



Neutral Citation Number: [2024] EWHC 2491 (Ch)

Case No: PT-2022-000279

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

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 4 October 2024

Before:

SAIRA SALIMI
(sitting as a Deputy High Court Judge)

Between:

- (1) Ahmed Khan
(2) Sarwar Khan
(3) Shalima Khan
(4) Farhana Khan
(5) Jennifer Khan

Claimants

- and -

Muhammed Iftekhar Khan

Defendant

Mr William East (instructed by **Cripps LLP**) for the **Claimants**
Mr Simon Lane (instructed by **Jury O'Shea LLP**) for the **Defendant**

Hearing dates: **24 June-8 July 2024**

Approved Judgment

This judgment was handed down on 4 October 2024 by circulation to the parties or their representatives and by release to the National Archives.

SAIRA SALIMI :

1. The Claimants and the Defendant are the six children of Fatima Khan (“Mrs Khan”) and the late Abdul Mubin Khan (“Mr Khan”), who died on 2 May 2008. The eldest child, Muhammed, is the Defendant. The Claimants, to whom I will individually refer by their first names to avoid confusion, are the other five children – Ahmed, Sarwar, Shalima, Farhana and Jennifer.
2. This claim concerns the beneficial ownership of four properties (“the Properties”) in Greater London – in order of acquisition, 14 Stapleton Road, in Tooting Bec, 7 Essex Grove, in Upper Norwood, 53 Norbury Crescent, in Norbury, and 5 Ullswater Road, in West Norwood. The Claimants assert that the leasehold and freehold interest in 7 Essex Grove is held beneficially for Farhana, Shalima and Jennifer (together “the Daughters”) while the leasehold and freehold interests in the other three properties are held beneficially for the Defendant, Ahmed and Sarwar (together “the Sons”). At present, legal title to the leasehold flats at 14 Stapleton Road, 7 Essex Grove and 5 Ullswater Road is held by the Defendant, while the legal title to the freehold at each of those properties is held by Ahmed. The flats are let to tenants. The freehold title to 53 Norbury Crescent is held by the Defendant, and is subject to a lease to Purple Panda Nurseries Ltd, a business in which the Defendant has an interest.
3. The agreed facts in relation to the Properties can be briefly summarised. Mr and Mrs Khan came to the United Kingdom from Bangladesh many years ago. Mr Khan arrived first, in 1962, and Mrs Khan joined him in 1975, following their marriage in Bangladesh in 1968. All six children of the marriage were born in the United Kingdom.
4. Halim Khan, the son of Mr Khan’s elder brother, came with Mrs Khan from Bangladesh at the age of 2 and lived with the Khan family while he was growing up.
5. Mr Khan, initially with a number of business partners, built up a restaurant business known as the Clapham Tandoori. The partners gradually dropped out of the business, and by the time the business was sold in 1992 he was the sole owner.
6. In 1980 Mr and Mrs Khan acquired a property at 64 Salford Road in their joint names, which was converted into three flats, renovated and let out to tenants.
7. In April 1986 Mr and Mrs Khan acquired 14 Stapleton Road in their joint names, using funds from the sale of one of the flats at 64 Salford Road and mortgage finance for the purchase. 14 Stapleton Road was also converted into flats and let out to tenants (although the conversion was not regularised by a grant of retrospective planning permission until much later).
8. The family lived for some time in a flat above the Clapham Tandoori. However, in February 1989 Mr and Mrs Khan acquired a family home at 74 Cricklade Avenue, in Streatham Hill, and moved into it with their children. Mrs Khan still lives in that property, together with Ahmed, his wife Khairun and their two children.

9. In 1992 Mr Khan sold the Clapham Tandoori.
10. In 1998 the remaining two flats at 64 Salford Road were sold, and 7 Essex Grove was acquired with the proceeds of sale. Initially it was bought as a freehold property in the name of Farhana Khan, with a mortgage in her name.
11. On 17 March 2004 the freehold of 14 Stapleton Road was transferred to the Defendant. He took out a mortgage of £240,000 and paid off the original mortgage owed by Mr and Mrs Khan.
12. In 2005 Farhana and her husband divorced. It appeared that her former husband intended to claim a share of 7 Essex Grove in the divorce proceedings, although in the event she gave up any claim to a share in the matrimonial home in Birmingham and, presumably as a quid pro quo, her former husband's claim against 7 Essex Grove was not pursued.
13. Leasehold titles of the three flats at 7 Essex Grove were granted by Farhana to the Defendant in 2005. The Defendant paid off Farhana's existing mortgage, using mortgage finance obtained against one of the flats. The other two leases were granted to the Defendant for no consideration.
14. In March 2005 53 Norbury Crescent was purchased. The freehold title was in the Defendant's name. (Purple Panda Nurseries Ltd ("Purple Panda") was incorporated in 2011 and began operating a nursery at the property in 2013, and has continued to do so to the present day.)
15. In September 2006 5 Ullswater Road was purchased with the aid of mortgage funding. The freehold title was in the Defendant's name.
16. In April 2007 the Defendant purchased 49 Middlesex Road, using mortgage finance raised against 7 Essex Grove to provide a deposit of £50,000. Farhana subsequently went to live at 49 Middlesex Road.
17. In June 2007 the freehold title to 7 Essex Grove was transferred from Farhana to Ahmed for no consideration.
18. In the same month, the freehold title to 5 Ullswater Road was transferred from the Defendant to Ahmed, and three long leases of the flats in the property were granted to the Defendant for no consideration.
19. In 2008, the Defendant mortgaged Flat 3 at 7 Essex Grove for approximately £184,000. £50,000 of the money so raised was passed to Shalima to help her to pay her debts. Shalima repaid that money to the Defendant over the period between 2008 and 2013.
20. In the spring of 2008, Mr Khan arranged Ahmed's marriage to Khairun in Bangladesh. On 2 May 2008 Mr Khan died suddenly in Bangladesh. He left no will, and 74 Cricklade Avenue passed to Mrs Khan by right of survivorship.
21. On 3 November 2009 a bankruptcy order was made against Shalima on her own petition.

22. In July 2009, the freehold interest in 14 Stapleton Road was transferred from the Defendant to Ahmed, and three long leases of the flats at the property were granted to the Defendant for no consideration.
23. In August 2016, title to 49 Middlesex Road was transferred from the Defendant to Farhana.

