

ENGLAND AND WALES / JUDGMENT

# Santokh Singh Bains v Nadira Siraj Irshad & Anor

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[2025] EWHC 491 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS IN  
BRISTOL BUSINESS LIST (ChD) Case No: BL-2022-BRS-000038 Bristol Civil Justice Centre 2  
Redcliff Street, Bristol, BS1 6GR Date: 7 March 2025 Before : HHJ PAUL MATTHEWS  
(sitting as a Judge of the High Court)

- ----- Between : SANTOKH SINGH BAINS

- and -

(1) NADIRA SIRAJ IRSHAD

(2) CURDWORTH LIMITED

- -----

- ----- Claimant Defendants Helen Swaffield (instructed by Direct access)  
for the Claimant Charlie Newington-Bridges (instructed by Darwin Gray LLP) for the  
Defendants Hearing dates: 27 November 2024 to 5 December 2024

- ----- This judgment was handed down remotely at 10:30 am on 7 March  
2025 by circulation to the parties or their representatives by e-mail and by release to the  
National Archives. HHJ Paul Matthews Approved Judgment HHJ Paul Matthews :

## INTRODUCTION

Singh Bains v Irshad, BL-2022-BRS-000038 1. 2. This is my judgment on a claim by the claimant against the defendants in respect of the proceeds of the sale of a hotel (the Brentwood Hotel) in Porthcawl, Wales, and also a residential house in Stockland Street, Cardiff, said to have been the assets of a partnership between the claimant and the first defendant. The claim form was issued on 23 December 2022, with particulars of claim annexed. The defence of the second defendant was filed on 11 April 2023, and that of the first defendant on 19 May 2023. The claimant filed replies to both defences on 4 July 2023. On the first day of the trial an application was made by the claimant for permission to amend the particulars of claim. The purpose of the amendment was to include a further claim in debt against the first defendant originally vested in a company owned by the claimant, and assigned to him just the day before the trial began. After hearing the

application, I dismissed it, for reasons given at the time. Preliminary background 3. 4. 5. 6. In due course I shall have to consider the facts in detail. But, by way of preliminary background, I should give a general outline of the circumstances of the claim at this stage. The relationship between the claimant and the first defendant goes back to the 1980s, and was at one time a personal intimate one, although there is a dispute between the parties as to how long that lasted. However, all relations between them ended after the Brentwood Hotel was sold on 1 November 2021. The unchallenged narrative, in brief summary, is that the first defendant, of Pakistani origin, worked in a business owned by the claimant, of Indian origin, in the West Midlands in 1984, and that an intimate relationship sprang up between them. In about 1986 the claimant and the first defendant acquired and operated a fish and chip shop in Teignmouth called the Central Fish Café. In about 1992-93 the business was investigated by HMRC in relation to unpaid VAT. Ultimately, the first defendant stopped working in the business. In late 1997 the first defendant was adjudicated bankrupt on her own petition, when she was living in a flat in Birmingham. Subsequently she went to Pakistan, and when she returned in about 2000 she lived first of all with her daughter and then subsequently in Southampton. It was in 2002 that the claimant and the first defendant discussed buying a hotel business. The Brentwood Hotel in Porthcawl was acquired that same year, with the aid of mortgage finance. The property was conveyed jointly to the first defendant and one Aamer Gull. The first defendant lived full-time at the hotel and ran it on a daily basis, whereas the claimant visited and stayed overnight on average once a week, dealing with the accounts and the financial side of the business. There was no written partnership agreement. In about 2006 a residential property at 1 Stockland Street Cardiff was acquired, again with the aid of a mortgage loan, and again in the names of the first defendant and Aamer Gull. It was let out at a rent. In 2008 and 2009, claims were made on several life assurance policies taken out on the life of Aamer Gull, who was said to have died in November 2008 in India. These claims were investigated on behalf of the life HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 assurance companies concerned, who subsequently refused to pay out. In 2011, the mortgage loan on the hotel was refinanced through a different bank. Significant sums of money were then paid to the claimant. 7. The hotel continued to be operated thereafter. It appears that business leases of the hotel were granted to various companies over the next 10 years. These companies belonged to different people, including the first defendant's son, her daughter, and the claimant. Finally, in 2021 the hotel was sold. The purchase price was received by the solicitors acting on the sale, and paid entirely to the first defendant, at her direction. The second defendant is a company (incorporated on 14 July 2021) holding assets which are accepted to represent proceeds of some of the partnership property. The claimant claims to be entitled to a half share in those proceeds, based on a number of causes of action, including causes arising in partnership, constructive trust, proprietary estoppel and unlawful means conspiracy. All these claims are denied by the defendants. The parties' cases 8. The particulars of claim are lengthy and expansive, and in certain respects repetitive, running to some 21 pages. The defences seek to meet the particulars. I need not set them out in extenso. Here I simply summarise the parties' cases on the most contentious issues, building on the unchallenged narrative set out above. I deal with the claimant's and the first defendant's position in turn, taking one point at a time. The relationship between the parties 9. 10. The claimant says

that the parties formed a romantic relationship from about 1984 which lasted until November 2021, cohabiting in various places. The first defendant says that the relationship lasted for only about two years, and that there was no cohabitation anywhere. Financing the acquisition of the hotel 11. 12. The claimant says he provided the whole of the initial capital of £80,000 for purchase of the hotel in 2002 and arranged the mortgage. He says that Aamer Gull (to whom the hotel was conveyed jointly with the first defendant) was his twin brother, who died in India in November 2008. He further says that Mr Gull was a nominee and agent for him. The first defendant did not contribute any money to the purchase nor participate in the service companies which carried out the hotel business. Finally, he says that it was agreed that the claimant would be entitled to repayment of his original investment of £80,000 and also 50% of the resale profit net of expenses. The first defendant says that it was agreed with the claimant that she would provide, and she did provide, £45,000 towards the start-up costs of the hotel, in several instalments. She says that Mr Gull did not exist as a separate person, and it was simply another name used by the claimant, in order to avoid UK debts and taxes, and for the purpose of an attempted life assurance fraud. She and the claimant were joint owners. Financing the acquisition of Stockland Street HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 13. 14. The claimant says that he provided the whole of the deposit of £60,000 in relation to the purchase of Stockland Street and again provided for the legal title to be vested in the first defendant and Mr Gull jointly, once again as nominee and agent for him. The first defendant did not contribute any money to the purchase. After repayment to the claimant of the deposit of £60,000 and the mortgage, each of the parties would be entitled to 50% of the surplus income of the property year on year. The first defendant says that she decided to purchase Stockland Street in 2006, to plan for her retirement. She was advised by the claimant that she would not be able to obtain a buy to let mortgage loan alone, and therefore did so with the claimant. Some of the deposit for the purchase came from monies provided by the first defendant to the claimant for this purpose. What happened to the joint legal titles? 15. 16. The claimant says that, on the death of Mr Gull, the first defendant agreed with the claimant to hold the legal title both of the hotel and of Stockland Street for both herself and the claimant, and on that basis the claimant entered into an agreement with Mr Gull's executor (the claimant's son). The first defendant denies that there was any such agreement, but says that Mr Gull was just the claimant by another name. However, the claimant was asserting that Mr Gull was dead. The remortgage 17. 18. The claimant says that in June 2011, he organised the remortgage of the hotel and was repaid his original investment of £80,000 as agreed. However, he remained a partner until the sale of the hotel on 1 November 2021. The first defendant says that on the remortgage of the hotel she paid the claimant to buy out any interest that the claimant may have had in the hotel and Stockland Street, without acknowledging that he had any such interest. She denies that he remained a partner thereafter until the sale of the hotel in 2021. The sale of the hotel 19. The hotel was sold in November 2021 for £595,000, together with stock of £3866.22 making a total amount received of £598,866.22. But the claimant says that the first defendant did not pay him his half share of the net proceeds, nor repay his £60,000 initial investment in Stockland Street. He also alleges an interest by way of proprietary estoppel, relying on (i) the first defendant's assurance that she held the legal titles on trust for him, and (ii) (in relation to the hotel) the first defendant's assurance in 2021 that she and the claimant would buy

properties in Cardiff and/or Portugal with their proceeds thereafter. The claimant says he has relied to his detriment of these assurances by (a) his provision of investment and services as a partner for the hotel and the residential property, and (b) instructing his solicitors to act on the sale of the hotel. The first defendant denies these allegations, and that the claimant was entitled to any such half share or initial investment. Withdrawals and payments from bank accounts HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 20. 21. In addition, the claimant says that the first defendant made unauthorised withdrawals and payments from the bank account of Langerson Ltd with the Bank of Scotland and the claimant's personal account with Santander Bank, to which she had access. She also represented to the claimant that they would in future by properties jointly in Cardiff and or Portugal, and induced him to instruct solicitors to deal with the sale of the hotel. The first defendant says that she was free to withdraw money for her personal use and required no authorisation from the claimant. She also denies the representations alleged concerning future acquisition of properties. HOW JUDGES DECIDE CASES 22. For the benefit of the lay parties concerned in this case I will say something about how English judges decide civil cases like this one. I have borrowed what follows largely from other judgments of mine in which I have made similar comments. First of all, judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds. I make clear that judges do not operate on the basis that if a person is considered to be lying on one point, that means that the witness is lying on all points, or even most of them.

23. More particularly in relation to the question whether witnesses are telling lies, the standard practitioners' textbook Phipson on Evidence, 20th ed 2024, says that "The principal tests or factors to take into account in determining whether a witness is lying or not more or less overlap with those which apply in assessing the reliability of a witness's account. These are:

- (1) the consistency or otherwise of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;
- (2) the internal consistency of the witness's evidence;
- (3) consistency with what the witness has said or deposed on other occasions;
- (4) the credit of the witness in relation to matters not germane to the litigation;
- (5) lies established in evidence or in the context of the proceedings;
- (6) the demeanour of the witness;
- (7) the inherent probabilities of the witness's account being true". 24. This list is based on that produced by the late Lord Bingham, a former Lord Chief Justice and later Senior Law Lord, and published in his book *The Business of Judging*, 2010, chapter 1. In this context, Lord Bingham said that "the demeanour of the witness" meant "his conduct, manner, bearing, behaviour, delivery, inflection; in short, anything which characterises his mode of giving

evidence but does not appear HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 in a transcript of what he actually said”. But demeanour is in any event only one factor. Quite apart from this, however, there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them. Burden of proof 25. 26. The first of these rules concerns the burden of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it: *Sadovska v Secretary of State for the Home Department* [2017] 1 WLR 2926, SC, [28]. Here the claimant bears the burden of proving his case, ie (in very brief summary) that there was a partnership between himself and the first defendant, which produced assets which on the dissolution of the partnership should have been divided between them, but in breach of duty the first defendant did not cause or allow that to happen. The importance of the burden of proof is that, if the person who bears that burden satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it did happen. But if that person does not so satisfy the court, then for those purposes it did not happen. The decision is binary. Either something happened, or it did not, and there is no room for maybe: *Re B (Children)* [2009] 1 AC 11, [2]. That may mean that, in some cases, the result depends on who has the burden of proof. Standard of proof 27. 28. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case like this, it is merely the balance of probabilities: see eg *Hornal v Neuberger Products Ltd* [1957] 1 QB 247, 256, 261, 265. This means that, if the judge considers that something in issue in the case is more likely to have happened than not, then for the purposes of the decision it did happen. If on the other hand the judge does not consider that that thing is more likely than not to have happened, then for the purposes of the decision it did not happen. It is not necessary for the court to go further than this. There is certainly no need for any scientific certainty, such as (say) medical or scientific experts might be used to. The civil standard of proof applies just as much to proving allegations of behaviour amounting to the commission of a criminal offence (if that arises in the case) as to behaviour which is legally wrong but not criminal in character. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not to have happened: see *Re H (Minors)* [1996] AC 563, 586D-H; *Home Secretary v Rehman* [2003] 1 AC 153, [55]; *Re B (Children)*

[2009] 1 AC 11, [14]-[15]. The role of judges 29. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them by the parties. They are referees, not detectives. So, it is the responsibility of each party to find and put before the court the evidence and other HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 material which each wishes to adduce, and formulate their legal arguments, in order to convince the judge to find in that party’s favour. There are a few limited exceptions to this, but I need not deal with those here. So, it is no good a party saying in

court, “Oh, I do have evidence to support that part of my case, but I didn’t think to bring it to court.” The fallibility of memory 30. 31. 32. 33. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22], restated recently in *Kinled Investments Ltd v Zopa Group Ltd* [2022] EWHC 1194 (Comm), [131]-[134]. As the judge said in that case, “a trial judge should test a witness’s assertions against the contemporaneous documents and probabilities and, when weighing all the evidence, should give real weight to those documents and probabilities”. In the present case, there are a large number of documents available. This is important in particular where, as here, the relevant facts go back over several decades, and the memories of the witnesses available have inevitably been dimmed by the passage of time. It is also important where, as here, there is an acute clash of evidence on some matters which cannot be explained as an error on the part of one side (or even both sides). In deciding the facts of this case, I have therefore had regard to the more objective contents of the documents in the case which are not challenged. However, I must also record that the authenticity or veracity of a number of the documents in the case was also attacked. In some cases it was suggested that they had been faked by the claimant. I will have to deal with these later, at the appropriate point in this judgment. As I have said, I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to questioning. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is deliberately not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available. Reasons for judgment 34. Fifthly, a court must give reasons for its decisions. That is the point of this judgment. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered: *English v Emery, Reimbold & Strick Ltd* (Practice Note) [2002] 1 WLR 2409, CA, [17]-[19]. Judges deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. The judge’s expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 the judge’s overall evaluation: *Biogen Inc v Medeva Plc* [1997] RPC 1, 45. Put shortly, judgments do not explain all aspects of a judge’s reasoning, and are always capable of being better expressed: *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372. But they should at least express the main points, and enable the parties to see how and why the judge reached the decision given. Failure to call witnesses 35. Lastly, there is the question whether the failure to call a witness has any effect on a party’s case. This question arose in *Royal Mail Group Ltd v*

Efobi [2021] 1 WLR 3893, SC. In his judgment, Lord Leggatt (with whom all the other members of the court agreed) said: “41. The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.” Overall 36. Not being present when the events take place, the judge cannot know what happened. But the judge follows a set of rules designed to lead to a judgment about what is more likely than not to have happened. The judge takes account of what the parties choose to put before the court, and reaches a decision on that material in accordance with those rules. That, in broad terms, is our system. WITNESSES Witnesses tendered for cross-examination 37. In the present case I heard from the following witnesses on behalf of the claimant: the claimant himself, his younger brother Narinder Singh Bains, his friend Dave Moss, his cousin Kuldeep Singh Uppal (who gave evidence by video-link from Hong Kong), and the former manager of the Brentwood Hotel Emma Bennett. I heard from the following witnesses on behalf of the defendants: the first defendant, a former employee of the Brentwood Hotel Karl Miller, and an insurance claims investigator John Saunders HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 38. Having heard and seen these witnesses give evidence, I make these general comments. First of all, the two most important (and lengthy) witnesses were the claimant and the first defendant. All the other witnesses were very short, with the exception of the claimant’s brother Narinder Singh Bains, who was only slightly longer. Second, and in order to accommodate the particular needs of the shorter witnesses, it was necessary to interpose them during the evidence of other witnesses, notably the claimant and the first defendant. This meant that each of the claimant and the first defendant gave evidence in disconnected sessions. Given that both of them are elderly, this was probably no bad thing. The claimant 39. 40. 41. The claimant was cross-examined on three separate days, amounting in total to a little over nine hours. He was then re-examined by his counsel on two separate days for a total time amounting to some 3 hours 40 minutes. So I had a very good opportunity to observe him closely as he gave evidence. He was born in India in

1949, and his first language is Punjabi. He came to England in 1962 or 1963 as a teenager, and has lived here ever since. Although he speaks some English, he very sensibly had the benefit of a Punjabi interpreter with him whilst he gave evidence. Nevertheless, he did give some evidence in English, although mixed up with Punjabi. It was not always clear that he had completely understood the questions put to him, and many of them had to be repeated or explained. This repetition or explanation, coupled with giving evidence through an interpreter, undoubtedly contributed to the length of time which the claimant spent in the witness box. However, even when the claimant did understand the question put to him, he frequently did not answer it, but either parried it (for example, by asking “why would I do that?”) or answered a different question. Or he would change his evidence, sometimes very quickly. In his witness statement (eg at [53], [57]), he was at pains to emphasise how he organised the purchase of the hotel and made all the arrangements, including dealing directly with the solicitors. But, in cross-examination, he said that his brother Aamer Gull dealt with the mortgage company. Then he immediately went back on this and said that he did. Then, contrary to what he said in his witness statement, he then said that his brother dealt with the lawyers. His evidence was simply inconsistent. A number of documents were put to him to show that he was lying on one subject or another, and I am afraid that I must record that he was unable satisfactorily to deal with them. I record some examples of this in the section below dealing with the issue of the separate existence of Aamer Gull. But another, which I shall mention now, relates to the claimant’s Home Rights application made on 14 December 2021 registered on 15 December 2021 against the first defendant in relation to the house at 1 Stockland Street in Cardiff (4/559). This application is a prelude to enforcing rights of occupation to a residential property by way of application to the court under section 33 of the Family Law Act 1996. The section applies where a dwelling house has at any time been or was intended to be the home of the applicant together with an associated person, 42. The form of application to register home rights on the title to the property in question contains the usual warning that the offence of fraud may be committed by dishonestly HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 entering untrue or misleading information. It contains an email address partly using the name “Grewal”. During cross-examination the claimant was asked whose email address this was. He said that he did not know. He was asked if he knew anyone called Grewal. He replied that he knew a Grewal who lived in Southall and was a builder. Then he was asked if he had a relative called Grewal. At first he said No. Then he said that he did, as his sister married into the Grewal family. He was asked if he knew anyone called Grewal with legal expertise. He said, “Not in England”. Then he was asked if he had a niece called Grewal, and he said yes. He was asked whether she was a lawyer. He said Yes. He was asked whether she helped him, he said yes, adding that he asked her to do so. Finally, he was asked whether she was in court. He said Yes. In fact, she was sitting behind the claimant’s counsel. The claimant knew that 1 Stockland Street had never been the home of himself and the first defendant, nor was ever intended to be. As will appear later on, it was an investment, let at a rent. In cross-examination, the claimant said that his home was at 180

Ashes Road, Birmingham. The form which the claimant signed, claiming “home rights” was however in respect of 1 Stockland Street. It stated that he was the first defendant’s “husband, wife or civil partner”. Obviously, the claimant was and is none of those. Initially, he accepted that he was not married to the first defendant, and neither had he entered into a civil partnership with her. When this was put to him, he then said he thought the first defendant was his civil partner, because of their personal intimate relationship. As will be seen later, I find that that relationship in fact ended in 1986 or 1987. Leaving that matter on one side, the claimant knew at the time he signed it in 2021 that he was still married, to Kashmir Kaur, and in completing the form also had the benefit of the assistance of a person experienced in English law. In my judgment, he must have known that he could not truthfully make that statement, and consequently he was simply not entitled to make this application. But he made it nonetheless. In court, he said he had been the landlord of the property and used to receive the rent. He “did the form” (he said) to stop the sale of the property, which used to belong to his brother. It was put to him that he deliberately lied on the form. His answer was “No. There was no lie.” I do not agree. It was a barefaced lie. In a letter to the Land Registry dated 1 April 2022, the first defendant pointed out that the claimant was already married to someone else (4/562). As a result of this and other episodes throughout his cross-examination, I was driven to the conclusion that much of the claimant’s evidence in this case was a series of lies, some of them quite childish. Indeed, I formed the conclusion that he had never thought things through, and that, rather than admit the truth of any of the points now being put to him, he was making up much of his evidence as he went along. As a result, I cannot accept anything that he says that is not corroborated from an independent or objective source. I add only this, that, in *Holyoake v Candy* [2017- EWHC 3397 (Ch), Nugee J (as he then was) was satisfied not only “that [the claimant] was willing to lie when his commercial interests justified it”, but also that he had lied in his pleadings and in his evidence to the court. The judge went on to say that, “30. ... while I doubt whether the law ever regards lies as an acceptable way to conduct business dealings, it need hardly be said that the Court is bound to take a 43. 44. 45. 46. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 particularly adverse view of a litigant who lies in the course of litigation, as this undermines the Court process itself.” Other witnesses for the claimant 47. 48. 49. 50. Kuldeep Singh Uppal, Emma Bennett and Dave Moss each gave evidence for about 15 minutes. This short time makes it difficult for me to include demeanour and consistency in answers in assessing the reliability of their evidence. The thrust of the evidence of Mr Uppal and Mr Moss concerned the existence of Aamer Gull, a matter on which the claimant was extensively cross-examined. If I believe the claimant on this point, their evidence will add nothing. If I disbelieve him, then it will be difficult for me to conclude other than that the other two witnesses are either mistaken or not telling the truth. (I accept that, if I were unsure about the claimant’s evidence, then their evidence might tip the balance.) Neither of them actually had much information on the basis of which to give evidence. Ms Bennett’s evidence went to the nature of the relationship between the claimant and the first defendant during the time she worked at the

Brentwood Hotel. Although she now works for the claimant's son, during her short cross-examination she appeared to be telling me the truth as she saw it. Narinder Singh Bains was cross-examined at greater length (about 45 minutes). He is about 15 years younger than the claimant, and was born and brought up in England. His English is therefore perfect, with a Birmingham accent. He was a fluent and intelligent, if somewhat reluctant, witness. But I concluded that much of his evidence was not truthful. Many questions were answered by saying that he did not know, although some of the questions were such that I would have expected him to know the answer. He said that he had met Aamer Gull regularly in pubs and restaurants, and done business with him, but he knew nothing of his personal life, such as where he went to school, whether he was married or had children, what friends or hobbies he had, and he had never thought of taking any photographs of him. He did not think that his absence of knowledge about an older brother was odd. When asked if he was making this up, he replied, "Not really, no." Other questions were answered that he did not remember, and it was a long time ago. Yet he answered questions dealing with the existence of Aamer Gull without difficulty, even though they related to "a long time ago". However, he was unable to explain satisfactorily why his father, who was estranged from Aamer Gull, and apparently never saw him again thereafter, nevertheless lived all his time in England in a property which was also Aamer Gull's electoral roll address in 2004. The claimant had also served a witness summons on the grandson of the first defendant, Salsabeel Ali Islam. He was initially reluctant to give evidence at all, but in the event gave evidence remotely, by videolink. He was a clear but anxious witness, who (I was told) suffers from autism. He also told me that he had been the victim of an assault by masked men recently, and feared that this was connected to this case. He was slow in his thoughts and his answers, but I have no reason to doubt the truth of any of them. His evidence was short (at about 20 minutes) and was of limited relevance to the issues in this case, being mainly concerned with the corporate governance of the second defendant (about which he could say very little anyway). The first defendant HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 51. The first defendant was cross-examined over three separate days for a total time amounting to nearly 7 hours (and was re-examined for about 20 minutes). She was a clear and fluent witness, with very good English and a good memory for detail. She had an answer to almost every question put to her, and the ones where she did not were ones where I would not have expected her to have one, because they did not directly involve her. Cross-examination made little impression on her. But once or twice she appeared confused, and there were times when I wondered whether she knew more than she told me. For the most part, at least, I accept what she said. Certainly, I preferred her evidence to that of the claimant, where they differed. Other witnesses for the defendants 52. 53. 54. 55. Karl Miller, a former employee of the Brentwood Hotel, was a straightforward and clear witness with nothing to hide. He readily accepted that he had been in court in respect of housing benefit fraud, for which he received a fine. I accept his evidence. The insurance claims investigator John Saunders, was a transparent and plainly honest witness. He was cross-examined over about an hour and a half, and I had a good

opportunity to judge his oral evidence. As a result, I accept his evidence as to what he did and said, and what was said to him by others, during the course of his investigations, and which he wrote about in his five reports to the insurance companies that instructed him in relation to the claims made on policies taken out on the life of Aamer Gull. That means that I accept that he said what he said he did, and saw what he said he saw, and that others said to him what he said they said to him (including in his written reports). But, of course, that does not mean that others speaking or writing to him were telling the truth. That is a different question. I accept also that the opinions that Mr Saunders expressed were honestly held by him. However, his opinions as to matters of fact in issue in this case, such as whether or not Aamer Gull existed, or whether that name was an alias of the claimant, are inadmissible as opinion evidence going to issues before the court, and accordingly I pay no attention to them: see eg *North Cheshire and Manchester Brewery Co Ltd v Manchester Brewery Co Ltd* [1899] AC 83, 85; *Land Securities Ltd v Westminster City Council (No 1)* [1993] 1 WLR 286, 288E; *Rogers v Hoyle* [2015] 1 QB 265, [39]. The evidence of Mr Saunders is attacked by the claimant on several bases. Once such basis is that, although he interviewed many persons connected to Aamer Gull, he did not interview the claimant. When this was put to him in cross-examination, he said that he had tried to find out where the claimant was, but one family member said he was in Telford, another said he was in Northampton, whilst his parents said he was in Canada. When he went to the family home in Ashes Road (which is the claimant's home address), he had the door slammed in his face.

