NC's, I accept AC's evidence over that of his father. I recognise that the September emails between him and NC show that it was AC who had first suggested telling the Tribunal that he was ill. AC accepted this in cross-examination, explaining that he had told this father that to get him off his case. It seems to me that this was said out of frustration or annoyance. While AC's suggestion to his father is still to be deprecated, I do not think it undermines the honesty and integrity of his oral evidence to the Tribunal. Indeed, far worse is NC's conduct in taking that suggestion and running with it, knowing it to be wholly untrue.

241. I also bear in mind that when AC had initially said in oral evidence that he did not know who had signed as him on various documents, his later position was that it was NC who had signed pretending to be him. In my judgment, his earlier pretence at not knowing was a desperate attempt to protect his father, despite the difficult situation. I consider that by the second day of his oral evidence, he realised that there was no point in trying to protect him any more. I note that AC expressed some frustration when he gave oral evidence for the second time, saying to NC that he did not know why he had let things get to that point. Again, I do not think that his initial lack of candour on that point affects the rest of his evidence.

242. I reject any suggestion that AC was lying in an attempt to evade some sort of liability as a director of SRL, because he said in oral evidence that he believed that he did have some liability. It is not for me to consider whether he was right about that, but this shows that he would not be falsely claiming to have had no involvement in an attempt to avoid any financial liability.

243. I also reject any suggestion that AC was lying to further some vendetta against his father. His evidence on this was clear and unequivocal and I accept it. I observe here that NC's

conduct in raising these allegations against his son reflects extremely badly on his character, but then that is consistent with my assessment of NC as someone who lies routinely.

244. Accordingly, I am satisfied that AC did not sign the December 2020 or September 2024 statements. As I have explained earlier in relation to NC's evidence, I find as a fact that NC signed the September 2024 statement. I am also satisfied on the balance of probabilities that he signed the December 2020 statement.

Expert evidence

245. There is one other extremely important piece of witness evidence, which is a report from Ellen Radley. Ms Radley is a well-known forensic document examiner. She was instructed, as a joint expert, to undertake a forensic examination of 17 documents in order to provide an expert opinion as to whether the signatures on each of those documents are signatures of IAE, JHE, and/or Junior, and whether or not any signatures were simulated. The documents that she reported on are those that I have identified above as Documents 1 to 17 (for obvious reasons, Ms Radley was not asked to provide an opinion on Document 0).

246. Her report, dated 27th January 2023, is a detailed and comprehensive piece of work. It demonstrates the high level of skill and care which the Tribunal is used to seeing in Ms Radley's work.

247. Her conclusions can be identified, in summary terms, as follows.

248. First, that a large number of known signatures of JHE had been provided, which were generally considered suitable for the purposes of the examination.

249. Secondly, that none of the questioned documents had signatures in the normal and natural style of JHE.

250. Thirdly, that the known signatures presented for IAE were slightly limited in number and nature for the purposes of the examination.

251. Fourthly, that there was "very strong evidence" to support the proposition that IAE did not write signatures in her name on seven of the documents (Documents 1, 2, 3, 4, 5, 7, and 10, which includes all the relevant 2017 documents and the first tenancy agreement), but that these were simulations.

252. Fifthly, there was "strong evidence" to support the proposition that IAE did not write signatures in her name in capital lettering on three documents (Documents 8, 11 (which was signed in two places), and 12), but that they were either simulations based on a very vague recollection of IAE's general signature style or else someone had simply written her name.

253. Sixthly, there was "strong evidence" to support the proposition that IAE did not write signatures in her name on three other documents and that these were writings of her name by someone else. These were Documents 9, 14, and 16, which includes the form TR1 apparently transferring ownership to SRL.

254. Seventhly, the evidence was "inconclusive" as to whether IAE had signed two of the documents or whether they were simulations by someone else. These were Documents 6 and 17, which were the 2018 charge, said to be witnessed by Miss Rehman, and the second tenancy agreement, also said to have been witnessed by Miss Rehman.

255. Eighthly, that the known signatures of Junior that had been presented for examination were considered inadequate for a full and meaningful comparison.

256. Ninthly, the evidence as to whether Junior had signed any of the documents had to be regarded as "inconclusive". This really flows from the previous point.

257. Finally, for present purposes, that there were two pairs of documents with identical signatures, Documents 1 and 5, and Documents 14 and 16. This meant that the signatures had not been appended in separate signing processes. For each pair, either one had been copied from the other or both had been copied from an unidentified master document.

258. Ms Radley quite rightly and properly drew attention to the difficulties inherent in the exercise that she had been asked to undertake, particularly given the absence of the original documents for inspection.

259. The expert report provides a sound basis, when taken with the other evidence, for the Tribunal to be satisfied on the balance of probabilities that JHE did not sign any of the relevant documents. By the time of the trial, neither SRL nor the Bank suggested that he had.

260. It will be seen that, having had the benefit of oral evidence and detailed submissions, I have reached a different view to Ms Radley on IAE's involvement. That should not be taken as any criticism of Ms Radley's work. It is simply that the Tribunal has had the benefit of being able to assess the evidence of the witnesses who claim to have witnessed IAE's signatures, as well as IAE herself. The Tribunal has been able to analyse that evidence alongside Ms Radley's report, noting the various concerns that she herself identified.

261. Significantly, FE said in her evidence that her mother's Parkinson's disease caused problems with her hands. That was not information that was made available to Ms Radley and which provides an explanation for how some of the disputed signatures could have been made by IAE despite the observations and concerns noted by Ms Radley.

262. It was not suggested that there was any bar to the Tribunal departing from Ms Radley's report just because she had not been called to give oral evidence and cross-examined on her report. Having regard to the circumstances as I have explained them, I do not consider that the law, as explained in *Kennedy v Cordia Services (LLP)* [2016] UKSC 6; [2016] 1 WLR 597; and, *Griffiths*, means that the Tribunal cannot reach a different conclusion where compelled to by other evidence. I also do not think that I am actually departing from Ms Radley's report, bearing in mind her own express recognition of the limitations of the task that she was asked to undertake. It is simply that the greater evidence that was available to the Tribunal outweighs the very strong and strong handwriting evidence.

THE FACTS

263. In this section of the decision I will attempt to set out my findings of fact in roughly chronological order. Some of these findings are, as I have already said, influenced by the findings that I have set out in the previous section, but the following findings have also fed into the analysis in that section. In that way, I have sought to consider all of the evidence and to do so recursively by way of an iterative process.

264. In an attempt to make this section more manageable, I have sub-divided it into the relevant years, starting with 2017, although there is inevitably a degree of jumping around within the timeline. For the sake of the reader, I will try to keep that to a minimum and I hope I will be forgiven when the chronology is not strictly linear.

2017

265. I start with the relationship between JHE and IAE, and Document 0. JHE and IAE say there was no such transfer document, while NC says that he saw it. One difficulty for the Tribunal is that the evidence of all three of them has been untruthful in significant respects.

266. I am satisfied that there was a breakdown of sorts in the relationship between JHE and IAE in around 2017, and that this amounted to them being estranged. JHE's real quibble was with the word "estranged", but his evidence described a relationship which could quite fairly be described as that. In my judgment, the evidence of IAE and FE to the contrary was untruthful.

267. I am not, however, satisfied that this led to JHE signing a transfer of his interest in the property. There is no contemporaneous evidence to support this. While JHE accepted under cross-examination by Mr Lees that it was possible that he may have signed something without reading it, I do not accept that this made it probable than not that he did so. His recognition of the possibility was a sensible concession, but it goes no further than acknowledging that it was just that – a possibility. Furthermore, when Mr Mussa raised this point again in his cross-examination of the witness, JHE was clear that he had not signed a transfer. Mr Miah returned to this point in re-examination and showed

JHE an example of a TR1. JHE was again clear that he had not signed anything like that and there had not been any discussion about signing something of this nature.

268. There was no evidence to suggest that he was wrong about this and that JHE and IAE had discussed any alteration to their ownership status. I also note that the property was valued in 2018 at around £500,000 (or £450,000 for a quick sale). The position in 2017 was that there was around £22-23,000 secured against the property with the mortgage and Cabot charge. There was therefore substantial equity in the property. It would be surprising, to say the least, if JHE had simply given up his half-share of that equity, but there was no suggestion that he received anything else as part of some sort of informal "divorce" settlement to compensate him for the loss of what even on a conservative estimate would have been well over £200,000 worth of equity in the property. The idea that he would walk away from that for a clean break is little short of preposterous.

269. The only clues that suggest that there may have been a transfer signed by JHE come later in the chronology and I shall deal with them, but I can say now that I do not accept NC's evidence that he saw such a document. I find as a fact that Document 0 (as I have labelled it) did not exist.

270. The next factual issue to consider is whether a meeting took place in around July 2017 between NC, AC, Mr Sharma, Junior, and IAE. There is a very significant dispute about this, because the Applicants' case is that this was all a fraud from the outset, and that starts with the alleged meeting in July 2017, which IAE says simply did not take place.

271. Again, as between NC and IAE, I am faced with the evidence of two witnesses who I have found to be dishonest. I have reached the conclusion that NC's evidence is closer to the truth, although I still consider that some of his evidence about this event was not truthful.

272. I am, however, satisfied on the balance of probabilities that NC did meet with Junior and IAE.

273. While IAE's account was seemingly supported by FE's evidence, as she said that her mother would not have gone to such a meeting, FE was forced to accept that she was

not in the house all of the time during the day and would not necessarily know what her mother had been up to. Her evidence is therefore of little assistance.

274. In assessing the likelihood of such a meeting having taken place, I consider that IAE's financial situation is relevant. The mortgage was in arrears. Her current account was frequently overdrawn and incurring penalty fees. She was in need of money. This goes some considerable way to explaining why she may have been willing to entertain what otherwise might have been thought to be a rather improbable arrangement. The Tribunal does not need to find that there was a motive for IAE to enter into a loan agreement, but in my judgment the fact that there was some reason why she might do so helps in establishing the inherent probabilities behind the competing accounts.

275. The great tragedy of this case is that there was no need to enter into such risky transactions on such unfavourable terms. IAE's financial position was not good, but the property should not have been at great risk of being lost. The amount owing on the mortgage was under £20,000 and one would have expected that the mortgagee would have been open to considering a revised payment plan if that had been necessary. Although JHE had not provided full disclosure of his bank statements, it appears that he had a reasonably good level of funds that would have helped to alleviate any problems with the mortgage. The overdue amount as at 10th July 2017 was only £530.02. It ought to have been fairly simple to get the mortgage payments back on track. IAE faced two difficulties. First, that it would have been very hard to ask her husband for help as she had been lying to him about the mortgage payments. Secondly, that the reason she had been lying to him had not gone away and she was persistently gambling away far more than she could afford. There was a better way out, but it required a clear head to find it and it needed a level of self-awareness and honesty about IAE's situation that she lacked. The situation is all the more wretched because there was evidence that at least part of the cause was a side effect of IAE's medication.