The Claimants' case

24. The Claimants claim that it was always Mr Khan's intention that the beneficial ownership of the Properties should be shared between his children. Specifically, they assert that 7 Essex Grove was intended to be and is held beneficially for the Daughters in equal shares, and the remaining three properties are held beneficially for the Sons in equal shares. They claim, in respect of 7 Essex Grove, that there is an express trust of the property (based on an email from the Defendant in 2013, with which I deal below) or that there is a constructive trust, either a constructive trust of the type found in *De Bruyne v De Bruyne* [2010] 2 FLR 1240, where the legal owner is debarred from treating an asset as his own because it would be unconscionable for him to do so, or a common intention constructive trust and detrimental reliance on that intention by the Daughters. In respect of the three other properties, the Claimants claim that they are held on constructive trusts for the Sons on the same basis. To the extent that the Claimants' claims rely on having acted to their detriment, the specific detriments pleaded are:
 - i) Ahmed asserts that he carried out very extensive work on the Properties, without pay or below market rates, to the detriment of his own career prospects.
 - ii) Sarwar also asserts that he worked on the Properties, though less extensively than Ahmed.
 - iii) Farhana gave up her interest in her matrimonial home on her divorce in order to avoid her former husband making a claim on 7 Essex Grove, at a time when she did not own another property.
 - iv) Shalima gave up the security of knowing that Farhana was the legal owner who would be protecting their interest in the property.
 - v) Jennifer claims the same detriment as Shalima.
25. The Claimants seek orders for sale of the Properties. They also make a tracing claim against the Defendant for monies raised by way of mortgage finance against the Properties and then invested in other properties held for his sole benefit.
26. There was no valuation evidence in relation to the Properties at trial: notwithstanding the agreement of the parties recorded in the order following the costs and case management conference, the parties did not obtain expert valuations of the Properties in advance of the trial. However, given their locations around London and the sums that the parties agree have been raised

against them by way of mortgage finance, it is reasonable to assume that the Properties are valuable.

The Defendant's case

27. The Defendant's position has shifted somewhat in the course of the proceedings, but in essence his case is that Mr Khan always intended that he, as the eldest son, should be the beneficial owner of the Properties, and that the various transactions were all carried out with that end in view. He denies that any of the Claimants have any entitlement to the Properties.
28. The Defendant does not deny that Ahmed worked on the Properties, but asserts that he received payment for it and therefore that he did not suffer any detriment. He denies that Sarwar carried out any significant work on the Properties. If and to the extent that Farhana suffered any detriment, his position is that it was more than compensated for by the acquisition of 49 Middlesex Road for her to occupy, and its subsequent transfer into her name without a requirement to repay the deposit to the Defendant.
29. He denies the existence of any constructive or express trust. He also contends that he has borne all the stress and responsibility associated with ownership of the properties, as well as the financial risk entailed in borrowing against them.
30. He counterclaims for an account of rent paid to Ahmed by tenants at the flats at 14 Stapleton Road, and for the transfer of the freehold titles to 14 Stapleton Road, from Ahmed's name into his own name or that of a person nominated by him. He also seeks an order for the termination of the tenancies at 14 Stapleton Road, and an order for immediate access to each of the flats at 14 Stapleton Road.

Preliminary matters

Shalima's bankruptcy

31. The Defendant previously asserted that Shalima, having been declared bankrupt in 2009, could not make a claim in these proceedings as her interest in 7 Essex Grove, if any, was an asset of the Official Receiver. At the time of her bankruptcy she did not declare any interest in the property: she did not receive legal advice at the time and says that the lack of such a declaration was a simple oversight.
32. It is unfortunate that the parties should have realised so late that Shalima's earlier bankruptcy was relevant to these proceedings. However, the Official Receiver, acting as her trustee in bankruptcy, executed a deed of assignment on 20 June 2024, before the commencement of the trial, enabling Shalima to pursue these proceedings. It was conceded on behalf of the Defendant that the deed was validly executed. I was therefore satisfied that Shalima was entitled to pursue her claim.

Disclosure

33. Mr Lane also raised some concerns about disclosure on behalf of the Defendant. No application for specific disclosure was received in these proceedings, and the concerns expressed were of a general nature. It was argued on behalf of the Defendant that the requirements of PD 57AD were not satisfied by the provision of the same list of documents attached to each certificate. I find no basis in the Civil Procedure Rules for the assertion that each claimant in a joint claim must file a separate list of documents with their disclosure certificate, and Mr Lane was unable to indicate any authority on the point. I accept that disclosure in this case has not been wholly satisfactory and there are gaps in the documentation (for both the Claimants and the Defendant - for example, no evidence was disclosed as to the Defendant's source of funds for the purchase of 5 Ullswater Road, which is material to the case). However, the key period is now a long time ago and it is perhaps not surprising that the documentary history is not complete.

Conduct of the parties

34. To complicate matters further, a number of allegations of unethical or unlawful conduct on the part of the Claimants or the Defendant were raised before me. I expressly invited counsel to explain the relevance of those matters in these proceedings: they were said to go to credibility. Where the allegations seemed to me to be relevant to the proceedings, I have dealt with them in this judgment. If I have not dealt with an allegation it is because I considered it to be irrelevant to the proceedings.
35. I considered, for reasons unconnected with the specific allegations made about their individual conduct, that all the Claimants and the Defendant were in varying degrees unsatisfactory witnesses whose credibility was questionable. Their responses to questions were frequently evasive, and often inconsistent with their written witness statements. There is also, unsurprisingly, significant hostility between members of the family, although there was a general unwillingness to accept this. I have therefore been cautious about relying on the unsupported evidence of any of the parties on any contested matter of fact, and have relied heavily on the evidence of third parties and on the documents disclosed in the case.

The legal framework

36. The Claimants accept that where, as here, property is held by a sole legal owner, the burden is on the claimant to show that the beneficial interest does not follow the legal interest.
37. The applicable law was not in dispute in these proceedings. The Defendant did take issue with the use of tags such as "family business" or "family enterprise", used by the Claimants in their evidence to describe the family activities in relation to the Properties. The Defendant's submissions object to the lack of any reference in the claim to a legally recognised principle of the family unit (as, for example, the claim in *Singh v Singh* [2014] EWHC 1060 (Ch) that assets were held in a type of joint ownership recognised by Hindus and Sikhs for members

of a household living together). However, those submissions did not appear to me to be relevant in this case, as the Claimants were not purporting to use the language of “family property” or “family enterprise” in any technical sense, but as a helpful shorthand to identify the activities that they say they were carrying out, as a family, in relation to the Properties from a very early age, when Mr and Mrs Khan first purchased 64 Salford Road.

38. In relation to 7 Essex Grove only, the Claimants claim that there is an express declaration of trust in favour of the Daughters. The formal requirements for an express trust of land are set out in s.53(1)(b) of the Law of Property Act 1925, as follows:

“(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol-...

(b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.

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

39. The Claimants contend that the requirements of s. 53(1)(b) are met in an email dated 12 October 2013 from the Defendant to Shalima and other members of the family. They cite *Lewin on Trusts* at 3-012, which refers to *Forster v Hale* (1798) 3 Ves. Jr 696 as authority for the proposition that “the section is satisfied if the trust is manifested and proved by any subsequent acknowledgment by the trustee.”

40. The Defendant concedes that an email with a name typed at the foot can constitute a “signed” written document as a matter of law for the purposes of s.53(1)(b), following the decision in *Hudson v Hathway* [2023] KB 345, but denies that the email constitutes a written declaration of trust.