56. Mr Saunders certainly knew of the claimant's existence, and had no reason not to speak to him and obtain his evidence. As I have said, he made attempts to trace him. But he did not have an address at which to write to him or a telephone number on which to call him. I accept that, if Mr Saunders could have found the claimant, and the claimant had consented to be interviewed, that would have happened. That it did not happen is not the fault of Mr Saunders. Witnesses not tendered for cross-examination HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 57. In addition to these witnesses, I had the benefit of witness statements tendered in evidence under a hearsay notice, served under section 2 of the Civil Evidence Act 1995 and CPR rule 33.2. Hearsay evidence was formerly inadmissible in civil proceedings. It was not on oath, the demeanour of the witness could not be observed, and neither could he or she be cross-examined, so that the evidence could not be tested. This was not an obscure rule of law. On the contrary, it was well-known by ordinary educated people. For example, in Charles Dickens's *The Pickwick Papers*, 1836-37, Ch 34, at the trial in *Bardell v Pickwick* for breach of promise of marriage, Sam Weller had ended an answer to one of the questions in cross-examination of Serjeant Buzfuz with the words "... as the soldier said". But Mr Justice Stareleigh immediately intervened, and told him: "You must not tell us what the soldier, or any other man, said, Sir ... It's not evidence." Educated (lay) readers of the book would have regarded this as a clever joke by the author at the fictional judge's expense. But the joke depends on knowing about the point of law. 58. Hearsay evidence in civil proceedings was first rendered admissible by the Civil Evidence

Act 1968, section 1 and 2, now replaced by the Civil Evidence Act 1995, sections 1 and 2.

Section 1(1) reads: “In civil proceedings evidence shall not be excluded on the ground that it is hearsay”. The notice procedure provided for by CPR rule 33.2 enables other parties to be forewarned, and to have certain basic information about the evidence concerned. In some cases, they have the opportunity to apply for the witness concerned to be called for cross-examination: see rule 33.4. In the present case the witness statements so admitted were from the following witnesses: the mother of the claimant Naranjan Kaur (now deceased), and Mohammed Ali Islam, the son of the first defendant (currently in prison, apparently following conviction for possession of marijuana). 59. In addition to that, however, the bundle contained statements containing hearsay evidence from persons in respect of whom the notice procedure was not complied with. These included (for example) statements from: Baljinder Singh Bains, the former wife of the claimant’s son Ajmail, Dave Horne, who ran a photo processing shop in Cardiff, and a letter from Dr Madhu Deodhar, who was said to have issued a death certificate for Aamer Gull. The failure to comply with the procedure does not however mean that these hearsay statements (and others in the bundle) are automatically inadmissible in evidence: see section 1(1) of the 1995 Act, quoted above. In addition, paragraph 27.2 of the Practice Direction to CPR Part 32 provides that: “All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless –

- (1) the court orders otherwise; or HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038
- (2) a party gives written notice of objection to the admissibility of particular documents.” 60. On the other hand, the court has power under the rules to control evidence generally, including the power to exclude otherwise admissible evidence: see CPR rule 32.1(2). Exercising this power would usually be a procedural sanction bringing CPR rules 3.8 and 3.9 and the so-called Denton criteria (from *Denton v TH White* [2014] 1 WLR 795, CA) into play. In the present case, I was not asked to exercise this power. If the power is not exercised, however, and the hearsay evidence is admitted, the failure to comply with the notice procedure does affect its weight, because the claimant is denied the benefits that that procedure was designed to afford. Accordingly, the further witness statements form part of the overall evidence in the case, but I give them the weight that I consider appropriate in all the circumstances. Persons who could have been called to give evidence but were not 61. 62. As I have explained above, the court may consider whether an adverse inference may be drawn from the absence of a person to be called as a witness. As Lord Leggatt said in the case to which I referred, the consideration include “whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole.” The first defendant submitted that I should draw such an adverse inference from the failure of the claimant to call his own son, Ajmail Singh Bains, to give evidence. I am satisfied from the evidence in this case that Ajmail was very

much concerned in the transactions with which I have to deal, being named in some of the relevant legal documents, being the sending or receiving party in relation to relevant correspondence, as well as being a participating party in various discussions. Accordingly, he would have had much directly relevant evidence to give in this case. Moreover, that evidence on particular points would have been the only direct evidence, and would be of importance. No satisfactory explanation was proffered for his failure to give evidence. There was no suggestion he was ill, or even absent on business. 63. In his written evidence, the claimant said that his son “does not approve of my relationship with Mrs Irshad. He does not wish to be involved. He has lost his temper and become upset at the way she has behaved”. Moreover, it was suggested by the claimant that Ajmail did not wish to be cross-examined on offensive text messages which he had sent to the first defendant’s son (and which the claimant said he regretted). Yet no direct evidence of this (such as a letter from Ajmail) was produced. 64. But, despite his father’s long association with the first defendant, Ajmail has been heavily involved with almost everything his father has done over many years, including closely co-operating in his assertion of the separate existence of Aamer Gull. Moreover, Ajmail has a real interest to protect, in the sense that he proved the first will of Aamer Gull, and took his entire estate. If Aamer Gull were just another HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 name for the claimant, he would not be entitled to these assets. As a result, I simply do not accept that he was unwilling to assist his father in seeking to recover a significant sum of money from the first defendant, and to protect his own inheritance. This family has shown itself to be a close one, and blood is thicker than water. In all the circumstances, I infer that his son’s evidence, if truthfully given, would not support the claimant’s case. THE TRIAL BUNDLE The general position 65. It is regrettably necessary for me to record that there were a number of problems with the trial bundle. In the usual way, the parties in this case were to agree it, and the claimant was to prepare and lodge it: see CPR Part 32 Practice Direction, paragraph 27.7; The Chancery Guide, paragraph 12.36; and paragraph 3 of the order of DJ Wales of 31 August 2023. This was reiterated in detail in the order made by me at the pre-trial review on 14 October 2024. That order provided in part as follows: “5. The Parties shall agree an index to the trial bundle by 4pm on 5 November 2024.

6. The trial bundle shall contain a bundle of core documents (comprising the documents to which the parties are likely to refer regularly).
7. The Claimant shall provide the Defendants with an electronic copy of the bundle by 4pm on 12 November 2024.
8. The Claimant shall file the trial bundle in hard copy (to include a copy for the witnesses) by 4pm on 18 November 2024.” This case 66. However, despite the clarity and mandatory language of the order, this was not complied with. In particular two bundles were filed for trial, one from the claimant and one from the defendants. It is clear from the correspondence between the parties that they could not agree on what should be included in the trial bundle. The claimant’s position was that documents should not be included in the

trial bundle unless they were referred to in the parties' witness statements, and that the defendants' position was that there was no such rule. Thus, in an email of 30 October 2024 to the defendants' solicitors, the claimant's barrister said (6/83): "The trial bundle should contain the documents referred to in evidence. Please identify which witness has referred to them or will refer to them." 67. By email dated 31 October 2024, she further said (6/88): "Cross examination is about putting your case to our witnesses. We are struggling to see where these documents come up in your case. If you wanted them to be part of your case, they should have been in the evidence so that the Claimant had a fair opportunity to challenge them. We do not condone and neither will the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Court an approach where all of your disclosure is included as a means of taking the Claimant by surprise, where it is not referred to in evidence." 68. In their email to the claimant's barrister of 1 November 2024 (6/87), the defendants' solicitors replied that in their view "there is no requirement for the trial bundle to be linked to evidence. We will not be identifying why each document should be included in the trial bundle or where it has been referred to in the Defendants' case. The request is disproportionate, unreasonable, and entirely unnecessary (and there is no requirement for you to the same). The documents are requested for inclusion in the bundle so that they can be referred to by counsel and in cross examination. The courts expect the bundle to be jointly prepared and this intended to be a collaborative process. We are not trying to be obstructive. Either you agree the documents can be included in the joint bundle, or, if you refuse, we will file a separate bundle of the disputed documents for use at trial and you can explain your position to the judge." 69. I was not aware of this correspondence at the time. On 14 November 2024, having merely noted from the court file that each side appeared to have lodged a separate trial bundle, I caused the following message to be sent to both sides: "I can see from CE-File that both the Claimant and the Defendant appear to have filed separate trial bundles, neither of which complies with the Chancery Guide. Please tell the parties that this contravenes my order of 14 October 2024 at the PTR requiring a single bundle. Unless there is a single trial bundle, complying with the Chancery Guide, the trial cannot go ahead on the listed dates." As a result, a link to a new, single, electronic trial bundle was sent to the court on 15 November 2024, and it was filed in hard copy with the court on 18 November 2024. The law 70. In the correspondence, both sides referred to dicta from the decision of Constable J in *Innovate Pharmaceuticals Ltd v University of Portsmouth* HEC [2023] EWHC 2394 (TCC). The claim was one for breach of contract and in the torts of misrepresentation and fraud. The defendant sought to adjourn the imminently forthcoming trial on the basis that the trial bundle contained documents to the inclusion of which it did not agree. The application was refused. 71. In the course of his judgment, the judge said: "12. The trial bundle should contain, and contain only, those documents which are likely to be referred to at the trial. It is not difficult to prepare and it is a source of amazement how often parties are unable to co-operate constructively over the preparation of an appropriately relevant set of documents for trial. The starting point for inclusion within a chronological run of documents within a trial bundle will be those documents referred to within the pleadings, witness statements or expert reports. This is likely to

contain the majority of documents HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 that will be referred to at trial (indeed, it could contain substantially more, but where they have been referred to by a witness, factual or expert, the default position is that their inclusion should generally be unobjectionable). In addition, each side may wish to rely upon some documents from their own disclosure (although it is likely that such documents will already have been included in one of the foregoing categories if it is probative) and, more likely, some documents taken from the other sides' disclosure which are considered to be helpful to their own case and which are likely to be deployed in cross-examination. No proper criticism can be made that such an assessment may be conservative, and it is inevitable that the trial bundle will contain some documents that will never be referred to ... ” 72. I respectfully agree. Whether documents should be included in the trial bundle is not answered by asking whether they are intended to form part of the evidence. Instead, only the starting point for inclusion is documents referred to in statements of case, witness statements and expert reports. Most of such documents will indeed be part of the evidence (on either side). But that is, as I say, just a starting point. Other documents to be included in the bundle will be those that are thought by a party to be in some other way helpful to that party's case (without necessarily being referred to in court documents or being part of the evidence to prove the case), eg by being intended for use or possible use in cross-examination, or for otherwise weakening the other side's case, and indeed those which are or may be referred to by the advocate at trial simply for the purposes of exposition and explanation. The court cannot tie the advocate's hands in advance as to how to conduct the trial. It is necessarily a shifting landscape, dependent on what happens from one moment to the next. Much of the preparation for it will therefore be “built in”, just in case. Clearly, an over-cautious party who insists on including too much will run the risk of being penalised in costs at the end of the day, even if he or she otherwise is successful, but that is a different matter.

73. What this means is that, when the parties agree a bundle, they are agreeing only as to the materials which the parties consider that the judge is likely to need and therefore should have before him or her for the purpose of deciding the case. They are not however agreeing that what each of these documents says is true. Of course, as I have already said, CPR Part 32 Practice Direction, paragraph 27.2, makes documents contained in bundles which have been agreed for use at a hearing admissible at that hearing as evidence of their contents, unless the court otherwise orders or a party objects. That provision saves a lot of unnecessary formal evidence (merely proving documents) having to be produced at trial. But mere admission in evidence is a long way from agreeing the truth of the contents of the documents concerned. In any case, a party has the absolute right by notice to object even to admissibility in evidence (obviously at risk as to costs). So, a party is not prejudiced by agreeing to the inclusion of documents in a bundle. 74. In general, therefore, the party with carriage of the bundle should normally allow the other party or parties to have included whatever documents from the disclosure they wish. Of course, attention should be paid to the guidelines in the Chancery Guide. However, contrary to the claimant's counsel's view in

this case, there can be no obligation on a party to justify to its opponent the inclusion in the bundle of documents which have already been disclosed in the course of the proceedings, and HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 by which the opposite party cannot be taken by surprise. If there were such an obligation, it might (for example) disclose important aspects of a party's approach to cross-examination, which might rob that technique of its important ability properly to test the evidence of the other side. 75. In addition, I disagree with the claimant's counsel's view that "Cross examination is about putting your case to our witnesses". It includes that, but it is not confined to it. It extends further, for example to cross-examination as to credit, and to weakening the evidence put forward on the other side. Nor can it be said, as the claimant's counsel said in the correspondence, that disclosed documents should not be "included [in the bundle] as a means of taking the Claimant by surprise" If documents have been disclosed, then ex hypothesi they do not take the recipient by surprise. That is, after all, the point of disclosure. They have already been disclosed. The bundle in this case 76. The form of the bundle as eventually filed by the claimant was to divide it into several sub-bundles, as follows:

1. Statements of case, orders and evidence
2. Core Bundle Scott Schedule and bank statements
3. Claimant's documents
4. Defendants' documents
5. Invoices (Claimant)
6. Correspondence 77. Nevertheless, it still did not comply with the rules. There was, for example, no single chronological bundle (see The Chancery Guide, Appendix X, paragraph 11(c)). Instead, there were two sub-bundles, one from the claimant's disclosure and one from the defendants' disclosure. Moreover, neither of these sub-bundles was chronological either. Documents were placed hugger-mugger next to each other. Worse still, there were a large number of duplicates, contrary to The Chancery Guide, Appendix X, paragraph 12(g). Finally, and as I note in the course of this judgment, there were a number of documents of some importance which for some reason were not included in the bundle. However, we are where we are. In this judgment, I refer to particular pages in the bundle in the form X/XXX, where the number before the stroke refers to the sub-bundle, and the number after the stroke refers to the page number in that sub- bundle. **FACTS FOUND**

## Introduction

78. In this case, there are a number of important but discrete factual disputes between the parties. These include the following: (1) Did the claimant's and the first defendant's intimate personal relationship last for only a short time in the 1980s (as the first HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 defendant says), or did it

continue much longer, perhaps until the sale of the Brentwood Hotel in 2021 (as the claimant says)? (2) Did the claimant have a twin brother called Aamer Gull who died in 2008 (as the claimant says), or was this a name adopted and used by the claimant in some of his business affairs (as the first defendant says)? (3) Did the partnership between the claimant and the first defendant in relation to the Brentwood Hotel and the residential property at 1 Stockland Street come to an end in about 2011 (as the first defendant says), and if so on what terms, or was it still subsisting at the time of the sale of the hotel in 2021 (as the claimant says)? 79. The answer to the first of these questions affects the way in which the evidence over the whole period should be considered. The answer to the second of these questions affects not only the consideration of the evidence, but also the legal consequences of some of the transactions entered into during the relevant period. The answer to the third of these questions is key to the resolution of the claims made by the claimant. Of course, there are other issues too. However, because of their effect on the consideration of the evidence in the case, I will deal with the first two issues separately at the outset. I will then proceed to consider the whole case (including the third issue) in the light of my findings on those first two issues. The relationship between the claimant and the first defendant The parties' positions 80. I begin with the question of the relationship between the claimant and the first defendant. It is common ground that it was a personal intimate relationship at first, beginning in about 1984. At that time the first defendant was divorced from her first husband, whereas the claimant was still married. The first defendant says that in 1986 or 1987 the claimant's wife found out about the intimate relationship between them, and took an overdose. So (according to her) the relationship was ended, although they remained friends and business partners. But the claimant says that the intimate relationship continued, right up to sale of the hotel in 2021. However, the claimant accepts that the first defendant married for the second time in May 1987, although that marriage too ended in divorce, in 1995. The claimant says that that marriage was one of convenience, merely to enable her husband (who was a distant cousin of the first defendant) to remain in the UK. The first defendant denied that in cross-examination, and I accept her denial. The evidence 81. The first defendant went to Pakistan in 1999 and stayed there for several months, in connection with the marriage of her son. She returned to the UK in 2000, when she went to live in with her daughter in London, and then in 2001 she went to live in Southampton until 2002, when she was persuaded by the claimant to join him in acquiring the Brentwood Hotel in Porthcawl. Thereafter she lived in the hotel, in the owner's one bedroom flat. As I have said, the claimant came on an approximately weekly basis to Porthcawl, and stayed overnight for one or two nights at the hotel. His evidence was that he stayed in the flat with the first defendant. Her evidence was that on these occasions they slept in separate bedrooms, one of them in the flat and one in a free bedroom in the hotel, usually room 3, a small room opposite the front door to the flat. If the hotel were full, one of them would sleep in the living room of the flat. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 82. 83. Emma Bennett's evidence was that the claimant and the first defendant shared the flat when he came to stay, and did not use the other bedrooms. Her written evidence (at [13]) was that they were "close and affectionate", and (at [7]) that they

shared the same bed. However, in cross-examination, she accepted that she never saw them in bed together. She was asked in re-examination what made her think that they shared a bed, and she said that she would lock up the hotel for the night, and take the keys up to the flat. Karl Miller's written evidence was that the first defendant lived in the flat, but said nothing about where the claimant slept. In cross-examination he gave evidence about coming up to the flat to get the key to unlock the bar from the claimant (on the occasions that he was in the hotel). He gave no evidence as to where the claimant and the first defendant slept. The claimant could produce nothing in documentary form to support the assertion of a long lasting personal intimate relationship. There were no greetings cards for significant occasions, no letters or messages passing between them. Strikingly, there were no photographs of them together as a couple. They did however travel abroad together from time to time. The claimant says these were holidays. The first defendant says they were business trips, where they were considering business ventures abroad. Again, however, I saw no photographs of them whilst abroad. I find it hard to believe that a couple in a relationship would travel abroad on holiday on multiple occasions and yet never once take a single photograph to record the event. When asked in cross-examination why there were no photographs, the claimant said at one point that they did not take any pictures, and then at another point that there were photographs but that the first defendant's children had taken them away. I do not believe either explanation. I accept the first defendant's explanation that they were business trips.

## Conclusion

84. The evidence of both Emma Bennett and Karl Millers only supports the presence of the claimant on certain occasions in the flat where the first defendant lived. In some cases that might permit an inference that they slept in the same bed. Having seen both the claimant and the first defendant in the witness box over a considerable period, and taking into account the first defendant's second marriage in 1987, her stay in Pakistan in 1999-2000, and her lengthy stays in London and Southampton, I am not prepared to draw that inference. I prefer the first defendant's evidence on this point, as elsewhere. I disbelieve the claimant, and find that the intimate relationship between them had finished by 1987, and that thereafter it was just business and ordinary friendship. The separate existence of Aamer Gull The parties' positions 85. Next, I turn to consider the question whether the claimant had a twin brother called Aamer Gull who died in 2008. The transfers of the Brentwood Hotel on its acquisition in 2002 (4/496) and of 1 Stockland Street on its acquisition in 2007 (4/425, 4/498) were made to the first defendant and "Aamer Gull" jointly, and the mortgage loans were granted to them. In each case the Land Registry Transfer Form TR1 was completed so as to declare that the transferees held the property so acquired on trust for themselves as beneficial joint tenants. The first defendant's evidence was that this was simply an alternative name that the claimant had been using since the 1990s, although he continued to use Santokh Singh Bains as well. The claimant's evidence HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 however was that he had a

twin brother by the name of Aamer Gull, and that he used his name for these transactions with the first defendant to prevent his family making difficulties for the first defendant if he died before her. The life assurance claims 86. 87. The matter came to a head in November 2008, when the claimant began to assert that Aamer Gull had died whilst on a visit to India with his parents. Subsequently the first defendant became aware that claims were being made on some 13 separate life assurance policies on the life of Aamer Gull, mainly taken out in connection with mortgage finance, including that for the hotel and for Stockland Street (4/184). The total claim was for about £2.2 million. The insurance companies concerned instructed John Saunders, a specialist insurance investigator, to look into the matter and report to them. After interviewing a number of persons connected with the claimant in the UK, and visiting India to interview others, he produced a total of five reports, in which he concluded that the claims were bogus, and that there never was such a person as Aamer Gull. As a result, the insurance companies refused to pay out on the policies. As I have already said, Mr Saunders' opinion as to the existence of Aamer Gull is inadmissible in evidence in this case, but his reports nonetheless contain much relevant information, with further documents annexed, which was deployed in cross-examination. For example, in his first report Mr Saunders said that Aamer Gull's proposal to Friends Provident for life assurance in 2002 had stated that he (rather than the claimant) cohabited with the first defendant (4/169, 4/173), although the proposal form was not, so far as I could see, in the bundle. For the reasons already given, the evidence set out in Mr Saunders' reports is admissible in evidence in these proceedings, though its weight is a matter for me. Happily, the claimant had the opportunity to cross-examine Mr Saunders fully about it.

88. Mr Saunders' reports can be listed and described as follows: No 1: 15 December 2008 (4/166), covering Mr Saunders' initial instructions, an unsatisfactory interview with Ajmail Singh Bains, telephone conversations with the first defendant and Mr Raymond Mason, solicitor of Lin & Co, and a subsequent interview with Mr Mason, and various contacts with the insurance companies instructing him. No 2: 3 April 2009 (4/200), covering an interview with the claimant's parents through an interpreter, in the presence of the solicitor Mr Mason. No 3: 1 May 2009 (4/230), covering Mr Saunders' visit to India, where he made enquiries in Palkadim village (where Aamer Gull was said to have died), at Bilga Hospital, at Phillaur City Hospital (where he conducted two separate interviews with Dr Madhu Deodhar), at the central registry in Jalandhar, at the registry in Phillaur, at the Post Office there, and in Khella village (where the family had a home and Aamer Gull was said to have been born). No 4: 15 May 2009 (4/280), covering an interview with the Indian consul in Birmingham, Mr Balaji, a conversation with Mr Mason of Lin & Co, various enquiries re UK addresses connected with Aamer Gull and the family, including attending at 176-180 Ashes Road, Birmingham. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 No 5: 26 February 2010 (4/301), covering a further interview with Mr Mason of Lin & Co, and Ajmail Singh Bains, the claimant's son, an interview with Balbinder Singh Bains (Ajmail's former wife), and further enquiries at the claimant's stated home address, 176-180 Ashes Road, Birmingham. Cross-examination of the claimant 89. The claimant was extensively cross-

examined about the existence of Aamer Gull. His evidence was that Aamer Gull came to the UK with his father in about 1961, though he and his mother and other siblings did not join them until about 1964. However, Aamer Gull did not live with them, having become estranged from his parents over an affair with an English girl. So the claimant knew very little of his twin brother until they were reconciled in about 1985. His further evidence is that thereafter they did business together, as did the claimant's son and younger brother. It was put to the claimant that there was no evidence of Aamer Gull's address before 2001. The claimant responded "I don't know about that." It was put to him in cross-examination that he made up the existence of his brother in 2001. His response was "Why would we have done that?" The claimant produced a number of documents in support of the existence of Aamer Gull. These included photocopies of various identification documents in the name of Aamer Gull, including an Indian passport, a UK residence permit, and a council tax payment card. I did not see any originals of these documents. I will deal with them in more detail shortly.

