

[2020] EWHC 2038 (Ch)

Claim Nos. PT-2018-000433 and PT-2018-000968

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (CHD)

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

Date: 30th July 2020

Before: DEPUTY MASTER HENDERSON

IN THE MATTER OF THE ESTATE OF MEDINAT BOLA ADEPOJU (DECEASED)
BETWEEN

MR OLADIMEJI KEHINDE AKINOLA

Claimant (in both Claims)

- and -

(1) MR AKINFENWA OYADARE

(2) MS JUMOKE ABOSEDE ADEPOJU

Defendants (in both Claims)

JUDGMENT

The Claimant represented by Mr Richard Devereux-Cooke (instructed by OA Solicitors) until 6th July 2020 and thereafter in person.

The First Defendant represented by Ms Daria Gleyze (instructed by Grayfield Solicitors).

The Second Defendant represented by Mr Richard Bowles (instructed by Palmers Solicitors).

Hearing dates: **27th, 28th, and 29th January 2020**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the Claimant and to the other parties' solicitors by email. The date and time for hand down is deemed to be **10.00 a.m. on 30th July 2020.**

DEPUTY MASTER HENDERSON

Introduction

1. This is my judgment on a set of preliminary issues which were ordered to be determined by an order of Deputy Master Lloyd dated 11th July 2019.
2. The preliminary issues are as follows:
 - (a) Whether the Claimant has a beneficial interest (and if so, what interest) in any of the following properties and/or in respect of the proceeds of sale where those properties have been sold:

Properties in the Estate of Mrs Medinat Bola Adepoju deceased:	
Property address:	Land Registry title number:
3 Goose Square, Beckton, London E6 5QW	EGL122008
95 Connor Road, Dagenham, Essex RM9 5UT	EGL8702
45 Shortcrofts Road, Dagenham, Essex RM9 5PH	EGL 3006
108 Halbutt Street, Dagenham, Essex RM9 5AP	EGL361478
53 Cartwright Road, Dagenham, Essex RM9 6JJ	EGL122780
31 Queensland Court, Dock Road, Tilbury, Essex RM18 7BZ	EX727429
30 Rokeby Street, Stratford, London E15 3NS	EGL 409369
16 Blanche Street, Canning Town, London E16 4JR	EGL 86285
116 Pittman Gardens, Ilford, Essex IG1 2QD	EGL455823
12 Venables Close, Dagenham, Essex RM10 7NJ	EGL263265

24 Blackthorn Road, Ilford, Essex IG1 2LB	EGL475773
Properties sold prior to death of Mrs Adepoju:	
15 Beaconsfield House, Beaconsfield Road, Canning Town, London E16 4HS (sold 31/07/2014)	EGL274885
275 New Road, Dagenham, Essex RM10 9ND (sold 16/07/2014)	EX44097

(b) Whether the Claimant has any additional or alternative claim by virtue of the matters alleged in paragraphs 18 and following of the Particulars of Claim dated 3 December 2018.

3. The matters alleged in paragraphs 18 and following of the Particulars of Claim dated 3 December 2018 are to the effect that (i) the First Defendant (“Mr Oyadare”), in his capacity as administrator of the estate of the late Medinat Bola Adepoju (“Mrs Adepoju”) agreed in a letter dated 21st March 2017 that the Claimant (“Mr Akinola”) had a beneficial interest in the net assets of the estate of Mrs Adepoju amounting to 25% of the value of those assets and (ii) in reliance on that agreement Mr Akinola accepted a position as the agent for the administrator for the purpose of managing the properties. As a result Mr Akinola claims that by reason of an estoppel or a contract he had a 25% beneficial interest in the net assets of Mrs Adepoju’s estate.
4. The properties were purchased over a period from 1999 to 2007. They were all registered in the sole name of Mrs Adepoju.
5. Mrs Adepoju died in Nigeria on 16th July 2015. She did not leave a will.
6. Mr Oyadare is the administrator of Mrs Adepoju’s estate. He was appointed pursuant to an order of Master Matthews dated 26 January 2017. The grant of letters of administration was made to him on 30 May 2017.
7. Mr Akinola claims a beneficial interest in the properties or their proceeds on the basis of:
 - 7.1. A common intention constructive or resulting trust.
 - 7.2. The agreement alleged to have been made between him and Mr Oyadare after Mrs Adepoju’s death.
 - 7.3. A proprietary estoppel arising after Mrs Adepoju’s death by reason of a representation alleged to have been made by Mr Oyadare that Mr Akinola had a 25% interest in the properties on which he had relied and acted to his detriment by providing rent collection services to Mr Oyadare. Mr Devereux-Cooke also submitted that there was reliance by reason of Mr Akinola forbearing to sue, but I dismiss that submission immediately. There is no evidence whatsoever that any delay in Mr Akinola in suing prejudiced him or his claim.