41. In relation to the three other properties, and to 7 Essex Grove in the event that the claim for an express trust is unsuccessful, the Claimants assert that the beneficial interests are held by the Defendant (and by Ahmed in respect of the freehold titles) on constructive trusts, either of the kind identified in *De Bruyne v De Bruyne* [2010] 2 FLR 1240, or on the basis of detrimental reliance by the Claimants. The key feature of *De Bruyne* was that a common intention was sufficient to found a constructive trust in circumstances where it would be unconscionable for the purported trustee to take the beneficial interest in the property, even though the beneficiaries were children at the crucial time and had not relied on the common intention, to their detriment or at all. At paragraphs 49-51, Patten LJ says:

“The authorities dealing with common intention constructive trusts provide only one example of a situation in which equity will impose a trust upon the owner or transferee of property based on the circumstances in which the property is acquired or dealt with. For a trust to be created the court has to be satisfied that it would be unconscionable for the legal owner to assert his legal interest

in the property to the exclusion of the alleged beneficiaries. The fiduciary obligation which that involves arises most obviously in an express trust where the property is held under the terms of a trust instrument in which the interests of the beneficiaries are clearly identified. In such cases the trustee either receives the property subject to the beneficial interests created by the instrument of transfer or, in the case of an express declaration of trust, subjects property already owned by him to those interests. In the case of a constructive trust, the obligation is imposed upon him as a result of his unconscionable conduct.

In common intention constructive trusts the equity arises because it would be unconscionable for the owner of the property to be allowed to deny the co-habitee the interest which it was agreed or understood that he or she would have and in reliance on which the co-habitee acted to his or her detriment. In a case like Lloyds Bank plc v Rossett where the husband purchased the house with money from his own family trust, and the wife made no financial contribution to its acquisition but relied instead on works of improvement which she carried out to the property, some causal link is necessary in order to connect the work done to the agreement or understanding that the ownership should be shared and so deprive the husband of absolute ownership of a property which he had paid for. This requirement of detrimental reliance is closely bound up with the question of unconscionability and in the analogous context of proprietary estoppel has come to be regarded as something which ought properly to be considered as part of a broader inquiry into whether the repudiation of the assurance given was or was not reasonable in all the circumstances: see Gillett v Holt [2001] Ch 210 at page 232D.

There are, however, a number of situations in which equity will hold the transferee of property to the terms upon which it was acquired by imposing a constructive trust to that effect. These cases do not depend on some form of detrimental reliance in order to re-balance the equities between competing claimants for the property. They concentrate instead on the circumstances in which the transferee came to acquire the property in order to provide the justification for the imposition of a trust. The most obvious examples are secret trusts and mutual wills in which property is transferred by will pursuant to an agreement that the transferee will hold the property on trust for a third party. In neither case does the intended beneficiary rely in any sense on the agreement (he may not even be aware of it) but, in both cases, equity will regard it as against conscience for the owner of the property to deny the terms upon which he received it. It is not necessary in such cases to show that the property was acquired by actual fraud (although the principle would apply equally in such cases). The concept of fraud in equity is much wider and can extend to unconscionable or inequitable conduct in the form of a denial or refusal to carry out the agreement to hold the property for the benefit of the third party which was the only basis upon which the property was transferred. This is sufficient in itself to create the fiduciary obligation and to require the imposition of a constructive trust. The principle is a broad one and applies as much to inter vivos transactions as it does to wills: see Rochefoucauld v Boustead [1897] 1 Ch 196; Bannister v Bannister [1948] 2 AER 133.

42. The Claimants claim that this is just such a situation, and it would be unconscionable for the Defendant to assert his interest in the Properties to the exclusion of all the Claimants, whether or not there has been detrimental reliance.
43. Further or alternatively, they assert that there is a common intention constructive trust of the kind described by Patten LJ in the passage I have quoted in respect of each of the Properties, and that all the Claimants have relied on the existence of that common intention to their detriment, as set out in paragraph 24 above.
44. The Claimants also draw my attention to the proposition, developed in *Stack v Dowden* [2007] 2 AC 432 HL, that a course of conduct may be evidence of the intention of the parties. In that case, the unusually strict separation of the parties' finances throughout their relationship supported the proposition that, even in the absence of a declaration of trust, they intended the beneficial interest in the property to be held otherwise than in equal shares.

Findings of fact

45. The facts of the crucial period are disputed. Mr Khan left no documentary evidence of his intentions in relation to any of the Properties, and made no will. His intentions in the period between 1986, when 14 Stapleton Road was purchased, and his death in 2008 are clearly central to this case, but it was agreed by all parties (and by other witnesses) that it was not the family way to write down intentions or to involve lawyers, but to operate on trust between family members. That is not perhaps unusual: as Mr East noted in his closing submissions, it is in the nature of a constructive trust that there is likely to be little or no written evidence of its creation. However, it is an evidential complication.
46. All the Claimants and the Defendant gave evidence. The Claimants' additional witnesses were Mrs Khan, Halim Khan (the parties' cousin, who lived with them while he was growing up), Khairun Khan (Ahmed's wife), Eileen Garside (formerly the Defendant's business partner), Shamim Uddin (a former neighbour of the family) and Seamus Crowley (an accountant who prepared Ahmed's tax return). It was the intention of the Claimants to call Brian Ardron, an architect who had worked with the family on some of the Properties, but he died not long after making his witness statement, and the statement was admitted as hearsay evidence. The Defendant's witnesses were his business partner in Purple Panda Nurseries, Anthony Bailey, and Robert Harley, a mortgage broker. Robert Harley's statement was agreed by the parties and he therefore did not give oral evidence before me.
47. Two further individuals, Paul Miller and Andrew Shippey, were referred to in the Defendant's evidence, but did not make statements and therefore what the Defendant says about their understanding of the position is hearsay only. Paul Miller was a solicitor who acted on the purchase of 14 Stapleton Road, and the Defendant says that it was he who advised putting the freehold titles in Ahmed's names to separate the ownership of the freehold and leasehold, and failed to advise that it would have been possible to put them in the name of a company

instead. Andrew Shippey was a mortgage broker who likewise acted for the Defendant in relation to the Properties.

48. Mrs Khan's oral evidence, which I found credible and convincing, was that she had little or no involvement in decision-making in relation to the Properties, but signed documents when she was asked to do so by her husband. She was able to shed some light on the decision-making in relation to 7 Essex Grove and 14 Stapleton Road, but was of less assistance in relation to the other properties. The Defendant asserts (and this allegation is also repeated in text and email messages to various of the Claimants) that she has been intimidated by the Claimants into supporting their case, especially since she is living with Ahmed and his family. I do not find that she has been intimidated into giving evidence. In cross-examination, she was firm that no-one had told her what to say. Understandably, she wanted the dispute to be over, was saddened by it and would have liked her children to be able to resolve it without litigation.