The birth certificate 90. 91. 92. There was also a photocopy of a (modern) English translation of a Punjabi language birth certificate bearing the name of "Amar Gula" (3/59). This was in the claimant's disclosure, though the original Punjabi certificate from which the translation was made had not been disclosed by the claimant in these proceedings. However, during the claimant's cross-examination of John Saunders at trial, in fact on Wednesday 4 December, a document, apparently in Punjabi, was produced without warning, either to the court or to the first defendant, by the claimant's counsel, which she said was that original. No explanation was given as to why this had not been disclosed in the usual way (or indeed why it had not been supplied to Mr Saunders in 2008-09, along with the English translation). The claimant's counsel simply said that it had been found by the claimant over the previous weekend, ie 30 November-1 December. There was no certified English translation, and I do not read Punjabi. Nor was this document put to the first defendant when she was giving evidence, although it could easily have been, because her cross-examination took place on each of Monday 2, Tuesday 3 and Wednesday 4 December. In these extraordinary circumstances, I declined to admit this document in evidence. I return to the copy of the English translation of the certificate (3/59). However, as appears from its face, this English language document was created only in December 2009, ie after Aamer Gull's alleged death, and for the purpose of supporting the insurance claims. Indeed, any original Punjabi certificate could not have been produced before 1969, because the English translation refers to the original certificate's having been provided pursuant to an Indian law of 1969. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 93. In relation to the copy English translation birth certificate, the claimant was asked to comment on part of one of the reports of John Saunders. This report (No 3) said that Mr Saunders had made enquiries of the relevant Indian authorities in 2009, and that there was no record of the birth of Aamer Gull (nor, indeed, of the claimant) in India in 1949. Mr Saunders produced a copy of what he said was an official certificate to that effect (4/629). This was put to the claimant, who however simply said, "We had the birth certificate". I find, however, that there was no official contemporaneous official record of the birth of Aamer Gull for certificates later to be issued of that record. The Indian passports 94. 95. 96. The photocopy of the Indian passport

produced by the claimant stated that the passport had been issued by the Indian Consulate in Birmingham in August 2000, no. B1165208, with an expiry date of November 2005 (3/174ff, 3/186, 187, 4/294, 4/374). The photograph shows a man with a moustache in an open-necked shirt. It is obvious that Aamer Gull, if he existed, must have had several such passports over time. He is said to have been born in India in 1949, and to have died there in 2008. That would have required the presentation for examination of a valid passport every time he entered (or left) the UK or India. Yet no other pre-2000 passport (or photocopy of a passport) for Aamer Gull was produced by the claimant. There is a strange feature of the photocopy passport dated 2000. This is that, in the section for the holder to indicate the name of his or her spouse, the holder of the Aamer Gull passport has written the name “Kashmir Kaur” (4/295). This however is the name of the claimant’s wife. When this was put to him in cross-examination, the claimant said that it was a common name. The claimant’s evidence was that Aamer Gull had once been married, but that his wife had died many years ago, before 1985, and that he did not know what her name had been. According to him, he never asked, because there was no point in doing so. The claimant was asked if he had written his own wife’s name on his supposed twin brother’s passport. He replied, “I have British passport. Why would I do that?” It was put to him that he had obtained the Indian passport fraudulently. He replied, “Why would I do that? I have my own passport.” Copies of the claimant’s British passport (3/180, 181, 188, 193, 4/292), and also his driving licence (3/181, 182, 184, 188, 190), are also in the bundle. In addition to the photocopy of a passport issued in 2000, produced by the claimant, the defendant disclosed a photocopy of a further passport in the name of Aamer Gull, no F1916976, issued in Birmingham in June 2005, with an expiry date in 2015 (4/296). It appears that this photocopy was obtained by Mr Saunders in investigating the life assurance claims in 2009. Again, the original passport is missing. The claimant said that this passport was sent by post from India after the death of Aamer Gull, but subsequently lost (4/202, 4/242), having been posted on 25 February 2009 (4/255). The photograph shows a clean-shaven man wearing a collar and tie. In investigating on behalf of the insurance companies underwriting the life policies on Aamer Gull, Mr Saunders went to interview the Indian consul (Mr Balaji) in Birmingham about the Indian passport. The consul told Mr Saunders that it was a genuinely issued passport, though he also said that, by checking its number, the previous passport (a copy of which could not be located) had been issued to the claimant. But there was no record of any legal change of name. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 The UK residence permit and the council tax payment card 97. 98. The photocopy of the UK residence permit, granting indefinite leave to remain, shows that it was issued at Croydon on 24 May 2005 (3/177, 178, 179, 180, 183, 189, 192, 193, 4/375). It must have been granted on the basis of the 2000 passport, because the 2005 passport was not issued until June 2005. The photograph on the permit shows a clean-shaven man wearing a collar and tie, similar to that in the 2005 passport. There is no evidence before me of any leave to remain in the UK having been applied for or granted before that date. The council tax payment card (3/178, 185, 191) is undated, but it was issued to “Mr Gull Brentwood Hotel 46 Mary Street Porthcawl”. (The Brentwood Hotel is actually 37-41 Mary Street; 46 Mary Street is the address of the property

opposite, which was also in the name of Aamer Gull.) The council tax payment card bears a photograph which, to my eye at least, appears to be the same photograph as that in the residence permit and the 2005 passport. The bearer is of a similar age and is wearing is wearing a similar collar and tie. Given the existence of the photo ID constituted by the passports, residence permit and council tax payment card, I do not wonder that solicitors and others were prepared to accept the identity of Aamer Gull for the purpose of relevant anti-money-laundering (“AML”) checks. I therefore place minimal reliance on the fact that such checks must have been carried out in relation to conveyancing and life assurance transactions, in order to prove the separate existence of Aamer Gull. These checks frequently take the matter no further than the existence of the photo IDs which satisfy them. Indeed, in one sense, they show the limitations of the AML checks. If it is too easy for dishonest people to obtain false photo ID these days, the checks are valueless, because you do not need to carry them out for honest people. This is simple evolution. If you develop a brand-new weedkiller, then you may expect that, before long, weeds resistant to it will have sprung up. It is an application of Darwin’s theory of the survival of the fittest. Baljunder Singh 99. I add that in 2010 Mr Saunders interviewed Baljinder Singh Bains, the former wife of the claimant’s son (they were divorced in December 2009). He showed her the copies of the two passports, dated 2000 and 2005, in the name of Aamer Gull. She told Mr Saunders that both photographs were of the claimant, and that her then husband, Ajmail, had told her that Aamer Gull was a name used by his father. She also told him that, on one occasion, when she went with the claimant to obtain a banker’s draft from the Halifax for the purposes of a house purchase which was to be put into her name, she saw him sign “Aamer Gull” rather than “Santokh Singh Bains”. She gave Mr Saunders a written statement dated 11 February 2010 confirming these matters. A copy of the authority for the issue of the banker’s draft, signed “Aamer Gull” and dated 14 May 2002, was in the bundle before me. 100. In his own witness evidence, the claimant said that his son’s “marriage ended badly. [Baljinder] took the children. She was very bitter ... She was highly critical of [Ajmail] and the family. It suited her purpose to undermine and attack him”. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Her witness statement referred to above was put to the claimant in cross-examination, and in particular the statement that the claimant used the name Aamer Gull. However, the claimant’s response now was that Baljinder “left our family, there was a big problem, she went with druggy people”. The inference now is that her evidence to Mr Saunders was given, not because the marriage breakdown was bitter, or that Baljinder took the children and wished to undermine Ajmail, but instead because she went with “druggy people”.

101. Balbinder Singh Bains gave Mr Saunders the contact details for the claimant’s sister Jasbir Singh, who lived in Paignton, where they ran a fish and chip shop. Mr Saunders spoke to her by telephone, and she said that she left home 26 years earlier and did not wish to speak about her family. But she confirmed that she did not have a brother called Aamer Gull (4/308). Mr Saunders also obtained details for another of the claimant’s sisters, Balbir Grewal, but had not contacted her by the time of his report. Further documents

102. Additional documents were produced, including (i) a handwritten Form P60 in respect of earnings of Aamer Gull from employment with a company called Acorn Plus Ltd in the tax year ended 2003 (3/41, 4/389), (ii) two wills said to have been made by Aamer Gull, the first dated 27 May 2004 (3/42, 4/286) and the second dated 20 March 2006 (4/393), (iii) copies of extracts from the electoral roll for 178 Ashes Road Birmingham B69 4RB for 2004 (3/13) and for 34 Strensham Road Birmingham B12 9RR for the period 2008-10 (3/12), (iv) a copy of an English translation from Punjabi of a death certificate for “Aamer Gull”, said to have died in India on 7 November 2008, the original certificate (which was not disclosed) having been issued on 10 November 2008 and the translation on 11 November 2008 (3/10, 3/56), and (v) a copy of an English probate granted to Ajmail Singh Bains (the claimant’s son), extracted by Lin & Co of Sutton Coldfield, dated 20 August 2010, in respect of the estate of “Aamer Gull” (3/11, 3/61).
103. 104. In addition, there was a letter from a Dr Madhu Deodhar, dated 7 November 2008 (4/211), written on notepaper stating him to be a Senior Consultant Surgeon and Medical Director at Bilga General Hospital. In this letter Dr Deodhar described attending a patient in a nearby village who died on 7 November 2008, called “Amar Gull”. There were also two “Profit and Loss accounts” for Aamer Gull for the years ended 30 September 2002 and 2003, and an HMRC inheritance tax account for the estate of Aamer Gull relating to the asserted death in 2008 (4/411). It is however a striking feature of the claimant’s case that, despite the first defendant’s defence (at [2]) making clear that the separate existence of Aamer Gull was very much in issue, he could produce no documentary evidence of the existence of Aamer Gull which could be dated before 2000. There were no documents recording his arrival in the UK, or his immigration status in the UK from time to time (given that he is stated to have remained an Indian citizen). There were no photographs of Aamer Gull in his early years in the UK. (I will come back to a particular photograph of the claimant and – allegedly – Aamer Gull produced much later on.) There were no letters between the members of the family in India and the UK. There were no school records or medical records of those years. Although the claimant asserted that Aamer Gull worked as a mechanic for Jaguar in Birmingham, he could provide no HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 documentary support for that. When the absence of documents for this period was put to him, the claimant said “I don’t know about that. How can I find out?”
- Form P60 105. 106. 107. I turn now to the handwritten Form P60 purportedly issued in respect of earnings of Aamer Gull from employment with a company called Acorn Plus Ltd in the tax year ended 2003 (3/41, 4/389). The address given for Acorn Plus Ltd was “192 Monument Road, Edgbaston, Birmingham”. In cross-examination, the claimant said he “did not give this” document, and did not know who did. But he accepted that he had disclosed it in order to support his allegation of the existence of Aamer Gull. In answer to a question about the name of the company, he said Aamer Gull “might be working there, but I do not know”. The claimant was taken to a printed-out record from Companies House (4/624) which showed that the only company called Acorn Plus Ltd had been incorporated on 8 May 2013, that is, more than 10 years after the year referred to in the P60, and more than four years after Aamer Gull’s supposed death. When it was put to him that somebody had forged the P60, he said “I don’t know about that.” It was put to him

that he had produced it, and he replied “I don’t know anything about it.” Later in cross-examination, in connection with a different point, the claimant was asked about the building at 192 Monument Road Birmingham, the address of Acorn Plus Ltd given in the P60. He agreed that “it belongs to our family”. Asked about the company’s connection with that address, the claimant said “It might be the company’s address, but I don’t know anything about it. I don’t know about the company.” I note in passing that in one of Mr Saunders’ reports the Indian consul in Birmingham is stated to have told him that the claimant’s address at the time of his application for a passport in 2000 was 192 Monument Road. The wills and the probate

108. Next, there are the two wills said to have been made by Aamer Gull, the first dated 27 May 2004 and the second dated 20 March 2006, and the probate granted to Ajmail Singh Bains dated 20 August 2010 (3/11, 3/61). The first will was witnessed by the first defendant and Karl Miller. It described Aamer Gull as being of 34 Stensham Road, Birmingham. It appointed Narinder Singh of 176 Ashes Road, Oldbury, Birmingham, and Ajmail Singh Bains (the claimant’s son) of 34 Stensham Road, Birmingham as executors, and gave the whole of the estate after payment of debts, taxes and funeral and testamentary expenses, to Ajmail. Given that the first defendant treated Aamer Gull as simply another name for the claimant, the fact that the first defendant witnessed the will takes the claimant nowhere. I cannot treat it as an admission of Aamer Gull’s separate existence. 109. The second will was witnessed by Mohamed Ali Islam (the first defendant’s son) of 46 Mary Street Porthcawl and Jaswant Toor of 89 Ferndale Road, Oldbury, Birmingham. It described Aamer Gull as being of 34 Stensham Road, Birmingham. It revoked all earlier wills, and appointed the claimant (named as “Santokh Singh Bains”, without any address) to be sole executor and universal legatee of the estate. In his written evidence, the claimant does not refer to this will at all. I was given no HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 explanation of how the two witnesses, apparently living in different parts of the country, were brought together to witness the testator’s signature being made. 110. 111. The probate, somewhat surprisingly however, was granted in respect of “the last Will and Testament of the said deceased” to Ajmail, named as executor in the first will, rather than to the claimant, named as executor in the second. The bundle did not contain a copy of the will annexed to the probate, but it appears that probate was granted of the earlier rather than the later will, notwithstanding the revocation of earlier wills by the second will, and that the second will was ignored. The content of the wills is also interesting. If, as the claimant says, Aamer Gull died a widower and without children, he still had his mother, the claimant, a younger brother and three sisters alive. But he chose in the first will to give everything to the claimant’s son, and in the latter to give it all to the claimant. Of course, in many societies, there is a traditional preference for male rather than female inheritance. It may be that this is such a case. I have no evidence on the point. But, if so, Aamer Gull would have had two brothers living when he made the first will, yet chose to give all to his nephew. On the other hand, if Aamer Gull was just another name for the claimant, the wills’ provisions become rather easier to understand. The electoral roll 112. The extracts from the electoral roll place

Aamer Gull at 178 Ashes Road Birmingham B69 4RB in 2004, and at 34 Strensham Road Birmingham B12 9RR in the period 2008-10 (though he is supposed to have died in November 2008). There is nothing in the bundle from the electoral roll earlier than 2004, and nothing between 2004 and

2008. According to other documents in the bundle (3/15-16), Aamer Gull acquired 34 Strensham Road for £135,000 in early 2002, with the aid of mortgage finance. The Co-Operative Bank wrote to him there on 27 June 2002 (3/37). And, indeed, the will of 27 May 2004 gave his address, not as 178 Ashes Road, but as 34 Strensham Road. (The first defendant's evidence, which I accept, is that she was living in one of the flats at 34 Strensham Road when she became bankrupt in December 1997 (4/61), and that the property then belonged to the claimant.) There is also a copy in the bundle of a power of attorney purportedly given by Aamer Gull to the claimant, dated 20 March 2006, which records Aamer Gull's address as 34 Strensham Road (though misstated as "Stensham") (4/394).
113. Moreover, the claimant's father, as well as the claimant, lived at 178 Ashes Road. (In cross-examination, the claimant explained that 176, 178 and 180 Ashes Road were three houses joined together, and internally were one. The claimant used to live in 178, but later bought 180 and moved there.) The claimant in evidence said that his father maintained his lifelong dislike for Aamer Gull, although he also said there was "a settling of differences" between them at the time of the trip to India in 2008 where Aamer Guller was said to have died. But it seems unlikely that Aamer Gull would have been living with his father in 2004, at a time when they were still estranged. In cross-examination, the claimant then said that Aamer Gull did not live at 178 Ashes Road, though he used to visit. When asked if the electoral roll was wrong, the claimant said that he did not know. When asked whether he had misinformed the local authority compiling the roll, he did not answer the question, but instead replied, "Why would I do that?" HHJ Paul Matthews Approved Judgment Census returns Singh Bains v Irshad, BL-2022-BRS-000038 114. The registration of Aamer Gull on the electoral roll for two periods in this century, in 2004 and 2008-10, contrasts with the results of UK census enquiries made on behalf of the first defendant. The printed results of these enquiries (4/636-645) were put to the claimant in cross-examination. The claimant agreed that they showed that, although Aamer Gull was supposed to have come to the UK in about 1961, his name does not appear on any UK census return from then until two entries showing his supposed death on 7 November 2008. These latter entries appear however to be derived from the register of deaths and the grant of probate respectively. It was put to the claimant that the reason Aamer Gull did not appear in any census return was because he was not living in this country. The claimant replied, "That's not true". It was put to the claimant that he had invented Aamer Gull. Again the claimant replied, "That's not true". But he did not explain why Aamer Gull did not appear on the census. The death certificate 115. I turn now to the copy of an English translation from Punjabi of a death certificate relating to Aamer Gull, stated to be of 34 Stensham Road, Birmingham (3/10, 3/56). In cross-examination, the claimant was taken to another of the reports of Mr Saunders, in which he described how he went out to India to investigate the supposed death of Aamer Gull. His

report said that in April 2009 he had been to the village where Aamer Gull was said to have died, but witnesses there said that there had been no death of a member of the claimant's family in the previous year. Mr Saunders inspected the local register of deaths, but there was no entry for Gull.

116. When this was put to the claimant, he said that the information about deaths “gets back to head office, and they issue the certificate, and not these people”. It was put to the claimant that the death certificate had been issued fraudulently. The claimant replied that he did not go over there to make any arrangement. Instead, he said, Aamer Gull's own solicitor had written to the appropriate officials and obtained the certificate. He was asked again whether he accepted that the certificate had been issued fraudulently, and he replied, “No, that's not right.” 117. 118. In cross-examination, the claimant accepted that he knew a man called Gusharan Singh Shergill, who lived in the UK, but who had founded a charity in India called Amerdeep Singh Shergill Memorial College, in memory of his deceased son. The claimant agreed that he had been a donor to the college, and supported it. It was put to him that he had asked Mr Shergill to procure a fake death certificate for Ameer Gull. The claimant said “How can Shergill get this? It is not true”. He made the same response to a question whether he asked Dr Deodhar (through Mr Shergill) to supply the certificate. Again it was put to him that he had ‘called in a favour’ to obtain the certificate, and the reply once more was that “That's not true”. In relation to the typed letter from Dr Madhu Deodhar, dated 7 November 2008, written on Bilga General Hospital notepaper (4/211), the claimant was taken in cross-examination to a handwritten letter from Dr Deodhar to John Saunders dated a few months later, in April 2009 (4/266), which Mr Saunders had exhibited to one of his reports to the insurance companies. The heading to that letter was “Certificate issued by me dated 7/11/2008 regarding AMAR GULL s/os Gur Singh ... ” In that letter, HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 which was evidently written after an interview between Mr Saunders and himself, Dr Deodhar said that he had “truthfully told you the way in which I was coaxed to give the above mentioned fake certificate.”
119. He said in this letter that he had been approached by Mr Gusharan Singh Shergill, a good friend of his and a patron of Bilga Hospital where Dr Deodhar had previously worked. He introduced Dr Deodhar to “two of his friends as ‘NRI’ [which, although the claimant professed not to know what it meant, I understand from my previous professional solicitor's practice to mean ‘non-resident Indian’] and who needed a certificate.” Although Dr Deodhar “initially refused to stoop down to such low level as a doctor”, he said he was taken aside by Mr Shergill and reassured that no fraud was involved, and so he could trust Mr Shergill's word and honesty. Because (he said) of the philanthropic work done by Mr Shergill, he agreed to write the death certificate, and suitable (but false) Bilga Hospital notepaper was supplied for the purpose.

120. However, in the present letter he confirmed that in fact he had never gone to see “the patient AMAR GUL ... nor I went to his residence nor did I see him die.” He also said that he had last worked at the Bilga General Hospital about two years earlier (another document from that hospital confirmed that it was for just over seven months ending in March 2007), and that he was extremely sorry for his “wrongdoing” in giving a false certificate. When it was put to the claimant that he had asked for a fake death certificate for Aamer Gull, he said “That’s not true.” 121. 122. In 2010 Dr Deodhar appears to have provided a further set of answers to a questionnaire provided by Lin & Co on behalf of the executors of Aamer Gull (4/400). In those answers Dr Deodhar confirmed that he had no authority to use Bilga Hospital notepaper for his letter of 7 November 2008, but used it because “I had no other Paper with me”. Apparently, he had told Lin & Co that on 27 April 2009 he was “pressurised by the management of the hospital to declare the certificate was false”. When asked why he was pressurised, he answered “I do not know”. He was asked to confirm “that the events described in the certificate [are] absolutely true”, and replied “Yes”. He knew the deceased was Aamer Gull because “Relatives told me”, and said that they showed him “Passport no F1516976”. He said that he thought “Mr Saunders seems to be wrong” in stating that no death occurred in the village on 7 November 2008, implying that Dr Deodhar did not attend the death and the certificate was “a forgery” (but this is Lin & Co’s word, not Dr Deodhar’s). Taking all this together, I prefer the evidence collected by Mr Saunders, and in particular that given by Dr Deodhar in the interview between them which was confirmed by Dr Deodhar’s letter of April 2009. I do not believe the claimant when he denied that that he had asked for a fake death certificate for Aamer Gull. I find that he was one of the “NRI” referred to by Mr Shergill, and that he did ask for that fake certificate through Mr Shergill. I further find that it was provided by Dr Deodhar, who had the integrity to admit his fault in his later letter of April 2009, though he subsequently backtracked in his further answers to the 2010 questions of Lin & Co. It appears that Dr Deodhar was later dismissed from his post (4/284). The HMRC inheritance tax account 123. The HMRC inheritance tax account, dated 9 November 2017 (4/411), sets out a calculation of the IHT due on the death of Aamer Gull on 7 November 2008, plus HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 accrued interest. It shows a chargeable value of £454,149, and tax on that value of £56,859.60. (This compares with a gross value stated in the probate of £814,595, and net value of £47,477. These inconsistencies are just another curious feature of this case.) It is not stated what assets and liabilities have been declared to HMRC on the tax return.
124. But it appears from the papers in this case that, apart from any chattels and bank accounts in the name of Aamer Gull, his name appeared on the title to a number of properties, including the Brentwood Hotel (37 Mary Street), 46 Mary Street (opposite, also known as the Ocean View Hotel), 1 Stockland Street, and 34 Strensham Road. In addition, he was stated in the claimant’s witness statement (at [31]) and in Nrainder’s witness statement (at [5]) , and in a news article (3/4) to be a joint owner of The Mount Pleasant Hotel in Malvern (though, curiously, not on the registered title (3/5)). 125. 126. Finally, there is a partnership agreement, dated 27 December 2005, in the bundle (4/342) between him and Ajmail Singh

Bains, which was brought to an end by the latter, selling his 1% share to Aamer Gull for £1 (4/349). The partnership appears to have owned 178 Ashes Road, 180 Ashes Road (even though in cross-examination the claimant told me that he had bought 180), 191-192 and 195-196 Monument Road, Birmingham, 1 and 1A Regent Street Torquay, Devon, 20 Lower Brook Street, Torquay, Devon, and 50 Mary Street, Porthcawl. Obviously, there would be mortgage debts to deduct from the market value of those properties which were charged. But there is not enough information in the bundle to be more precise. For a death in November 2008, the upper limit of the nil rate band of inheritance tax was £312,000. The difference between £454,149 and £312,000 is £142,149. Tax at 40% on that sum is £56,859.60 (the sum calculated by HMRC as payable on the supposed death of Aamer Gull).