More detail on the facts

8. Mrs Adepoju was married to Dr Adepoju. They had two children:
 - 8.1. The 2nd Defendant (“Ms Adepoju”) who was born in 1987.
 - 8.2. A second daughter who was born in 1988 and who died in 2008.
9. Dr and Mrs Adepoju were Nigerian. In about 1985 they moved to Glasgow where Dr Adepoju studied for his PhD. Ms Adepoju was born in Glasgow in 1987.
10. Dr Adepoju was a mining engineer. After obtaining his PhD in Glasgow he spent an academic year lecturing in the USA. Mrs Adepoju and Ms Adepoju went with him, and Ms Adepoju’s sister was born in the USA.
11. After that Dr Adepoju worked setting up the mining engineering department at the Federal University of Akure in Ondo State in the south western part of Nigeria. He continued to work for the University until his untimely death in a road accident in 2001.
12. Mrs Adepoju, Ms Adepoju and Ms Adepoju’s sister all lived with Dr Adepoju in Nigeria until about 1993 when Mrs Adepoju came to England.
13. In England Mrs Adepoju worked as a nurse. She also developed a business buying and selling gold, jewellery and books.
14. When Mrs Adepoju came to England to work as a nurse she first lived in a rented flat on the Samuel Lewis Estate. The accommodation was owned by the Samuel Lewis Housing Association.
15. To begin with after Mrs Adepoju came to England, Ms Adepoju and her sister lived in Nigeria with Dr Adepoju and went to school there, the school being attached to Dr Adepoju’s University.
16. In the early years of her time in England as a nurse, Mrs Adepoju would return to Nigeria every year at around Christmas time. There was some dispute as to the lengths of these visits, but nothing turns on that. They, or some of them, may have been between 2-3 weeks and a couple of months.
17. To begin with during this period, that is to say from about 1993, Dr Adepoju and his and Mrs Adepoju daughters would visit Mrs Adepoju in London in the summer holidays. They would stay in the flat on the Samuel Lewis Estate.
18. At some stage Ms Adepoju came to live with Mrs Adepoju in England and went to school in England. From then on Mrs Adepoju did not return to Nigeria every Christmas, and when she and Ms Adepoju did, it was for shorter periods, sometimes of a month or so and sometimes of some 2 weeks or 10 days. The detail on this is of no relevance but sometimes Mrs Adepoju and Ms Adepoju would travel to and from Nigeria together, and sometimes separately.
19. There is a small conflict of evidence as to when Ms Adepoju came to England to go to school.
20. In paragraph 18 of Mr Akinola’s statement dated 14th September 2018 Mr Akinola says that Ms Adepoju came to the UK for the first time at about the age of 14, after her father

had died, when Mrs Adepoju and he felt she should continue her schooling in England. Consistently with that, under cross-examination Mr Akinola said that Ms Adepoju came to England in about 2001 for a better education in the UK.

21. In contrast Ms Adepoju said under cross-examination that she was not in Nigeria in 2001. She said she was in London with Mrs Adepoju. She said she had visited London every summer, and in 2000 she stayed on. She said that when she started school in England she was held back a year.
22. In my judgment nothing turns on whether Ms Adepoju started to live in London in 2000 or 2001. There is no reason for Ms Adepoju not to be telling the truth on that question and, as the person directly involved, I consider that it is more likely that she rather than Mr Akinola would have an accurate memory of that date. Accordingly, I find that Ms Adepoju started living in London in 2000.
23. Mr Akinola's evidence, which I have no reason to disbelieve on these points, was that he first met Mrs Adepoju in 1993, when he was the director of a travel business and she was a customer. Mr Akinola says that Mrs Adepoju would introduce other customers to the travel business, and in return Mr Akinola would arrange discounts for Mrs Adepoju's own travel.
24. Mr Akinola was not challenged as to his evidence to the effect that:
 - 24.1. Because of his and Mrs Adepoju's business relationship, when Mrs Adepoju went to Nigeria, she would ask him to look after her flat, to check any post which arrived for her while she was away, and pay any utility bills.
 - 24.2. In 1998 he noticed that the Samuel Lewis Housing Association had a Tenants Incentive Scheme designed to assist tenants to acquire their own property.
 - 24.3. He thought this was a good idea, so he helped Mrs Adepoju to find a mortgage lender, which was Abbey National.
25. I accept Mr Akinola's evidence in that regard.
26. The first of the properties in issue was purchased in 1999 making use of the Samuel Lewis Housing Association Tenants Incentive Scheme. This property was 16, Blanche Street, Canning Town, London E16 4JR ("Blanche Street").
27. The Land Registry entries for Blanche Street show that Mrs Adepoju became its registered proprietor on 23rd March 1999.
28. In the bundle there are copies of three letters to Mrs Adepoju from the Samuel Lewis Housing Trust relating to the incentive scheme and the purchase of Blanche Road. These are exhibited to Mr Akinola's statement dated 14th September 2018. They are:
 - 28.1. A letter dated 21st September 1998 thanking Mrs Adepoju for her application to participate and in the scheme and giving her instructions as to how to do so.
 - 28.2. A letter dated 5th October 1998 saying that they were pleased to hear that Mrs Adepoju had found a suitable property to purchase and giving her instructions as to the next stage in the process.
 - 28.3. A letter dated 22nd December 1998 with the reference "16, Blanche Street, Canning Town, London E16 4JR". The first sentence of this letter reads: "I am pleased to inform you that the above property is now in a position to

exchange contracts.” I suspect that this was intended to mean “pleased to be informed that you are ...”; but nothing turns on that.