276. Mr Miah submitted that the relatively low level of debt meant that this could not be any motivation for IAE to enter into these transactions. That is a powerful submission, but I am not persuaded that it is correct. There were better options available to IAE, but I consider that it was likely that she was not thinking clearly and was probably led towards

these unfavourable transactions by Junior, who seems to have benefitted greatly from them.

277. All in all, it was not a sensible or prudent financial decision to take, but that does not make it so improbable that I should discount it entirely. Desperate people often make bad choices. In my judgment, that is what happened here. I have not heard from Junior and IAE opted to present an untruthful account in her evidence. I therefore do not know what Junior said to IAE, but it is certainly possible that Junior may have sought to pressure his mother into going along with an agreement that was more beneficial to him than it was to her.

278. In the end, it seems to me that the best supporting evidence to show that there was a meeting in July 2017 comes from the documents that follow it, such as the solicitor to solicitor correspondence and the other conveyancing documents. Working backwards from those, some sort of meeting involving NC, Junior, and IAE is the most likely cause of those documents having been created. The reality is that if there was no meeting and agreement then there would need to have been an elaborate and far-reaching conspiracy involving lawyers at several different firms. Mr Miah did not shy away from putting the case in that way, and he argued it on behalf of the Applicants forcefully and tenaciously. In my judgment, this version of events is simply too implausible to accept. That creeping web of conspiracy is a necessary consequence of IAE's bare denials of having had any involvement, which means that the Applicants have needed to assert that Mr Onwubiko, Mr Bhajanehetti, and Miss Rehman were all lying and that Mr Sahni's evidence was also wrong. I reject those allegations in the very wide-ranging way that they have been framed. Although I have expressed some reservations about some aspects of the non-party evidence, I accept the key parts of Mr Onwubiko's evidence. In particular, I find that IAE did attend the offices of Grayfield Solicitors and did instruct that firm to act for her. The only reason for doing that in this case would be if there had been agreement reached between Tertip, TNUK, IAE, and Junior. I therefore find that a meeting did take place in July 2017.

279. I accept AC's oral evidence that he had not met IAE and so was not involved. His evidence was that he did not operate out of the 902 Eastern Avenue address. I accept that and so there would be no need to be working from there as AC had claimed. There

is a world of difference between someone signing documents that are put in front of them without really thinking about it, so that they do not recall doing so, and meeting someone, particularly in the rather unusual circumstances described by NC. I therefore conclude that AC would remember if he had met IAE. It follows that either he or NC must be lying about it. In my judgment, NC is lying about AC being present. I consider that he has lied about this to bolster his story that he met with IAE and Junior, but that despite that, he is telling the truth about having met with those two.

280. Without having heard from Mr Sharma, I do not think that I can safely reach a finding as to whether he was also present, but I do not think that it is an issue that requires a finding in this case.

281. The remaining key issue that needs to be resolved about this meeting is whether NC was shown a signed TR1 transfer form signed by JHE (Document 0). IAE's evidence to me is of little use, because I am satisfied that a meeting did take place, contrary to her evidence. Despite that, I reject NC's evidence of having seen a TR1 signed by JHE. As a former solicitor and a company director dealing with property investments, the importance of such a document would have been obvious to NC. It is, in my judgment, wholly implausible to the point of fantasy to suggest that he would not have taken a copy of this incredibly important document in some form. There does not seem to be any plausible reason why he would not do so. It was not suggested that his office did not have suitable facilities for taking a copy of Document 0. NC's oral evidence was that Junior had given it to him, so there was every opportunity to take a copy before handing it back.

282. Indeed, this was another point where NC's oral evidence was entirely unsatisfactory. SRL's Statement of Case, which he drafted, said at para.3.6.1 that Junior had provided a copy of the unregistered transfer to him, AC, and Mr Sharma. That certainly gives the impression that a copy was handed over to them to do with as they pleased. NC said in cross-examination that Junior had given them a copy of the document but he gave it back. He tried to excuse the Statement of Case by saying that the problem was the way it was worded. As it turns out, NC is not entirely responsible for the wording, because he was reminded later on by Mr Lees that para.3.6.1 was lifted from the Bank's Statement of Case. Indeed, large parts of SRL's Statement of Case were direct copies

from the Bank's pleading. I am not critical of that as SRL did not have legal representation at the time. I am, however, extremely critical of NC's evidence about this because when originally faced with para.3.6.1 he chose to make up some justification for what was said in the Statement of Case. This seems to be NC's standard reaction to any difficult question.

283. NC's evidence is that Mr Sharma was present during the meeting when Junior produced the signed TR1. As I have said, I have not heard evidence from Mr Sharma and so make no findings about his involvement. It is, however, of some (albeit limited) significance that SRL have failed to produce Mr Sharma as a witness. If NC is telling the truth, Mr Sharma would be able to corroborate that account. His absence provides some support for the conclusion that NC is not telling the truth about this. It is perhaps a minor factor, but it does nonetheless provide additional support for that finding.

284. Jumping ahead slightly in the chronology, the best clue to suggest that NC had seen Document 0 is a letter from SRL's conveyancing solicitors, Ewan & Co, to Grayfield Solicitors, dated 28th August 2017. This letter demonstrates a distinct lack of care on the part of Ewan & Co, because it incorrectly identifies their clients as being IAE and John Henry Ebanks (it is not clear whether that is meant to be a reference to JHE or Junior) and suggests, wrongly, that Grayfield were acting for TNUK and Tertip. I observe that a similar lack of care was shown in their initial letter of 25th August 2017, which does correctly identify that Ewan & Co are acting for those companies, but refers to two completely different individuals and a property in Billericay. None of this inspires great confidence about the accuracy or efficiency of Ewan & Co's work in this transaction.

285. Returning to the 28th August letter, it is significant because it includes the following.

> "If the documents are executed by J H Ebanks Junior and Mrs I A Ebanks, than the TR1, which we understand you are holding, from J H Ebanks Senior must be registered with the DS1 from Barclays Bank Plc and Cabot Financial Services Limited."

286. The reference to a "TR1 … from J H Ebanks Senior" fits what I have termed Document 0. Mr Onwubiko had speculated in his oral evidence that there could have been a transfer

to Junior and that his firm might have looked into that in August 2017. He thought that this would be shown on the file if it had been done. When the file was produced though, the 28th August letter was not in it. That suggests that it was never received by Grayfield as the only other letters that were produced in the trial bundle that were said to have been sent to them by Ewan & Co had both been safely filed away (those letters were the 25th August letter that I have already referred to and a short later letter of 5th September 2017).

287. Nor was there was any record of any enquiry made about this point by Mr Onwubiko or anyone else working on the file. Furthermore, there was no trace of any reply in either the material provided by SRL from Ewan & Co or the Grayfield conveyancing file. Although there was in the bundle a letter from Grayfield dated 29th August 2017, it did not deal with the points raised in the 28th August letter and can only be read and understood as a response to the earlier letter of 25th August.

288. The copy of the 28th August letter in the bundle is not signed. While that in itself would not be surprising for a solicitor's file copy of an outgoing letter, it is rather intriguing to note that the copy of the 25th August letter in the bundle <u>was</u> signed. That said, the copy of the 5th September letter in the trial bundle is also unsigned and it is apparent that a signed copy was sent and received as a copy was in the Grayfield conveyancing file, stamped as received on 12th September.

289. As Mr Lees pointed out, it was not suggested that the letter of enquiry was not genuine and I am therefore not prepared to find that it did not exist and had not been sent. In my judgment, the most likely explanation in these circumstances is that it was either never received or was simply overlooked. Had it been addressed, there would have been a record of that.

290. What is particularly troubling is that there is nothing to suggest that Ewan & Co either received the answer that they wanted or that they raised this issue again. NC accepted that they did not receive any answer to this point. No confirmation that the property had been transferred to IAE and Junior was ever provided. There was no evidence that NC, TNUK, or later SRL, ever sought to check whether a transfer had been completed and registered.

291. Accordingly, if NC's evidence is correct then TNUK took an enormous risk, as did SRL later on. It would seem that Tertip also took a similar risk, but the reality is that the risk to that company may have been rather lower, because NC's oral evidence was that TNUK had underwritten the Tertip loan. He also referred to this several times in his oral evidence as "our" loan. It seems that Tertip was effectively a front for a loan from TNUK and so any element of risk was in reality borne by TNUK at that stage.

292. In my judgment, it is inherently implausible that NC, as the controlling mind behind TNUK and SRL, would have taken that risk if he really thought that Document 0 existed. It would be an entirely unnecessary risk because it would have been an extremely simple matter to raise the query again or conduct a straightforward check. His evidence was they were careful lenders, but it is impossible to reconcile that suggestion with proceeding without receiving the necessary assurance about the transfer.

293. The counterpoint to that might be the suggestion that it would be implausibly risky for NC to proceed at all if there was no Document 0. Even Mr Miah for the Applicants made a similar point in his closing submissions, suggesting that the whole process had to be a complete fraud because it was not plausible that NC would have taken the risk on there not being a transfer from JHE and IAE to Junior and IAE.

294. While I recognise that this would involve some element of risk, having carefully considered all of the available evidence I have come to the conclusion that it is more likely than not that this is precisely the risk that NC was prepared to take. He knew that the property ought to have been transferred to IAE and Junior. The 28th August letter would have been written on his instructions, ensuring that there was some documentary trail that he could rely on later if it became necessary (as it has done).

295. Having taken that a little out of chronological sequence, I go back to the July 2017 meeting. As I have said, I am satisfied for those reasons that there was no Document 0. It did not ever exist. The idea of it is an invention of NC's. Tracing the genesis of that idea is difficult because, again, I have not been told the full truth by NC or IAE. The

most likely explanation is that NC recognised that there should be a transfer and suggested to Junior that one should be arranged.

296. Moving on from that, as I have already indicated, I find as a fact that Junior and IAE did instruct Grayfield Solicitors to act for them in the agreed loan and purchase agreement. Having heard Mr Onwubiko give evidence and be cross-examined in detail, I am quite satisfied that he would not have been a participant in the elaborate conspiracy claimed by the Applicants. I recognise that I have not heard from the person who did most of the work on the file, but Mr Onwubiko witnessed IAE signing some of the crucial documents.

297. It was noticeable that, when it was finally disclosed, the conveyancing file included various authorisations apparently signed by IAE, much as one would expect. For obvious reasons, those signatures had not been the subject of expert evidence, but I find as a fact that those documents had all been signed by IAE. It is possible that she may not have fully appreciated what she was signing, but I am satisfied that she did sign them. All of this points inexorably to IAE having been taken by Junior to the Grayfield offices and instructing that firm to act for them.