7 Essex Grove

49. The freehold title to 7 Essex Grove was originally purchased in Farhana's name, with a mortgage that was also in her name. Her evidence was that she took out the mortgage on instructions from Mr Khan. There was no suggestion from any party that Farhana was intended to benefit directly from the arrangement at the time. Her evidence was that she received the rent into her bank account, and carried out some administrative tasks relating to the tenancies, on behalf of Mr Khan rather than for her own benefit, and that Mr Khan was the decision-maker. She used money from the rent to pay the mortgage and other costs relating to the property, and the balance was passed on to Mr Khan. Her recollection was not very detailed, but this is perhaps not surprising given that the purchase took place in 1998.
50. The Defendant does not assert that Farhana was the beneficial owner of the property during the period when the title was in her name or dispute her account of how the funds were dealt with.
51. Her evidence was that her parents told her, before the purchase, that the property would eventually belong to her and her sisters, but with Mr Khan in control and receiving the income during his lifetime. Mr Lane argued that her evidence in the proceedings was inconsistent with her pre-action witness statement. Her witness statement in the proceedings said that the property was purchased "*with the intention that 7EG would eventually belong to me and my sisters*". Her pre-action witness statement refers in several places to the property as belonging to her father, but also states "*My parents clearly expressed this property belonged to their three daughters*". The emphasis is different but I do not find that there is any inconsistency, given that she asserts the property was held for the benefit of her father during his lifetime.
52. At the time when the property was acquired, the Defendant's relationship with his parents was not good. He downplayed this in cross-examination, but was taken to a copy of an application he had made in May 2003 to have a judgment against him (otherwise unrelated to these proceedings) set aside. His explanation, which he acknowledged was in his own handwriting, for not being

aware of the original claim against him was that he had fallen out with his parents and moved out, and was therefore not living at the address to which documents were sent. I am persuaded, therefore, that the reason for putting the property in Farhana's name originally was that Mr Khan did not feel at the time that the Defendant would be a suitable person to hold it, in spite of a cultural preference in favour of the eldest son (to which Halim Khan in particular attested, and which the Defendant himself endorsed, asserting that his father intended him to be the beneficial owner in preference to his siblings because he was the eldest).

53. Jennifer and Shalima likewise gave evidence that they recalled being told that 7 Essex Grove would be held for the benefit of the Daughters, as did Ahmed and Sarwar, although Jennifer, Ahmed and Sarwar were not specific about when and how they were told this. Shalima's evidence was that she remembered it being discussed over dinner at her parents' home.
54. The evidence of Shamim Uddin, in his witness statement and his oral evidence, was that Mr Khan told him "*it is for my daughters*", meaning 7 Essex Grove. He said that this arose at a time when Mr Khan was very angry about Farhana's husband seeking to make a claim against the property in the divorce proceedings (i.e. around 2005). The Defendant did not seek to challenge this evidence.
55. Mr Uddin also gave evidence that it was not unusual in Mr Khan's circle for individuals to obtain mortgage finance in their children's names while retaining control of the property in question.
56. Khairun Khan gave evidence that, when she met Mr Khan in Bangladesh in 2008, before she married Ahmed, he told her that one of the family properties was held for his three daughters, and the other properties were held for his three sons.
57. Mrs Khan had limited recollection of the transactions relating to 7 Essex Grove. She gave evidence through an interpreter, and her witness statement was also translated from Bengali. Her witness statement said that "*We registered 7 Essex Grove in the name of our eldest daughter, Farhana, on the understanding that 7 Essex Grove did not belong to her but she was holding 7 Essex Grove for the benefit of all three of my daughters, Farhana, Shalima and Jennifer.*" In oral evidence it was clear that Mr Khan was the decision maker and she was only kept informed of his decisions after they had been made, but her evidence was consistent as to the intention with which the property was acquired: "*I was told that I am buying it in the name of Farhana so that my three daughters can have it.*" As I have already observed, I found Mrs Khan to be a truthful and careful witness who was saddened by the breakdown in relationships among her children.
58. Halim Khan's evidence in his witness statement was that he was told by Mr Khan, around the time of Farhana's divorce, that the property was held for him during his lifetime "*and for the ultimate benefit of the girls*". He did not become aware at the time that the leasehold titles had been granted to the Defendant: he learnt of that much later.

59. I considered Halim Khan to be a credible witness. He had nothing personally to gain by supporting the Claimants' case, and although he had grown up with the family he was slightly detached from it. He was clearly very angry with the Defendant, but the reason he gave was that the Defendant had told "*outrageous lies*" about his ownership of the Properties. The Defendant suggested that he was resentful because he had not been treated as fully part of the family, but he denied that and expressed gratitude to his adoptive parents. In any event, it is hard to see why resentment against Mr and Mrs Khan would result in support for the Claimants' case, and the Defendant did not explain this.
60. The leasehold interests in 7 Essex Grove were created in 2005, and legal title to them was placed in the Defendant's name. The mortgage in Farhana's name was paid off at that point. The documentary evidence shows that the Defendant obtained a mortgage on one of the flats, which was enough to pay off the mortgage in Farhana's name. He took the leases of the other two flats unencumbered.
61. The Defendant's position on the grant of the leases of 7 Essex Grove altered in the course of the proceedings. Initially he asserted that he had purchased them, but in oral evidence said that the property was a gift and he took it off his parents' hands as a favour, as the burden of managing the property and dealing with the tenants had become too great for Mr Khan. This is hard to reconcile with other evidence which shows that Mr Khan continued to take an active and energetic interest in all the Properties until he went to Bangladesh before his death.
62. The Defendant also said that he took on the property in return for paying off his father's debts. The mortgage that had been taken out in Farhana's name was certainly paid off (using the proceeds of a mortgage obtained on one of the newly created flats). However, the Defendant's evidence is inconsistent as to the value of the debt that was said to have existed. At an earlier stage of proceedings the Defendant asserted that the debts amounted to £80,000, but as the case went on the figure was reduced to £15,000. There is no independent evidence of either of his parents being in debt at that time, beyond their mortgage on 74 Cricklade Avenue and the mortgages on 7 Essex Grove and 14 Stapleton Road, which were more than adequately covered by rental income on those properties.
63. In 2007 Farhana transferred the freehold of 7 Essex Grove to Ahmed. The Defendant asserts in his Defence and Counterclaim that he was unaware of the transfer and complains that his rights of pre-emption as leaseholder had been ignored. However, it is clear from other evidence that he was aware of the transfer before the proceedings began; in 2012 he forwarded on an email from his solicitor, Paul Miller, to Ahmed, asking him to complete a freehold questionnaire, and in 2016 a notice was served on both the Defendant as the leaseholder and Ahmed as the freeholder by the local authority, confirming that a licence under the Housing Act 2004 had been approved. The Defendant did not raise any questions about the freehold ownership in either of those exchanges, implying that he was already well aware of it when he received those documents.

64. By the Defendant's account, his parents were in serious financial trouble and reliant on benefits at the date of the transfer to him. He does not explain why they would make a gift of a valuable asset to him in those circumstances, including income from it, and his account is inherently implausible.
65. An email written by the Defendant in 2013 to Shalima and other members of the family (in the context of her financial difficulties, which accounts for the angry tone of the email) also undermines his account. In it he says: "*I want Essex Grove out of my name by 2014. This belongs to three sisters as stated clearly.*
- I never wanted this property in my NAME....You are not even grateful to the fact that between myself and Ahmed We have maintained, argued with neighbours, improved, fought against tenants, blood, sweat and tears, cleaned toilets. So you guys have a block of flats that have at least 40-50% equity not to mention a valuable home should you need it."*
66. The Defendant could not adequately explain this email in cross-examination. He said that it did not make sense, and had no plausible explanation of what it might mean, if not that he held the leaseholds of 7 Essex Grove on trust for the Daughters.
67. The Defendant accepts that the deposit for 49 Middlesex Road was obtained through a mortgage on 7 Essex Grove, and that he did not ask Farhana to pay the deposit back. He explained that the money was a gift from him.
68. Ahmed accepts that he holds the freehold on trust for the Daughters, so there is no dispute on that point.
69. The email evidence is persuasive: the Defendant was clearly operating in 2013 on the basis of a shared family assumption that 7 Essex Grove was held for Mr Khan during his lifetime, and thereafter for the Daughters. It is also not disputed that Mr Khan was very dismayed by Farhana's divorce and her husband's threat to claim a share of 7 Essex Grove, and that he wanted to change the way in which the legal title was held as a consequence of that concern. Mr Khan was clearly the decision maker at the point when the leaseholds were created, and there was evidence from both Halim Khan and Mrs Khan that the intention was that the property should be held for the Daughters following Mr Khan's death. I find, on the balance of probabilities, that there was a common intention on acquisition of 7 Essex Grove, on the creation of the leaseholds and on the transfer of the freehold that the beneficial interest in the property should be held on trust for Mr Khan during his lifetime and thereafter for the Daughters.