Accordingly, it is clear that the assets said to be those of Aamer Gull at his death have benefited from the nil rate band of £312,000, on which no tax has been charged. The claimant urged on me the fact that tax of £56,859.60 had been paid, which would not have been paid if Aamer Gull did not exist, and therefore did not die. But, if Aamer Gull is just another name for the claimant, then, by proving the earlier will of 2004, he would have transmitted £312,000 of his own assets to his own son without paying any tax. On his own death he would have another nil rate band legacy to give tax-free. The photographs 127. 128. Further documents produced on disclosure were a number of photographs appearing to show the claimant, aged about 20-30 years old, together another young man of about the same age (3/168ff). Both young men had clothes and hair styles of the 1970s. On any view they greatly resemble one another. These were said to represent the claimant and Aamer Gull together. But it was accepted by the claimant in cross-examination that these photographs were not genuine photographs of two people side by side. In a statement made in October 2023 (3/167), the manager of a photo processing shop in Cardiff, Dave Horne, said that he had been asked in about 2010 to scan two separate photographs together, to make it appear that the two persons depicted were photographed side by side, contrary to reality. The photographs in the bundle were the result. Mr Horne's (hearsay) evidence, which I accept, was that he had been asked by HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 the claimant to (and did) "scuff" the resultant composite photograph to make it appear older than in fact it was. The claimant accepted that he had asked for the composite photograph to be made, but denied that he asked for it to be scuffed. He did not however suggest any other reason why the shop manager should have scuffed it, and nor did he say that he had complained about the scuffing. I find that he asked for this to be done. Applications for life assurance 129. 130. In an application for life assurance on his own life with Friends Provident in September 1993, the claimant stated that he lived at 178 Ashes Road, Birmingham, and that his wife's name was Kashmir Kaur. The application attached a medical report of an examination by a Dr Gilbert. This records that the claimant, then aged 43, had one brother aged 26 and three sisters aged 40, 38 and 25. There was no mention of a twin brother also aged 43. In cross-examination the claimant said he had answered the doctor's questions truthfully. However, he did not include Aamer Gull as a brother "because he was not living with us, so I was not counting him as a family member". I do not accept this explanation. In an application in July 2005 to HSBC for life assurance on

the lives of both Aamer Gull and Ajmail Singh Bains (4/593ff), Aamer Gull was described as married, and living at 35 Strensham Road, Birmingham. Moreover, Ajmail Singh Bains was described as the “son” of Aamer Gull. In cross-examination, the claimant agreed that he had told me the day before that Aamer Gull was a widower. He also agreed that Ajmail was his son, not Aamer Gull’s. Commenting on both points, he said that this was the first time he had seen this document (which is signed by Ajmail but also by “Aamer Gull”). I do not believe this. Driving licence? 131. For the sake of completeness, I add that there is also a reference, in two of the application forms (both dated July 2005) for life assurance with HSBC on the life of Aamer Gull, to a UK driving licence in his name, said to have been issued in 1995. This was noted on the forms by way of apparent verification of the applicant’s then current address. But there was no copy of the driving licence itself in the bundle, and no other support for the existence of this document. I can place no real weight on this. Evidence from the first defendant 132. I have already referred to the written evidence of the first defendant, that Aamer Gull was just another name adopted by the claimant, which was confirmed in cross-examination. But the documents in the bundle show that the first defendant did not say this at earlier times. For example, on 24 February 2009, in a handwritten note to Mr Mason of Lin & Co (4/517-518), she wrote about both Stockland Street and the hotel. As to the former, she said “I have no objection to you applying to HSBC for balance at the time of Aamer’s death”. In relation to the hotel, she wrote “The Co-op know of his passing away”. I infer that this is a reference to Aamer Gull. But if Aamer Gull was, as she later claimed, simply another name for the claimant, then he would not be dead, and it would have been more creditable for the first defendant not to go along with the claimant’s story that Aamer Gull had indeed died. On the other hand, if HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Aamer Gull existed separately from the claimant, and the first defendant believed he had died, then her later statements to the contrary would be wrong. 133. This point was not put to the first defendant in cross-examination, so I do not know how she would have dealt with it. At the time of the note, in February 2009, the insurers had not decided whether to reject the claims on the policies, and it may be that the first defendant simply was unwilling to “rock the boat” until they made their decision. All I can say is that the first defendant must have been wrong in one of the positions she took, either in the note of February 2009, or in these proceedings. I take this into account in considering all the available evidence on the question. Oral evidence 134. 135. In addition to the documentary evidence, and the claimant’s own oral evidence, there was oral evidence as to the existence of Aamer Gull from his younger brother Narinder Singh Bains, his friend Dave Moss, and his cousin Kuldeep Singh Uppal. In his witness evidence, Narinder Singh Bains said he had “carried out business transactions together” with Aamer Gull, and “would regularly meet up in hotels and restaurants and speak to each other for this purpose”. However, in cross-examination, he said that they had met five times. Even so, he was unable to provide a single anecdote or story about Aamer Gull’s life or history, or indeed any other detail. I do not believe his evidence of the separate existence of Aamer Gull. The evidence of Dave Moss was that he had met Aamer Gull in 1981 through an introduction from the claimant. Yet, the claimant’s evidence was that he did not

see his twin brother from the time he came to the UK until they were reconciled in about

1985. Mr Moss had no recollection of Aamer Gull's having worked for Jaguar, and had no idea if he was married or had children. Effectively he knew nothing about him. Once again, I do not believe this evidence of the separate existence of Aamer Gull.
136. Kuldeep Singh Uppal's witness statement said that Aamer Gull and the claimant "were very much alike, except that I recall Aamer was slightly shorter than his brother. They had a close relationship. Their family and mine did not meet very often ... Our meetings mostly took place at their grandfather's house in India." He went on to say that he could "recall the last time I met Aamer and" the claimant, which was at their grandfather's funeral in India in about 1996-97. This evidence clearly gives the impression of meetings on at least several occasions over the years. But in cross-examination, Mr Uppal said that he had never met Aamer Gull before the funeral in 1996-97. And he knew literally nothing else about him. Once more, I do not believe this evidence of the separate existence of Aamer Gull. 137. Lastly, there was the affidavit of the mother of the claimant Mrs Naranjan Kaur. This was signed on 12 October 2023, when she was 96 years old. She has since died. Her signature is, I am afraid, a scrawl which suggests a great effort in writing at all. The affidavit is in English, and consists of seven short paragraphs, less than one page of A4 in length. It says that she gave birth to Aamer Gull on 11 August 1949 in India, that he came to the UK with his father in 1960/61, became involved with an English girl, and was sent away from the family. It goes on to say that there was a reconciliation in adulthood, and that he worked as a mechanic in Birmingham. It HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 138. 139. further says he died in India on 7 November 2008 when on holiday with his parents. No documents are exhibited to this affidavit. I had no evidence of the circumstances in which this affidavit came to be made. Mr Saunders' interview with the parents in 2009 was conducted through an interpreter. But there is no reference to a Punjabi version of the affidavit, or to any employment of an interpreter. On a subsequent attempt to interview the parents, Mr Saunders was even told that the parents were senile. Obviously, I did not have the benefit of seeing and hearing Mrs Naranjan Kaur. All I have is a short affidavit. Given her age, her lack of English, the lack of evidence of the circumstances in which the affidavit was made, and her undoubted attachment to her children, I am afraid that I cannot place any reliance on this affidavit as representing the truth of the matter. I record that Emma Bennett was called to give evidence for the claimant. She was the manager of the Brentwood Hotel. There was evidence before me (for example from Dave Moss, at [6] of his witness statement) that Aamer Gull visited the Brentwood Hotel. He certainly had correspondence addressed to him sent there. But Emma Bennett did not give any evidence that she ever met him. On the other side, the evidence of the first defendant, and that of Karl Miller, was that Aamer Gull was simply another name which the claimant employed, and that the claimant had no twin brother. Although the credibility of Karl Miller was challenged, his evidence about the nonexistence of Aamer Gull was not. Evidence about the name Aamer Gull

140. Mr Saunders gave as his opinion that Aamer Gull was a Muslim name, and that a Sikh family, such as that of the claimant, would not have twin boys, one of whom was given a Sikh name, and one a Muslim name. However, I consider that this is inadmissible opinion evidence, because, assuming (without deciding) that the religious affiliation of persons bearing names of Indian origin is a proper subject of expertise at all, Mr Saunders neither claimed nor demonstrated any such expertise. I have therefore excluded this opinion in reaching my decision. The same opinion was expressed to Mr Saunders by a gentleman called Gurdeep Singh, the son of Satnam Singh, who witnessed the 2005 passport application in the name of Aamer Gull (4/311). But I exclude this for the same reason. Discussion 141. I must draw the threads together of the evidence relating to the alleged existence of Aamer Gull. During the course of my exposition I have already expressed my disbelief of some elements of the evidence adduced by the claimant. As for the rest, I think I can take it all together. Coincidences happen. Improbable things do sometimes occur. One must guard against saying “never”. But improbable things are, nevertheless, improbable. Put two or more improbable things together and you have to multiply their respective improbabilities together to achieve an idea of the overall improbability that they should all happen together. On the whole, I feel a little like the White Queen in Lewis Carroll’s *Alice in Wonderland*, who was “asked to believe as many as six impossible things before breakfast”.
142. What I am asked by the claimant to believe here are statements contained in documents apparently signed by Aamer Gull (i) that despite the evidence of the HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 claimant (that he was a widower), Aamer Gull was married in 2000 and in 2005, (ii) that his wife had the same names as the claimant’s wife, (iii) that in 2004 Aamer Gull lived at the same address as his father, from whom he was at that time estranged, and (iv) that, despite the evidence of the claimant, he had a son who had the same names as the son of the claimant. Moreover, other documents relied on by the claimant say that (v) Aamer Gull was employed in 2002-03 by a company which did not come into existence for a further 10 years, and indeed at an address belonging to the claimant’s family, and (vi) Aamer Gull was on the electoral roll in the UK on only two occasions during his life, namely 2004 and 2008-10 (though he died in 2008). In addition to that, (vii) there is no documentary evidence from before 2000 of the existence of Aamer Gull, said to have been born in 1949 and resident in the UK from 1961, (viii) there are no entries for him in any UK census return from the time he allegedly arrived in the UK in 1961 to the time that he is said to have died in 2008, and (ix) there are no genuine photographs of the claimant and Aamer Gull together, and one had to be specially created (and scuffed) at the claimant’s express request by professional “photoshopping” in about 2010. One or two perhaps of these things might be coincidences, or just mistakes, but not all of them. 143. There is also the matter of the two wills, and the unexplained preference for the first over the second, and also the payment of IHT on what were said to be Aamer Gull’s net assets, but with the benefit of a nil rate band gift to the claimant’s son. There is the evidence of the first defendant, the Indian consul, that of Baljinder Singh, that of Dave Horne, and the letter of Dr Deodhar of April 2009, all of which I accept as truthful. And I

bear in mind that, having seen him cross-examined over a lengthy period, I have found overall that I cannot accept the claimant's evidence where it is not corroborated by an independent source.

144. On the other hand, there are identity documents bearing both Aamer Gull's name and a photograph said to be his. But, even if it is no longer so easy as Frederick Forsyth made it seem in his 1971 novel, *The Day of the Jackal*, to obtain a passport in a false name, it is clear from the evidence of the Indian consul in this case that genuine passports may still be issued to people who are not necessarily who they claim to be. I accept that in the present case solicitors accepted Aamer Gull as a client for the purposes of the anti-money laundering legislation, and this should involve a verification of the client's identity. But solicitors can accept duly certified copies of official identity and address documents from clients who are not present before them, as indeed Lanyon Bowdler (the claimant's solicitors) appear to have done in this case: see their client questionnaire at 4/310, a letter of 15 February 2007 at 4/415, and a letter of 6 April 2011 at 4/438. In such cases, much depends on the original documents. 145. I also take into account the fact that, if I find that Aamer Gull did not exist separately from the claimant, I may be providing at least some support for the view that the claimant and his son Ajmail were involved in an attempted fraud on insurers following the claims made against them in 2008-09. This is not something to be done lightly. But I have to decide the issues before me, and the separate identity of Aamer Gull is one of them. 146. Finally, the claimant submits in closing that HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 "the conduct and demeanour of the [claimant] in giving evidence does not support a finding that he is capable of the creation of an alter ego and thwarting the [anti- money laundering/know your customer] processes of solicitors and banks, doctors and public records. A true fraudster would have made a better job." That submission goes nowhere. The question is not whether the claimant is a "true fraudster" (whatever that is). As Agatha Christie once made Hercules Poirot observe, the perfect murder is one which is never found out. Equally, the perfect fraud is the one which is never discovered. Here, the question instead is whether Aamer Gull ever existed separately from the claimant. That is a question to be decided on the evidence before the court, and not on whether the claimant could "have made a better job".

Conclusion on Aamer Gull

147. Ultimately, therefore, I have to weigh up the evidence. Having done so, I am clearly of the opinion that there was no such separate person as Aamer Gull, and that it was just another name for the claimant, that he used in his business transactions. I have concluded that the claimant did attempt to create an alter ego. What his motive was for so doing is irrelevant, although a number of ideas may suggest themselves (the defence of the first defendant asserted that it was "to avoid debts and tax in the UK and/or for the purposes of an insurance scam relating to life insurance"). The evidence in favour of Aamer Gull's existence is weak, and that against it is, frankly, overwhelming. Indeed, I think that the claimant's persistence in the assertion that Aamer Gull separately existed, in the face of all the evidence against him, has been little short of childish. It is time to restore some grown-up thinking to this

case. Further fact-finding The various bank accounts

148. Building on the findings already made in relation to the first two issues identified above, and on the evidence before me, I find the following further facts. In finding those facts, I refer to a number of bank accounts. It will aid understanding if I set out here summary details of the accounts to which I intend to refer: Bank Halifax Co-Operative Co-Operative HSBC HSBC HSBC Lloyds Lloyds Account number ending Name(s) on the account 0331 4630 8302 9160 Aamer Gull Aamer Gull and Nadira Irshad Aamer Gull and Nadira Irshad Aamer Gull and Nadira Irshad Not known Not known Disputed: see below The Brentwood Hotel HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Lloyds Lloyds Lloyds Lloyds 7260 7293 The Brentwood Hotel Disputed: see below Not known S Bains and K Kaur Bank of Scotland Langerson Ltd Santander Disputed: see below 149. 150. 151. In the case of most of the accounts set out in the table above, there are examples of bank statements in the bundle, though not always for the relevant periods for which they might be most useful for this case. However, in some cases, there are, so far as I can tell, no bank statements in the bundle, and I have not found information in the trial bundle to indicate the name or names on the account. In the table I have indicated this with “Not known”. In cross-examination the first defendant said however that account ending 8302 belonged to the claimant alone. That evidence was not challenged, and I have no reason not to accept it. In three cases I have stated that the name on the account was “Disputed”. One is the account with Lloyds ending 2150. There is a copy of only one bank statement in standard headed notepaper form for this account in the trial bundle. This is for the period 2 May 2018 to 1 June 2018. This statement says that the account is in the names of “S Bains and N Irshad”, and the address given for them is 180 Ashes Road Oldbury, Birmingham. This is a residential property belonging to the claimant. The only other evidence of the transactions on this account is a computer printout of such transactions, in chronological order, from 9 April 2002 to 22 October 2021. It is some 19 pages long, and ends with the statement that the account has been closed. At the top of the first page it bears the name of “Nadira S Irshad”, with an address of “1 Stockland Street Cardiff”. After the acquisition of Stockland Street, this account was used to receive the housing benefit paid by Cardiff Council in respect of part of the rent charged to the first defendant’s son. In his witness statement (at [107]) the claimant gives evidence of setting up the account in April 1998. He further (at [98]) gives evidence that at some late stage the first defendant obtained the removal of the claimant’s name from this account, so that it became an account in the sole name of the first defendant. He further says that he did not notice this at the time. The first defendant’s witness statement does not deal with the removal of the claimant’s name from this account. So far as I can see, the first defendant was not asked about it in cross-examination either. It appears from a letter (3/97) dated 5 March 2018 from Lloyds to the claimant and the first defendant that they had asked for the address for this account to be changed from 180 Ashes Road, and the claimant himself gives evidence that the change was to the hotel address in Porthcawl. 152. I am satisfied on the evidence that the first defendant did procure the change of the names on the account so as to remove that of the claimant. But I have no sufficient evidence to say when

or how that occurred, except that it was after May 2018 and before October 2021. The lack of evidence means that I cannot be satisfied that the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 153. 154. 155. 156. 157. change involved wrongdoing by the first defendant. One would normally expect that a bank would not remove a joint account holder without consent (or at least notice). The second account is the account with Lloyds ending 7260. Again, there is only one bank statement on headed notepaper in the standard form (2/71). This says that it covers the period from 20 June 2018 to 19 July 2018. However, there are then six pages following containing transactions which run from 10 January 2018 through to 19 June 2018. It may be that this is an amalgamation of several bank statements. But for present purposes it does not matter. The statement says the account is in the name of “Mrs N Irshad” and gives the address of 180 Ashes Road (which is the claimant’s residential property). The claimant’s evidence (witness statement, [71]-[72]) is that he set up this account as a joint account for the purposes of the partnership, with an address at 180 Ashes Road, his own home address, and further that the bank statements showed partnership transactions. He went on to say (at [98]) that the first defendant “secretly removed” his name from the account. The first defendant’s evidence is that this was never a joint account, but instead was her personal account in her sole name, opened originally at the branch in John Street, Porthcawl. She adds that at some point the claimant wanted to change the address to his own address. Subsequently, she asked the bank to change it back, which the bank did. She says that the transactions shown in the statement were her own. The burden lies on the claimant to make good his assertion. I observe that, as with the other account just discussed, I do not see how the claimant’s name could have been removed without his consenting to it, or at least knowing about it. Moreover, the only relevant documents in the bundle support the first defendant’s position that it was her sole account. If the claimant has other documents showing differently, then he has only himself to blame for not disclosing what would be obviously relevant documents. In any event, and as on previous occasions, as between the oral evidence of the claimant and that of the first defendant, I prefer that of the first defendant. I find that this was her personal account. The third disputed account is the Santander Bank account 0773. The claimant says that it was in his sole name. The first defendant says that it was in their joint names between 2017 and 2021. No bank statements were included in the trial bundle or otherwise made available to me. There was no other documentary evidence. All I therefore have is the evidence of the claimant and the first defendant, which is diametrically opposed. On this point, as elsewhere, I prefer the evidence of the first defendant. The claimant has not proved that it was his sole account, and I find that it was a joint account. Finally, I must mention the Lloyds Bank account number 9160 in the name of the Brentwood Hotel. The first defendant’s case is that this was her own sole trader account for the hotel (a Lloyds Business Extra Account), and under her sole control. In the particulars of claim (at [12]c) the claimant says that it was in his sole name. On the other hand, in his reply (at [21]d) the claimant says that it was a joint account, but that the first defendant removed him from it secretly. 158. There are bank statements for this account in the trial bundle, from 2011 through to

2014. They show the account in the name of “The Brentwood Hotel”, which is just a HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 trading name. It does not identify the account holders. There is a further bank statement for this account for March 2021 in the bundle, which also gives the name of the account as “The Brentwood Hotel”. However, above the name on the account someone has written in manuscript “Mr S Bains Mrs N S Irshad”. I do not know who wrote these words. I prefer the evidence of the first defendant, and find that it was her sole trader account. The Central Fish Café, Teignmouth
159. Having dealt with the bank accounts, I can proceed with the further fact finding. As I have said, the relationship between the claimant and the first defendant goes back to the 1980s. The first defendant had been married, with four children. Her marriage was unhappy, eventually ending in divorce. She joined a foundation course in sociology at Bournville College in Birmingham, and in September 1984 began to work part-time in a fish and chip shop owned by the claimant. As I have already found, there was a personal intimate relationship between them of short duration, beginning in 1985 and finishing in 1986 or early 1987. 160. 161. 162. In 1986 the claimant and the first defendant went into business together. They acquired and operated a fish and chip shop in Teignmouth called the Central Fish Café. They took out a loan of £30,000 in joint names, and she contributed capital of £9,000 in 1986 and £10,000 in 1987. The claimant dealt with all the financial matters and the paperwork relating to the business. He did not live in Teignmouth, but visited every couple of weeks to deal with paperwork. (The claimant says he spent “extended periods of time” there, but I reject this.) The first defendant was there full time, living in the flat above, and ran the business on a daily basis. The claimant says in his written evidence that the first defendant merely worked for him in the Teignmouth business, which belonged to him alone. I reject this evidence. At the very least, it is inconsistent with the basis upon which the first defendant took responsibility for the VAT problem which subsequently arose. It is also inconsistent with her being jointly liable to the bank for the £30,000 loan, and the payment of further capital by her, referred to above. In fact, as I have found, she was a partner. But the partnership was entirely informal, a “partnership at will”, and there was no written partnership agreement. The claimant further says that during this time the first defendant entered into an arranged marriage with a cousin, so that her husband could stay in the UK. He exhibits a marriage certificate which shows that the marriage took place, in May 1987 (3/161). The address given for her was a council flat in Birmingham where she had lived before moving to Teignmouth. The first defendant said that her husband was a distant cousin and that she had met him in Pakistan previously. She said it was genuine and not to enable her husband to stay in the UK. The marriage lasted until 1995, and failed only because she lived in Teignmouth where her business was, while he wanted to live in London. I find on the evidence that it was not a marriage of convenience. 163. In 1992 or 1993 the business was investigated by HMRC in relation to unpaid VAT. It turned out that, unknown to the first defendant, the claimant had never registered for or paid VAT. Eventually, the claimant persuaded the first defendant to accept responsibility for the VAT

liability as she was a partner of the business, but had no HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 significant assets to lose, whereas the claimant did. The first defendant stopped working in the business. The claimant however, carried on with it, installing a manager. After Teignmouth 164. 165. The claimant suggested that the first defendant change her name, from Nadira Bint Siraj for to Nadira Siraj Irshad, and she did so on 12 December 1996, using a solicitor introduced by the claimant (4/564). The claimant did the same (4/291), changing his name from Santokh Singh to Santokh Singh Bains. However, from about the same time, the claimant also began to use the name Aamer Gull. I infer that the problems over VAT had encouraged the claimant to seek to protect himself and his assets by using alternative names which would make it more difficult for the authorities to keep track of his activities. The first defendant having stopped working, she lived for about six months in a flat at 34 Strensham Road, Birmingham, which she understood belonged to the claimant, although documents in the bundle (3/14-15) show that it was apparently sold in 2002 to Aamer Gull, the vendor not being stated. But I have found that this is just another name for the claimant. While she was in Strensham Road, in December 1997, the first defendant was adjudicated bankrupt on her own petition in the county court at Birmingham, under the name Nadira Siraj (4/61). This appears to have dealt with the HMRC claim.