29. Mr Akinola has also exhibited a copy of a statement of account produced for Mrs Adepoju by Norman H Barnett & Co in respect of the purchase of Blanche Street. The typewritten content of this statement is not controversial. It is in two columns headed “RECEIPTS” and “PAYMENTS”.

30. The receipts columns reads:

From you - Local Authority Search fee	£ 100.00
From you - deposit	£ 6,800.00
From Abbey National plc	
- mortgage advance	£44,980.00
From Samuel Lewis Housing Trust	
Tenant’s Incentive payment	£16,000.00
From you - Balance required to Complete	£ 1,464.27
	<u>£69,344.27</u>

31. The Payments column reads:

To Local Authority - Search fee	£ 100.00
To Vendors Solicitors - balance required to complete	£61,200.00
Norman H Barnett & Co., - costs	£ 370.26
Norman H Barnett & Co., - abortive costs (bill herewith)	£ 94.01
Stamp Duty	£ 680.00
Land Registry fees	£ 100.00
	<u>£69,344.27</u>

32. What is highly controversial is the handwritten note on the bottom right hand side of the statement. Someone has written there:

<u>Purchase Price £68,000</u>	
<u>Deposit</u>	<u>Costs</u>
3,000 - Akin	100.
<u>3,800 - Bola</u>	370.26
6,800	94.01
<u>16,000 - Grant</u>	680.00
22,800	<u>100.00</u>
	1,344.27

33. It is common ground that in that note “Akin” is a reference to Mr Akinola and “Bola” is a reference to Mrs Adepoju. What was controversial was who had written the note and whether it corroborated Mr Akinola’s evidence that he contributed £3,000 in cash towards the purchase of Blanche Street.

34. Under cross-examination Mr Akinola said that the handwriting was not his and that he did not recognise it. He said that Mrs Adepoju gave him the copy statement with the handwriting already on it. He said he did not know when the handwriting was put on the statement or who put it there.
35. As regards the £3,000: Mr Akinola said that he paid it specifically for the purchase of Blanche Street. He said there was no bank statement showing it. It was a cash payment. He said he did not keep his statements for that long (i.e. back to 1999). He said there were no records in the formal sense.
36. Under cross-examination by Mr Bowles, Mr Akinola said that the £3,000 was the only money he “paid across”. He said the money for the deposit was needed urgently because there were limited funds available in the incentive scheme which would go elsewhere if the Housing Association’s offer was not accepted within 6 weeks. He said Mrs Adepoju was away for 12 weeks. Any implication that Mr Akinola arranged the purchase with Mrs Adepoju’s solicitors was dispelled by the next section of his cross-examination by Mr Bowles.
37. In that section, Mr Akinola said that he gave the £3,000 in cash. He said “cash was king, I was running a business”. He said he handed the £3,000 to Mrs Adepoju. He said he did not know whether Mrs Adepoju paid her solicitor with cash or with a cheque, but, he said, “likely a cheque”.
38. Under cross-examination Ms Adepoju said Mr Akinola had altered the statement of account by adding the handwritten note.
39. Ms Adepoju said the handwriting of the note looked like Mr Akinola’s handwriting. She said she had had dozens of opportunities to see Mr Akinola’s handwriting. There is insufficient in the way of examples for me to be able to make my own assessment in that regard and there was no expert evidence on the subject.
40. Under cross-examination Ms Adepoju said that when she returned to the UK in August 2015 after Mrs Adepoju’s death, the office in Blackthorn Road had been ransacked; documents were missing, and then the statement of account with the handwritten note appeared from Mr Akinola. She said the door was not broken into. She said she did not report the ransacking, but that a SUV car and a Mercedes car were missing. The implication of what she was saying was that she thought that Mr Akinola took the document in 2015 while Mrs Adepoju was dying in Nigeria, or after Mrs Adepoju’s death. These suggestions were only made by her when under cross-examination and had not been put to Mr Akinola.
41. In his statement dated 14th September 2018 Mr Akinola said that he provided the £3,000 in cash “on the understanding that I would have an equal interest in the property at 16 Blanche Street.”
42. In his statement dated 1st August 2019 Mr Akinola said that Mrs Adepoju’s interest in buying and selling properties developed after Blanche Street had been purchased.