14 Stapleton Road

70. 14 Stapleton Road was initially purchased in the names of Mr and Mrs Khan in the mid-1980s, when their children were quite young. It was common ground that a great deal of building work was done on the property, by members of the family generally, and by Mr Khan and Ahmed in particular as time went on. The evidence of both Halim Khan and Mr Uddin was that Mr Khan and Ahmed worked very closely together on the Properties once Ahmed grew up, spending long days carrying out works to them.

71. Title to the freehold of 14 Stapleton Road was transferred to the Defendant in 2005. Mrs Khan's evidence in cross-examination was that "*it was given from our name to his name and he was told it was for the three brothers.*" It appears that the relationship between the Defendant and his parents had improved by 2005. The Claimants' case is that Mr Khan wanted the Defendant to hold the legal title so that he could obtain mortgage financing which could then be used for the acquisition of further property for the benefit of the Sons. A mortgage obtained on 14 Stapleton Road was used later to acquire 53 Norbury Crescent, so the facts on this point appear to support the Claimants' position.
72. The Defendant asserted that the acquisition of 14 Stapleton Road was a purchase from his parents, albeit at a very significant undervalue, and that he made a payment to Mr Khan to pay off debts. Again, I find this implausible. There is no evidence of any direct payment from the Defendant to either of his parents, and no evidence that Mr Khan was in debt. The Defendant did pay off the existing mortgage on the property, which was approximately £60,000.
73. The Defendant also cannot explain why they would have sold the property to him at a significant undervalue, rather than selling it on the open market, if they needed the money. It would probably have been worth in the region of £380,000 or more (there was no valuation evidence before me, but £380,000 was the Defendant's own figure in cross-examination).
74. The Defendant did obtain a mortgage of approximately £240,000 against the property, part of which was used to pay off the small mortgage in Mr and Mrs Khan's names, and the remainder of which was used to fund the purchase of 53 Norbury Crescent.
75. The Claimants' case was that, at a family meeting in 2004, it was agreed that to match the way in which 7 Essex Grove was held for the Daughters, 14 Stapleton Road would be held for the Sons.
76. I am not persuaded that there was anything so formal as a family meeting. The Claimants appeared to be unsure of where it had taken place (at 74 Cricklade Avenue or the Defendant's house). The Defendant disputes that it took place, Mrs Khan did not support the Claimants' account of the meeting in cross-examination, and there was no independent evidence as to whether it occurred.
77. However, Mrs Khan's evidence does indicate that there was a shared understanding at the time of the transfer to the Defendant that the property was held for the Sons.
78. Khairun Khan's evidence was that when she met Mr Khan in Bangladesh in 2008, shortly before his death, he told her that one of his properties was being held for the daughters and the remaining properties were held for his three sons. She also gave evidence of an attempt that she and Mrs Khan had made in August 2011 to try to resolve differences between Ahmed and the Defendant: her evidence, which was not challenged in cross-examination, was that the Defendant had said that:
 - i) He would give everyone their share of the Properties in good time;

- ii) If the Daughters wanted 7 Essex Grove they needed to go and get a mortgage and take the house from him.
 - iii) 14 Stapleton Road was to be shared between himself, Ahmed and Sarwar
 - iv) 53 Norbury Crescent and 5 Ullswater Road were owned 50-50 between him and Ahmed, as Sarwar had done none of the works. Mrs Khan said that Sarwar should get his share like everyone else, and an argument followed.
- 79.** Further, the parties' conduct following the transfer is not at all consistent with the Defendant being the sole beneficial owner of 14 Stapleton Road. The Claimants' evidence, which the Defendant did not dispute, was that Mr Khan continued to be actively involved in renovation work to the property. The flats at 14 Stapleton Road were let to tenants, and the Defendant accepted that Ahmed acted as landlord of the flats and received the rent, both before and after their father's death. This was supported by the evidence of Seamus Crowley, who prepared Ahmed's tax return on the understanding that the property was held on trust for the three brothers, not for the Defendant alone. Ahmed's evidence was that the rent was received on behalf of Mr Khan until his death, and thereafter for the benefit of the Sons. The Defendant accepts that Ahmed accounted to him for rent up to 2020, when these proceedings began.
- 80.** Ahmed asserts that he spent enormous amounts of time working on the property. The Defendant accepts that he carried out work on the property but says that the number of hours is a gross exaggeration, and that in any event Ahmed was paid for the work. However, there is no evidence of payments to Ahmed from the Defendant (or any of his associated companies) before 2009. Halim Khan's evidence was that there was a family expectation that members of the family would work for the family businesses without pay, and cited his own experience of working at the Clapham Tandoori six days a week and receiving a weekly allowance of £5 as a teenager. It seems to me, therefore, more likely than not that Ahmed was not paid during Mr Khan's lifetime.
- 81.** If 14 Stapleton Road was, as the Defendant asserts, in his sole beneficial ownership, it is entirely unclear why Ahmed would have acted as he did, particularly in relation to the rent.
- 82.** There are also WhatsApp messages between the Defendant and Ahmed in June 2020 in which the Defendant appears to acknowledge that 14 Stapleton Road, 53 Norbury Crescent and 5 Ullswater Road are held for the benefit of the Sons. The context is an angry exchange in which Ahmed objects, on 16 June, to the Defendant remortgaging the Properties and says "*I don't give a toss you go on and buy as many properties as you want but not with my inheritance, like I stated if you pull money out of tooting [i.e. 14 Stapleton Road] Ullswater or Norbury then 50% of whatever pulled out needs to come to me plain and simple.*" (The Claimants' explanation for the reference to 50% is that the parties had agreed that Ahmed and the Defendant would be entitled to a bigger share for a period of time to reflect that they had carried out work on the Properties and Sarwar's contribution had been considerably less.)