166. Because she was bankrupt, however, her opportunities were now limited. She could not, for example, obtain a loan. In 1999, she went to Pakistan in connection with the marriage of her son, and, when she returned in about 2000, she lived first of all with her daughter and then subsequently in Southampton. She was discharged from bankruptcy in December 2000, at the end of the statutory three-year period (as it then was) under section 279 of the Insolvency Act 1986. (In cross-examination the claimant's counsel put it to her that the statutory period was five years, so that she was not discharged until December 2002, but I think this must have been a slip.)
167. While she was living in Southampton, she formed the idea of buying a fish and chip shop there. She approached the claimant for advice on how to go about this. He sought instead to persuade her to go into business with him again. After the experience in Teignmouth, the first defendant was wary of doing this a second time. But she was persuaded to do so by the claimant, who explained that his son (Ajmail Singh Bains) was an accountant and would deal properly with all the regulatory and tax matters. The acquisition of the Brentwood Hotel, Porthcawl
168. Accordingly, the claimant and the first defendant discussed buying a hotel business. Ultimately, the Brentwood Hotel in Porthcawl was acquired that same year, with the aid of mortgage finance. That, and all the paperwork, was (despite what the claimant said in part of his evidence) organised and controlled by the claimant himself. He instructed Praveen Chaudhari, the son of a friend, at Lanyon Bowdler, solicitors, to deal with the conveyancing. The property was purchased for a total of £255,000, but apportioned as to £175,000 for the property itself, £65,000 for the goodwill and £15,000 for the fixtures and fittings (3/194,

4/381). HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 169. 170. 171. It was transferred by TR1 on 5 July 2002 by the vendors to the first defendant and “Aamer Gull” jointly (4/496). The form TR1 provided expressly (in box 11) that the property was to be held by them as trustees for themselves as beneficial joint tenants. The first defendant and “Aamer Gull” were registered as joint proprietors on 18 September 2002 (4/510). Since Aamer Gull was a name that the claimant had been using on and off for some time, the first defendant did not question its use here. I find that the first defendant at no time gave any promise or assurance that she was simply a trustee for the claimant. She understood that she was a beneficial owner of half of each property. I turn now to the question how the acquisition was financed. On 15 May 2002 the Co- Operative Bank plc offered a loan to the first defendant and Aamer Gull of £180,000 (4/3, 4/474). The offer letter says it is subject to security being granted over assets described in a schedule which is, however, not attached to that letter nor, so far as I can see, elsewhere in the bundle. Since the purchasers paid a total of £255,000, most of the acquisition costs of the hotel and business were raised by mortgage finance. This is confirmed by the completion statement in the bundle, showing a loan “to be received” from the bank of £180,000 (3/194). The Co- Operative Bank charge on the hotel is shown in the title register (3/195, 3.196, 3/197, 4/571), registered on 18 September 2002. The claimant insisted that life assurance policies were taken out with Friends Provident on the lives of Aamer Gull and the first defendant in October 2002, to pay out the sum of £180,000 on either death (4/184, 4/490ff). In his witness statement the claimant says he contributed an initial £80,000 to the purchase. He refers to manuscript annotations on the completion statement, reading “S & K acct 93 Money from Loyds Bank Deposit £80,000”. He says that this shows that the £80,000 came from the joint account with his wife at Lloyds Bank ending in “93”. But, although he has included in the trial bundle at least one of the bank statements relating to that account, he has not included the one which would show, one way or the other, whether such a payment was ever made at this time. Nor has he included any evidence from the solicitors that they received this money from him. Indeed, the completion statement itself (prepared by them) shows otherwise. Two sums are shown as “Received from you” (where “you” refers to the joint purchasers, Mr Gull and the first defendant): the sum of £200 and the sum of £25,500. The balance stated to be “required from you” was £15,271.98. If the claimant had contributed £80,000, it is difficult to see where it would have fitted into the statement. I do not accept the claimant’s evidence on this point.

172. On the other hand, the first defendant paid a total of £45,000 towards this venture. This consisted of £14,000 paid to the Halifax bank account in the name of Aamer Gull on 8 June 2002 (4/4, 4/515), £11,000 paid to the same account on 14 June 2002 (4/5, 4/516), and £20,000 on 26 August 2003 (paid into a different account in the name of Aamer Gull out of the first defendant’s share of the profits in the first year of trading). 173. I find that this was the source of the £25,000 referred to in the completion statement. The claimant says that he provided the first defendant with this money, out of the proceeds of sale of a property in West Bromwich. However, he gives no further details and has not included any relevant

supporting documents in the bundle. The first defendant says that this money “was a combination of my savings and what I was loaned or given by family members” (witness statement, [22]). HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 174. 175. 176. I do not accept the claimant’s evidence on this point, and prefer the first defendant’s. The first defendant invested a further £35,000, first by a payment to the claimant of £18,000 on 28 August 2003 and then a payment of £17,000 on 10 September 2004. That makes a total of £80,000. Despite the mortgage finance, in going into this venture, the first defendant was certainly risking her own money. There is a document in the bundle in Punjabi, dated 15 December 2002 (3/202, 205), accompanied by a certified translation dated 7 November 2024 (3/203-04). In translation, this document is headed “Special power of attorney”. But, according to the translation, it is not a special (or any kind of) power of attorney as that concept is understood in English law. Instead, it states that “Amar Gola, date of birth 11-8-1949” declares that he has purchased the Hotel Brentwood as agent and nominee of the claimant, and that the claimant has “invested all the money to buy the hotel”. Moreover, “Whatever other property is and will be in my name, has been, and will be, fully funded by my brother.” This is an extraordinary document. I have already found that Aamer Gull was simply another name for the claimant. Here the claimant, without admitting the alter ego, is seeking in effect to claim for himself all Aamer Gull’s present and future assets. This simply underlines the non-existence of a separate person. It was not relied upon in the present claim. Moreover, I do not accept the statement contained in it that the claimant has “invested all the money to buy the hotel”. He did not. In fact, at the outset, he put up at most a modest amount of money. Of the purchase price of £255,000, the bank supplied £180,000 by way of loan to “Aamer Gull” and the first defendant. And the first defendant supplied £25,000 up front, a further £28,000 a year later, and a further £17,000 a year after that. 177. In this judgment I have already mentioned a power of attorney purportedly given by Aamer Gull to the claimant, dated 20 March 2006, a copy of which is in the bundle (4/394). It is in the usual English form, and gives very wide powers to the attorney (ie the claimant) to deal with the property and bank accounts of Aamer Gull. This is quite different from the Punjabi document to which I have just referred. In his witness statement (at [66]), the claimant says this: “Although the Hotel was purchased in the name of my brother, I was authorised to carry out financial transactions by a Power of Attorney dated 20th March 2006 ... This enabled me to have full control of the financial side of the business without reference to my brother. It was witnessed by the eldest son of Mrs Irshad.” Having found that Aamer Gull was simply another name for the claimant, it follows that this document was just another piece of window-dressing. The terms of the agreement between the claimant and the first defendant 178. In his particulars of claim, the claimant pleads both express (at [6] and [7]) and implied (at [8]) terms of an agreement said to have been reached between the claimant and the first defendant. Alternatively, the claimant pleads (at [9]) that there was a partnership at will between them. In her defence, the first defendant largely denies the allegations of both express terms (at [17] and [18]) and implied terms (at [18.4]). She formally denies the allegation of a partnership at will, although in fact during the trial HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 179. it was clear

that she accepted that there had been a partnership at will between herself and the claimant until 2011, when the refinancing referred to below took place. In cross-examination, the first defendant was not asked about the precise terms of the agreement. In his cross-examination, the claimant accepted that no terms of the agreement alleged between them were put in writing. In answer to a question whether he now accepted that the terms pleaded were not actually agreed, the claimant responded that “in a fair sense she [the first defendant] was not entitled to anything, but I let her have 50%”. I take that to imply that he accepted the premise of the question. In cross-examination, the claimant also accepted that there was no agreement between them that she and Aamer Gull would hold the properties on trust for the claimant. The claimant simply said, “I trusted her”. But he refused to accept that, if there was no agreement between them, the express terms set out in the particulars of claim could not have been agreed. Nor could he accept that there were no implied terms. I will postpone discussion of the question of implied terms until after I have referred to the relevant law. At this stage I will simply say that in my judgment there was no evidence before me which satisfied me that the express terms alleged by the claimant were in fact ever agreed between the parties. I therefore find that that there were no such express terms. Carrying on the hotel business

180. As with Teignmouth, the first defendant lived full-time at the hotel in Portcawl, and ran it on a daily basis, whereas the claimant visited and stayed overnight on average once a week, dealing with the accounts and the financial side of the business. Once more there was no written partnership agreement. The defendant accepts that she was in a 50:50 partnership at will with the claimant, and I so find. However, the actual business of operating the hotel was (at the suggestion of the claimant) carried on by a succession of shelf companies which had short business leases of the premises, and employed the staff. 181. These companies included the following: Centwood Ltd, 2003-2005; Flowcrown Ltd, 2005-2007; Astrapoint Ltd, 2007-2008; Seletank Ltd, 2008-2010; Lowebeck Ltd, 2010-2012; Danmill Ltd, 2012-2015; Heybridge Ltd, 2015-2017; Langerson Ltd, 2017-2021. 182. In his written evidence (at [77]), the claimant admits and avers the use of the following companies “as vehicles for my businesses (the Hotel and other ventures)”: HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Astrapoint Ltd, 2007-2010; Seletank Ltd. 2008-2010; Lowebeck Ltd, 2010-2012; Heybridge Ltd, 2015-2018; Langerson Ltd, 2016-2021. 183. The claimant does not mention the first two companies in the first defendant’s list, Centwood Ltd and Flowcrown Ltd, and nor does he mention Danmill Ltd, which sits in order between Lowebeck Ltd and Heybridge Ltd. As to Heybridge Ltd, which he claims as one of “his” companies, it is interesting to note that, in his witness statement dated 25 March 2019, verified by a statement of truth, made in the county court claim made (not by him) against the first defendant (3/123), he said: “1. I am the Leaseholder of the Brentwood Hotel and have been since March 2017.

2. When I took over the business and signed the Lease Agreement with Nadira Irshad who is the owner of the property the previous tenants trading under the name of Heybridge limited had left the business abruptly and the company was no longer trading.” 184. In his witness statement for trial, the claimant said (at [93]) that the first defendant’s daughter Robina “came to help” at the hotel, but ran up a debt with a brewery, took the money from the business to pay it, but failed to pay it, and the brewery had sued the first defendant for the unpaid debt. The claimant said that therefore he made the statement above “in order to separate Mrs Irshad from the business so that she would not be prosecuted for the debt caused by Robina”. This makes no sense. Heybridge Ltd was running the hotel then. The brewery’s claim was therefore properly against that company. The first defendant would never have been personally liable for it. And if the claimant owned Heybridge then the matter was a fortiori. In any event, the two statements (that dated 25 March 2019, and that made for this trial) cannot both be right. The claimant has lied in at least one of them. 185. The first defendant’s evidence was that some of these companies belonged to the claimant’s family, and some to hers. She identified Danmill Ltd as belonging to her son Aslam Islam, and Heybridge Ltd as belonging to her daughter Robina Islam. I was shown documents from the Companies House website in relation to Danmill Ltd, which showed Aslam Islam as the sole director. In her written evidence, she said: “59. ... for the next five years, the two service companies that ran the hotel were basically my son (Aslam) and daughter (Robina) ... [ ...]”
62. That is how things remained until 2017, when my daughter decided to return to London to pursue her career. Around the same time a brewery company was suing me for some unpaid drinks supplies, and the Claimant helped me with that. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 The Claimant ... provided a witness statement in which he confirmed that I was the business owner and the hotel was nothing to do with him apart from the fact that Langerson had a lease.” 186. I prefer the evidence of the first defendant on the ownership of the services companies to that of the claimant in this case, which means that I accept the evidence of the claimant in his 2019 witness statement that he was not behind Heybridge Ltd, the previous tenant, but had been the “tenant” of the hotel only since 2017 (when his company Langerson Ltd obtained its lease). The Stockland Street property 187. In 2007, the hotel was doing well. The first defendant suggested to the claimant that some of the profit could be invested in a residential property. The claimant agreed, and in about April 2007 a residential property at 1 Stockland Street Cardiff was acquired (4/498, 4/539) for £145,000, again with the aid of a mortgage loan (of £93,000 from HSBC Bank), and again in the names of the first defendant and Aamer Gull, subject to a charge in favour of the bank (4/502). The title was registered in their names on 27 April 2007 (4/431, 4/433, 4/487). They were expressed in the transfer to hold on trust for themselves as beneficial joint tenants (4/426). They were given express advice about the significance of this, and in particular the effect of the doctrine of survivorship before the completion in a “Report for Mr A Gull” dated 28 March 2007 (4/420). Their choice was recorded and confirmed internally within the solicitors on 26 April 2007 (4/435). Life assurance policies were taken out with HSBC on Aamer Gull’s and the first defendant’s lives to secure the

repayment of the loan sum of £93,000 for the Stockland Street property (3/47, 3/48).

188. However, the property was not occupied by them, but instead let out at a rent to one of the first defendant's sons, Mohammed Ali Islam. The rent was paid (at least in part) by the local authority by way of housing benefit claimed by Mohammed Ali Islam. It was paid directly by the council into the Lloyds account ending 2150. The claimant's evidence (witness statement, [110]) was that the claimant was put forward as the landlord of the property (despite not being the registered proprietor) because he "was not a member of Mrs Irshad's family". The tenancy agreement "was therefore provided to Cardiff Council with my name as the owner of the Property". This is also evidenced by a document in the bundle before the court. It is a letter dated 27 August 2019 from Cardiff City Council, sent to the claimant (as Mr S Bains) at the hotel address. This informed him that the housing benefit payable in respect of Mohammed Ali Islam was being changed, because child benefit was no longer payable in respect of his son Salsabeel. Dealings with the equitable interests in the properties 189. In the light of some of the closing submissions made on behalf of the claimant, it is necessary for me to find certain facts in relation to possible dealings with the equitable interests in the two properties. I have already found as a fact that that the claimant did not have a twin brother called "Aamer Gull" (or anything else). Instead, "Aamer Gull" was simply another name for the claimant himself. On that basis, according to the express terms of the transfer forms, the claimant and the first defendant held each of the properties as joint tenants on trust for themselves as beneficial joint tenants. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038
190. But there is no evidence before me that any notice of severance of joint tenancy was ever given between the claimant and the first defendant (or vice versa). Nor is there any evidence of any other action or conduct which would give rise to such a severance before the "buy-out" which I have held took place in 2011. Nor is there any evidence of any release of a beneficial joint tenancy or declaration of trust either by the first defendant or the claimant. I find that there was no such notice, action or conduct, release or declaration.
191. However, if I were wrong in my finding about the non-separate existence of "Aamer Gull", and there really were such a person, the position would be that he and the first defendant pursuant to express terms of the transfer forms would hold each of the properties as joint tenants on trust for themselves as beneficial joint tenants, unless and until (during the life of Aamer Gull) some different arrangement were come to. But there was equally no evidence before me of any notice of severance or any conduct which would give rise to a severance during the period until his supposed death. Nor was there any evidence before me of any release of a beneficial joint tenancy or any declaration of trust by Aamer Gull, or indeed the first defendant, in favour of any other person. On this alternative factual hypothesis, I find that there was no such notice, action or conduct, release or declaration. Aamer Gull's "death"
192. As I have already said, from November 2008, the claimant and his family gave out that Aamer Gull had died in India, on holiday with his parents. In 2008 and 2009, claims were made on several life assurance policies taken out on the life of Aamer Gull. These claims

were investigated on behalf of the life assurance companies concerned, who as a result of those investigations subsequently refused to pay out. Some of these policies were with HSBC, and were taken out in connection with the acquisition of Stockland Street (4/521ff).

193. Following Aamer Gull's supposed death in November 2008, the claimant wrote a handwritten note (4/472) to the first defendant: "Both Co-Op and HSBC Come to you. Mr Gull is Dead. No one Else got any [illegible] without you."

194. Roy Mason of Lin & Co was evidently instructed by the claimant's son, Ajmail Singh Bains, to apply for probate of Aamer Gull's estate. The probate was eventually issued on 20 August 2010 to Ajmail alone (3/11, 3/61). A suggestion in the claimant's written closing submissions (at [49]) that the claimant became the executor is inconsistent with this. (Indeed, the claimant's witness statement (at [41]) says that Ajmail and Narinder were the executors, and that the claimant was not an executor of the estate.) 195. In the meantime, there was obviously communication between Mr Mason and the first defendant, since she was shown on the conveyancing documents as joint owner with Aamer Gull of both the hotel and of Stockland Street. The bundle contains a handwritten note sent by fax from the first defendant to Mr Mason dated 24 February

2009. The terms of this note make clear that something from Mr Mason to the first defendant preceded it, but, whatever it was, it is not available to me. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 196. 197. (The fax markings at the bottom of each of the two pages say that the fax was sent from "Mount Pleasant" – the name of the hotel in Malvern apparently owned by Aamer Gull and Ajmail Singh Bains or Narinder Singh (the evidence varies) – on 12 January 2007. But that is impossible, since the fax refers to "Aamer's death", and yet Aamer Gull is not supposed to have died until November 2008. This point was neither explored nor explained before me. But I know from my own past experience of owning and using fax machines that their settings are usually capable of being adjusted, so as to show or to change the name of the sender and the time and date of transmission. And, on older models, switching off the machine for a period of time will impact on the time and date settings.) The note from the first defendant states in terms that the first defendant does not intend to make any further payments on the joint mortgages for Stockland Street (with HSBC) or the hotel (with the Co-Operative Bank). She also says that both properties should "automatically go into my name". It is not clear how far, in making this statement, she was relying on the earlier handwritten note from the claimant. But the fact is that the land register for Stockland Street (4/504) and for the hotel (4/534, 4/506, 4/113-121) were subsequently amended to show the first defendant as sole proprietor of each. Of course, given the claimant's stance that Aamer Gull was dead, the claimant was not in a position to contest the effect of survivorship on the legal title to each property, and I find that he did not do so.

198. But the combination of (i) the failure of the life assurance companies to pay out on the policies taken out on the life of Aamer Gull, and (ii) the refusal of the first defendant to keep up instalments on the mortgage loans meant that the mortgagees of the hotel and of

Stockland Street became concerned. On 1 July 2009 HSBC (mortgagee of Stockland Street) wrote a letter, partly in standard terms for customers in financial difficulty, but also tailored to the specific problems which the lender required to be addressed. These involved a refinancing of the debt, and the making of alternative banking arrangements. The letter was addressed “Dear Mr Bains” (presumably because the bank understood that Ajmail Bains was the executor of Mr Gull’s will, but it was sent in that form not only to “The Executor of the (late Aamer Gull C/O Lin & Co Solicitors” (4/525), but also to the first defendant (at 34 Strensham Road, Birmingham (4/521). 199. The first defendant’s evidence (witness statement, [55]) is that, by 2010, the HSBC problem had been resolved, because HSBC had been paid off and there was a new mortgage in the first defendant’s name alone. Meanwhile, the property had been transferred to her sole name. This evidence appears not to be challenged by the claimant, and I accept it. Refinancing the hotel 200. The mortgagee of the hotel was the Co-Operative Bank. The first defendant wrote to that bank on 18 September 2009 (4/528), responding to a letter from the bank of 9 September 2009, which I have not seen. The first defendant said that she enclosed a copy of the life assurance policy in relation to the loan for the hotel, apparently showing the bank’s interest noted thereon. Obviously, this was done to reassure the bank. It is also clear that the first defendant considered that there had been some agreement between the bank and herself as to how account arrears were to be met. I HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 have not seen any response from the bank to this letter. There is in the bundle however a bank statement from the bank dated 27 February 2009 (4/532) which has additional manuscript entries (I do not know by whom) purporting to show payments of £2000 per month (with occasional variations in amount) through to June 2011. 201. In June 2011, the mortgage loan on the hotel was refinanced through a different bank, Lloyds TSB Bank plc. The outstanding loan to The Co-Operative Bank plc of £107,332.29 was paid off on 17 June 2011 (4/545) when the security was redeemed. Lloyds TSB Bank plc lent £290,000 on the security of the hotel (4/544), and £181,867.71 was paid to the claimant and the first defendant’s joint account with Lloyds TSB on completion (4/538, 4/543). Considerable sums of money were then paid to the claimant. The first defendant says that these were pursuant to an oral agreement between her and the claimant to buy him out of the partnership at will. The claimant denies any such agreement. In order to reach a conclusion, I must consider the documents available to me.

202. A mortgage broker called Tony Gilbertson prepared a report on behalf of the first defendant, which was sent by fax on 26 January 2011 to Lloyds TSB Bank to seek mortgage refinancing (4/17ff, 4/63ff, 4/82ff). The “Funding Requirement” was stated at the outset of the report as follows: “To provide commercial mortgage loan of £350k to refinance the freehold property known as The Brentwood Hotel ... to uplift existing Co-Operative bank debt (£120k) and buy out sleeping partner”. 203. I find that the reference to the “sleeping partner” was one to the claimant. This is confirmed by a further paragraph under “Proposition Analysis” which reads (4/18): “To provide loan funding against the Brentwood Hotel to uplift the existing Co-Operative debt (120k) and buy out sleeping partner, Mr S Bains.” There is also a further

unredacted reference to “Bains” further on in the same section where there is reference to drawings being shared equally between the claimant and the first defendant. 204. The report goes on to say that the first defendant “has operated the Brentwood Hotel for the last eight years on a sole trader basis ... but with a sleeping partner ... ” There is then a gap, which appears to indicate a redaction, and the passage continues: “ ... assisted with the initial purchase of the hotel, but operates his own 14 bed hotel, the Mount Pleasant Hotel, in Great Malvern, Worcestershire ... ” I infer that the references to the sleeping partner (whom I have found to be the claimant) and to the person who “assisted with the initial purchase” are to the same person, who is the claimant, even though the claimant is not the registered proprietor of the Mount Pleasant. 205. The report further says this: HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 “Whilst the client is in her mid-sixties, succession planning [is] already in place in the form of her son, Mohammed Islam, who himself has worked at the Brentwood since 2004.” In the final section of the report (“Summary and Recommendations”) of one of the versions of this report in the bundle, I find this: “Mindful of the age of the client, to provide business longevity for the proposed term of the loan, if necessary, it can be converted to a partnership to include Mohammed Islam?” 206. There was a meeting between the bank, Mr Gilbertson and the first defendant in early February at the hotel, and a loan offer was made for £350,000 over 15 years, at a variable rate of interest. An internal banking report seeking sanction for the loan said: “We have been approached by Tony Gilbertson (broker) to advance £350k. The £350k is to uplift the Co-Op’s mortgage and £230k to buy out [redacted] out of the business.” I find that the name redacted was once again that of the claimant. The report went on to say: Future plans would be for the business would be for the B&B to be passed to Mrs Irshad’s son Mr Mohamed Islam.” The loan was sanctioned internally by the bank on 8 February 2011. 207. In March 2011 the hotel was valued by external surveyors at £424,000, rather than the £550,000 which Mr Gilbertson’s report had suggested. At a 70% loan to value ratio, this brought down the loan to £294,350, which the first defendant was prepared to accept. This was sanctioned in May 2011. In fact the amount finally borrowed was £290,000. Lanyon Bowdler, the claimant’s solicitors, were instructed to deal with the conveyancing aspects. They wrote a client care letter to the first defendant alone, on 6 April 2011 (4/436). There was no mention of the claimant. As I have said, the loan outstanding to the Co-Operative Bank (£107,332.29) was paid off on 17 June 2011. The first defendant was the sole borrower on the new loan from Lloyds TSB, and had sole responsibility for repaying it. By the time the hotel came to be sold in 2021, the £290,000 loan had been reduced to about £70,000. Was the claimant bought out? 208. The question is whether part of the money raised by the new loan was indeed used to “buy out” the claimant, as the bank as told. In his witness statement, the claimant says it was not. He says that “The broker was told that it was a for a repayment of a share because this was the best way to approach it rather [than] suggesting that the business needed finance.” I do not accept this explanation. At best it is a memory by the claimant of something that happened 13 years earlier, and it is unsupported by any contemporary documentation. The report by Mr Gilbertson however is contemporaneous, and the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 209. 210. 211.

claimant was well aware of its contents at the time. But in addition to this the money raised by the refinancing was not used for the purposes of the business, at least not directly. It was used directly to pay money to the claimant. The question is what this money was paid for. The amount left from the loan of £290,000 after discharging the Co-Operative debt and paying other costs and expenses was £181,867.71 (4/544). This was paid by Lanyon Bowdler to a joint account of the claimant and the first defendant with Lloyds TSB ending 2150 (4/543). There is no doubt that the claimant received £180,000 of this sum in one payment, on 22 June 2011. The first defendant says this was to buy out the claimant's interest (1/260-261). But the claimant pleads that it was to repay his original investment in the hotel, and for "carrying out the improvement work required in the Hotel" (Reply, [17], 1/132). The claimant's pleaded original investment was £80,000 (1/9, [4]). I have disbelieved the claimant's evidence that the sum of £80,000 was ever paid by him. As to the work to be carried out on the hotel, this does not appear to have been the subject of cross-examination either of the claimant or the first defendant. Plainly their written evidence is inconsistent. In his witness statement (at [69]-[70]) the claimant said that he paid a total of £21,025 for construction of a beer garden in 2008, improvements to the bar and lounge in 2009, and refurbishment of the garden in 2021, as well as continuing repairs to the hotel. This evidence does not support the pleading in paragraph 17 of the reply, quoted above: neither the dates nor the amounts match up. Indeed, the refurbishment of the garden occurred much later, during Langerson Ltd's business tenancy. There is in the bundle however an invoice dated 25 February 2010 from "Phil Williams Building Contractor" (5/35) in respect of work to the bar and lounge and to the ladies and gentlemen's toilets amounting to £21,025. I do not think I was taken to this during the trial, but it may be the source of some of the evidence given above. The amount of £21,025 matches. But it still does not support the pleading, because the work had already taken place the year before, nor account for all the money raised by the refinancing. In addition to that, the claimant refers (witness statement at [75]) to drawings made by him from the Lloyds account ending 9160, and in the next paragraph says: "My drawings were in part to repay for the improvements to the property referred above." But no particulars are given, and there is clearly an element of "double-counting" here. Moreover, it is odd to describe reimbursement of business expenses as "drawings". 212. There is another invoice in the bundle, dated 1 April 2011. It is from a builder in respect of works done at the hotel for the price of £25,495. But this is clearly not the work referred to at paragraphs [69]-[70] of the claimant's witness statement. And it was all done and paid for more than two months before the refinancing took place. The claimant was asked about this in re-examination. He said that he had paid this from his own pocket (rather than from a business account). I was not shown any documents in confirmation of this. I am afraid that, without such confirmation, I am not prepared to accept the word of the claimant on this point. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 213. There is a further point. The claimant gives evidence (witness statement, [89]) that, at the same time that the Co-Operative Bank mortgage was repaid, he "organised a business loan in the sum of £100,000 to be taken out with Lloyds bank. [The first defendant] signed the loan agreement (but I organised this). I made the application.