298. I also find as a fact that IAE did sign Documents 2 and 3, which Mr Onwubiko was said to have witnessed. I accept his account for the reasons that I have already given, and I reject as false IAE's denials which are so undermined by her claims that she did not sign her witness statements. While I acknowledge the force of the expert handwriting report, which said that there was "very strong evidence" that IAE had not signed these documents and they were simulations, I have had the benefit of hearing the oral evidence of IAE and Mr Onwubiko, and I also have the additional information about the effect of Parkinson's disease on IAE's hands.

299. As I will explain later in this decision, I will assume, to IAE's benefit, that some documents apparently signed by her were in fact signed by someone else (see the discussion of Documents 7 to 12, below). I have therefore considered Documents 2 and 3 in light of that, which could be argued to make it more likely that this other person also signed Document 2 and/or 3. Having considered this carefully, I reject that

possibility because I found Mr Onwubiko's evidence of his dealings with IAE to be persuasive and to have the ring of truth about it.

300. I am also satisfied on the balance of probabilities that IAE did sign Documents 1 and 4. Although these were not witnessed, they were part of a "suite" of documents relating to the loan agreement and contract to purchase. It makes sense for them to have all been signed. IAE's denials are so unreliable that I feel confident in rejecting them even for these documents that were not said on their face to have been witnessed by Mr Onwubiko. Again, I take into account the expert report, which places these two documents in the same category as Documents 2 and 3, but I find that this is outweighed by the inherent probability of the four documents having been signed as a package (which would not necessarily need them to all be signed at the same time, but as part of the same overall process) and by the evidence about IAE's hands. I observe that the signature on Document 4 looks very much as if it could be the work of someone struggling with their hand and dexterity. These factors all outweigh the possibility of them being signed by whichever person may have signed other documents purporting to be IAE.

301. Although not a key issue in this case, I am satisfied on the balance of probabilities that no inspection was made by or on behalf of Tertip before the loan was entered into. I also find that there was no inspection by or on behalf of TNUK before agreeing the contract to purchase. The only suggestion that there might have been an inspection was in NC's witness statement at paragraph 5, but he explained in his oral evidence that this had been a mistake. I accept that part of his evidence. It ties in with Mr Sahni's oral evidence, as he said that his first visit was not until early 2018.

302. I am satisfied on the balance of probabilities that IAE and FE were living in the property at the time that these agreements were entered into. There is no evidence that either of them were living anywhere else at the time. Although NC had said in his witness statement that they would not have proceeded with the loan if there was any indication that the property was owner-occupied, that is plainly untrue as no steps whatsoever were taken to check the occupancy. Furthermore, I note that the Grayfield instruction letter of 29th August 2017 warned that there was a danger of "losing your home", showing that Mr Onwubiko understood the property to be IAE's home. In addition, for reasons

that I will come on to, I consider that IAE has been consistently living at the property throughout the relevant period.

303. There is clear evidence demonstrating a payment of £90,000 from Ewan & Co to Grayfield Solicitors. This can also be seen in the Grayfield conveyancing file. I find as a fact that this payment was made. It was not separated into the payments from Tertip and TNUK but sent as one lump payment.

304. It is also clear that the Barclays mortgage was redeemed, albeit that the conveyancing file provided by Grayfield Solicitors shows that this was subject to some delay because Barclays Bank returned the first attempt at making payment. Within that file is a letter from Barclays Bank, dated 17th January 2018, confirming that their charge was removed. The redemption payment was £19,556.63. Mr Miah quite rightly and fairly accepted in closing submissions that the Barclays charge had been redeemed. The Grayfield conveyancing file also demonstrates a payment of £2,059.91 being made to settle the debt owed to Cabot.

305. The bulk of the payment went directly to Junior, which was consistent with an authorisation apparently signed by IAE in the Grayfield conveyancing file. IAE did receive £1,500 on 30th August 2017 from a "J EBANKS" with the reference "COSITSMYMUM". On the balance of probabilities, this was a payment from Junior. What happened next provides a clear demonstration of the scale of IAE's gambling problem. Her account had been slightly overdrawn prior to the payment from Junior, so that payment left her with a balance of £1,403.19. Over the course of the next day £480 in cash was withdrawn. During the course of that day, £540 was paid to Mecca, a well-known gambling organisation, through numerous transactions. The following day, £140 was paid to Mecca. There were no transactions recorded on the next two days, 2nd and 3rd September, but on 4th September there were seven payments to Mecca. These came to a total that day of £200, and the last payment made the account overdrawn. With just the odd other transaction, the entire £1,500 went in just three days of activity, mainly on gambling.

306. The next issue in time relates to Document 5, the Form RX1 for Tertip's restriction, which is dated 11th October 2017. I do not think that it is possible for me to resolve this

without hearing from someone at Ewan & Co who was involved at that time. Mr Bhajanehatti's oral evidence was that he started working there in September 2018, so it cannot be him. It is possible that he is mistaken about quite when he started there, but there was no evidence linking him with that firm in 2017. On the basis of Ms Radley's report and her opinion that the signatures of IAE and Junior on Document 5 had been derived from Document 1 or some other document, I find that IAE did not sign a further RX1 form in October 2017. As I have determined that she did sign Document 1, it must follow that the signature on Document 5 has been taken from Document 1, rather than any other source. One possibility is that someone at Ewan & Co worked from a scanned copy of Document 1 and edited the text in boxes 9 and 10 on the form before signing it themselves on behalf of the firm. As I have said though, I do not think I can make any further findings on this document in these proceedings. It does not seem to me to be necessary to do so, as IAE had signed the other relevant documents relating to these transactions.

2018

307. The next relevant point in time is around March 2018. SRL's case is that Junior and IAE again visited the offices at 902 Eastern Avenue and asked to borrow more money. This led to a subsequent loan from TNUK to Junior and IAE. This supposed meeting was the subject of much less attention from the parties during the hearing when compared with the July 2017 meeting. IAE had said in her written evidence that she denied attending the offices at 902 Eastern Avenue. I have found that her denial cannot be accepted in relation to July 2017. I do not believe though that it was suggested to her that she was lying about this in relation to early 2018. Nor does it seem to have been suggested to NC that he was lying about this meeting. I am satisfied that there must have been some contact between at least Junior and NC asking for more money, because there was subsequently loan documentation and an inspection by Mr Sahni. For the purposes of this judgment, I do not consider that I need to go further than this. It is not a key issue so far as the referred matters are concerned. I do not make any positive finding that NC has lied about this meeting, but I shall assume to the benefit of IAE that it is at least possible that Junior may have been making some arrangements behind her back.

308. I accept Mr Sahni's evidence that he carried out an inspection at NC's request. As I recorded above, it was not suggested to him that he was lying about this. As he did carry out an inspection, that supports NC's evidence that there had been a request for an additional loan.

309. I do not accept that the property was vacant when Mr Sahni inspected. In my judgment, the inspection was more of a superficial cover for TNUK than a genuine inspection. This is not a criticism of Mr Sahni, but of the task that he was required to carry out. The Tribunal was not shown any contemporaneous notes of the inspection, any report that was provided to TNUK, or any file notes made by TNUK to show that they had conducted proper enquiries before entering into the loan. I appreciate that TNUK are not a party to these proceedings, but as it is effectively another one of NC's companies, it is hard to see why that information could not have been obtained and produced to the Tribunal if it existed.

310. I consider it most unlikely that IAE and FE would have gone to live anywhere else, particularly given IAE's medical issues. On the balance of probabilities, I find that they lived at the subject property throughout the relevant period. There was no evidence whatsoever putting FE at any other property. The evidence that IAE may have lived elsewhere was extremely limited.

311. In AC's disavowed statement of December 2020, it was said that IAE had told Mr Sahni that she did not live at the property and that her address was "9 Genoa House, Ernest Street, London E1". There is no record from around the time of the inspection of her having said that. It is a somewhat unusual form of address for a person to give in conversation. When Mr Sahni came to give his evidence, he did not recall an address with this level of detail, although he said that IAE had told him something about coming from the "E1 area". He repeated this during his oral evidence. There was no explanation as to how the fuller address given in the December 2020 statement had been communicated to NC or TNUK more generally.

312. By the time of that statement though, SRL was in possession of a council tax bill from the London Borough of Tower Hamlets in IAE's name, dated 4th March 2018 and giving an address at 9 Genoa House, Ernest Street, London E1 4RD. That had apparently been

used to prove IAE's name and address to another potential lender. In my judgment, it is more likely than not that this is where NC got the address details from for the December 2020 statement. I do not accept that those details came from Mr Sahni. I do not think that Mr Sahni was lying to the Tribunal, but at this distance in time I do not consider that his recollection is likely to be reliable on this point of detail.

313. There is still the council tax bill itself. This presents a bit of a problem for IAE. She denied any knowledge of it, but her bare denials are of little persuasive value. Ultimately though, without any other reliable evidence tying her to that address, I am not persuaded that this shows that she had a connection with it. Although a relatively unusual name, there may be more than one Irene Ebanks in London, or this could have been manipulated by Junior or someone else in order to suggest that his mother was not living at the subject property. Her bank accounts for this period do not show any payment to Tower Hamlets LBC for this council tax bill. In fairness, they also do not show any payment to Waltham Forest LBC (the relevant authority for the Salcombe Road property) for council tax for the subject property either but (a) a standing order does appear later for "WALTHEM FOREST", which may relate to a debt owed to that authority, and (b) most significantly from the bank statements, they show regular cash withdrawals from a Link cashpoint at "333 LEA BRI". On the balance of probabilities, that will be a reference to 333 Lea Bridge Road, which is a substantial distance from Genoa House, but right around the corner from the subject property. It would make no sense for IAE to travel there to withdraw cash if she was living at Genoa House.

314. There was also a later bank statement for IAE giving a different address. That turned out to be Junior's address. IAE's evidence that she could not have lived with him seemed to me to be plausible, despite the problems with other parts of her evidence. Furthermore, if she was living with Junior then this would have required FE to either also be living with him, or living somewhere else. It was not suggested that she could have been living with Junior. In light of IAE's health problems and the need for support from FE, it is most unlikely that mother and daughter would be living in separate properties. That address was in Ware, Hertfordshire and it is completely implausible that IAE could have lived there and continued under the care of doctors in East London. By far the most likely explanation is that Junior somehow manipulated things to get his address on his mother's bank account.

315. Again, there are still frequent cash withdrawals from 333 Lea Bridge Road at around the time that IAE was supposed to be living in Hertfordshire. If it does not make sense that she would travel there from Genoa House, it makes even less sense for her to have travelled to Lea Bridge Road from Ware to withdraw cash. In my judgment, the more probable explanation is that she walked to that cash point because it was just around the corner from her home.