83. The Defendant's response was "*Your inheritance? I can finance borrow and pay back...You can't be trusted with inheritance as you will throw it down the drain. It's my inheritance too. And everyone else's.*" In cross-examination, the Defendant said that by "inheritance" he meant his mother's property at 74 Cricklade Avenue, but this is not plausible in context – the reply comes 40 seconds after Ahmed's message and it must be referring back to Ahmed's reference to the three specified properties.
84. Later the same day the Defendant says "*It was nice and convenient to keep in my name all those years, same with your inheritance. Nice to use my name for 20 years now you think I'm trying to keep it. Because of bitterness and jealousy from you lot.*" In cross-examination he said that this referred only to 7 Essex Grove.
85. The following day the WhatsApp discussion about the remortgages resumes. 74 Cricklade Avenue was also mortgaged (which had itself been the subject of some disagreement within the family, as some of the Claimants felt that it exposed Mrs Khan to unnecessary financial risk). Ahmed says "*Cricklade [mortgage] interest alone is 18k a year but wait rent money from Essex grove tooting Norbury, Ullswater can't cover 18k a year do one*". Those are clearly references to the Properties. Ahmed goes on to suggest that the Defendant is using the rental income on his own properties: "*How much have you spent on Blairderry [the Defendant's own home]. Let me guess?*". The Defendant responds "*Believe it or not I have other sources of income. Not your inheritance*" to which Ahmed replies "*Exactly pay out of your own pocket for your own property...*". It appears reasonably evident from these exchanges that the Defendant recognised and accepted that there were two classes of property: the "inheritance" and his "own property".
86. The Defendant's position on the exchange of WhatsApp messages (which are considerably more extensive than the extracts I have quoted) is that (a) they were an attempt by the Claimants to obtain admissions from him, at a time when they knew, but he did not, that litigation was contemplated and (b) his responses were sarcastic. Neither of these arguments holds water. If he had replied (as on his own case he would have been entitled to do) to the effect that he owned all the Properties, that would have produced very unhelpful evidence from the Claimants' perspective, so they would have been taking a very high risk, and it is hard to see what the intention of sarcasm would be in context (later in the exchange the Defendant does use sarcasm, referring to Ahmed owning "*all of Stapleton*", which clearly is not seriously meant). I find that the WhatsApp messages are highly relevant evidence that the Defendant regarded himself in 2020 as holding the Properties as a trustee, and that that was a common understanding between him and the Claimants.

53 Norbury Crescent

87. The acquisition of this property was closely linked with the transfer of 14 Stapleton Road. The Claimants' account of the acquisition of this property was that it was acquired with a view to creating a nursery or care home business as a source of income for Mr Khan. This is supported by the evidence of Mr Uddin, who discussed the possibility of a nursery with Mr Khan. His evidence was that

at the time when 53 Norbury Crescent was purchased, Mr Khan invited him to consider going into partnership with him in a nursery business, given his past experience in this area, but that he did not wish to do so.

- 88.** The Claimants say that the fall-back position in relation to 53 Norbury Crescent was that it might become the family home if it proved impossible to obtain planning permission to use it as a nursery. The Defendant denies this, but at the time when the property was acquired the family members then living at 74 Cricklade Avenue signed a deed of consent in connection with the grant of the mortgage on 53 Norbury Crescent, subordinating any rights that they might have in the property to the lender's interest. The conveyancing file for 53 Norbury Crescent was not disclosed as the firm of solicitors who handled the purchase had closed down, so there is no contemporary explanation of the deeds, but it is hard to see why other members of the family would have needed to sign deeds of consent if the property was to be used, as the Defendant says, either as a nursery or as a house for himself and his partner and children. There is no evidence to support his claim that he intended personally to live in it, and I find that that is a later fabrication.
- 89.** Eileen Garside, the Defendant's former business partner in Pangea Support Services Ltd ("Pangea") (a company providing support services to young people and incorporated in 2007) gave evidence of Mr Khan's continuing active involvement with the Properties, particularly 53 Norbury Crescent, where Pangea was based for a period of time. She was a careful witness with no personal interest in the outcome of the proceedings: she had sold her share of Pangea to Farhana in 2011, significantly before the litigation began, and although she had remained in touch with Farhana from time to time it was not a very close connection.
- 90.** She remembered Mr Khan, having seen him regularly at 53 Norbury Crescent in the year before he died. Her evidence was that he was there very regularly and viewed himself as in control of that property and the others which are the subject of this claim, all of which were known to her because Pangea tenants lived in the flats. She also recalled Mr Khan and Ahmed doing extensive work to the property, such as the construction of an extension. The Defendant sought to downplay the work done, but accepted that they built the extension and did other works to the property over time, including the rebuilding of a chimney in 2012 (for which Ahmed accepts that he was paid).
- 91.** Halim Khan's evidence was that Ahmed and Mr Khan, together with a labourer, did significant work at 53 Norbury Crescent. The evidence of Brian Ardron (admitted as hearsay only, as explained above, but supported by contemporary documents) was that Ahmed and Mr Khan carried out significant works to the property, and that applications for planning permission and a party wall agreement were made in Ahmed's name, not the Defendant's.
- 92.** Anthony Bailey's evidence contradicted that of Mrs Garside and Halim Khan. He said that he had rarely seen Ahmed or Mr Khan at the property, but conceded that at the time he had been a busy lawyer in a commercial firm and his opportunities to observe what was happening were limited.

93. There is also some evidence of Ahmed becoming involved in negotiations about the rent paid by Pangea at 53 Norbury Crescent (before Purple Panda occupied the property), at a meeting in February 2008. A note of the meeting shows that Mrs Garside and the Defendant (as directors of Pangea) argued strongly for a reduction in rent, while Ahmed was very reluctant to agree it. The Defendant and Mr Bailey sought to explain this away as a fiction to satisfy Mrs Garside that the rent was being considered by an independent person given that the Defendant had a conflict of interest, being both a director of Pangea and the landlord. That seems extremely convoluted (and unlikely to satisfy Mrs Garside): the simpler and more plausible explanation is that Ahmed became involved because he had an interest in 53 Norbury Crescent (and 5 Ullswater Road, which was also discussed at the same meeting as the flats were let to users of Pangea's services), and unlike the Defendant had no conflict of interest.
94. I find that Mr Khan directed the purchase of 53 Norbury Crescent for his own benefit during his lifetime and thereafter for the benefit of the Sons, and maintained an active interest and involvement in the property after its acquisition. There was a common understanding between the Defendant and the Claimants that that was the basis on which it was held.

5 Ullswater Road

95. Much of the evidence relating to 14 Stapleton Road and 53 Norbury Crescent (such as the exchanges of WhatsApp messages and the evidence of Eileen Garside) applies also to 5 Ullswater Road: the three properties are frequently referred to together and distinguished from both 7 Essex Grove and other property held by the Defendant.
96. Shalima's evidence, which was not challenged in cross-examination, was that it was Mr Khan who found the property and that she went with him to view it.
97. Halim Khan's evidence is that Mr Khan took him to see Ullswater Road at the time of its purchase, and that it was in very poor condition at that time and clearly required a lot of work. He said that Mr Khan told him that "our" intention was to convert it into three flats. They were speaking Bengali at the time, so the word used was *umra*. There was no dispute that that meant "our". He also gave evidence that he visited on further occasions and saw Mr Khan and Ahmed working there, and that it was Mr Khan's habit to work very long days, so that other family members had to do likewise. It was also his evidence that he did not see the Defendant or Mr Bailey working at the property.
98. The story is very much like that of 14 Stapleton Road: the leaseholds were held by the Defendant and the freehold by Ahmed, and the property was converted into flats which were then let to tenants. The Claimants' case is that Ahmed, together with Mr Khan, carried out very significant works to the property: the Defendant's case is that (to the extent that Ahmed carried out works to the property) he was paid for them, and that Ahmed in any event exaggerates the extent of his work on the property, since he and Anthony Bailey carried out some of the works. Mr Bailey's evidence supports the Defendant's assertion that he carried out work to the property, but he acknowledged in cross-

examination that he could not say how much work Ahmed had done, since his own contribution was relatively limited.