43. In answers to questions from me Mr Akinola said that the agreement or understanding with Mrs Adepoju about going into the property business existed first when Blanche Street was bought. Whatever Mr Akinola's beliefs may have been, I do not accept that Mrs Adepoju bought Blanche Street as part of a plan to go into a property business. She may well have had in mind that if and when she sold the property she would make a profit; but that would be no different to the hope or expectation of most homebuyers.
44. Mr Akinola accepted that Mrs Adepoju was buying Blanche Street as a home for herself. In answer to a question from me, he said that the initial agreement was just to buy a home for Mrs Adepoju. He said they were aiming to buy more properties. In my judgment that was not Mrs Adepoju's intention at the time of the purchase of Blanche Street.
45. I consider that Mrs Adepoju's intention to buy more properties came later. In my view that is established by the following matters:
- 45.1. Blanche Street was bought as a home for Mrs Adepoju.
 - 45.2. The gap of over two years from the purchase of Blanche Street until the purchase of the first buy-to-let property (Halbutt Street on 21st June 2002).
 - 45.3. The fact that Mrs Adepoju was still married to Dr Adepoju in 1999.
 - 45.4. The fact that the first of the various courses which Mr Akinola took in relation to property acquisition and mortgages was not taken by him until 2002.
 - 45.5. Mr Akinola's acceptance in answer to questions from me that it was his idea to use Blanche Street to buy more properties.
 - 45.6. The answers which Mr Akinola gave in the following exchange between him and me shows clearly that Mrs Adepoju did not agree to get involved in property investment in 1999 or have such an understanding at that time with Mr Akinola ("DMH" is Deputy Master Henderson, "OKA" is Mr Akinola):

DMH You talked about having an agreement / understanding with the deceased about going into a property business. When was that first made?"

OKA "When we bought the property in 1999."

DMH "Was that just for Blanche Street, or for others?"

OKA "Yes, but we could remortgage and then buy more property."

DMH "To what extent was the deceased involved in the plan? There's a gap in buying properties between 1999 and 2002."

OKA

DMH "The deceased was buying 15 Blanche Street as a home for herself?"

OKA "Yes."

DMH "So was the initial agreement just to buy a home for the deceased?"

OKA "Yes, but aiming to buy more properties."

DMH “Was there a change in the agreement? Was it Mrs Adepoju’s intention to [break the barrier(?)] and buy multiple properties?”

OKA “It was my idea to use the first property to buy more”.

DMH “Did she agree with you that you would buy one property, then go further?”

OKA “No. She didn’t know ... it’s a matter of education ..”

DMH “Did the deceased want to get into property investment in 1999?”

OKA “She did not know anything about property investment at the time.”

DMH “If I’d said to her in 1999 ‘are you intending to buy to let out’ what would her answer have been?”

OKA “She would not have been too sure, then.”

DMH “Was there a new agreement before Halbutt Street?”

OKA “She would never have done anything without consulting me.”

46. Following the purchase of Blanche Street, Mrs Adepoju gave up her tenancy and moved into Blanche Street.

47. In the course of his cross-examination Mr Akinola at first said that Blanche Street was not used as a family home from 1999 to 2001. He said that Dr Adepoju only came “about once” and stayed in the house at Blanche Street once for a week or two. However, he accepted that it was Mrs Adepoju’s home. In the passage from his evidence quoted above and under cross-examination from Mr Bowles, Mr Akinola said that Blanche Street was just bought as a home for Mrs Adepoju. It was, he said “bought for her to be living there”. That also fits with what Mr Akinola said in his statement dated 6th July 2016 as to visiting Mrs Adepoju “at home” in Canning Town i.e. at Blanche Road.

48. I think the point which Mr Akinola was making was that there was not a family living at Blanche Street, only Mrs Adepoju until Ms Adepoju arrived in 2000 or 2001.

49. In my judgment it follows that I should regard the purchase of Blanche Street as the purchase of a property in a domestic setting for use as a home by Mrs Adepoju.

50. Dr Adepoju died in 2001 in a car accident.

51. In 1993 when he met Mrs Adepoju, and until at least 2002, Mr Akinola was living with his wife, Mrs Akinola at 22, Sussex Road, Erith, Kent DA8 1GB (“22 Sussex Road”). That is still the address used by him in his witness statements.