316. I also consider it very unlikely that someone in IAE's condition would be able to manage to move from the property to the Genoa House address, then from there to Junior's house in Ware, before moving back again to the property in a little more than a year and a half.

317. It is noticeable that the address for both Junior and IAE on the subsequent TNUK loan agreement is the subject property. One would ordinarily have expected this to have been changed to their current addresses if new address details had been given. That is not in itself determinative as the Tribunal is aware that borrowers will often use the address of the security property event if they are not resident there and it was not suggested that Junior was living there anyway. It does provide some limited additional support for my finding.

318. It is also perhaps helpful at this point to consider another inspection of the property which is said to have shown that it was unoccupied. There is a valuation report from De Villiers Chartered Surveyors. The report is dated 20th April 2018 and is said to be based on an inspection carried out on 16th April 2018 by Sally Higgs. The report includes several photographs of the property, including its interior, which are date stamped "16/04/2018" and time-stamped with times between 13:33 and 13:41. I am quite satisfied that the valuer must have had access to the property.

319. As I recorded above, AC's statement, which NC relied on, noted that the valuation report recorded that the property was vacant. I do not agree that the report says this, which I consider is most likely simply a misreading of the report. The executive summary records that no tenancies were evident, but the basis for that conclusion is not explained. The report records that two of the three bedrooms were locked and the valuer

could not access them. The report also says that the freehold interest has been valued on the basis of vacant possession, but that is a standard valuation approach. It says nothing about whether the property was vacant at that time.

320. Within the photographs, it can be seen that the reception room and the bedroom which the valuer could access are cluttered. Bottles of shower and bathroom gels can be seen in the bathroom, along with toilet paper on a holder. There is a bottle of washing up liquid on the counter in the kitchen. Some items of cutlery can be seen in a drying rack. There is a black bag within the kitchen bin and a basket of dog toys in the corner.

321. Taken all together, the photographs give the clear impression of a property that is being lived in. If no-one was living in that property then it is the Mary Celeste of houses.

322. Interestingly, a dog could be seen in the garden in one of the photographs appended to the inspection report. The dog matches a description given by FE of the family dog.

323. As Mr Lees observed, this is all somewhat double-edged for IAE, because if she was still living at the property then it is likely that she was involved with arrangements for the valuer's inspection. That is possible, but it could also be possible that Junior had made some arrangement to get her out of the house and provide access to the valuer. I do not think that ultimately this is a point that I need to decide. Nor can I realistically reach much of a view in Junior's absence. Either way, the report suggests to me that the property was being occupied. On the balance of probabilities, the occupants were IAE and FE (and their dog).

324. Going back to the disputed documents, there are a cluster of them from around this time, during the first half of 2018. These are Documents 7 to 11. These documents were all either not witnessed or only witnessed by Mr Ewan, who did not attend to give evidence. Some of these documents are rather suspicious on their face, particularly Documents 7 and 10. For each of these documents, I do not attach much weight to IAE's denials, as I have found that she has been untruthful about signing other documents. I also exercise some caution with the expert evidence, as I have reached different conclusions for some other documents.

325. Document 7 is rather curious, because it is dated 12th January 2018 and seems to relate to a restriction in favour of TNUK, based on a charge dated at some point in 2017. This was not explained by SRL and does not fit in with the timeline advanced by NC. As it was not witnessed by anyone, and bearing in mind the expert evidence, I am not satisfied that IAE did sign this document.

326. The next document, Document 8, is a charge in favour of another lender. This loan did not complete. This document is apparently witnessed by Mr Ewan. As I have not heard from him and bearing in mind the handwritten evidence, I am again not satisfied that IAE signed this document. I accept that Junior may have been exploring the possibility of obtaining further funding, but I consider it likely that he was keeping IAE in the dark. Without hearing from Mr Ewan, I am unwilling and unable to make any finding about who may have signed this document. I note that NC's position in other proceedings involving different documents is that Mr Ewan has witnessed forged signatures. I am not prepared to make any finding along those lines against Mr Ewan without hearing from him.

327. Next, Document 9, is the loan contract with TNUK. This was also not witnessed, despite there being space on the template for a witness to sign. In the absence of a witness to this document, and bearing in mind the expert evidence, I am not satisfied that IAE signed the loan agreement.

328. Document 10, the tenancy agreement with K McDermott is one of the oddest documents. It is dated 7th April 2018 and apparently signed by IAE and Junior on that date, to grant a tenancy of one year to Miss McDermott with effect from that date. Miss McDermott's signature is said to have been made on 24th October 2015. That is plainly incorrect. The agreement itself appears to have been prepared by someone who knows very little about the applicable housing law at that time (although it is, in my experience, sadly far from unique in that respect). There was no evidence before me that a Miss McDermott had ever lived at the property. Other than this document, there was no evidence of a genuine grant of a tenancy to her.

329. Of course, if the De Villiers valuation report is correct that no tenancies were evident, that further calls into question this supposed tenancy agreement with Miss McDermott, which apparently began just eight days before the De Villiers inspection.

330. In my judgment, this is not a genuine tenancy agreement. On the balance of probabilities, it has been put together purely to provide the thinnest veneer of credibility to a buy-to-let mortgage application. I am not persuaded by the bank statement disclosed by SRL apparently showing Junior receiving rent. That could have related to another property or simply been a reference label attached to any transfer of money to give the appearance of rent. Nor I am persuaded by the insurance policy with Royal & Sun Alliance Insurance plc. That could easily have been obtained at relatively low cost (or even no cost if promptly cancelled) to support a fictitious buy-to-let claim and it is rather suspicious that the policy did not begin until 16th May, which was over a month after the tenancy agreement supposedly began.

331. I should add that none of this implies any criticism of Mr Bhajanehatti in relation to this document. Although his signature appears on the tenancy agreement, that is only in the context of subsequently certifying a copy. There is no reason to think that he did not do that accurately.

332. Given all of those concerns about this tenancy agreement, and having regard to the expert evidence, I am not satisfied that IAE signed Document 10.

333. Finally in this group is Document 11. This is a loan offer document, which is probably related to Document 8. It is purportedly signed by IAE in two places, one of which is apparently witnessed by Mr Ewan. For much the same reasons as in relation to Document 8, I am not satisfied that IAE signed it.

334. For each of these documents, I have considered whether I can reach a positive finding that someone else has signed pretending to be IAE. The significance of this is that if at least one document has been signed by someone else, that provides substantial support for her claim that all of the documents have been signed by someone pretending to be her. At the very least, it would provide support for an argument that some of the other documents must have been signed by someone else. I still have serious reservations

about IAE's evidence, but I am prepared to assume that someone else did sign at least some of Documents 7 to 11. I have doubts whether that is right, but I have decided to give IAE the benefit of the doubt in relation to these documents, so as to consider the other documents in the light that is most favourable to her.

335. The next document in time seems to be Document 12, an apparent loan agreement between Tertip, Junior, and IAE. This is dated 18th July 2018 and is seemingly witnessed by Mr Bhajanehatti. I have considerable reservations about this document. Mr Bhajanehatti's oral evidence was that he did not start working at Ewan & Co until September 2018 and there does not seem to be any explanation for how he would have been involved two months earlier. I have wondered whether his oral evidence may have been confused or mistaken, because Junior's bank statement was certified by Mr Bhajanehatti on 10th May 2018, with a Ewan & Co stamp. This was a document that had been disclosed by SRL but that which, for whatever reason, had not been included in the trial bundle and so was not the subject of discussion at the hearing.

336. His oral evidence was also that the only document that he witnessed was the later transfer document (Document 14). Neither SRL nor the Bank placed great reliance on Document 12, as that loan did not proceed. The Applicants also did not rely heavily on the potential problems with this document. It does give rise to some concerns though, because if one document has been forged or otherwise "doctored" it does make it more likely that this may be the case for other documents, as I discussed in relation to Documents 7 to 11.

337. This has troubled me, because there was not sufficient evidence before the Tribunal to make any finding as to who would have signed this if it was not IAE or how the document may have been edited, but in the absence of any confirmation from the attesting witness, I cannot be satisfied that IAE did sign Document 12. Ultimately, I have concluded that this is as far as I can go and as far as I need to go for the purposes of this decision. I am not satisfied that I can make a finding on the available evidence that IAE signed Document 12. I am also not satisfied that I can make a finding on this evidence that someone else signed Document 12. The Tribunal does not need to make a finding on the authenticity of this document to resolve the referred matters, because it is not the basis of either application to HM Land Registry. Insofar as it is relied on as

supporting evidence for any party's case, I consider that I can properly deal with it by reviewing other disputed documents against the backdrop of there appearing to be documents that purport to bear IAE's signature but may not have actually been signed by her. This is much the same approach as I have taken to Documents 7 to 11.

338. I come then to August 2018. SRL's case, as explained by NC, is that the Tertip and TNUK loans were nearly due to be repaid. That does not seem to be correct for the alleged TNUK loan, as on the face of it that was a loan for one month only, repayable by 22nd April 2018. I have already expressed reservations about the loan agreement, Document 9. The loan with Tertip was, however, repayable by 27th August 2018 and the purchase agreement with TNUK provided for a completion date of 29th August 2018. Even leaving the alleged loan from TNUK out of account, it would be clear by July or August that something would need to be done to avoid losing the house.

339. I do not think that the Applicants have given full financial disclosure, but the bank statements that I have seen for IAE's account continue to show a generally low level of funds throughout 2018. On the odd occasions that the balance got into four figures, IAE swiftly ran it down with a barrage of gambling transactions. It is clear that only a careful refinancing programme would enable her and Junior to exit the arrangements that had begun in August 2017. That was always going to be difficult given IAE's gambling problems. It is not clear whether or not Junior had any motivation or desire to ensure that the property was saved. It is also possible that he saw an opportunity to use the property to gain more money for himself. It is hard to know what IAE thought or knew because of the problems with her evidence, but I suspect that she did not really appreciate the gravity of the situation.

340. In all of those circumstances, I find that it is more probable than not than a plan was hatched between NC and Junior to form SRL and transfer the property to the new company so that they could borrow as much money as possible against it. I consider it unlikely that IAE had much knowing involvement with this plan. I also consider that AC's direct and knowing involvement was extremely limited. I do not make any finding about whether or not he signed documents establishing the company. On the available evidence, it seems possible that he may have signed them without really appreciating what they were or paying much attention to them, but it is also possible that NC signed

for him. This was not a pleaded issue between the parties and the Tribunal does not have enough evidence to reach a conclusive view. If that needs to be resolved, that will have to be addressed in a different forum.

341. There was no evidence that Tertip had any involvement in these discussions, but as NC's evidence was that TNUK had underwritten the Tertip loan, and as I consider that Tertip was being used as a front for lending from TNUK, the absence of Tertip from any negotiations or discussions is not as surprising as it might otherwise have been.