The balance of £100,000 was transferred to me for the following items:

- a. £80,000 was the Original Investment
  - b. Repayment of expenses spent on the Hotel to fund improvements and mortgage payments.” The first defendant’s witness statement (at [58]) confirms that this £100,000 loan was taken out and paid over to the claimant. As noted by the claimant, the first defendant was alone responsible for this loan. But this too does not support the pleading in the claimant’s reply. And the claimant’s improvements to the property now have a third source of funding. Indeed, the claimant accepted, by reference to payments shown in bank statements, that between 2010 and 2012 he received payments of over £230,000 out of the Lloyds Bank joint account 2150, and another £10,166 out of the Lloyds Bank account 2560 in the name of The Brentwood Hotel. And, so far as he was concerned, all this money was free of debt. In considering whether some of the money raised by the new loan was used to “buy out” the claimant, I bear in mind that by the time of the refinancing the first defendant was accepted by the claimant, and indeed registered at the Land Registry, as the sole legal owner of the hotel. I am aware that the claimant now says that the first defendant held the property on trust for herself and the claimant as partners. The only written evidence of any trust is contained in the original transfer of the fee simple to the first defendant and Aamer Gull as joint tenants holding expressly for themselves as beneficial joint tenants. But the claimant asserted in 2007, and continues to assert, that Aamer Gull died in that year. 214. 215.
216. Of course, the claimant might have said that Amer Gull was just another name for himself, and that he himself was still alive, and so the hotel continued to be held by him and the first defendant jointly on trust for themselves as joint tenants. But he has steadfastly refused to do this, either in 2011 or now. Indeed, he agreed to the title’s being changed to the name of the first defendant alone, making clear that he was not asserting that he was Gull. The fact is that the claimant did not then and does not now rely on the declaration in the transfer (or, indeed, any other document) as a declaration of trust in his favour. If one looks at the position as in 2011, one can see that the first defendant was in a strong negotiating position vis-à-vis the claimant. 217. Secondly, the claimant had not only (i) agreed to the title to the hotel and Stockland Street being vested in the first defendant alone, but had (ii) arranged new mortgage loans for each property for which the first defendant alone was liable, and (iii) had extracted from the refinancing all he had ever put in and more. The first defendant’s evidence was that both she and the claimant considered that his involvement in the partnership was over. HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 218. 219. 220. 221. In this connection, there is a lack of documentation before me which could be relied on by the claimant to demonstrate his continued partnership with the first defendant after 2011 in carrying on the hotel business, or any continued beneficial co-ownership of the hotel itself. There are for example no accounts for the hotel between 2011 and 2017 (when Langerson Ltd was granted its tenancy) showing that he was involved in the management or ownership of the business or the hotel, or making any money from it. I bear also in mind the evidence of the first defendant, which I accept, that it was the

claimant who dealt with the finances and accounts of the business while he was in partnership with her. Even putting that on one side, there are (for example) no tax returns showing profits declared from the hotel, or rent payable to him by the business. Then there are the invoices. Part 5 of the bundle contains invoices relating to the hotel for the supply of goods and services. Only a handful of these were referred to during the trial, but I have looked at all of them. Most of them are addressed to the “Brentwood Hotel”. Of those that are addressed to or for the attention of a person, or contain a person’s name, the most common name to appear is that of the first defendant. So far as I can see, there are no invoices that contain the claimant’s name dating from between (i) the time that the refinancing of the hotel took place in 2011 and (ii) the lease granted to Langerson Ltd in 2017. In short, there is nothing of substance in the documentation to show that the claimant continued to be a partner in the business or had or continued to have any share of the beneficial ownership of the hotel itself. If he were, or did, there must surely be such documents. There are some documents showing that he used the hotel address for some of his correspondence, but that is all. So, at the end of the day, in my judgment, it comes down to which witness’s evidence I prefer. I have of course seen both in the witness box over a considerable period of time, and have had a sufficient opportunity to form a view of the trustworthiness of their evidence. In accordance with that view, I prefer the evidence of the first defendant on this point. I therefore find that the claimant and the first defendant agreed that the first defendant would buy out the claimant from the hotel business and the property, and that this was implemented by paying the balance of the funds raised by the refinancing to the claimant. The money he received was clear of any debt. All the debt was firmly on the shoulders of the first defendant, now the sole beneficial owner of the two properties. After the refinancing 222. The companies which carried on the hotel business in the years 2012 to 2017 (so not quite immediately following the remortgage) were Danmill Ltd, which I have found was owned by the first defendant’s son Aslam Islam (rather than Mohammed Ali Islam, referred to in the Gilbertson report and the internal banking report, but that may simply be a slip), and Heybridge Ltd, which I have found was owned by the first defendant’s daughter, Robina Islam. The involvement of Damill and Heybridge is not quite consistent with the statements to the bank about succession planning. It is still family, but different members of it. 223. The hotel continued to be operated thereafter, although there is some dispute as to by whom this was done. As before, business leases of the hotel were granted to various HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 companies over the next 10 years. I referred earlier to the claimant’s written evidence for trial (at [77]), that all the companies to which he referred were “vehicles for my businesses”. I also set out the evidence of the first defendant that Danmill Ltd belonged to her son Aslam Islam, and Heybridge Ltd belonged to her daughter Robina Islam, and that they ran the hotel for the five years following the remortgage. I concluded that I preferred the evidence of the first defendant on the ownership of the services companies to that of the claimant in this case. The bundle contains a copy of the lease to Danmill Ltd, dated 15 September 2012 (4/31), and the lease to Heybridge Ltd dated 1 March 2015 (3/65). The rent reserved by both the Danmill lease and the Heybridge lease was £12,000 per annum. I note also an invoice (5/12) from Sky

in December 2016 addressed to Aslam Islam at the Brentwood Hotel, presumably in respect of television services. The first defendant became ill during the time that Heybridge held the lease and, according to the first defendant, whose evidence I accept, the claimant said he would take it on, incorporating his own company to do so. So, with the lease to Langerson Ltd, dated 20 March 2017 (4/90), the claimant formally took over the running of the hotel business. The rent reserved by this lease was £30,000 per annum, that is, 2.5 times the rent under the earlier leases. Why it was so much higher than under the previous leases was not explored at the trial, but it coincides with a change from leases granted to companies owned by the first defendant's children to a lease granted to the claimant. The bundle contains an invoice dated 19 March 2017 from Heybridge Ltd to Langerson Ltd (4/547), a letter from Langerson Ltd (signed by the claimant) to Francis Wilks & Jones (solicitors for Premier Drinks Solutions) 12 June 2017 (4/549), refuting their claim against Langerson Ltd in respect of goods supplied to Heybridge Ltd, and an undated letter from the claimant to CJCH Solicitors (4/552) making the same points. As I have already said, the claimant made a witness statement dated 25 March 2019, verified by a statement of truth, made in the county court claim made against the first defendant (3/123), in which he confirmed that he was the leaseholder of the hotel, since 2017, and that the first defendant was the owner. He did not say that he had a half share in the hotel. As I have also said, for the reasons already given I accept this evidence. 224. 225.

226. Accounts for the hotel business were prepared by accountants for the year to 31 March 2017 (4/464ff). The name of the accountants is not stated, but the format and typeface of these accounts are identical to the accounts prepared for the hotel business by accountants called Farmiloes (who had previously advised the claimant) for the years ended 31 March 2019 (4/452ff) and 31 March 2020 (4/458ff). The accounts for year ended 31 March 2017 are in the claimant's name, although Langerson Ltd's lease did not begin until March 2017. This was not explained at trial.
227. Moreover, the accounts for the years ended 31 March 2019 and 31 March 2020 are not in the name of the claimant, but instead in that of someone called Pritpal Singh, who is described in the accounts as the "Proprietor" of the business, and whose address is given as that of the hotel. The parties were unable to give me any explanation as to who was Pritpal Singh, or what he had to do with the hotel and its business. So far as I can see, he does not figure elsewhere in the papers before the court. Since the claimant said that he (the claimant) was running the hotel during the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 period for which these accounts were made up, it may well be that Pritpal Singh was simply a nominee for the claimant (but in which case I do not understand why the claimant would not be prepared to say so). However, nothing was said at trial to turn upon it.
228. As I have said, the rent reserved by the Langerson lease was £30,000 per annum. The hotel accounts for the year ended 31 March 2017 (in the claimant's name) show a total sum paid for "Rent Rates & Insurance" of £47,801. The accounts for the years ended 31 March 2019

and 31 March 2020 (in the name of Pritpal Singh) show sums of £62,883 and £42,188 respectively for “Rent Rates & Ins”. In the accounts for the year to 2017, the net profit before tax is stated as £114,502 (4/467). For the years to 2019 and 2020 it is stated as £31,553 and £40,328 respectively (4/456, 4/462). It is therefore clear that during these years the business was being carried on separately from the ownership of the property itself, which was and had been since 2010 in the first defendant’s sole name. 229. 230. I note in passing that the trial bundle also contains accounts for Langerson Ltd for 2017-18 (3/99ff) and 2018-19 (3/128). The accounts for 2017-18 show that in that year the company had a turnover of £130,000, making a gross profit of £50,689, though with “Other operating income” of £10,625, making a total profit of £61,314. However, “Administrative expenses” accounted for £56,627 of that, leaving a taxable profit of £4687, on which corporation tax was calculated at £717. Interim dividends of £3800 were paid, and a retained profit of £170 was carried forward. The balance sheet showed net assets as at 30 April 2018 of £171. Those for 2018-19 contain very little relevant information, being restricted to so-called “micro-entity” accounts under the Companies Act 2006, s 477. But they do say that the total net assets of the company were £270 (not £171) as at 30 April 2018, £2129 as at 30 April 2019, and £6736 as at 30 April 2020. I am not clear how these accounts fit with the accounts for the claimant and Pritpal Singh, each carrying on the business of the hotel. If Langerson was carrying on the hotel business at this time then the claimant and Pritpal Singh were not doing so, and vice versa. This was not explored at the trial. I note that Langerson’s “Administrative expenses” of £56,627 included “Rates, rates, insurance and service charges” of £14,947. I assume that there is an error and it was meant to read “Rent, rates, insurance and service charges”. But the rent reserved in the Langerson lease was actually £30,000 per annum. And the hotel accounts for the claimant and Pritpal Singh also contain significant sums (exceeding £30,000) for rent and other things. 231. I note that a fire risk assessment (3/247) was completed for the hotel by the first defendant’s son on 13 July 2020. This referred to the claimant as a person in control of the premises, who also signed the form on the same day. As the tenant of the property, of course, Langerson Ltd had legal possession of it. The claimant’s allegations that the first defendant removed money 232. In his particulars of claim, the claimant alleges (at [22]a) that the first defendant

- (1) “made unauthorised cash withdrawals from a cash point in amounts of £500 and £1000 from the Langerson Bank Account no 16252666 throughout the period 2020 HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 233. 234. 235. until completion of the sale on 1st November 2021, without the consent of the Claimant, amounting to £50,395”; and
- (2) “received transfers of monies from the personal bank account of the Claimant with the Santander Bank in the sum of £20,498.00 on the pretext of Hotel expenses, when the amounts were for her personal use.” In her defence (at [37.1]), the first defendant denies that she required authorisation to make withdrawals or that she received any monies on any “pretext”. I take this to amount to saying that the first defendant accepts that she did take some money from the Langerson Bank account and receive some money from the

Santander bank account, but that in each case she was entitled or authorised to do so. The claimant's witness statement for trial (at [97]) refers to a "table of withdrawals", which he says is not an exhaustive list, "as there are large gaps in the bank statements". That table has a column for the first defendant's response, which was "These are the First Defendant's withdrawals from the account via bank debit card to meet hotel business expenses". So far as I can see, there is no similar table putting together the relevant transfers from Santander Bank. In relation to the monies withdrawn from the Langerson account, the claimant told me in examination in chief (a short session of which I exceptionally permitted to be conducted) that the first defendant had a debit card on that account, which enabled her to withdraw cash for the purposes of the hotel business. The claimant subsequently accepted in cross-examination that some of the workers at the hotel were paid in cash, but denied that any suppliers were. The first defendant said that she did indeed use some of the cash to pay staff, and also local workmen. She said that she also used cash to pay suppliers, because the claimant preferred to pay suppliers half by cheque and half in cash. I accept this evidence. I find that the claimant has not proved that the money withdrawn by the first defendant from the Langerson Ltd bank account was drawn in excess of her authority. So far as concerns the sums paid from the Santander bank account, so far as I can tell the first defendant was not cross-examined about them. Since I have found that this was a joint account of the claimant and the first defendant, and there is nothing to show that the mandate was limited, I find that the first defendant was entitled to draw on this account for the purposes of the business. The claimant's claim is that the first defendant drew on this account on the pretext that the payments were for hotel expenses. But there are no further particulars, and no evidence dealing specifically with the truth or falsity of the assertion that the payments were for such expenses. On this state of the evidence, I cannot find that the claimant has made out his claim in this respect. The sale of the hotel 236. I now turn to the sale of the hotel in 2021. In his witness statement for trial, the claimant says: "95. Covid was a difficult time for the Hotel. I arranged a Bounce Back loan in the sum of £50,000. By this time Mrs Irshad wanted to sell the Hotel and retire. She had enough of the work. She suggested going to her sister in Dubai or buying HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 a flat somewhere. She asked me to buy out her share. She would often ask me to fund her share which she described as 'half' ...

96. As soon as Covid stopped, and the Hotel recovered, I agreed to sell it. We discussed selling the business and dividing the profit. We spoke about using our respective shares to buy a flat together in Cardiff and perhaps even abroad in Portugal. At this time we were still very much a couple and the relationship was continuing ... "
237. As to that, the first defendant said (in her witness statement at [65]) that during the Covid pandemic the hotel "stayed closed for pretty much 18 months", and agreed that the claimant "arranged Covid grants and furlough support". She also says (at [63]) that she asked the claimant for help in selling the hotel, and that he found the estate agent and encouraged her to use his own solicitors Lanyon Bowdler for the conveyancing. (The solicitor who dealt with the matter was Praveen Chaudhari, who was the son of a friend of the claimant, Shispal

Singh.) However, “[a]t no stage did the Claimant suggest to me or Lanyon Bowdler that he was entitled to anything from the sale ...”. 238. I prefer the evidence of the first defendant. I have found that the personal intimate relationship between the claimant and the first defendant ended in about 1986 or

1987. They were not “still very much a couple” in 2021. I further find that the first defendant decided that she wanted to sell the hotel, but that she had to involve the claimant, because his company Langerson Ltd had a business tenancy of the property, and the claimant had ready access to the financial information about the business of the hotel, which the purchasers wanted. The claimant did find an agent to market the property, and the first defendant did employ Lanyon Bowdler for the conveyancing. But I also find that the claimant did not suggest that he was entitled to anything on the sale.
239. Ultimately, on 28 October 2021 the hotel was sold to a company called Heartbreak Hotel (Porthcawl) Ltd (3/249). (The purchasers were Elvis Presley fans and had found out about the hotel because of the special Elvis Presley events that the first defendant put on.) Langerson Ltd was a party to the contract of sale, in order to surrender its lease (Particulars, box 2, clause 6.3-6.4). The purchase price of £595,000 was received by Lanyon Bowdler, the solicitors acting on the sale. 240. The claimant’s evidence (witness statement, [100]) is that he had arranged with the first defendant for the proceeds of sale to be paid to a joint account (Lloyds Bank account ending 7260), but the first defendant as sole vendor countermanded this by an email (3/160), and the proceeds were in fact paid to another account, in her sole name. However, he also says (in the same paragraph) that he believes that the destination account was changed because he made an enquiry of the first defendant that the net proceeds would be sent to a quite different account, the Lloyds Bank account ending
2150. He goes on (witness statement, [102]) to say that the proceeds were due to be paid into the account ending 2150, but that the first defendant had removed his name from the account before the proceeds were paid in. 241. This does not make sense, for at least two reasons. First, the claimant changes his mind in the space of a few lines as to which account was the account allegedly agreed between them for the payment of the proceeds of sale. Secondly, the first stated of the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 242. 243. two accounts with Lloyds, that ending 7260, was the account into which the proceeds were in fact paid. They were not paid into the account ending 2150, which appears to have been closed on 22 October 2021, about 10 days earlier. On the evidence before me, the account ending 7260 was the personal account of the first defendant, and not a joint account with the claimant. So, he was at least right to say that he did not have access to the funds. The claimant’s own evidence (witness statement, [100]) is that he signed a written confirmation to Lanyon Bowdler to say that he had no claim on the proceeds of sale. (So far as I can tell, however, this document is not in the trial bundle.) One consequence of this was that the contract of sale prepared by the solicitors does not disclose that the claimant had any beneficial interest in the hotel. That contract

incorporates Part 1 of the Standard Commercial Property Conditions (2nd edition), Condition 4.1 of those Conditions provides that the vendor is selling the property free from incumbrances (with certain exceptions, none of which applies here). The claimant's written confirmation had a further important consequence. Praven Chaudhari of Lanyon Bowdler had a significant email correspondence leading up to the completion of the sale with both the first defendant (as vendor) and with the claimant's son Ajmail (it will be recalled that the claimant gave evidence that he did not use email himself). However, at no time did Mr Chaudhari advise either of them that it would be necessary for there to be two persons to receive the purchase price, so that the purchaser received a good title: cf the Law of Property Act 1925, s 27. Again, Mr Chaudhari must have relied on the claimant's confirmation that the first defendant was solely beneficially entitled. At trial, the claimant did not raise this point.

244. What the claimant instead maintained at trial was an argument that the purchase price was to be apportioned as between the first defendant and Langerson Ltd. However, the contract does not say so. Although clause 3 of the contract template provides that the purchase price was to be apportioned "as shown in the Particulars", the Particulars in fact made no such provision. In the result, I find there was no such apportionment agreed. In any event, the "apportionment" that the printed version of the Particulars contemplated was between different elements of the property sold, rather than different elements of a composite vendor. The Home Rights application
245. As mentioned earlier, a Home Rights application was made by the claimant on 14 December 2021 and registered on 15 December 2021 against the first defendant in relation to the house at 1 Stockland Street in Cardiff (4/459). As I have already said, the claimant was not entitled to make this application, and the first defendant wrote a letter of objection on 1 April 2022 (4/562). THE LAW Partnership 246. There was no dispute about the relevant partnership law. The late nineteenth century common law was in effect codified in the Partnership Act 1890. I need not set out the terms of relevant sections. I was however referred to a particular dictum of Lord HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 Millett, with whom the rest of the House of Lords agreed, in *Hurst v Bryk* [2002] 1 AC 185, HL, as to the relationship between mere contract and partnership. 247. In that case, Lord Millett said (at 194): "It is impossible to say whether the modern contractual doctrine of accepted repudiation might have infiltrated the law of partnership if partnership had been treated as merely a particular species of contract enforceable in the common law courts. Disputes between partners and the dissolution and winding up of partnerships, however, have always fallen within the jurisdiction of the Court of Chancery. This is because, while partnership is a consensual arrangement based on agreement, it is more than a simple contract (to use the expression of Dixon J in *McDonald v Dennys Lascelles Ltd* 48 CLR 457, 476); it is a continuing personal as well as commercial relationship. Neither during the continuance of the relationship nor after its determination has any partner any cause of action at law to recover moneys due to him from his fellow partners. The amount owing to a partner by his fellow partners is recoverable only by the taking of an account in

equity after the partnership has been dissolved: see *Richardson v Bank of England*

- (1838) 4 My & Cr 165; *Green v Hertzog* [1954] 1 WLR 1309. Only the Court of Chancery was equipped with the machinery necessary to enable such an account to be taken, and the basis upon which the account was taken reflected equitable principles.” Trust law Express trusts
248. Whereas an express trust of pure personalty does not require any particular formality, an express trust of land must be “manifested and proved” by writing signed by the person creating it: Law of Property Act 1925, s 53(1)(b). A declaration of express trust without such signed writing is unenforceable. Declarations of trust of land are commonly inserted into conveyances and transfers of land. *Pink v Lawrence* (1978) 36 P & CR 98, CA, was a case (like the present) concerning the effect of a declaration of trust in a transfer of registered land. Buckley LJ, with whom Eveleigh LJ and Sir John Pennycuik agreed, said (at page 101): “Where there is an express declaration of trust, the doctrine of constructive trusts cannot be referred to to contradict the expressly declared trust. The doctrine of constructive trusts is one which applies in circumstances in which there is no declared trust. ... Once a trust has been effectively declared, it can only be got rid of either by rescinding the document containing the declaration of trust on the ground of fraud or mistake, or rectifying it in the appropriate manner to vary or delete the declaration of trust.”
249. Many authorities since have taken the same view: see eg *Stack v Dowden* [2007] 2 AC 432, HL, where Lady Hale (with whom Lord Hoffmann, Lord Hope and Lord Walker agreed) said: “49. In the olden days, before registration of title on certain events, including a conveyance on sale, became compulsory all over England and Wales, conveyances of unregistered land into joint names would in practice declare the HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 purchasers' beneficial as well as their legal interests. No-one now doubts that such an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel ...” It will be seen that the judges in that case proceeded on the basis that, assuming that the original declaration was unimpeachable, it could be superseded only by a subsequent set of circumstances creating new trusts (whether expressly or by operation of law). Statutory trusts
250. Where land is conveyed or transferred at law to two or more persons, whether as joint tenants or as tenants in common, trusts are imposed on the transferees by statute: Law of Property Act 1925, s 34(2) (transferees as tenants in common), s 36(1) (transferees as joint tenants). The transferees formerly held on a trust for sale (1925 Act, s 35), but now hold on a so-called trust of land (see the Trusts of Land and Appointment of Trustees Act 1996) for the benefit of the persons interested in the land (who commonly are themselves). Thus, all cases of co-ownership of land at law after 1925 necessarily involve the interposition of a trust. The use of the trust both simplifies conveyancing (vis-à-vis third parties), and also provides a ready means of resolution of internal disputes between the various parties to the co-ownership structure. 251. The identity of the beneficiaries of the co-ownership trust is typically stated in an express statement in writing of the trusts on which the land is to be

held, contained in the conveyance or transfer. The revised form of transfer (TR1) introduced under the Land Registration Act 2002 makes specific provision for the parties to the transfer to indicate their choice of beneficiaries by way of a simple “tick-box” mechanism. If however there is no such statement of the identity of the persons interested (whether “tick-box” or otherwise), the matter will have to be resolved by reference to the well-known doctrines of so-called implied, resulting or constructive trusts.