52. In paragraph 4 of his statement dated 25th May 2018 Mr Akinola said that he and his wife had been separated for many years by the time he met Mrs Adepoju. I find that that is untrue. In his statement dated 6th July 2016 in the Probate Action Mr Akinola said “I separated from my wife since year 2001”. Under cross-examination from Mr Bowles, Mr Akinola accepted that in 1993 he was still married to Mrs Akinola and they were not separated. He said he was with his wife until 2001. I find that that was the position, though, as Mr Akinola said in cross-examination, he and Mrs Akinola were “having issues” before that time. There was no separation of Mr Akinola from Mrs Akinola until 2001.
53. Until at least 2002 Mr Akinola’s relationship with Mrs Adepoju was platonic. What Mr Akinola called their “love relationship” did not start until 2002 or 2004.
54. In paragraph 6 of his statement dated 6th July 2016 in the proceedings brought by Ms Adepoju against Mr Akinola for, amongst other things, declarations that she was Mrs Adepoju’s next-of-kin; that Mr Akinola was not married to Mrs Adepoju and a grant of letters of administration of Mrs Adepoju’s estate (“the Probate Action”); Mr Akinola said that his “love relationship” with Mrs Adepoju started in 2002.
55. In contrast in paragraph 2 of Mr Akinola’s statement dated 25th May 2018 he said that when Mrs Adepoju died he and she had been together in a relationship “for a number of years, since about 2004”.
56. On 10th October 2003 Mr Akinola witnessed Mrs Adepoju’s signature on a mortgage deed re-mortgaging Blanche Street. He gave his address on the deed as 94, Coldharbour Lane, London SE5 9PU and his occupation as “Travel Business”. 94, Coldharbour Lane was the address of Mr Akinola’s business. In cross-examination he said that by then (2003) he and Mrs Adepoju were staying together “on and off”. Later he said that in 2002 to 2003 he was at Blanche Street on and off and was contributing to the household.
57. In his witness statement in the Probate Action dated 6th July 2016 in support of his Defence Mr Akinola said that he and Mrs Adepoju moved in together in 2004 when they bought a new built property and started living together in a situation akin to marriage.
58. The “new built” property referred to was 24 Blackthorn Road, Ilford (“Blackthorn Road”). The Land Registry entries for this property show that completion of its purchase took place on 7th June 2004.
59. Under cross-examination Ms Adepoju accepted that Mr Akinola was “around” in 2004. She said that he has never lived at Blackthorn Road. She said he might stay for 2 or 3 days in a row. He “just comes and goes”. She maintained that he continued to live at 22 Sussex Road. She said she had been to his home at 22 Sussex Road where he had his own family and home.
60. Ms Adepoju said that it was she who found Blackthorn Road. She found it in the Metro newspaper. It had two bathrooms. She said Mr Akinola was not involved in the decision to buy it. She said Mrs Adepoju bought it because she (Ms Adepoju) wanted the house and wanted an *en suite* bathroom. She said that when she went to study in Brighton (autumn 2006) Mrs Adepoju claimed to pay Council Tax on the basis of single

occupancy. This evidence was not contradicted by any evidence from Mr Akinola and was not challenged by Mr Akinola or on his behalf. I accept it.

61. Ms Adepoju said that Mr Akinola received no correspondence at Blackthorn Road. He sometimes left his jacket there. The 3rd room in the house was used as an office.
62. The fact that Mr Akinola continues to use 22 Sussex Road as his address gives some support to Ms Adepoju's evidence that Blackthorn Road was not Mr Akinola's home. Or at least that it was not his only home.
63. Mr Akinola's evidence in his statement dated 1st August 2019 was that Blackthorn Road was the house which became the family home.
64. On analysis Mr Akinola's and Ms Adepoju's evidence is not very far apart on the nature of the relationship between Mr Akinola and Mrs Adepoju down to 2004. I find that their romantic or "love" involvement did not start until 2002. By 2004 it had got more serious but Mr Akinola was not living full time with Mrs Adepoju either at Blanche Street or at Blackthorn Road. He was visiting and staying overnight for a few nights a week, but retained his home at 22 Sussex Road.
65. In my judgment, Blackthorn Road, like Blanche Street before it, was bought as a home for Mrs Adepoju. It was also bought as a home for Ms Adepoju who by then (and unlike in 1999) was living in England. It was also bought as a place where Mr Akinola could stay with Mrs Adepoju.
66. In my judgment it follows that I should regard the purchase of Blanche Street as the purchase of a property in a domestic setting for use as a home by Mrs Adepoju.
67. After the purchase of Blackthorn Road and Mrs Adepoju's and Ms Adepoju's move into it, Blanche Street was let out.
68. It is against that background that, in the period 2002-2004 most of the properties in issue were acquired. The dates, addresses and purchase prices were as follows:
 - 68.1. 21st June 2002 - 108 Halbutt Street - £94,000.
 - 68.2. 3rd March 2003 - 12 Venables Close - £130,000.
 - 68.3. July 2003 - 45 Shortcrofts Road - £135,000.
 - 68.4. 28th August 2003 - 3 Goose Square - £120,500.
 - 68.5. 28th October 2003 - 30 Rokeby Street - £165,000.
 - 68.6. 21st November 2003 - 31 Queensland Court - £95,000.
 - 68.7. 5th February 2004 - 95 Connor Road - £150,000.
 - 68.8. 15th March 2004 - 15, Beaconsfield Road - £160,000.
 - 68.9. 22nd March 2004 - 116 Pitman Gardens - £161,500.
 - 68.10. 20th May 2004 - 53, Cartwright Road - £165,000.
 - 68.11. 7th June 2004 - 24 Blackthorn Road - £244,950.
69. The purchase prices for all those properties were funded wholly or substantially by mortgages. In that context I note that Blanche Street was re-mortgaged on 10th October 2003 realising £92,309 which could have been put towards the deposits on later purchases.