342. Despite IAE's vehement denials of any involvement, I am satisfied on the balance of probabilities that she did sign Document 14, the TR1 transferring ownership of the property.

343. I can start the analysis here with Document 6, a draft Together charge that was apparently signed by IAE and Junior, and witnessed by Miss Rehman. For reasons that I have given earlier, I accept Miss Rehman's evidence that she did witness IAE sign this document.

344. The Tribunal was also shown a solicitor's certificate signed by Miss Rehman, dated 24th September 2018, confirming that she had advised IAE on a proposed transaction which involved transferring ownership of the subject property to SRL for that company to borrow funds from SRL. I find as a fact that Miss Rehman only signed this document after having satisfied herself that the person in front of her was IAE and after giving her the advice identified on that certificate. The scurrilous allegation that she had signed this certificate without having done so was completely unfounded.

345. It does not seem to me that it makes any difference that some of the form had been pre-populated before it was passed to Miss Rehman. She would still need to satisfy herself that she was giving advice about a transaction that was identified in that part of the form, as she said in her oral evidence that she had done. I also do not think that it matters that Miss Rehman had not seen a current signed passport or EU/UK photo driving licence, as specified at para.3 of the form. She filled in the form of photographic identification that she did see and explained to the Tribunal that this was what was provided by IAE.

346. The existence of those documents is only consistent with some plan to borrow money from Together. That provides support for my finding that there was an agreement to transfer the property and also explains how a transfer document would come into existence.

347. The crucial TR1 apparently transferring the property to SRL was examined by the expert as Document 14. She made the point that the signatures were identical to Document 16, which meant that one had been copied from the other, or possibly both had been copied from some unidentified master document. During the hearing on 10th January, NC produced what he said was the original of Document 14. I was able to inspect that with the aid of a magnifying glass and it appeared to me to be a pen and ink signature on the document.

348. The process by which NC came to have this document is worthy of note. He explained that over the Christmas holidays he had gone to see Mr Ewan in his office and asked him if he had any documentation for this case. Mr Ewan made an appointment with the archive service and both of them went and searched through the papers. NC said that he helped Mr Ewan, but that he did not look in any file. It might be thought to be a little surprising that Mr Ewan was so willing to help NC, given the allegations advanced by NC in the *Katrin Properties* case. That may perhaps be a matter to be considered in other litigation. I am more concerned for present purposes that Mr Ewan was apparently willing to allow NC into the archives where files for other clients were kept. Although NC said that he did not look in any files, this seems unlikely to be consistent with Mr Ewan's data protection obligations and his duties as a solicitor.

349. Returning to Document 14 itself, there is a stark contrast between the evidence of IAE, who denies any involvement with this document, and Mr Bhajanehatti, who says that she signed it in front of him. I have already found that IAE's denials in respect of other documents were untrue. I also bear in mind though that some sort of forgery is not as improbable as it might otherwise have been, given what I have said about Documents 7 to 12.

350. There was a sustained attack on Mr Bhajanehatti's integrity by the Applicants. I can see why a reasonable person might wonder whether a man with his admitted background

should be allowed anywhere near important conveyancing documents. His oral evidence to the Tribunal was far from satisfactory, as I have explained above.

351. I have reflected carefully on all of these matters and the expert handwriting evidence about Document 14. Having done so, I am satisfied that it is more likely than not that IAE did sign Document 14. In some respects, the most compelling evidence is Miss Rehman's evidence about Document 6 and the solicitor's certificate. It would make very little sense for that process to have been undertaken and then not to have IAE sign the crucial TR1. When balancing Mr Bhajanehatti's evidence and IAE's evidence, I have concluded that his account is to be preferred. The evidence of both witnesses was imperfect, but IAE's bare denials are unpersuasive and are outweighed by the other surrounding evidence.

352. As I accept Mr Bhajanehatti's evidence that he witnessed IAE sign this document, it follows that her signature on it has not been copied from elsewhere. This means that it is the signature on Document 16 that has been copied and that it must have been copied from Document 14. I find as a fact that this is the case. I cannot reach a view on who was responsible for this copying, as this would be no more than idle speculation.

353. It was not suggested that IAE had signed Documents 13 or 15. There must be some doubt over whether they were signed by AC or by NC pretending to be him. This is not something I can resolve. In his oral evidence, NC was offered the opportunity by Mr Lees to ratify on behalf of SRL everything that had been done. NC willingly took that opportunity. It therefore seems to me that, insofar as this Tribunal's fact-finding exercise is concerned, it does not matter which out of AC and NC signed Documents 13 and 15.

354. Finally in 2018, a mortgage application was made on behalf of SRL to the Bank. The majority of the mortgage process took place in 2019 and so can be more conveniently dealt with in this judgment under the heading of that year.

2019

355. Before getting to the Bank's loan, the final document that I need to deal with is the tenancy agreement, Document 17. It was said in AC's statement that this had been

prepared following Junior's insistence that his mother should be allowed to move into the property. I reject that explanation, which makes little sense. The property was, according to SRL, taken on as a buy-to-let property in October 2018. There was no evidence of any works being carried out to the property by SRL so it is unthinkable that it would be allowed to remain vacant from October 2018 to January 2019 without some attempt at marketing it for let, but there was no evidence of any steps being taken in that regard either. On the balance of probabilities, the most logical explanation is that the property was occupied throughout by IAE, which fits with the findings that I have made above about occupancy.

356. There are various other issues concerning the circumstances in which the alleged tenancy was entered into.

357. The property has gas central heating (as evidenced by the valuation inspection reports), and so SRL as landlord should have provided gas safety certificates to the tenant. NC admitted that he did not think that this had been done. SRL should also have provided a copy of the energy performance certificate. NC said that the property did have an energy performance certificate but he did not know if it had been given to IAE. Mr Miah pointed out that the publicly accessible energy certificate database shows that there was no certificate in place for this property. SRL should also have given the tenant a copy of the Government's publication 'How to rent: the checklist for renting in England'. NC said that this was not given. The property is also in an area designated by the local housing authority, Waltham Forest LBC, for selective licensing. NC accepted that there was no licence in place.

358. He maintained that despite all of these serious regulatory failings and despite the total lack of any demand for payment of rent, this was a genuine tenancy agreement. NC agreed with Mr Lees that he had, in various forms, granted other assured shorthold tenancies and for some of those had failed to give the relevant documents.

359. For present purposes, I am satisfied that the tenancy agreement (Document 17) was signed by IAE. Miss Rehman's evidence was clear and entirely credible. IAE's evidence about not signing documents was quite the opposite. I also accept Miss Rehman's

evidence that it was signed by Junior. I will consider in the next section of this decision what the consequences of that are.

360. The next relevant issue is the loan from the Bank. There is very little that is in dispute about this. It is clear that a request was made on behalf of SRL to borrow money from the Bank, to be secured against the subject property. There must be considerable doubt as to whether AC played any role in this at all. It is not necessary for me to address that. NC ratified all steps on behalf of SRL during his oral evidence. Although there may be questions about whether NC acted fraudulently during the process of obtaining the loan, the Bank is seeking to honour that loan agreement and this judgment is not the appropriate place to consider questions of fraud as between SRL, NC, and the Bank in relation to that loan.

361. Mrs Beart has described in her statement how the Bank received the mortgage application, conducted due diligence, and obtained a valuation for the property. She also explains the underwriting process that took place and the offer that was made and then agreed. I accept all of her evidence, save for the caveat that I make no finding as to whether AC signed the various documents that Mrs Beart thinks he signed. She is, of course, only working from the documents, which do purport on their face to have been signed by AC, but Mrs Beart can have no direct knowledge of that. This is an issue that has arisen between AC and NC during the course of this hearing. I do not need to resolve it for the purposes of the referred matters and so merely flag here that there is a question mark over the authenticity of the signatures.

362. A restriction was entered against the title for the property on 3rd May 2019. The Bank's position, as explained in Mrs Beart's statement, is that HM Land Registry has now accepted that there was an error in a priority search dated 31st May 2019, which should have revealed that the Applicants had contacted HM Land Registry and raised allegations of fraud about the October 2018 transfer. It would seem that this is what the 3rd May restriction relates to. There was no explanation as to how or why the Applicants would have contacted HM Land Registry at around this time when their evidence is that they did not discover this until the following year. This is an oddity that I cannot resolve, nor is it necessary to do so in these proceedings.

363. I move on now to October 2019. In her statement, FE had said that a s.21 notice was received on 14th October 2019. Mr Sahni had given evidence that he was tasked with delivering a notice to quit. As I have already said, the photograph that he produced showed the first page of a s.8 notice. The Tribunal has seen the full document, which appears to be a standard rent arrears s.8 notice, apparently signed by AC on behalf of SRL on 4th October 2019. It is not my place to make any findings as to the validity of this notice and so it is not necessary to determine whether it was actually signed by AC or if it was signed by NC (and, even if it was, whether that would vitiate the notice). Nor did the Tribunal receive sufficient evidence to make any finding on this point.

364. I am, however, satisfied that a s.8 notice was delivered by Mr Sahni to IAE. As I indicated earlier, I consider that Mr Sahni was mistaken when said that this was a notice to quit. Based on the photograph that he produced, I find as a fact that it was delivered on 16th October 2019.

365. In my judgment, FE was simply mistaken when she said that a s.21 notice was delivered on 14th October. The slight discrepancy about the date is readily explained as it was only a matter of two days and it is quite easy to become confused about that. The misdescription of the notice is also likely to be an innocent mistake. While the difference between s.8 and s.21 is of tremendous importance to housing lawyers, it is not something that is always fully understood by the wider public. In circumstances where no possession proceedings were ever brought, it is hardly surprising if FE may have got the two different types of notice slightly muddled in her mind.

366. While there might have been a s.21 notice in addition to the s.8 notice, Mr Sahni did not suggest that he had delivered more than one notice, as I have already said. No such s.21 notice has been produced to the Tribunal by any party. Furthermore, it would be rather unusual for a landlord to give a s.21 notice at that stage, as there were still three months of the fixed term of the tenancy left to run. In addition, given the wholesale failure to comply with legislative requirements around assured shorthold tenancies, any s.21 notice would have been invalid. I recognise that this does not prevent some landlords from attempting to rely on s.21, but in my judgment the timing issue and inevitable invalidity make it very unlikely that SRL would have served a s.21 notice on IAE.

367. The consequences of that may be for another forum, but the issue was fully ventilated before me and I am in position to make factual findings as set out above accordingly.

2020

368. That deals with the relevant facts for 2017 to 2019. It is not necessary to make many factual findings about 2020, as only a few points arise.