252. Historically, it was sometimes difficult to tell from the language of the documents whether land was being conveyed to persons at law as joint tenants or as tenants in common, as both were possible and frequently employed. In the absence of evidence indicating one or the other, certain presumptions were resorted to. In *Robinson v Preston* (1858) 4 K&J 505, 510, Sir William Page Wood V-C said: “The law is settled as to the investment of moneys in the names of two or more persons in the purchase of property. If invested in unequal shares, the purchasers remain tenants in common of the purchased property; if in equal shares, and the matter on the face of it purports to be a joint-tenancy, then it is considered by this Court to be a joint-tenancy, and no equity is supposed to intervene by which it can be reduced to a tenancy in common.” However, in a case like the present, where the transfers of both the hotel and Stockland Street contained an express declaration of trust for the first defendant and Aamer Gull jointly, these presumptions are fortunately irrelevant. Implied, resulting or constructive trusts HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 253. In contrast to express trusts, implied, resulting and constructive trusts, that is, trusts arising by operation of law, are exempt from the requirement of signed writing that applies to trusts of land: *Law of Property Act 1925*, s 53(2). In this case I need to deal with both resulting and constructive trusts. Resulting trust 254. 255. In the cases and books, there are usually said to be two kinds of resulting trust. The first is called a presumed resulting trust. There are two sub-types: (i) purchase where the price is paid by a third party, and (ii) gratuitous conveyance. They both involve the same idea. This is that, where A conveys property to B without making clear whether B is to take beneficially or to hold as a trustee, the matter must be resolved by the evidence available. In default of such evidence, certain presumptions are applied. I will return to this. The second kind of resulting trust is called an automatic resulting trust. Where A conveys property to B on an express trust, but does not exhaust the beneficial interest, whatever is not the subject of the express trust remains with the settlor: *Commissioner for Stamp Duties v Perpetual Trustee Co Ltd* [1943] AC 425, 441. This second kind of resulting trust has no application in the present case.
256. Returning to the question of presumptions, this is not a case of gratuitous conveyance. But (except where the presumption of advancement applies) a resulting trust is presumed where the purchase price is paid (wholly or partly) by someone to whom the property is not conveyed or transferred: *Dyer v Dyer* (1788) 2 Cox Eq 92. If two or more persons contribute the purchase price, then the resulting trust is for those persons in proportion to their respective contributions: *Gissing v Gissing* [1971] AC 886, 897.

257. A contribution for these purposes is a capital sum which is paid over as part of the purchase price. If that capital sum is borrowed from a lender, whether on the security of a mortgage or not, it is the contribution of the borrower or borrowers who has or have taken out the loan: see *Crisp v Mullings* [1976] 2 EGLR 103, CA. Subsequent repayment of the loan is not itself a contribution to the purchase price, because this has already been paid at the time of purchase: *Calverley v Green* (1984) 155 CLR 242, HCA.
258. However, these rules about contributions are simply presumptions which operate in the absence of evidence that different provision has been made. In the present case, different provision was expressly made by the terms of the transfers to Aamer Gull and the first defendant jointly. No claim is made here that those express terms should be rescinded or rectified because of any vitiating factor or mistake in recording the transfers. So, as made clear in *Stack v Dowden*, referred to above, “an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel”. To that I would add only that a constructive trust affecting the parties and arising out of events subsequent to the acquisition could also have the effect of varying the original declaration. 259. There is a further point to make clear at this point. There is a general principle, which applies both at law and in equity, about the effect of paying for improvements to the property of another person, or indeed the property of oneself and another person. This HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 is that, in the absence of agreement between the parties, or something having similar effect, such as a proprietary estoppel, such improvement does not entitle the payer to an interest (or a greater interest) in the property: see for example *Pettitt v Pettitt*
- [1970] AC 777, 818B-D. Constructive trust
260. One kind of constructive trust is known as a common intention constructive trust: see *Gissing v Gissing* [1971] AC 886, 904-905. For this to arise, the parties must have had a common intention to share the property beneficially, upon the faith of which the claimant then acts in reliance to his or her detriment. The common intention may be either expressed between them, as when they have a discussion and reach a conclusion, or it may be inferred from the whole course of conduct between them: see *Lloyds Bank v Rosset* [1991] 1 AC 107, 132. However, even when it is inferred, it still represents the court’s conclusion as to what the parties actually intended: see eg *Stack v Dowden* [2007] 2 AC 432, [61]. The court has no power to impute an agreement or common intention to the parties based on what it considers would have been fair or reasonable. Once the common intention is established, the question is whether the conduct of the claimant in relying on the common intention to her detriment makes it unconscionable for the defendant to renege on that agreement: see *Culliford v Thorpe*
- [2018] EWHC 426 (Ch), [76]. 261. If such detrimental reliance is established, then the next stage is the quantification of the claimant’s share. If that is established by the common intention itself, then there is no need for the court to try to do so. But, where it is clear that the parties intended that the claimant should have a share, yet did not quantify it, the court

must do so. It does this, once again, by having regard to the whole course of conduct between the parties. But this time, because the parties have not reached an agreement, it is necessary for the court to consider what is fair. Here, at this final stage, the court imputes to the parties that which they did not agree: see *Jones v Kernott* [2012] 1 AC 776, [51]-[52]. Proprietary estoppel 262. The moral structure of the common intention constructive trust is in substance identical to that of the earlier doctrine of proprietary estoppel, from which it appears to have sprung in *Gissing v Gissing* [1972] AC 886, HL. One person (A) either promises or reasonably induces in another (B) the expectation that B shall have an interest in property belonging to A. It is not a contract, because no consideration is sought or provided (and, even if so, any formality requirement is not fulfilled). But there is a common intention (whether actual or by estoppel) that that shall happen. Being intended so to rely, B then relies on the promise or expectation to his or her detriment. If the court holds that it is unconscionable for A not then to perform the promise or make good the expectation, the court may in its discretion so order. 263. In *Gillett v Holt* [2001] Ch 210, CA, Robert Walker LJ, with whom Beldam and Waller LJJ agreed, said (at 225): “... the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.” HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 264. *Thorner v Major* [2009] 1 WLR 776 was one of a pair of cases in which the doctrine of proprietary estoppel was considered in the House of Lords. Lord Scott said “15. Lord Walker, in paragraph 29 of his opinion, identified the three main elements requisite for a claim based on proprietary estoppel as, first, a representation made or assurance given to the claimant; second, reliance by the claimant on the representation or assurance; and, third, some detriment incurred by the claimant as a consequence of that reliance. These elements would, I think, always be necessary but might, in a particular case, not be sufficient. Thus, for example, the representation or assurance would need to have been sufficiently clear and unequivocal; the reliance by the claimant would need to have been reasonable in all the circumstances; and the detriment would need to have been sufficiently substantial to justify the intervention of equity.” 265. In the same case, Lord Walker said: “56. I would prefer to say (while conscious that it is a thoroughly question- begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* (in which the mother's ‘stock phrase’ to her son, who had worked for low wages on her farm since he left school at fifteen, was ‘You can't have more money and a farm one day’). Hoffmann LJ stated at para 16: ‘The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made.’” 266. In *Guest v Guest* [2024] AC 833, SC, Lord Briggs (with whom Lady Arden and Lady Rose agreed) said: “13. ... The true purpose, as recognised by the Court of Appeal in the present case, is dealing with the unconscionability constituted by the promisor repudiating his promise. It is wrong to treat the unconscionability question

as limited to the issue whether or not an equity arises, and then to leave it out of account when framing the remedy.” *Pallant v Morgan*

267. Another kind of constructive trust is called a *Pallant v Morgan* equity, after the decision in *Pallant v Morgan* [1953] Ch 43. In that case the parties (neighbouring landowners) were both concerned to secure a particular piece of land which was up for auction. Pursuant to an agreement before the auction that if the defendant was successful the parties should divide the land in a certain way, the plaintiff did not bid, and the defendant was successful. However, the defendant then refused to divide the land as agreed. Harman J held that it would be a fraud for the defendant to retain all the land. The bid was on behalf of both, and the defendant held the land on trust according to the agreement. In truth, it was what might nowadays be described as a proprietary estoppel on a contingency. It was a promise by the defendant to divide up HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 land if obtained by him in the future between the parties on the basis that the plaintiff had acted to his detriment in not bidding for it. 268. In *Banner Homes Group plc v Luff Development Ltd* [2000] Ch 372, CA, this “equity” was extensively discussed. Chadwick LJ, with whom Stuart-Smith and Evans LJ agreed, said: “36. It is important, however, to identify the features which will give rise to a *Pallant v Morgan* equity and to define its scope; while keeping in mind that it is undesirable to attempt anything in the nature of an exhaustive classification. As Mr Justice Millett pointed out in *Lonrho v Fayed* (No 2), at page 9C, in a reference to the work of distinguished Australian commentators, equity must retain its ‘inherent flexibility and capacity to adjust to new situations by reference to mainsprings of the equitable jurisdiction’. Equity must never be deterred by the absence of a precise analogy, provided that the principle invoked is sound. Mindful of this caution, it is, nevertheless, possible to advance the following propositions:

- (1) A *Pallant v Morgan* equity may arise where the arrangement or understanding on which it is based precedes the acquisition of the relevant property by one of those parties to that arrangement. It is the pre-acquisition arrangement which colours the subsequent acquisition by the defendant and leads to his being treated as a trustee if he seeks to act inconsistently with it. Where the arrangement or understanding is reached in relation to property already owned by one of the parties, he may (if the arrangement is of sufficient certainty to be enforced specifically) thereby constitute himself trustee on the basis that ‘equity looks on that as done which ought to be done’; or an equity may arise under the principles developed in the proprietary estoppel cases. As I have sought to point out, the concepts of constructive trust and proprietary estoppel have much in common in this area. *Holiday Inns Inc v Broadhead* may, perhaps, best be regarded as a proprietary estoppel case; although it might be said that the arrangement or understanding, made at the time when only the five acre site was owned by the defendant, did, in fact, precede the defendant's acquisition of the option over the fifteen acre site.

- (2) It is unnecessary that the arrangement or understanding should be contractually enforceable. Indeed, if there is an agreement which is enforceable as a contract, there is unlikely to be any need to invoke the *Pallant v Morgan* equity; equity can act through the remedy of specific performance and will recognise the existence of a corresponding trust. On its facts *Chattock v Muller* is, perhaps, best regarded as a specific performance case. In particular, it is no bar to a *Pallant v Morgan* equity that the pre-acquisition arrangement is too uncertain to be enforced as a contract – see *Pallant v Morgan* itself, and the *Time Products* case – nor that it is plainly not intended to have contractual effect – see *Island Holdings Ltd v Birchington Engineering Co Ltd*.
- (3) It is necessary that the pre-acquisition arrangement or understanding should contemplate that one party ('the acquiring party') will take steps to acquire the relevant property; and that, if he does so, the other party ('the non-acquiring party') will obtain some interest in that property. Further it is necessary, that HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 (whatever private reservations the acquiring party may have) he has not informed the non-acquiring party before the acquisition (or, at the least, before it is too late for the parties to be restored to a position of no advantage/no detriment) that he no longer intends to honour the arrangement or understanding.
- (4) It is necessary that, in reliance on the arrangement or understanding, the non-acquiring party should do (or omit to do) something which confers an advantage on the acquiring party in relation to the acquisition of the property; or is detrimental to the ability of the non-acquiring party to acquire the property on equal terms. It is the existence of the advantage to the one, or detriment to the other, gained or suffered as a consequence of the arrangement or understanding, which leads to the conclusion that it would be inequitable or unconscionable to allow the acquiring party to retain the property for himself, in a manner inconsistent with the arrangement or understanding which enabled him to acquire it. *Pallant v Morgan* itself provides an illustration of this principle. There was nothing inequitable in allowing the defendant to retain for himself the lot (lot 15) in respect to which the plaintiff's agent had no instructions to bid. In many cases the advantage/detriment will be found in the agreement of the non-acquiring party to keep out of the market. That will usually be both to the advantage of the acquiring party – in that he can bid without competition from the non-acquiring party – and to the detriment of the non-acquiring party – in that he loses the opportunity to acquire the property for himself. But there may be advantage to the one without corresponding detriment to the other. Again, *Pallant v Morgan* provides an illustration. The plaintiff's agreement (through his agent) to keep out of the bidding gave an advantage to the defendant – in that he was able to obtain the property for a lower price than would otherwise have been possible; but the failure of the plaintiff's agent to bid did not, in fact, cause detriment to the plaintiff – because, on the facts, the agent's instructions would not have permitted him to outbid the defendant. Nevertheless, the equity was invoked.

- (5) That leads, I think, to the further conclusions: (i) that, although, in many cases, the advantage/detriment will be found in the agreement of the non-acquiring party to keep out of the market, that is not a necessary feature; and (ii) that, although there will usually be advantage to the one and co-relative disadvantage to the other, the existence of both advantage and detriment is not essential – either will do. What is essential is that the circumstances make it inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has acted. Those circumstances may arise where the non-acquiring party was never ‘in the market’ for the whole of the property to be acquired; but (on the faith of an arrangement or understanding that he shall have a part of that property) provides support in relation to the acquisition of the whole which is of advantage to the acquiring party. They may arise where the assistance provided to the acquiring party (in pursuance of the arrangement or understanding) involves no detriment to the non-acquiring party; or where the non-acquiring party acts to his detriment (in pursuance of the arrangement or understanding) without the acquiring party obtaining any advantage therefrom.” 269. I note that, in the later case of *Crossco No 4 Unlimited v Jolan Ltd* [2011] EWCA Civ 1619, Etherton LJ explained the *Pallant v Morgan* equity in a quite different way. He HHJ Paul Matthews Approved Judgment said: *Singh Bains v Irshad*, BL-2022-BRS-000038 “88. It is not necessary to resort to the common intention constructive trust to provide an explanation for the cases in which the *Pallant v Morgan* equity was, or is said to have been, applied. They can all be explained, and, in my judgment, ought to be explained in wholly conventional terms by the existence and breach of fiduciary duty. In *Chattock v Muller* Sir Richard Malins V-C held that the defendant had attended the auction as the plaintiff's agent. Similarly, in *Pallant v Morgan* Harman J held that the defendant's agent bid for lot 16 on behalf of both parties. *Holiday Inns*, *Time Products* and *Island Holdings* were joint venture cases, in which it is to be inferred that the particular nature of the relationship between the joint venturers was such as to give rise to fiduciary duties. In the absence of agency or partnership, it would require particular and special features for such fiduciary duties to arise between commercial co-venturers. It is clear, however, that in special circumstances they can arise: *Snell's Equity* (32nd ed) at 7-006; *Murad v Al-Saraj* [2004] EWHC Ch 1235 at [325]-[341], [2005] EWCA Civ 959. In my judgment, the result in *Banner Homes* can only properly be explained on that basis.”
270. However, the view of Etherton LJ in that case was a minority one. Arden and McFarlane LJ both held that it was not open to the court to reinterpret the decision in *Banner Homes* in the way that Etherton LJ wished. As Arden LJ put it, “129. However, the reasoning in *Banner Homes v Luff Developments Ltd* [2000] Ch 372, which Etherton LJ has set out at paragraph 76 above, makes it clear that the ratio of that case is firmly based on a common intention constructive trust. By common intention constructive trust, I mean a constructive trust of the kind enunciated in *Gissing v Gissing* [1971] Ch 162. The analysis of *Banner Homes* which I have set out at the start of this paragraph was accepted by Lord Scott in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752. The speech of Lord Walker in *Stack v Dowden*

[2007] 2 AC 432 and the joint judgment of Lady Hale and Lord Walker in *Jones v Kernott* [2011] UKSC 53 may mean that common intention constructive trusts may be limited in the future to family cases, but I do not consider that that position is so clear as to make it possible at this stage for this court to hold that *Banner Homes* cannot stand with decisions of the House of Lords and Supreme Court, and to treat the ratio of *Banner Homes* as not binding on it.” Tracing

271. When I was a law student, in the 1970s, we talked about “tracing claims”. Indeed, our teachers gave seminars and wrote articles about them. At the time I do not think that we misunderstood what this was intended to refer to. But now we know better. These days we have both following and tracing. In *Foskett v McKeown* [2001] 1 AC 102, HL, Lord Millett, with whom Lord Browne-Wilkinson and Lord Hoffmann agreed, said (at 127): “The process of ascertaining what happened to the plaintiffs' money involves both tracing and following. These are both exercises in locating assets which are or may be taken to represent an asset belonging to the plaintiffs and to which they HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 assert ownership. The processes of following and tracing are, however, distinct. Following is the process of following the same asset as it moves from hand to hand. Tracing is the process of identifying a new asset as the substitute for the old. Where one asset is exchanged for another, a claimant can elect whether to follow the original asset into the hands of the new owner or to trace its value into the new asset in the hands of the same owner. In practice his choice is often dictated by the circumstances. In the present case the plaintiffs do not seek to follow the money any further once it reached the bank or insurance company, since its identity was lost in the hands of the recipient (which in any case obtained an unassailable title as a bona fide purchaser for value without notice of the plaintiffs' beneficial interest). Instead the plaintiffs have chosen at each stage to trace the money into its proceeds, viz. the debt presently due from the bank to the account holder or the debt prospectively and contingently due from the insurance company to the policy holders.” 272. So there are two aspects to a tracing claim. The first is the identification of assets which can be said to represent the product or proceeds of some earlier asset. The second is a claim of ownership, at least in equity, to the assets so identified, or to a share in them. For present purposes, I think that this is a sufficient statement of the relevant law.

Transmission of equitable interests

273. Where a person, not being both the legal and beneficial owner of an asset, has a subsisting equitable interest in an asset, the transmission of that interest to another person may be effected in a number of different ways. The express transfer of a subsisting equitable interest is governed by section 53(1)(c) of the Law of Property Act 1925, which provides that: “a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will”. 274. For this purpose, the word “disposition” has been construed widely: *Grey v IRC*

- [1960] AC 1, 12. It plainly includes an express assignment. No particular form of words is required for such an assignment of an equitable interest: *Re Wale* [1956] 1 WLR 1346, 1350. But the statutory requirement of writing extends to other cases, such as where the beneficiary of a trust directs the trustee to hold on trust for another (*Grey v IRC* [1960] AC 1). On the other hand, it does not apply where the beneficiary declares a sub-trust for the benefit of a third party (*Nelson v Greening & Sykes (Builders) Ltd* [2007] EWCA Civ 1358), or directs the trustee to transfer the asset legally and beneficially to a third party (*Vandervell v IRC* [1967] 2 AC 291).
275. However, I must specifically mention the method by which one beneficial joint tenant gives up his or her interest for the benefit of another joint tenant. This is not by way of transfer or assignment of that interest. Instead, it is by way of “release”: *Hudson v Hathway* [2023] KB 345, CA, [43]-[46]. This is because each joint tenant already owns the whole, with all the rights that brings, but subject to the burden of the other joint tenant’s similar interest, with all the rights that that brings. If one joint tenant therefore releases his or her interest to the other, that other has exactly what he or she had before, but now no longer subject to the burden of the interest of the releasing HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 joint tenant. That has simply gone. It is to be noted that a joint tenant is not able to “release” his or her interest to a person who is not another joint tenant. Transmission of the joint tenant’s rights in such a case can only be by assignment of interest (which will cause a severance of the equitable joint tenancy).
276. As Lord Millett said in *Burton v Camden London Borough Council* [2000] 2 AC 399, 408, in commenting on the law before 1926: “No particular form of words was required for a release. Even if it was drafted as an assignment, it still took effect as a release.” The law remains the same after 1925. But the release still involves a disposition of a subsisting equitable interest. Accordingly, it requires to be made by signed writing: *Hudson v Hathway*, [181], per Nugee LJ. So, in *Hudson*, emails sent by a beneficial joint tenant, with his name at the end to confirm that it came from him, were sufficient in form to amount to a release his interest to the other joint tenant.
277. When a beneficial joint tenant dies, not having severed the joint tenancy prior to death, the surviving joint tenant takes the whole by survivorship, just as if there had been a release. In such a case the deceased joint tenant has nothing left to fall into his or her estate on death. Where the owner of an equitable interest dies, not being a beneficial joint tenant dying in the lifetime of at least one other beneficial joint tenant, that equitable interest will pass under any will that has been validly made (complying with section 53(1)(c) of the Law of Property Act 1925), or, if there is no will, under the rules of intestacy. 278. For completeness, I add this. It is also possible that a subsisting equitable interest in an asset be dealt with by reason of a constructive trust of that interest coming into existence and, in effect, transmitting the benefit of that equitable interest to another, third person. If that should happen, then, since a constructive trust may arise or be enforced without the need for any formality (Law of Property Act 1925, s 53(2)), the transmission of that benefit will necessarily

occur without the need for compliance with section 53(1)(c) of the 1925 Act. For present purposes, it is not necessary to say more than this. Unlawful means conspiracy 279. The law on unlawful means conspiracy for the purposes of this case can be shortly stated. In *Palmer Birch v Lloyd* [2018] EWHC 2316 (TCC), HHJ Russen QC (sitting as a judge of the High Court) said: “203. The decision of Newey J (as he then was) in *Constantin Medien AG v Ecclestone* [2014] EWHC 387 (Ch), at [321] (citing the Court of Appeal in *Kuwait Oil Tanker v Al Bader* [2000] 2 All ER (Comm) 271 at [108]) supports the following summary of the necessary ingredients of any claim based upon an unlawful means conspiracy:

- (1) An agreement, or "combination", between a given defendant and one or more others;
  - (2) An intention to injure the claimant; HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038
  - (3) Unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant;
  - (4) Loss to the claimant suffered as a consequence of those acts.” Contract 280. There are two questions of law here. The first is that of the test for the interpretation of terms used in a contract. In *Wood v Capita Insurance Services Limited* [2017] AC 1173, SC, Lord Hodge (with whom the other Justices of the Supreme Court agreed) said: “17. Interpretation is ... a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. But, in striking a balance between the indications given by the language and the implications of the competing constructions the court must consider the quality of drafting of the clause ... and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest ... Similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms.
18. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated ... To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each. 281. The second point is that of the test for implying terms into a contract. In *Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2016] AC 742, Lord Neuberger (for the majority of the court) said: “16. There have, of course, been many judicial observations as to the nature of the requirements which have to be satisfied before a term can be implied into a detailed commercial contract. They include three classic statements, which have been frequently quoted in law books and judgments. In *The Moorcock* (1889) 14 PD 64, 68, Bowen LJ observed that in all the cases where a term had been implied, ‘it will be found that ... the law is raising an implication from the presumed

intention of the parties with the object of giving the transaction such efficacy as both parties must have intended that at all events it should have'. In *Reigate v Union Manufacturing Co (Ramsbottom) Ltd* [1918] 1 KB 592, 605, Scrutton LJ said that '[a] term can only be implied if it is necessary in the business sense to give efficacy to the contract'. He added that a term would only be implied if 'it is such a term that it can confidently be said that if at the time the contract was being negotiated' the parties had been asked what would happen in a certain event, they would both have replied 'Of course, so and so will happen; we did not trouble to say that; it is too clear'. And in *Shirlaw v Southern Foundries* HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038