70. Mr Akinola said that none of the properties after the purchase of Blanche Street required any cash injection. He said the only cash injection was at the start and then further cash was raised by re-mortgaging.
71. Ms Adepoju in her statement said that the properties purchased in 2002 and 2003 were purchased in part with some of the funds coming from Dr Adepoju's pension and gratuity after she and Mrs Adepoju discussed how best to use the funds. That fits with the chronology of Dr Adepoju's death in 2001 and the possibility of Mrs Adepoju receiving funds in consequence of that.
72. The re-mortgage of Blanche Street did not take place until 10th October 2003 by when four of the buy-to-let properties had already been purchased. I should say that the properties which I describe as "buy-to-let" properties are all the properties except for Blanche Street and Blackthorn Road. That timing means that unless it was re-mortgaged during that period Blanche Street could not have provided cash to fund the deposits for those first four properties. Not only was there no evidence of Blanche Street being re-mortgaged during that period, the evidence was to the opposite effect. The much discussed statement of account in respect of Blanche Street showed a mortgage advance for the purchase in 1999 of £44,980 from the Abbey National. A completion statement for the re-mortgage of Blanche Street on 10th October 2003 shows the amount then applied to redeem the Abbey National as £37,370.50. In my judgment that is inconsistent with Blanche Street having been re-mortgaged before 10th October 2003 or in time to fund such deposits (if any) as were needed in respect of the purchases of the first four buy-to-let properties. On the balance of probabilities I find that insofar as funding other than mortgage funding was required for those four purchases it derived from Dr Adepoju's pension and gratuity.
73. In paragraph 5 of the Particulars of Claim in PT-2018-000433 Mr Akinola alleges that he had an interest in the properties "having contributed to their purchase and then to their management and maintenance and also because he did not believe that [Ms Adepoju] had any interest in managing the property investment or maintaining the portfolio."
74. Mr Akinola accepted that he had not made any of the mortgage payments, either in respect of Blanche Street or any of the other properties. Nor did he receive any of the rents from the properties. Nor did he receive the proceeds of sale of the properties which were sold before Mrs Adepoju's death. Those were 275 New Road which was sold on 16th July 2014 for £215,000 and 15 Beaconsfield Road which was sold on 31st July 2014 for £255,000. The rents and the net proceeds of sale went to Mrs Adepoju.
75. Ultimately the only direct contribution to the purchase of the properties which Mr Akinola said that he made was the £3,000 which he said he contributed to the cost of Blanche Street.
76. In paragraph 10 of the Particulars of Claim in PT-2018-000433 Mr Akinola alleges that at all times after 1999 he and Mrs Adepoju "worked together in the understanding between themselves that they were joint and equal partners in the property business."
77. In paragraph 15 of the Particulars of Claim in PT-2018-000433 Mr Akinola alleges that it was the common intention of himself and Mrs Adepoju that they should jointly and equally share in the acquisition of residential properties and in the development of those

properties as a business concern. He there alleges that that common intention was “established between them at the time of the purchase of the first property, 16 Blanche Street, in March 1999, and continued thereafter until the untimely death of Mrs Adepoju.”

78. I have already stated my conclusion that Blanche Street was not purchased as part of a property business. The property business came later.
79. Except for his case based on an initial agreement or understanding in relation to Blanche Street being bought as part of a property business, which I have rejected, Mr Akinola has never identified either in his Particulars of Claim or in his statements or orally in his evidence any particular conversation or occurrence which triggered the start of the property business and the purchase in Mrs Adepoju’s name of ten buy to let properties in the two year period from June 2002 to May 2004.
80. Mr Akinola’s answer quoted above of “She would never have done anything without consulting me” to my question: “Was there a new agreement before Halbutt Street?” typifies the difficulty with Mr Akinola’s case in this regard. The quoted “answer” in my judgment is not an answer to my question at all.
81. Mr Akinola relies upon his involvement on Mrs Adepoju’s behalf with lenders. The documents initially relied upon by Mr Akinola in this regard are:
- 81.1. A letter dated 2nd April 2007 from Neal Hayes of Neal Hayes Mortgages to Mr Akinola. The letter sets out what Mr Hayes suggests would be the “best deal for Mrs Adepoju” in terms of a loan or loans to be secured on two properties. This letter shows that Mr Akinola was assisting Mrs Adepoju in relation to the obtaining of loans on the properties by sending the FAX, but it also shows that he was dealing with the matter “for Mrs Adepoju” - not on behalf of Mrs Adepoju and himself.
- 81.2. A copy of a FAX dated 4th October 2006 from Mr Akinola to Jon Lord of Metro Finance. The Subject is “New Business -Buy-to-Let”. The message says that a “CQ” for Mrs Adepoju is attached and asks for two buy-to-let illustrations for re-mortgaging Goose Square and Shortcroft Street. This FAX shows that Mr Akinola was assisting Mrs Adepoju in relation to the obtaining of loans on the properties by sending the FAX.
- 81.3. A copy of a FAX dated 16th January 2007 from Mr Akinola to Mr Hayes. It states that it attaches a “CQ” for Mrs Adepoju. It asks for illustrations for re-mortgaging for Pittman Gardens, Rokeby Street and Queensland Court. It states that Mrs Adepoju “is looking for attractive rates and that she would like “quick re-mortgaging”. This FAX shows that Mr Akinola was assisting Mrs Adepoju in relation to the obtaining of loans on the properties by sending the FAX, but it also shows that he was dealing with the matter “for Mrs Adepoju” - not on behalf of Mrs Adepoju and himself.
- 81.4. A receipted invoice dated 21st July 2008 in respect of £1,308 paid to Mrs Adepoju by a Ms Kim Atherton for deposit and advance rent for Halbutt Street. The Invoice is signed by Mr Akinola “on behalf of Mrs Adepoju”.
82. I consider that those documents do not show a significant involvement in the business. Also they all relate to matters which occurred 3 or more years after all except for the New Road property had been purchased.