369. I accept that JHE did not know anything about these apparent transactions prior to 2020.

370. For reasons that I have already given, IAE was involved in them, although it is quite likely that she did not fully appreciate their significance prior to 2019 or 2020. It is not possible to say precisely when she may have started to realise the seriousness and consequences of her actions because of the uncertainty over what caused the initial complaint to HM Land Registry in 2019.

371. I am satisfied that FE did not know anything at the time about these transactions and her mother's trips with Junior to sign various documents. It is possible that she may have discovered something of this in 2019, prior to HM Land Registry entering a restriction apparently after a report of fraud, but it is also quite likely that she was entirely in the dark until 2020. I do not think that anything particular turns on this.

372. I am satisfied that during 2020, IAE and FE remained in occupation of the property and that they have continued to do so since then. JHE was not in occupation of the property from some point prior to July 2017. He may have gone back to the property from time to time, and may even have moved back in at some point since 2020, although I consider that he is rather peripatetic and I note that when he produced a bank statement for the period September to December 2024, his address was for a different property in London.

CONSEQUENCES

373. It is important to note that the Applicants have based their case solely on the proposition that they did not sign any of the key documents. They have not advanced any alternative case alleging, for instance, misrepresentation or undue influence, and have not argued

that the alleged transactions are otherwise void or voidable. Once the relevant facts have been determined as set out above, most of the consequences for the two applications made to HM Land Registry fall into place fairly readily.

374. First, I have found that there was no Document 0. Accordingly, JHE did not transfer his interest in the property to Junior (or anyone else).

375. Secondly, I have found that IAE did sign Document 3, which was the charge in favour of Tertip, and Document 14, which was the transfer to SRL. The Bank raised two arguments as to the effect of this conclusion.

376. The first suggestion made by Mr Lees was that the Tribunal could conclude that JHE had given IAE and/or Junior agency, which might be actual or ostensible, to deal with the property.

377. He supported this by reference to *Brocklesby v Temperance Permanent Building Society* [1895] AC 173; and, *Wishart v Credit & Mercantile Plc* [2015] EWCA Civ 655; [2015] 2 P&CR 15. In *Brocklesby*, Lord Herschell described the case as belonging "to a class unfortunately not unfamiliar to the Courts, in which one of the parties to the litigation must suffer on account of frauds which have been committed". Substitute "Tribunal" for "Courts" and that would not be an inapt description for the current case. Indeed, this case has other echoes of *Brocklesby*, as that also involved a son using his father's property to borrow money that he was not entitled to.

378. As explained in *Wishart*, the principle in *Brocklesby* required an owner to bear the risk of fraud on their agent's part where they had furnished the agent with the means of holding themselves out as the owner. In *Wishart*, Mr Wishart had left the acquisition of the property in the hands of a business associate, Mr Muduroglu. Mr Muduroglu acted outside the limits of his authority by arranging a mortgage with Credit & Mercantile, but the mortgagee had no notice of the limits of their authority. The effect in practical terms was that Mr Wishart had furnished Mr Muduroglu with the means to hold himself out as the true beneficial purchaser of the property and therefore as the legal and beneficial owner for the purposes of borrowing from Credit & Mercantile. Application

of *Brocklesby* precluded Mr Wishart from maintaining that he had a beneficial interest in relation to the property that he priority over the mortgagee's security interest.

379. In his closing oral submissions, Mr Lees realistically accepted that the *Brocklesby* principle, as it was explained in *Wishart*, would be of little assistance if SRL (through NC) had known that JHE was still an owner of the property and had not executed a transfer to Junior. It seems to me that even if SRL had not known this, it would still require some expansion of *Brocklesby* to make it cover the facts of this case. Each case is inevitably going to depend on the specific facts, but it is my view that it would be quite a stretch to say that JHE had furnished IAE with the means to hold herself out as having authority to deal with the property simply by moving out.

380. The Bank's second suggestion was that the effect of the documents signed by IAE was to sever the joint tenancy in equity that she held with JHE, with the result that they both held a 50% beneficial interest. The transfer to SRL was then effective to transfer her 50% beneficial interest. It could not, however, have been effective to transfer JHE's beneficial interest. Legal title to the property was vested in SRL when it was registered as proprietor of the freehold interest (see Land Registration Act 2002, s.58(1)). As a consequence, SRL held (and continues to hold) the property on trust for itself and JHE as tenants in common in 50/50 shares.

381. Mr Miah disputed this analysis, contending that, if the Tribunal found that there was no Document 0 and no involvement by JHE, but IAE had signed the relevant documents, then it did not follow that joint tenancy was severed just because one person had disposed of property without other's knowledge or consent. He pointed out that this was residential property and a matrimonial home.

382. That makes it necessary to consider the reasoning underlying the Bank's argument. Mr Lees referred to the following discussion in *Megarry & Wade: The Law of Real Property* (10th ed.):

> "(1) Total Alienation.

"12-039 If A, B and C are beneficial joint tenants and A assigns his interest to X, X will become tenant in common as to one-third with B and C as to two-thirds, but B and C will remain joint tenants of those two-thirds as between themselves. If B then dies, C alone profits by the right of survivorship, X and C being left as tenants in common as to one-third and two-thirds respectively.

"As a matter of common law, if one joint tenant forges the signatures of the others on a purported conveyance of the property, that conveyance will not transfer the legal estate, but is effective to pass the forger's beneficial interest to the purchaser, thereby severing the joint tenancy. It has been held that, where the joint tenant and the purchaser act in concert, the transaction is a sham and has no effect on the joint tenancy. However, it is questionable whether such a transaction can in law be regarded as a sham, as the parties plainly did intend it to have legal consequences. It has long been settled that a contract by one joint tenant to sell his interest effects a severance in equity provided that the contract is specifically enforceable. If, therefore, a joint tenant contracts to sell his interest to X, this causes a severance in equity. The trustees will therefore hold the legal estate subject to X's equitable right to share as tenant in common. It is for this reason that severance was brought about by a covenant in marriage articles or a marriage settlement to settle property held in joint tenancy. Similarly a mutual wills agreement between two joint tenants will sever the joint tenancy. A declaration of trust by one joint tenant of his interest in favour of a third party will also sever the joint tenancy as regards that share.

"(2) Partial Alienation.

"12-040 Although at common law the right to alienate was preferred to the right of survivorship, the right of survivorship took precedence over mere encumbrances. The distinction lay between acts which were inconsistent with the right of survivorship and those which were not. Thus a rentcharge could be satisfied out of one joint tenant's share of the rents and profits without disturbing the joint tenancy. These distinctions may no longer be strictly applied now that the equitable rules for the severance of interests in personalty prevail. The trend of modern decisions is to treat any partial alienation by a joint tenant as a

severance if it can be regarded as an act operating on that person's share. Thus the following dispositions by a joint tenant have all been held to effect a severance:

(i)the execution of a mortgage or charge over his or her interest;

(ii)a specifically enforceable contract to grant a charge over his or her interest; and

(iii)a purported mortgage over the entire property where a joint tenant has forged the signatures of the other joint tenants.

Although the point is not free from doubt, both principle and judicial opinion suggest that a lease for years granted by one or more (but not all) of the joint tenants will effect a severance of the joint tenancy not just for the duration of the lease but thereafter. A lease for years confers a right to possession of some particular share of the land for a fixed period, and this right arises by a separate title.

"By contrast, where a joint tenant creates an encumbrance such as an easement or profit, no estate or interest passes to the grantee. Such a grant destroys none of the four unities and provided that it does not interfere with the rights of the other joint tenants (and in particular, the right to possession) the joint tenancy will not be severed." (footnotes removed for ease of reading)

383. The Bank's argument is put in two different ways. The first that the grant of a charge by IAE severed the joint tenancy in equity, relying on the passages from *Megarry & Wade* quoted above, and *First National Securities Ltd v Hegerty* [1985] QB 850; and, *Edwards v Lloyds TSB Bank Plc* [2004] EWHC 1745 (Ch).

384. In *Hegerty*, a husband and wife had purchased a house as joint tenants. The husband subsequently applied to First National Securities for a loan and executed a charge in favour of that company. His wife's signature on the application for the loan and the charge was forged. The husband then moved out of the UK and fell into arrears with the loan, leading to the lender taking proceedings for a money judgment and then a charging order. In the High Court, Bingham J (as he then was) said that the effect of the execution of the legal charge by the husband was to sever the beneficial joint tenancy and to create a valid equitable charge over the husband's beneficial interest in the house. The Court

of Appeal noted the views of Bingham J on those points, but the judgments in the Court of Appeal were more concerned with the exercise of discretionary judgment when making a charging order.

385. In *Edwards*, a husband and wife had purchased a house together. They separated and the husband moved out. He then obtained a mortgage in his sole name from the bank, seemingly having represented that he was the sole owner. He signed a standard form of mortgage deed which was consistent with him being the sole owner, although rather oddly it included a forged signature for the wife. Park J referred to *Hegerty* and other cases and held that the mortgage deed was effective between the bank and the husband with respect to his interest in the house. That case included a further complication, which was that the husband's beneficial interest was ordered in divorce proceedings to be transferred to the wife, but that need not concern us here.

386. The Bank's other way of putting this argument is that the execution of Document 14 severed the joint tenancy in equity, relying again on the passages from *Megarry & Wade*, and *Ahmed v Kendrick* (1987) 56 P&CR 120; and, *Victus Estates (2) Ltd v Munroe* [2021] EWHC 2411 (Ch); [2022] 1 P&CR DG3.

387. *Ahmed* was another husband and wife case. The husband agreed a contract of sale with Mr Kendrick and subsequently executed a deed of transfer. The husband forged the wife's signature on both documents (it seems from the judgment that he had a history of forging her signature on conveyancing documents). The trial judge and the High Court on appeal held that the transfer to Mr Kendrick was effective to sever the beneficial joint tenancy and to pass to him all the interest which the husband had the power to convey.

388. The facts in *Munroe* are a little convoluted because there were two connected appeals and multiple parties. The issues are extremely helpfully explained by Morgan J at [2]:

> "The first issue which arises is: where a property is owned legally and beneficially by A and B, and B forges A's signature on a transfer of the property and the transferee (C) knows of the forgery, is the transfer a sham and of no effect or is it effective to transfer B's equitable interest in the property to C? The

second issue which arises is: if the transfer would not be a sham and where C charges the property to a lender, should the court as a matter of public policy, and applying the law as to illegality in relation to transactions, hold that B's equitable interest remains with B so that C does not acquire any interest and is incapable of charging any interest in favour of the lender?"

389. As one would expect, Morgan J's judgment contains a thorough and detailed analysis of each of those issues. In very summary terms, he concluded on the first issue that the transfers were effective to transfer B's equitable interest, and on the second issue that the transferred equitable interests could be charged in favour of the lenders.