- (1926) Ltd [1939] 2 KB 206, 227, MacKinnon LJ observed that, '[p]rima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying'. Reflecting what Scrutton LJ had said 20 years earlier, MacKinnon LJ also famously added that a term would only be implied 'if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh, of course!"
17. Support for the notion that a term will only be implied if it satisfies the test of business necessity is to be found in a number of observations made in the House of Lords. Notable examples included Lord Pearson (with whom Lord Guest and Lord Diplock agreed) in *Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board* [1973] 1 WLR 601, 609, and Lord Wilberforce, Lord Cross, Lord Salmon and Lord Edmund-Davies in *Liverpool City Council v Irwin* [1977] AC 239, 254, 258, 262 and 266 respectively. More recently, the test of 'necessary to give business efficacy' to the contract in issue was mentioned by Lady Hale in *Geys* at para 55 and by Lord Carnwath in *Arnold v Britton* [2015] 2 WLR 1593, para 112." Illegality 282. Sometimes the parties have made an otherwise valid contract, but some aspect of it is unlawful. The question may then arise as to the effect of the illegality on the validity of the contract. In *Patel v Mirza* [2017] AC 467, SC, a panel of nine Justices sat to consider the so-called "illegality doctrine", as propounded in the House of Lords' decision in *Tinsley v Milligan* [1994] 1 AC 340, and in three more recent decisions of the Supreme Court. For the majority, Lord Toulson (with whom Lady Hale, and Lords Kerr, Wilson and Hodge, agreed) said: "120. The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and

transparent assessment of the considerations identified, rather by than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate.” 283. Lord Neuberger took a similar, but not identical approach to Lord Toulson. Lords Mance, Sumption and Clarke reached the same decision as the majority (ie to dismiss the appeal), but by a different route. It is appropriate for me therefore to consider the HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 effect of illegality and public policy by reference to the majority view of Lord Toulson. Clean hands 284. In this claim, the claimant seeks equitable remedies. There is a maxim of equity that “He who comes to Equity must come with clean hands.” This is known as the “clean hands” doctrine. In *Gonthier v Orange Contract Scaffolding Ltd* [2003] EWCA Civ 873, Lindsay J (with whom Waller and Kay LJ agreed) said: “34. In *Willis [v Willis [1986] 1 EGLR 62, CA]* the appellants had resisted the respondents' claim for possession of a flat on the ground of an alleged promissory estoppel. The respondents, they claimed, had more than once said that the appellants could live in the premises rent free for as long as they needed. In reliance on that, claimed the appellants, they had expended money on the premises from time to time and in considerable amounts. In the course of resisting the claim for possession the appellants had been asked for details of what they had spent on the premises and upon what they had spent it. The details they disclosed included that some £1339.90 had been spent in the detailed ways they then described. When asked for particulars the appellants had relied on a letter from a Mr Robins. The letter was handed by them to the appellants' solicitor and was then used as the answer to the request by the respondents for particulars. Mr Robins' letter explained that he had carried out works at the premises and that, whilst he no longer had complete details to hand, he could confirm from ledgers the appellants' claims as to the description of the works that he had done as they had been specified in the appellants' defence and counterclaim. Of Mr Robins' letter the Court of Appeal said that it was a complete fiction. Mr Robins had not done any work. He had no ledgers and he had not been paid any money. The appellants were man and wife and the appellant to whom the letter had been addressed knew that it was wholly false. Parker L. J., giving the first judgment, said that the inference was inescapable that if the falsity of the Robins' letter had not been discovered by the respondents' solicitors it would have been relied upon throughout the proceedings. He said at page 63 l:- ‘I find it difficult to see how there could be any more serious conduct than that. When a party comes to the Court and seeks to obtain from it equitable relief, it is accepted, as I have said, that he must come with clean hands. I accept also, as was submitted on behalf of the appellants, that not every item of misconduct can possibly be sufficient to deprive a party who seeks equity from being granted the relief he seeks. Some misconduct may be trivial. But when a party acts as these parties have done – and Joanna Willis must be regarded as having been concerned in this, albeit indirectly, in as much as the document was put forward on behalf of both the appellants – it seems to be impossible for this Court to do other than to take the most serious view of it and to decline to grant equitable relief even if, to which I say nothing because it does not arise on the view I take of this case, they would otherwise have been so entitled.’ Sir John Donaldson M. R. said at page 63 m:- HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 ‘The conduct of the

appellants which has been disclosed in this case was such that no Court could, in my judgment, possibly grant equitable relief.' Parker L. J. had earlier said, of the learned Assistant Recorder's conclusion in that case that the Robins' letter had been wholly fraudulent and that the appellants' defence was rejected, that:- 'He was, in my judgment, entirely right so to do, and I would be content to dismiss the appeal on that ground alone. When a person seeks the aid of the Court to obtain the Court's assistance, via the principles of equity, to override somebody's strict legal rights, it is clearly a case for the application of the maxim, as indeed is accepted by the appellants, "that he who comes to equity must come with clean hands"'. Whilst consideration of "clean hands" is inescapably a matter that is sensitive to the varying facts of the particular case, unless some compelling distinguishing feature emerges such as to have enabled Mr Recorder Thom to have put Willis to one side, it is difficult to see how [Orange Contract Scaffolding]'s very considerable shortcomings failed to debar it from the equitable relief which it claimed."

285. After considering the trial judge's treatment of the clean hands doctrine, Lindsay J concluded: "39. In the circumstances I would hold that the Learned Recorder misdirected himself in law on the question of 'clean hands' for the reasons I have given. If (as to which I am far from sure) Mr Recorder Thom was able to regard the matter as simply one of the exercise of a discretion, I would hold that, in the light of his misdirection, this Court is free to look afresh at 'clean hands'. For my part I would hold, especially in the light of Willis supra, that Mr Horrigan's hands were hopelessly muddled; his conduct on [Orange Contract Scaffolding]'s part was in my judgment such as to deny equitable relief to the Respondent. I would allow the appeal on this ground alone ... " 286. In UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH [2017] EWCA Civ 1567, [2017] 2 Lloyd's Rep 621, Lord Briggs and Hamblen LJ said: "170. There remains the question whether KWL is barred from obtaining rescission by coming to equity without clean hands. In addressing this submission at trial, the judge directed himself as to the law by reference to the following passage in the judgment of Aitkens LJ in Royal Bank of Scotland Plc v Highland Financial Partners LP [2013] EWCA Civ 328, [2013] 1 CLC 596, at [158]- [159]: '158. There is no dispute that there exists in English law a defence to a claim for equitable relief, such as an injunction, which is based on the concept encapsulated in the equitable maxim "he who comes into equity must come with clean hands". Mr Nicholls accepted that the doctrine applies to a claim for an anti-suit injunction where the claim is based on an allegation that the defendant has started proceedings in a foreign jurisdiction in breach of contract because the claimant and defendant had HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 agreed to an exclusive jurisdiction clause in favour of the English courts. It is clear from the speech of Lord Bingham in Donohue v Armco Inc that this defence is distinct from that of there being "strong reason" not to grant an anti-suit injunction.

159. It was common ground that the scope of the application of the "unclean hands" doctrine is limited. To paraphrase the words of Lord Chief Baron Eyre in *Dering v Earl of Winchelsea* the misconduct or impropriety of the claimant must have "an immediate and necessary relation to the equity sued for". That limitation has been expressed in different ways over the years in cases and textbooks. Recently in *Fiona Trust & Holding Corporation and others v Yuri Privalov and others* Andrew Smith J noted that there are some authorities in which the court regarded attempts to mislead it as presenting good grounds for refusing equitable relief, not only where the purpose is to create a false case but also where it is to bolster the truth with fabricated evidence. But the cases noted by him were ones where the misconduct was by way of deception in the course of the very litigation directed to securing the equitable relief. Spry: Principles of Equitable Remedies, suggests that it must be shown that the claimant is seeking "to derive advantage from his dishonest conduct in so direct a manner that it is considered to be unjust to grant him relief". Ultimately in each case it is a matter of assessment by the judge, who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought.'
171. Neither Lord Falconer nor Mr Lord criticised the judge's reliance upon this statement of principle, and we are content to adopt it. The key part of it, which dates back to the 18th century, is that the misconduct or impropriety of the claimant must have "an immediate and necessary relation to the equity sued for", and that it must be shown that the claimant is seeking 'to derive advantage from his dishonest conduct in so direct a manner that it is considered unjust to grant him relief'. As the last five lines of the quoted passage show, this is one of those multi-factorial assessments to be conducted by the trial judge, with which an appellate court will be slow to intervene, unless the judge's conclusion was clearly wrong, or based upon some evident failure of analysis."
287. Gloster LJ dissented in the application of the doctrine of "clean hands" to the facts of the case, but it appears that she did not dissent from the relevant principles of law as stated: see at [372]. APPLICATION OF LAW TO FACTS Partnership and contract 288. I have found that there was a partnership at will between the claimant and the first defendant in relation to the property and business of the Brentwood Hotel from 2002, and there was a similar partnership at will in relation to the Stockland Street property from 2007. I have found that there were no express terms of agreement between them in the terms alleged by the claimant. In my judgment, the implied terms alleged to exist by the claimant were not incorporated in any agreement between them. This is HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 289. 290. because none of those terms meets the test of business necessity set out in *Marks & Spencer plc* at [17], set out above. There was no need to imply fiduciary duties as between the partners, or a term that each partner will work for the benefit of all the partners, because they are already part of the general law of partnership and arise in a partnership at will as with any other partnership. There was no business necessity for implying that the hotel and Stockland Street would be held by the first defendant and Mr Gull on trust for the claimant (and in cross-examination

the claimant accepted this), that the claimant would conduct the financial aspects of the hotel and the property, while both partners would conduct the operational aspects, that operational decisions would be taken by agreement between the parties, or that the partners' entitlements to profits and capital were anything other than 50:50. Provisions in the Partnership Act 1890 set out the position in default of agreement between the parties, so there is no need for any implication. Even if that not been the case, on the facts of this case, there would still have been no such need. I have found that, in June 2011 the parties agreed that the claimant would be bought out of the partnership at will, and that money would be (as it was) raised for this purpose by refinancing the hotel. In my judgment, that puts an end to all claims that the claimant might otherwise have had thereafter in respect of his partnership share, if he had continued to be a partner. It also puts an end to any claims that might arise thereafter in respect of any contract that previously subsisted between them as to the hotel and Stockland Street. Any such agreement was terminated by the buyout agreement. The claims in respect of allegedly unauthorised withdrawals or other payments from the Langerson Ltd bank account or the Santander bank account fail for an additional reason. This is that the claimant has not proved that any such withdrawals or other payments were made without authority. Proprietary estoppel

291. As to the proprietary estoppel claim, I have found that the first defendant never gave any promise or assurance to hold the properties on trust for the claimant. The only property arrangements were those produced by the forms TR1, for the purposes of the partnership. Their effect changed when the first defendant was registered as sole proprietor in 2010. It changed again after the refinancing, when the claimant was bought out and the properties had been put in the first defendant's sole name. I have also found that the first defendant gave no promise or assurance about buying properties together with the claimant in the future. Indeed, even the claimant's own evidence does not go so far as this. It says only that they "spoke about it". Any proprietary estoppel claim based on these alleged promises or assurances must fail.
292. But there is also a problem with detrimental reliance. Even if the first defendant had given the promises or assurances alleged, and even if they had been sufficiently certain to be capable of giving rise to an equity by way of proprietary estoppel, there was no sufficient detrimental reliance by the claimant on such promises or assurances. Acting as a partner cannot be such action in reliance, because that was what the claimant had agreed to do in entering the partnership at will between them. Nor can instructing solicitors to act as solicitors on the sale. He did not pay their costs out of his own pocket. Even if that action could amount to detrimental reliance, in my HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 judgment it would not be unconscionable for the first defendant to withhold any beneficial interest from the claimant, as he had been bought out by agreement between them. Even if there had been a sufficient promise or assurance, a proprietary estoppel claim on the basis of this alleged detriment must equally fail. Common intention constructive trust 293. The claim to a common intention constructive trust must fail for similar reasons. There was no agreement or common intention that the claimant

should share in the property after the buyout in 2011. And he has not acted on reliance on any such agreement or common intention. *Pallant v Morgan* equity 294. The claim to a *Pallant v Morgan* equity also fails on the facts. There was no pre-acquisition arrangement between the claimant and the first defendant which was different to what actually happened. The claimant (calling himself Gull) and the first defendant jointly acquired first the hotel and then Stockland Street, and held both properties on trust for themselves as beneficial joint tenants, as stated in the forms TR1, for the purposes of the partnership at will between them. Resulting trust

295. As to resulting trusts, the claimant says: “51. A resulting trust in favour of C also arises from his financial contributions to the deposits and financial subsidy for the improvements to the Hotel and to the business, including his rights as a partner.” 296. 297. In my judgment, no resulting trust can arise for the benefit of the claimant alone, whether as a result of his contributions to the purchases, or of such improvements as he may have paid for. The first point is that the claimant did not contribute the whole of the purchase monies, or even most of them. Most of the money was raised by mortgage finance, borrowed effectively on the sole liability of the first defendant. As I have already shown, by reference to *Crisp v Mullings*, for the purpose of the law of resulting trusts it was therefore her contribution, and not the claimant’s. The second point is that paying for improvements to the property of another, in the absence of agreement between the parties or some other equivalent transaction such as proprietary estoppel, does not entitle the payer to an interest (or greater interest) in the property. The point is that there was an express trust in each of the two forms TR1, and, since there is no attack on their validity or accuracy, and the attempt to claim a subsequent proprietary estoppel or constructive trust has failed, those express trusts must operate to give the first defendant her beneficial interest. Transmission of equitable interests 298. The claimant makes a series of submissions about the existence and transmission of equitable interests in the two properties. He submits that HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038 “49. ... the legal interests are either jointly owned by C and D1 or jointly owned by D1 and C in his capacity as the executor of the estate of Aamer Gull as bare trustees, subject to C’s right to demand the transfer of the late Mr Gull’s legal interest. On death, the legal interest in the Hotel and Stockland Street held by Gull would have passed automatically to D1 by survivorship (i.e. by operation of law). Thereafter, D1 held Gull’s interest in both properties on a bare trust for Gull’s estate ...
50. Under the terms of the later Will that legal interest is held by D1 in favour of C absolutely as the beneficiary of the same bare trust. On Gull’s death, whilst his legal interest in both the Hotel and Stockland Street, passed to D1 by the operation of survivorship under the terms of their joint tenancies, Gull had disposed of his equitable interest in both properties, so that D1 held those legal interests on a bare trust for AG’s personal representative by virtue of the Note and the implied terms of the partnership including under the Partnership Act.” 299. 300. In my judgment, this analysis is both mistaken and internally inconsistent, and I do not agree with it. It is mistaken, because it was the claimant’s son Ajmail, rather than the

claimant, who was granted probate of the will of Aamer Gull. No other person can act as executor whilst a probate is in force, and all third party transactions are valid, even if the probate were to be subsequently revoked: Administration of Estates Act 1925, ss 15, 27. It is inconsistent because it begins by positing that the legal estates are owned by the first defendant and the claimant, on the (mistaken) view that he was an executor of Aamer Gull's estate. But it goes on to say (rightly) that on Gull's death the legal title would accrue to the first defendant alone, and Gull's executor (whoever it was) would not be a legal co-owner. On the other hand, it asserts that Gull's estate would have retained an equitable interest in the properties after his "death", when the express trust in the forms TR1 was for the first defendant and Aamer Gull jointly. The true position however is this. If Gull had existed separately from the claimant, and had died, the first defendant would have become the sole legal and beneficial owner of the properties, in accordance with the express terms of the TR1. Gull's executor would have had no part of the legal title, and his estate would have had none of the beneficial interest. However, I have found that Gull had no separate existence, but was simply another name for the claimant. So the announced "death" of Gull (the claimant) was both untrue, and irrelevant in terms of what effect that had on the property, that is, nothing.

301. What did actually happen thereafter was twofold. First, in 2010 the registered legal titles were changed, at the instance of the claimant, so that the first defendant became the sole registered proprietor. That did not in itself affect the beneficial ownership. It was partnership property before the change, and it was partnership property afterwards. The second aspect was the refinancing to buy out the claimant, which took place in June 2011. The effect of the buy-out between the parties was to make the first defendant the sole beneficial owner of the two properties.
302. Next, the claimant submits that: "52. Gull always held the equitable interest for C following their arrangement and evidenced by the Note and indicated his disposal of it to the benefit of C. This prevents the doctrine of survivorship operating to transfer the equitable interest to HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 D1, because it has always been held on a bare trust for C, until C demands his share. This construction of the intention of Gull makes sense of the evidence of C and his continuation of his role as both funder and in exerting 'sweat equity' right up until the sale." (I understand the reference to "the Note" to be one to the document in Punjabi, dated 15 December 2002, whereby Gull apparently declared that he was the claimant's nominee: see 3/202-205.) 303. I find this passage incoherent. Even if Gull had existed separately from the claimant, he never held any equitable interest on trust for anyone. He would have held the legal estate (jointly with the first defendant) on the express trusts in the forms TR1. For this reason, there never was a bare trust for the claimant. And there never was any act by Gull/the claimant severing the beneficial joint tenancy and turning it into a beneficial tenancy in common. In particular, the "Note" of 15 December 2002 was not an attempt to deal with a beneficial interest so as to substitute another person as co-owner. At best it would have had the effect a declaration of trust of that beneficial interest for another, Gull remaining in position to

obscure the claimant's interest. (As I have pointed out, such a declaration is not a disposition for the purposes of s 53(1)

(c) of the 1925 Act.)

304. But, even if I were wrong, and it could in theory have had the effect of causing a severance, it could not in any event have done so in this case. This is because Gull did not separately exist: it was the claimant by another name. Even if a declaration of trust for another were sufficient to cause a severance, a purported declaration of trust for yourself is a thing written in water, and could not. (A notice to the first defendant under the Law of Property Act, s 36 would be another matter. But the Note was not such a notice.) So, the Note was ineffective in this respect anyway.
305. The claimant further argues that: "53. ... Severance of the legal estate was not part of the arrangement because C did not believe it to be necessary not to trust the agreement that he entered into with D1 and which she had expressly and tacitly encouraged." 306. I do not follow this as it stands. You cannot sever the joint tenancy of a legal estate in land (Law of Property Act 1925, s 36(2)). If I assume that this statement is a mistake for severing the beneficial joint tenancy, then it simply confirms the conclusion I had already come to, namely that there was no such severance. Yet that makes it inconsistent with the statement in paragraph 52 of the closing submissions that Gull intended to dispose of his equitable interest to the claimant (which, if it could have happened, would have caused a severance).
307. The claimant goes on to argue that "54. The argument of D1 that the equitable interest of C cannot operate outside the rule of survivorship, is dealt with in *Hudson v Hathaway* [2022] EWCA Civ 1648 per Lewison LJ. The court distinguished the 'release' of the equitable interest from similar concepts to avoid any severance of a joint tenancy. The ability of one joint tenant to release his interest to the other has been preserved by section 36(2) of the Law of Property Act 1925 ... " HHJ Paul Matthews Approved Judgment *Singh Bains v Irshad*, BL-2022-BRS-000038
308. But the court in *Hudson v Hathway* did not hold that a beneficial joint tenant could release his interest to a person who was not another such joint tenant. That case was one between the two joint tenants, and the question was simply whether one had released his interest to the other in an email to which he had put his name. The court held that he had.
309. Yet in the present case there is no release. If Gull existed as a separate person and had released his interest, it could only have enured for the benefit of the first defendant, the other joint tenant. It could not have enured for the benefit of the claimant, who was (on this hypothesis) a different person. But, if on the other hand Gull was the claimant, as I have found, then any release by him would equally enure for the benefit of the first defendant, and the claimant would have nothing. Tracing claim
310. The tracing claim relates to the alleged entitlement of the claimant to a share in the proceeds of sale of the hotel. It is said that the claimant may trace that share into the products of those proceeds. I have held that the claim to a share in the proceeds of sale fails on the facts. Hence the tracing claim falls away too. But it was properly acknowledged by the first defendant that, if the claim to a share of the proceeds had succeeded, a tracing claim into the product of the proceeds would

have been possible. In the circumstances, I need not consider it further. Unlawful means conspiracy 311. The claim that the first defendant was involved in an unlawful means conspiracy fails on the facts, because it depends on the claimant being entitled to half the sale proceeds of the hotel, and I have held that he is not so entitled. But if he were so entitled, then the first defendant would be liable to him under that head, and so the claimant could in principle trace into the products of the proceeds of sale. Accordingly, this further claim adds nothing in any event, and need not be further considered. The effect of illegality 312. It is not unlawful in itself to use a different name from the one by which a person usually goes. But, depending on the circumstances, a person so doing runs the risk, amongst others, of committing the tort of deceit, or one of a number of criminal offences, such as fraud. In the present case, the use by the claimant of the name Aamer Gull in entering the partnership at will with the first defendant did not deceive the first defendant. She understood it to be just another name for the claimant. As against her, there was nothing unlawful in using that name. She understood correctly that the partnership at will into which she was entering was between the claimant and herself. On the face of it, therefore, there is no reason to deny the claimant the rights and benefits of that partnership, as against the first defendant, merely because he used another name in doing so. 313. It may perhaps be that the attempts to make claims against the life assurance companies following the alleged death of Aamer Gull involved the commission of criminal offences by some one or more persons. For present purposes I will simply assume (without deciding) that it is so. But in my judgment the question which I must HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 consider is whether it “would be harmful to the integrity of the legal system” to give effect to any rights which the claimant had against the first defendant pursuant to the partnership at will into which he entered with her. The claims against the insurance companies arose out of policies which were taken out at the instance of the claimant to provide funds to pay off the mortgage loans that had been taken out in acquiring the properties. 314. I do not consider that the purpose of the criminal prohibition against fraudulent insurance claims will be enhanced by denial of the claimant’s claim to his partnership rights. Nor do I consider that there is any other public policy on which the denial of the claim may have an impact. In these circumstances, I do not consider that denial of the claim would be a proportionate response to the illegality. Accordingly, if I had not found on the facts that the claimant’s rights under that partnership at will had come to an end by reason of the buy-out by the first defendant, I would not have declined to enforce his partnership rights merely on the grounds of illegality. Clean hands 315. The equitable doctrine of clean hands, however, presents more difficulty. This is because the facts that I have found disclose that, in the course of the events described in this judgment, the claimant has lied extensively to both public authorities and private bodies in a number of significant ways. These lies include:

- (1) the obtaining of passports from the Indian government in the name of Aamer Gull, although there was no such person distinct from the claimant;

- (2) the obtaining and use of a UK residence permit and a council tax payment card in the name of Aamer Gull;
  - (3) the lies told to life assurance companies in applications for life assurance in September 1993 and in July 2005.
  - (4) the obtaining and deployment of a fake death certificate from Dr Madhu Deodhar for Aamer Gull;
  - (5) the obtaining of a probate for the estate of Aamer Gull, although there was no such person distinct from the claimant himself, and he (the claimant) had not died;
  - (6) taking part in the making of false life assurance claims in respect of the alleged death of Aamer Gull;
  - (7) asserting that he was the first defendant's spouse or civil partner for the purposes of making a Home Rights application;
  - (8) putting forward the form P60 purporting to show Aamer Gull as an employee of a company which did not then exist;
  - (9) obtaining and deploying the photograph which the Cardiff shop was asked to fake. 316. These lies were repeated in the course of making the present claim. The claimant could have told the truth (that is, that there was no such person as Aamer Gull HHJ Paul Matthews Approved Judgment Singh Bains v Irshad, BL-2022-BRS-000038 separate from the claimant) and still argued for his rights on the basis that he and the first defendant bought the properties and ran the business together. But instead he persisted in the childish charade that Aamer Gull really existed and did die. It has been an integral part of the dishonest way that this claim has been put. 317. Such lies in the course of litigation are offensive to the court. They strike at the root of our society, the rule of law and the enforcement of legal rights. I remind myself of the statement of Nugee J in *Holyoak v Candy*, already cited, that "the Court is bound to take a particularly adverse view of a litigant who lies in the course of litigation, as this undermines the Court process itself."
318. As stated in the authorities referred to earlier, the test is whether the claimant's misconduct has "an immediate and necessary relation to the equity sued for". But the authorities show that for this purpose misconduct can go beyond mere attempts to mislead the court by creating a false case, and can extend to the case where the claimant seeks to support an otherwise truthful case with fabricated evidence. 319. If I had considered that the claimant's claims had any merits, then, in my judgment, it would have been an affront to justice to allow him to succeed on them in the way that he has presented his case. In such circumstances, the claimant has not come to court with clean hands, and I would not have awarded the claimant any equitable remedy. That would include any remedy in constructive trust, proprietary estoppel or under *Pallant v Morgan*, all of which depend upon the court's considering that it would be unconscionable for the legal owner of property to insist on her rights. In the event, of course, this makes no difference to the result.

## CONCLUSION

320. For the reasons given above, I dismiss the claimant's claims in their entirety. Given my findings as to the lies which the claimant and his associates have told in the course of this litigation, and my findings as to the behaviour of the claimant more generally, I propose to send the papers in this case to the Director of Public Prosecutions. 78

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