83. Mr Akinola relies upon his undertaking “other roles and functions in the furtherance of” what he describes as “our” property business. In that regard he relies on the following documents:
- 83.1. A CIB Level 3 Certificate of his dated 16th December 2004 in Mortgage Advice and Practice.
 - 83.2. A certificate dated 24th February 2006 awarded to Mr Akinola for his having completed a five-day foundation course in plumbing.
 - 83.3. A certificate dated 18th March 2012 of continuous professional development in respect of the completion of a two-day kitchen fitting foundation course.
 - 83.4. A letter dated 16th August 2007 from Sade Kay, solicitors, to Mrs Adepoju at Blackthorn Road. The letter concerns the re-mortgage of 95 Connor Road. It states: “Further to completion in this matter today, I hereby enclose a note of my firm’s charges together with a completion statement for your information together with a cheque in the sum of £35,969.90.” “I take this opportunity to thank you for your instructions.” It is unclear to me why Mr Akinola considers that this letter shows his involvement with the business. It does not mention him at all.
84. I consider that those documents show no more than the acquisition of skills which could be used for a business of buying and letting out properties, but they do not show a necessary linkage with the buy-to-let properties which were bought in Mrs Adepoju’s name. Also they all relate to matters which occurred after all except for the New Road property had been purchased.
85. Mr Akinola says that he was keen to work with Mrs Adepoju on an equal and partnership basis. I accept that he was. But it is one thing for him to have been keen in that regard. It is another for Mrs Adepoju to have reciprocated that keenness and to have agreed such a partnership.
86. Mr Akinola says that he persuaded Mrs Adepoju that it would be good for both of them if she also attended a seminar about property investment. He says that he paid for her to attend a course at a cost of £500. He says that Mrs Adepoju came away from that course exclaiming that “my people perished because of lack of knowledge”. He says that exclamation was an indication of how excited she felt about the prospects. I accept that evidence but it does not show that the property business in which the properties were bought in Mrs Adepoju’s sole name was or was intended to be a joint business.
87. Mr Akinola relies on the fact that he attended a number of specialist courses and seminars, some of which cost as much as £4,000. In addition to the courses for which he obtained certificates as mentioned above, Mr Akinola relies on the following:
- 87.1. On 14th July 2002 Mr Akinola was booked into a course on “Property Power” at a cost of £820. His address on the form was given as 14 Dean Court, Thorncroft Street SW8.
 - 87.2. On 30th March 2004 Mr Akinola completed a customer survey form in respect of a course given by “Property Investors Courses Ltd” entitled “Providing Secrets to Success”.
 - 87.3. On 13th September 2004 Mr Akinola paid a deposit of £425.53 + VAT to “Essential Mortgages” in respect of a “Licence Fee Deposit”. On the next page in the bundle is a Visa card receipt dated 5th November 2004 from Essential Mortgages Ltd for £1,700. Mr Akinola was not cross-examined

about this, but a licence to Mr Akinola to act on behalf of Essential Mortgages Ltd would not be necessary for the purposes of the alleged joint property business.