390. In my judgment, the clear effect of those authorities is as suggested by the Bank and as explained in *Megarry & Wade*. Two points are worth addressing.

391. First, each of the cited cases concerns one co-owner's signature being forged. The current case is a little different because SRL's position is that Junior signed as Junior, rather than pretending to be JHE. But ultimately, however Junior's signature is construed, the focus needs to be on the consequences of IAE's signature on those documents and in each case it was the act of the co-owner who signed which had consequences.

392. Furthermore, the forged signature in *Edwards* is a bit of a red herring because the mortgage agreement was only with the husband. The point is that he purported to enter in an agreement dealing with the property which exceeded his power and so it was treated as an agreement that had effect up to the limits of the power that he did have.

393. Secondly, the extract from *Megarry & Wade* points out that it has been held that where the joint tenant and the purchaser act in concert, the transaction is a sham and has no effect on the joint tenancy. The case cited in support is *Penn v Bristol & West Building Society* [1995] 2 FLR 938 (noting that this point was not considered in the appeal reported at [1997] 1 WLR 1356).

394. I have found that TNUK knew, through NC, that Junior was not a co-owner of the property. I am prepared to assume that Tertip was also aware of this. When it came to

the transfer to SRL, that company was certainly aware, because Junior was one of the directors at the time. This potentially aligns this case with *Penn*. In my judgment, however, these transactions were not shams. I find that they were intended to have legal effect between the parties, which is a point that is suggested by *Megarry & Wade* in the next sentence. They were clearly intended by TNUK, Tertip, and SRL to have legal effect. There was no contrary evidence from IAE who simply denied, dishonestly, any involvement.

395. I also find Morgan J's analysis in *Munroe*, at [60] onwards, of *Penn* and the issue of sham to be most compelling and I gratefully adopt and incorporate that reasoning here.

396. Although Mr Miah relied on the property being residential and the matrimonial home, he did not identify any principled basis on which that should alter the consequences that flowed from IAE having signed the relevant documents.

397. I accordingly find that her actions severed the joint tenancy and were effective to transfer her beneficial interest in the property to SRL.

398. It follows that there is no mistake on the register in that IAE is not shown as a registered proprietor. The Bank submitted that there was not an obvious mistake on the register because SRL has the same entitlement as JHE to be registered as proprietor. That might be open to argument, as it seems to me to be contrary to the approach applied by Morgan J in *Munroe*. In his oral submissions, Mr Lees acknowledged that this was a surprisingly novel point and suggested that the best way forward may be to proceed on the assumption that there was a mistake and to address that on its merits. I consider that this was a very sensible suggestion and that is the course that I shall take.

399. The Bank acknowledged that the Tribunal might consider in those circumstances that SRL and JHE should be the joint registered proprietors, but submitted that this could only be addressed through an application for alteration.

400. I am not sure that this argument is correct because Land Registration Act 2002, Sch.4, para.1 defines rectification as being alteration of the register which involves the correction of a mistake and which prejudicially affects the title of a registered proprietor.

Rectification under the 2002 Act is therefore a type of alteration. The application made by the Applicants was for alteration. Their form AP1 specifically says that they are seeking to "alter the register", although the alteration that they sought amounted to rectification because it meets the Sch.4, para.1 definition.

401. I would be most reluctant to decline to grant JHE any relief purely because the relief that he might be entitled to is somewhat less than that which was claimed on the form AP1. The Tribunal has power under rule 40(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) to direct the Chief Land Registrar to give effect to an application in whole or in part. That appears to be potentially wide enough to allow for a direction that JHE be reinstated as a proprietor, even if the application does not succeed in relation to having SRL removed as proprietor and to have IAE reinstated.

402. Land Registration Act 2002, Sch.4, para.5(a) confers a power on the registrar to alter the register for the purpose of correcting a mistake. Where the alteration amounts to rectification (as defined by para.1), the power to alter is constrained by para.6. Sub-paragraphs (2) and (3) are relevant here.

> "(2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless—
>
> (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
>
> (b) it would for any other reason be unjust for the alteration not to be made.
>
> "(3) If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration."

403. At this point, the tenancy agreement between SRL and IAE becomes relevant.

404. I have found that Document 17 was signed by Junior on behalf of SRL as landlord (although he had ceased to be a director by the time it was signed, no-one suggested that he lacked authority to sign on behalf of SRL), and by IAE as tenant. I have also found, that SRL failed to take a number of steps which as landlord it was required to do.

405. I recognise that not all landlords comply with every legislative requirement. A failure to do so does not mean that the tenancy is not a genuine one. I did have some concerns in this case though, because the earlier tenancy agreement (Document 10) was clearly not a genuine tenancy granted to Miss McDermott and can only have been designed to give the misleading impression that this was a buy-to-let property.

406. If that document was not a genuine agreement then this lends credence to the suggestion that the second tenancy was also not genuine.

407. That is bolstered by the unrealistically high level of rent. That is not to say that the rent was excessive for this property, but simply that it was not remotely possible for IAE to be able to pay rent at that level, given her incomings and extremely limited earning potential. All of that would have been known to SRL through its director, Junior. It ought also to have been apparent to NC as he had met IAE.

408. I must say that I found NC's oral evidence about accounting for the unpaid rent for this property to be quite unbelievable as he gave one answer, and then contradicted that with an inconsistent answer when a different possibility was suggested to him. I do not consider that much, if any, thought was given to the rent. On the other hand, it is only fair to note that the s.8 notice that Mr Sahni was tasked with delivering to IAE did rely on all the usual rent arrears grounds (Grounds 8, 10, and 11 of Sch.2 to Housing Act 1988). NC also gave inconsistent answers about the purpose of the tenancy agreement and when it might be enforced. Part of the problem is that NC seems to say whatever comes into his mind at any particular time, without concerning himself with whether or not it might be true. But even a stopped clock is right twice a day, and it is always possible that NC might, almost by accident, end up saying something that is true.

409. Taking all of those matters into account, I have reached the conclusion that this was not a sham agreement and was intended to be a genuine tenancy agreement having legal

effect between SRL and IAE. As the Bank pointed out, once it is accepted that IAE had transferred her interest in the property to SRL, she needed some basis for occupying it. On my findings, she remained in occupation for a few months before the tenancy agreement was entered into, but this does not mean that some form of agreement was not necessary. All that it means is that what happened when the tenancy agreement was entered into had the effect of regularising and authorising her occupation.

410. One important consequence of recognising the validity of the tenancy agreement granted by SRL to IAE is that it means that the land is treated as being in SRL's possession. The power to alter is therefore only available if the conditions in either Sch.4, para.6(2)(a) or (b) are met. The Applicants have never pleaded any positive case in relation to either condition. That is a little surprising given their allegations of fraud, but is the strategy that they have adopted.

411. Mr Miah made the fair point in closing submissions that IAE is a vulnerable person and that she was used by Junior. The difficulty is that this does not really demonstrate that it would be unjust for an alteration in JHE's favour not to be made. It was not suggested that he was especially vulnerable or that he had been specifically exploited by Junior. His beneficial share in the property can be protected through other means and so not reinstating him as a registered proprietor would not be unjust.

412. The Bank also submitted that even if the Applicants could make out a case under para.6(2)(a) or (b), there were exceptional circumstances which justified not making the alteration, relying on para.6(3).

413. The Bank relied on three such exceptional circumstances.

414. The first of these was that JHE had abandoned the property and been careless as to what happened with it. I do not think that this can fairly be classified as remotely close to exceptional and I leave it out of account.

415. The second circumstance was IAE's involvement in the 2017 and 2018 transactions.

416. The third circumstance was that SRL would seem to have a 50% beneficial interest in the property and would be entitled to seek to be registered as a trustee in any event.

417. I can see that the second and third points taken together may be sufficiently exceptional to justify not removing SRL as registered proprietor, but I rather doubt that they would be an answer to an application to add JHE as a joint proprietor. In my judgment, that fails because the Applicants have not demonstrated that they can bring themselves within para.6(2)(a) or (b).

418. The Bank acknowledged in closing oral submissions that it could be open to the Tribunal to give some direction to the registrar, recognising JHE's beneficial interest. Having given that possibility further thought, I do not think that it would be right to do so at this stage of this case without more focused argument on the possibility and discussion as to the content of any such direction. This judgment contains various findings which create an issue estoppel between the parties on the points necessary to reach the view as to what direction to give to the Chief Land Registrar (see *Witt v Woodhead* [2020] UKUT 319 (LC)), and so JHE's position has some protection with the benefit of those findings.

419. In an attempt to get around the difficulties with rectification under Sch.4, 2002 Act, the Applicants advanced an alternative argument based on *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151; [2002] Ch 216; *Fitzwilliam v Richall Holdings Services Ltd* [2013] EWHC 86 (Ch); [2013] 1 P&CR 19; and, *Park Associated Developments Ltd v Kinnear* [2013] EWHC 3617 (Ch).

420. Mr Miah submitted that the effect of these authorities was that the registration of a fraudulent transfer resulted in a deemed transfer of the legal title only, so that the true owner's beneficial interest was not transferred and the new legal owner held the property subject to the original owner's beneficial interest. He continued that this meant that the new registered proprietor held the legal title as bare trustee for the original beneficial owner. That original owner could therefore call for the legal title to be transferred.

421. As the Bank submitted, this argument runs into three insuperable difficulties.

422. The first is that the approach is wrong in law. In *Swift 1st Ltd v Chief Land Registrar* [2015] EWCA Civ 330; [2015] Ch 602, the Court of Appeal decided that the beneficial ownership point in *Malory* had been decided *per incuriam*, because it had not considered *Argyle Building Society v Hammond* (1984) 49 P&CR 148 or s.114 of Land Registration Act 1925 (the applicable statute for the purposes of *Malory*): see [42]-[45] of Patten LJ's judgment in *Swift*. Accordingly, the supposed authorities are wrong insofar as they are based on *Malory*, which has since been departed from by the Court of Appeal.

423. The second is that the argument does not work on the facts of this case. As IAE's beneficial interest was transferred to SRL, the trust is for the benefit of SRL and JHE.

424. The third is that this is not the way in which the application HM Land Registry was framed and the Tribunal would be straying way outside of the bounds of the referred matter in dealing with it in this way.

425. I do not consider that it is necessary to prolong this judgment even further by dealing with subrogation in any great detail. The point was raised by the Bank but did not receive a great deal of attention from the Applicants. The Bank's argument was clear and straightforward: the Barclays mortgage (and the Cabot charge) had been paid off by Tertip, who had in turn been paid off by Together, who had then been paid off by the Bank. There was therefore a clear chain of payments that could be traced from the Bank down to the Barclays mortgage. There were three points that I feel need greater thought before I would be able to deal with subrogation.