99. The flats at 5 Ullswater Road are let to tenants (it was Mrs Garside's evidence that Pangea housed some of the young people it supported there).
100. It is not clear, in the absence of supporting evidence, where the initial finance to acquire the property came from, and I cannot make a finding on this point. The Claimants' case allows for the possibility that it may have come either from a remortgage of 7 Essex Grove or of 14 Stapleton Road, in either case they say at Mr Khan's direction. The Defendant, in his witness statement, stated that the funds had come from a mortgage on 7 Essex Grove. The Defendant has provided no evidence to support that statement. However, I do find on the balance of probabilities that Mr Khan was the directing mind behind the purchase, and that the funds came from either 7 Essex Grove or 14 Stapleton Road as part of his plan for a family property empire. He should, of course, have taken into account that the beneficial interest in 7 Essex Grove was not the same as for the other properties.

The issues for me to determine

101. Mr East produced a list of issues at the beginning of the proceedings, which were not formally agreed, but Mr Lane did not object to them. They were as follows and I adopt them for the purposes of this judgment.
102. **Issue 1:** Did Farhana acquire 7 Essex Grove according to a prior agreement (i) that Mr Khan should take sole beneficial ownership, or (ii) that the Daughters would have equal beneficial shares in the property, subject to Mr Khan's rights during his lifetime to the income from the property and to control the property?
103. I find that she took the property on the basis of a shared understanding that the Daughters would have equal beneficial shares, subject to Mr Khan's rights during his lifetime.
104. **Issue 2:** If the answer to issue 1 is that (ii) was the case, was Farhana holding 7 Essex Grove on constructive trust to that effect from the point of purchase under the type of constructive trust referred to in *De Bruyne v De Bruyne*?
105. Farhana has never denied that she was holding 7 Essex Grove on trust, so I have no difficulty finding in the Claimants' favour on this point.
106. **Issue 3:** Is an express trust in respect of the 7EG leasehold interests in favour of the Daughters manifested and proved for the purposes of section 53(1)(b) of the Law of Property Act 1925 by the Defendant's email dated 12.10.13?
107. I consider that it is. The email identifies the property, the beneficiaries ("three sisters") and the trustee, and the Defendant concedes that that section can apply to a declaration made after the trust is created.
108. **Issue 4:** If the answer to issue 3 is no, did the Defendant acquire the 7 Essex Grove leasehold interests (a) subject to an existing trust in favour of the

Daughters (and Abdul) as set out above and/or (b) according to a prior agreement that the Daughters would have equal beneficial shares in them, subject to Abdul's rights during his lifetime? If so, does a *De Bruyne* type constructive trust apply to that effect?

- 109.** If I am wrong about issue 3, I consider that there is ample material to support the existence of a *De Bruyne* type constructive trust. It would be unconscionable for the Defendant to purport to take the property beneficially given the clear intention of all parties at the time of the creation of the leaseholds, which is supported by the subsequent conduct of the parties until 2020, when these proceedings began.
- 110. Issue 5:** Further or alternatively, was there a common intention between Mr Khan, the Defendant and the Daughters that the Daughters should have beneficial interests in the 7 Essex Grove leaseholds? If so: (a) did the Daughters rely on that common intention to their detriment, and (b) if so, was there an express agreement that the Defendant would hold the 7 Essex Grove leaseholds on trust for the Daughters in equal shares (subject to Mr Khan's rights during his lifetime)?
- 111.** I do not strictly have to answer this question, given my findings on issues 3 and 4, but I record that Farhana clearly acted to her detriment in reliance on what she considered to be her interest in 7 Essex Grove, at the time when she gave up her interest in the matrimonial home on her divorce. It is less clear that Jennifer or Shalima acted to their detriment – indeed, it is not clear that they “acted” at all or had any say in the decision to transfer 7 Essex Grove from Farhana to the Defendant.
- 112.** The parties acted throughout on a clear understanding that 7 Essex Grove would be held for the Daughters in equal shares following Mr Khan's death.
- 113. Issue 6:** In the light of the answers to the above questions, is Ahmed holding the freehold in 7 Essex Grove for the Daughters in equal shares, or for the Defendant alone?
- 114.** In the light of my findings of fact on the common understanding between the parties, I find that Ahmed is holding the freehold in 7 Essex Grove for the Daughters in equal shares.
- 115. Issue 7:** Did the Defendant acquire 14 Stapleton Road according to a prior agreement that the Sons should have equal beneficial ownership subject to Mr Khan's rights during his lifetime to the income from the property and to control of the property? If so, does a *De Bruyne* type constructive trust apply to that effect, including in relation to the leasehold interests that were subsequently created?
- 116.** I find that the Defendant did so acquire 14 Stapleton Road, as part of Mr Khan's plan for expansion of the family's property interests for the benefit of himself and the Sons. It is unconscionable for the Defendant now to deny that the acquisition was on that basis, and a *De Bruyne* type constructive trust applies.

- 117. Issue 8:** Further or alternatively, was there a common intention between Mr Khan and the Sons that Ahmed and Sarwar should have beneficial interests in 14 Stapleton Road (and subsequently in the 14 Stapleton Road leaseholds)? If so: (a) did Ahmed and Sarwar rely upon that common intention to their detriment; (b) if the answer to (a) is yes, was there an express agreement that the Defendant would hold the property (including subsequently the leaseholds) on trust for the Sons in equal shares (subject to Mr Khan's rights during his lifetime)? (c) if the answer to (b) is no, what beneficial interest do the Sons take in the 14 Stapleton Road leaseholds?
- 118.** I find that there was such a common intention, and that Ahmed relied on it to his detriment. Regardless of which party's evidence is accepted about the precise amount of time involved, it is clear that Ahmed carried out a lot of work with Mr Khan, much of which was unpaid, and that that is likely to have been detrimental to his prospects of obtaining other work. I am less satisfied that Sarwar can demonstrate detrimental reliance. I accept that he carried out some work to 14 Stapleton Road after its transfer to the Defendant, but I am not persuaded that it was sufficient to constitute a detriment within the meaning of the case law. I find that there was a clear understanding between the parties that 14 Stapleton Road was held for the Sons in equal shares.
- 119. Issue 9:** In light of the answers to the questions set out in issue 8, is Ahmed holding the freehold in 14 Stapleton Road on trust for the Sons in equal shares, or for the Defendant alone?
- 120.** In the light of my findings on issues 7 and 8, I find that he is holding the freehold for the Sons in equal shares.
- 121. Issue 10:** Did the Defendant acquire 53 Norbury Crescent, with the benefit of monies raised from 14 Stapleton Road, according to a prior agreement that the Sons would have equal beneficial shares in the property, subject to Abdul's rights during his lifetime to income from the property and to control it? If so, does a *De Bruyne* type constructive trust apply to that effect?
- 122.** I find, on the balance of probabilities, that he did, and that such a trust applies. Again, it would be unconscionable for the Defendant to take the whole of a valuable property in the knowledge that it was intended to benefit all three of the Sons.
- 123. Issue 11:** Further or alternatively, was there a common intention between Mr Khan and the Sons that Mr Khan, Ahmed and Sarwar should have beneficial interests in 53 Norbury Crescent? If so: (a) did Ahmed and Sarwar rely on that common intention to their detriment; (b) if the answer to (a) is yes, was there an express agreement that the Defendant would hold the property on trust for the Sons in equal shares (subject to Mr Khan's rights during his lifetime); and (c) if the answer to (b) is no, what beneficial interest do the Sons take in 53 Norbury Crescent?
- 124.** I consider that there was such a common intention. I also consider that Ahmed relied on that common intention to his detriment. He accepts that he received some money for work that he carried out after 2009, although the Defendant and