426. The first of these relates to the first stage of the Bank's argument, which is that the Applicants' mortgage was redeemed out of the loan funds. I am satisfied that the Barclays mortgage was redeemed out of the funds transferred by Ewan & Co to Grayfield Solicitors. In circumstances where £20,000 of the amount transferred can be attributed to TNUK's deposit under the purchase agreement, rather than the money loaned by Tertip, I would want to hear further argument on whether and how the Tribunal should apportion the elements making up the £90,000 that was transferred, or whether that even makes any difference.

427. I recognise that following *Menelaou v Bank of Cyprus Plc* [2015] UKSC 66; [2016] AC 176, the need for a direct, traceable, link between monies advanced and a loan being paid off has been removed, although that was the way in which the Bank's subrogation argument was formulated. It may therefore not be necessary to determine whether the Barclays mortgage was paid off with TNUK's deposit or Tertip's loan. As, however, subrogation is an equitable remedy, it seems to me that some further thought would be needed about Tertip's position, if the Bank is claiming to be entitled to sub-subrogation. As the Cabot charge was also paid, it would seem to follow that at least some of the Tertip funds was used to pay off at least part of one or the other charge, but again this would need further consideration as to how the Tribunal should decide which of them the Tertip money went towards.

428. The second point also relates to the Tertip loan and whether Tertip could have been entitled to subrogation. It is not for this Tribunal to say that the Tertip loan was unenforceable, but there is a tenable argument that it was a regulated mortgage contract and so unenforceable under Financial Services and Markets Act 2000, unless a court decides under s.28(3)(a) that it is just and equitable for the agreement to be enforced. The House of Lords took the view in *Orakpo v Manson Investments Ltd* [1978] AC 95 that subrogation was not allowed where a loan was unenforceable. I think that in order to resolve this point there would need to be full argument on whether the Tertip loan was unenforceable, and if it was, whether the possibility of enforcement under s.28(3)(a) made any difference to the *Orakpo* analysis.

429. The third point relates to the second stage of the Bank's argument, which is that it was entitled to sub-subrogation by way of the loan to SRL. There is no doubt that the funds from the Bank were used to pay off the Together charge. NC's evidence on that was clear and on this point I accept his evidence. Where I have a little more difficulty is in following what happened to the money received from Together. To the extent that the Tertip loan seems to have been a bit of a front for TNUK, it is not clear to me that any payment actually went to Tertip to repay that loan. It is very difficult for this Tribunal, on the evidence that was produced, to form any view on what happened to the funds from Together. SRL had disclosed documents suggesting that substantial sums of money were paid to Junior in October 2018 and again in January and March 2019. As

before, the effect of *Menelaou* is that a strict tracing approach is no longer required, but I still consider that further thought is needed on these points.

430. Ultimately, subrogation is a remedy that is available when reason and justice demand that it takes effect: see *Orakpo* at p.110E and *Menelaou* at [48]. For the reasons given above, while recognising that the Bank may well have a very good claim to subrogation, my current view is that it is not necessary to resolve the issue of whether reason and justice demand that the Bank be entitled to rely on subrogation in order to decide what direction to give to the Chief Land Registrar. This issue is better left to be fully and properly argued out in the appropriate forum, should it be necessary to do so.

431. The Bank asked me to make findings about whether it had acted in good faith and so would be entitled to an indemnity if there was a mistake on the register that prevented its charge being registered. This was because the effect of Land Registration Act 2002, s.103, and Sch.8, is that a person is entitled to be indemnified by the registrar if they suffer loss as the result of what can be broadly summarised as a mistake or rectification (see Sch.8, para.1(1) for the various categories of mistake etc that can create an entitlement to an indemnity).

432. I suggested that any findings that I made about that would not be binding on HM Land Registry in any claim that the Bank might make for an indemnity, but the Bank indicated that some view from the trial judge who had heard the evidence might be of assistance. In light of the rest of my decision, this is unlikely to matter greatly, but I can say that on the evidence I heard, in particular the evidence of Mrs Beart, which was virtually unchallenged in any material respect, I consider that the Bank did act in good faith.

433. It may be open to argument as to whether that is relevant, because I had assumed (as I think the Applicants had also assumed) that the Bank would be relying on para.1(2)(b) of Sch.8, which provides that the proprietor of a registered estate or charge claiming in good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged. My reason for querying the relevance of that provision is that the Bank is not yet the proprietor of a registered charge, as that is the subject of one of the referred applications.

434. In his closing written submissions, Mr Lees explained that the Bank's entitlement to an indemnity would not arise by virtue of any rectification as the charge was not registered, which is the point that I raise in the previous paragraph. He said that, instead, the Bank's entitlement would arise from HM Land Registry's mistake in giving clear title when it was aware of the potential fraud. If that is the case though, it is not immediately clear to me that "good faith" is relevant in the legislative scheme. That is not a matter for me though and I repeat that on the evidence before me I would accept that the Bank had acted in good faith.

435. The Bank had also suggested in its skeleton argument for trial that SRL had acted in good faith too. In light of my previous findings and the consequences that flow from them, this too is unlikely to matter, but if it were necessary for me to decide (and to the extent that I can), I consider that it cannot possibly be said that SRL acted in good faith when NC must have known that Document 0 did not exist and so JHE still owned a share of the property.

436. There are two further issues which, having heard evidence and argument over the course of eight days, it is appropriate to make some observations on. Those are the terms of the bridging loans and the tenancy granted to SRL.

437. The terms of the Tertip loan agreement are matters of some concern.

438. First, NC's evidence was that the 3% interest payable on the loan was to be split with Tertip receiving 2% and TNUK receiving 1%. He confirmed that this was not disclosed to the borrowers. That has the risk, at least, of seeming to be a secret commission.

439. Secondly, the 3% interest rate was to increase to 8% if the loan was not repaid within twelve months. That has all the appearance of being a penalty.

440. Thirdly, this loan was secured by way of a first charge and may have been a regulated mortgage contract under Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). I acknowledge that the loan agreement identified that the property was let on rent and not occupied by Junior and IAE. That was patently

false as the property was not let and IAE was living there at the time. This should have been apparent to Tertip. I also acknowledge that the loan agreement sets out that it was a commercial loan to enable the borrowers "to purchase a commercial property and/or business investment", but it is open to considerable doubt whether anyone could have thought that to be true. Whether or not Junior did actually say anything about a business, AC's witness statement (which NC had drafted) does not say that this was mentioned at the time of the first loan; it only comes in at the time of the second loan (see paragraphs 4 and 9). In fairness, it should be noted that the engagement letter, dated 29th August 2017, from Grayfield Solicitors to IAE and Junior does mention a business selling e-cigarettes, and NC said in his oral evidence that Junior talked about a vape business during the initial meeting. For the reasons given elsewhere in this decision, I have grave reservations about NC's oral evidence, but the Grayfield letter may be significant.

441. Similar concerns can be raised about the loan agreement with TNUK. The position may be slightly different though because TNUK would only have been getting the benefit of a second charge. The Tribunal has not had the benefit of any detailed argument on the effect of the 2001 Order, which is far from a straightforward piece of legislation. I am not in the position to make findings on this, nor is it necessary to do so in order to decide the referred matters. I therefore merely state here my concern that TNUK may be at risk of entering into loans that would require to be regulated by the 2001 Order and the Financial Services and Markets Act 2000. Indeed, many of TNUK's business practices are questionable. Whether TNUK is doing anything wrong and whether anything should be done about that will be for others to decide. I have identified these concerns though as they have some relevance to subrogation, as can be seen above.

442. I return now to the tenancy agreement. I have found, in accordance with SRL's submissions, that this agreement was not a sham, despite the many admitted breaches of statutory requirements placed on landlords.

443. The consequence of that seems to be that there must be a grave doubt as to whether NC is fit to be a landlord of residential properties. I recognise that a "doubt" about some other matter is not something for this Tribunal to concentrate on, but given the role of the Property Chamber, which the Land Registration Division sits within, in dealing with these legislative requirements it would be remiss of this Tribunal to simply stand by and

do nothing. NC accepted that if the Tribunal found that the tenancy agreement was not a sham, so that there were obvious housing-related offences, the Tribunal could quite properly refer that to the relevant regulatory authorities. In my view it is appropriate to do so in this case. I will return to this further below.

444. In the course of this decision I have expressed several concerns about actions of SRL and NC, and, to a lesser extent, TNUK, Tertip, and Mr Ewan. I realise that a decision of this Tribunal is not a place for "concerns": see *Campbell v Cammarano* [2025] UKUT 122 (LC). I entirely agree with the observations of the Upper Tribunal in that case: the role of this Tribunal is to make findings and not to express concerns.

445. In my view, the position here is a little different. The Tribunal does not have sufficient material to make a finding on several of these points, and it would be wrong to do so in relation to Tertip and Mr Ewan when they have not been a party to proceedings. This is also the case for TNUK, although the point has a little less force there as NC has been involved and has given evidence about TNUK's involvement. Nor are findings on all of those points necessary in order to reach a decision that enables the Tribunal to give a direction to the Chief Land Registrar on the referred matters.

446. Those matters have, nonetheless, been brought into some focus through the evidence and developments in this case. I consider that it would be a dereliction of my judicial duties to simply turn a blind eye to some potentially serious unlawful acts. In my view, it is right and appropriate to draw those concerns to the attention of the relevant authorities for them to consider what, if any, investigative and enforcement action should be taken.

447. I will therefore direct that a copy of this decision should be sent to the following bodies for them to consider what, if any, steps they may wish to take as a result.

a. The London Borough of Waltham Forest, concerning SRL's position as landlord of the property and NC's involvement;
b. The Health and Safety Executive, concerning the failure to provide gas safety certificates;

c. The Financial Conduct Authority, concerning the loans offered by Tertip and TNUK;
d. The Solicitors Regulation Authority, concerning Mr Ewan's involvement;
e. The Information Commissioners Office, concerning the circumstances in which Mr Ewan allowed NC access to archived files; and,
f. The office of the Attorney General, concerning NC's conduct in lying to the Tribunal and signing false statements in his son's name.

CONCLUSION

448. For the reasons given above, the Chief Land Registrar will be directed to give effect to the Bank's application as if the objection had not been made and to cancel the Applicants' application.

449. The Tribunal will normally give a preliminary indication of liability for costs in its substantive decision. I will not do so here, as there are multiple parties and the costs arguments may be complex and detailed. I will instead give a direction for any costs applications to be made. If any applications are received, as I assume they will be, I will consider whether further directions are need for any responses. I currently anticipate that costs can be dealt with on paper, but I will also consider whether it is necessary to list an additional hearing to address costs.

450. In closing, I wish to reiterate my thanks to the advocates and to the teams that supported them through this litigation.

Dated this 18th July 2025

Judge Robert Brown

BY ORDER OF THE TRIBUNAL