the Claimants alike were unable with certainty to identify which payments set out in the spreadsheet of payments that was in evidence in the proceedings were payments for work carried out by Ahmed himself and which were to cover payments to labourers or purchases of materials. Ahmed asserts, but the Defendant denies, that some of the payments were payments to him of his share of rent paid by Purple Panda. I do not need to make a finding on this point, as there is no evidence of payment for work carried out up to the date of Mr Khan's death, and all the evidence before me suggests that Mr Khan expected the members of the family to work unpaid on the Properties (in the expectation that they would eventually benefit from their labours). However, I do not think there is evidence that Sarwar suffered any detriment in reliance on the common intention: he did comparatively little work on 53 Norbury Crescent. I find that the intention was that all three of the Sons should benefit in equal shares from the Properties: Ahmed's evidence was that the references to "50%" in messages was a reference to an agreement that he and the Defendant would take a larger share for a period, to reflect their greater contribution. I accept that evidence, especially as Ahmed would have stood to benefit from maintaining that he and the Defendant were entitled to 50% each.

125. **Issue 12:** Did the Defendant acquire 5 Ullswater Road, using money raised from 14 Stapleton Road or 7 Essex Grove, according to a prior agreement that the Sons would have equal beneficial shares in the property subject to Mr Khan's rights during his lifetime to income from the property and to control it? If so, does a *De Bruyne* type constructive trust apply to that effect?
126. It is not clear which property the funds came from to acquire 5 Ullswater Road, and this is a matter that will have to be dealt with as part of the Defendant's accounting for his use of the mortgage funds raised against the Properties. It appears from the WhatsApp messages, from Halim Khan's evidence of being shown the property by Mr Khan and from Mrs Garside's evidence that Mr Khan treated it as his own, that it was acquired with the intention that it should be held on the same terms as 14 Stapleton Road and 53 Norbury Crescent, and that that is how the parties subsequently treated it. However, if the funds came from a mortgage raised on 7 Essex Grove and the mortgage has not yet been repaid, the Daughters also have a claim in respect of part of the value of 5 Ullswater Road.
127. **Issue 13:** Further or alternatively, was there a common intention between Mr Khan and the Sons that Ahmed and Sarwar should have beneficial interests in 5 Ullswater Road (and subsequently in the 5 Ullswater Road leaseholds)? If so: (a) Did Ahmed and Sarwar rely on that common intention to their detriment? (b) If the answer to (a) is yes, was there an express agreement that the Defendant would hold the property on trust for the Sons in equal shares (subject to Mr Khan's rights during his lifetime)? (c) if the answer to (b) is no, what beneficial interest do the Sons take in the 5 Ullswater Road leaseholds?
128. The answer is the same as for 53 Norbury Crescent: Ahmed relied on it to his detriment, Sarwar did not. But in the light of my answer on the *De Bruyne* type trust, this is not fatal to their claim.
129. **Issue 14:** In the light of the above questions, is Ahmed holding the freehold in 5 Ullswater Road for the Sons in equal shares, or for the Defendant alone?

130. It follows from my decisions on issues 12 and 13 that Ahmed is holding the freehold for the Sons in equal shares.
131. **Issue 15:** If the Defendant holds any or all of the properties on trust for the Sons or the Daughters, must the Defendant account for (a) rental income received by him on the relevant properties, (b) the sums that would have been received had rent been charged at proper market rate on any or all of 53 Norbury Crescent, 5 Ullswater Road and 7 Essex Grove; (c) his use of the mortgage advances generated on the properties?
132. The Defendant is liable to account for rental income received by him on the Properties. The evidence appears to show that Purple Panda has benefited from a discount for a longer period than might be expected if the property were let to it by a commercial landlord, but in the absence of valuation evidence I cannot make any definite finding on this point. I can also make no findings in respect of the appropriate level of rent for the other properties, for the same reason.
133. He is clearly liable to account for the remortgaging of the Properties, and must account for the use made of the funds so acquired. He admitted in cross-examination that funds from the Properties were used for his acquisition of other properties that are not the subject of this claim.
134. **Issue 16:** In relation to the account which Ahmed will need to give of rental income received by him on 14 Stapleton Road the following questions arise (a) from what date he should provide that account, and (b) to what share of that income is the Defendant entitled?
135. It appeared to be common ground at the end of the trial that Ahmed had paid the income on 14 Stapleton Road to the Defendant until the end of December 2020. He must account to the Defendant for a one-third share of the income from that date.
136. **Issue 17:** Did Ahmed fail to collect any rent due on 14 Stapleton Road and if so how much? If so, is the Defendant entitled to damages?
137. No evidence was presented in support of this counterclaim, and Ahmed was not cross-examined on the point. This part of the counterclaim is therefore dismissed.
138. **Issue 18:** Has Ahmed failed to take reasonable steps to ensure that the flats at 14 Stapleton Road were tenanted? If so, is the Defendant entitled to damages?
139. No evidence was presented in support of this counterclaim, and Ahmed was not cross-examined on the point. This part of the counterclaim is therefore dismissed.
140. **Issue 19:** Have all or any of the Claimants caused any damage to any of the properties? If so, is the Defendant entitled to damages?

141. No evidence was presented in support of this counterclaim, and it was not put to any of the Claimants in cross-examination. This part of the counterclaim is therefore dismissed.
142. **Issue 20:** Were the Claimants justified in placing restrictions on the registered titles of the Properties? If so, should those restrictions now be lifted? If the applications for restrictions were not justified, is the Defendant entitled to damages?
143. In the light of my findings in these proceedings, the Claimants were clearly justified in placing restrictions on the registered titles in order to protect their beneficial interests in them.
144. **Issue 21:** Should the freehold interests in 14 Stapleton Road, 5 Ullswater Road and 7 Essex Grove be transferred from Ahmed to the Defendant, and if so on what legal or equitable basis?
145. It follows from my findings on the beneficial ownership of the properties that they should not.
146. **Issue 22:** Should Ahmed now be required to serve notice bringing the assured shorthold tenancies on 14 Stapleton Road to an end?
147. The Defendant has not shown a basis for such an order, which would be irrational as the tenancies are bringing in an income.
148. **Issue 23:** Is the Defendant entitled to immediate access to the Properties in circumstances in which those properties are currently tenanted?
149. This would be an inappropriate order if the properties are occupied by tenants who have a right to quiet enjoyment, and the Defendant did not pursue it at trial.

Conclusions

150. In the light of my findings on the issues, I grant the orders for sale sought by the Claimants in respect of each of the Properties, and the order for the account sought of rental income received by the Defendant, the undervalue of rent (if any) and the use made of funds raised by way of remortgage.
151. Consequential matters will be the subject of a further hearing to the extent that they cannot be agreed between the parties.