88. I consider that these documents do not show a necessary linkage with the buy-to-let properties which were bought in Mrs Adepoju's name or with the business of acquiring and running them. In terms of its nature and timing, the first might have been of assistance in that regard, but was not necessarily so. Mr Akinola was not asked about and did not volunteer any evidence about the 14 Dean Court address; nevertheless I consider it is relevant as another address with which Mr Akinola was associated.
89. In her statement Ms Adepoju said that she accompanied Mrs Adepoju to nearly all the viewings of the properties comprised in the estate at the time she was acquiring them.
90. Ms Adepoju says in her statement that she remembers Mrs Adepoju and her going to paint and clean Halbutt Street and some of the other properties to save money. I accept that evidence, but it is not inconsistent with Mr Akinola's case.
91. In cross-examination Ms Adepoju said she went to look at Halbutt Street with Mrs Adepoju. In relation to other viewings she said that some were on weekdays and some were on Saturdays. She said that Mrs Adepoju always wanted her to come along with her.
92. Mr Akinola's evidence did not go to the details of the purchases or who viewed the properties. Ms Adepoju was not challenged about what she said about accompanying Mrs Adepoju to viewings and the work done by her and Mrs Adepoju on Halbutt Street. I accept her evidence in that regard.
93. Ms Adepoju said in cross-examination that in the autumn of 2006 she went to Brighton University to study on a 5 year course, and that until 2011 she was living and working in Brighton. After the course finished, she stayed on for a further year in Brighton working for Boots as a locum pharmacist in East and West Sussex. She said she came home nearly every weekend so she would have had some idea of the development of the relationship between her mother and Mr Akinola.
94. It is clear to me that the relationship between Mr Akinola and Mrs Adepoju developed further after 2004. That is shown by the fact that on 15th April 2006 they went through a marriage ceremony in Nigeria. Master Matthews held in the Probate Action that that marriage could not be recognised in England because he considered that (i) upon the balance of probabilities Mr Akinola remained married to Mrs Akinola and (ii) Mr Akinola and Mrs Adepoju were domiciled in England; so that what would have been their polygamous marriage was invalid as a matter of English law. Even though the marriage was invalid as a matter of English law, in my judgment it is a highly relevant event so far as Mr Akinola's and Mrs Adepoju's relationship was concerned.
95. Only one English property was acquired after 2004. That was 275 New Road which was bought on 16th August 2007 for £180,000.
96. On 18th September 2009 Mr Akinola and Mrs Adepoju jointly purchased a plot of land in Nigeria.

97. On 31st October 2010 Mr Akinola and Mrs Adepoju became joint leaseholders of another property in Nigeria.
98. Mrs Adepoju gave birth to a boy child (“James”) in Nigeria on 11th June 2011. Mr Akinola believed James to have been his child.
99. Mr Akinola’s case is that he worked as “the” property manager for the properties. I have already considered his evidence in relation to the training and courses which he went on. He says he dealt with mortgage lenders to arrange funding for the purpose of the initial purchases and then re-mortgaging of properties to generate funds for further purchases. He has produced remarkably little paperwork in that regard.
100. Mr Akinola said that he carried out many of the basic repair and maintenance tasks which arose in respect of the properties. He says the work was done to minimise the costs and expense which would otherwise have been incurred using other builders and contractors.
101. Mr Akinola said he was not paid from 1993 to 1999 or even after 1999. He said that was because he had an interest in the properties. He said he did the work that he did on and in relation to the properties because of his understanding, shared with and by Mrs Adepoju that he and Mrs Adepoju were in business together and that a common intention existed that they had equal shares in the assets of that business which, he said, included Blackthorn Road. I have already found that Blackthorn Road was bought as a home, not as a business asset.
102. In her statement Ms Adepoju said that some of the properties were managed by estate agents from the outset and that Mrs Adepoju managed the rest of the properties by herself. She said that when Mrs Adepoju was not available Mr Akinola supported Mrs Adepoju to manage some of the properties, however, said Ms Adepoju, this usually came at a cost to Mrs Adepoju. She says that on one occasion Mrs Adepoju bought Mr Akinola a car, for which he was grateful. Ms Adepoju says that shortly before her death Mrs Adepoju planned upon her recovery to engage an estate agent to manage all her properties and cut all ties with Mr Akinola.
103. Mr Akinola made a document dated 7th December 2016 which is headed “Constructive Trust Claim”. He sent this document to Mr Oyadare with a view to persuading him of the strength of his claims. In his statement dated 1st August 2019 Mr Akinola said that he stood by the content of that document. In that document Mr Akinola said that he and Mrs Adepoju bought a car each of the same value on the same day at the same place from the proceeds of a re-mortgage.
104. Mr Akinola said that the money for the car came from a re-mortgage of 45 Cornwall Road. I have no reason to disbelieve him on that point and do not do so. However, it appears to me that this makes this a “non-point” in that if 45 Cornwall Road belonged beneficially to Mrs Adepoju, then the use of the proceeds of a re-mortgage to provide a benefit to Mr Akinola would be a gift or payment by her to him. On the other hand if the property was beneficially jointly owned and they each had a car out the proceeds of the re-mortgage, then that would merely show each getting his or her entitlement.

105. Mr Akinola accepted that estate agents were sometimes used to find tenants for the properties. He said in relation to that that finding a tenant was different from managing the properties. In my view finding tenants for properties would generally be part of managing the properties, but I accept that Mr Akinola might have viewed that differently.
106. Under cross-examination Ms Adepoju referred to bank statements for an HSBC account in the name of Mrs Adepoju. These cover a period from 4th January 2015 (i.e. from a little over 6 months before Mrs Adepoju's death) to 4th February 2015 and from 4th July 2015 to 4th November 2015. On the use of estate agents point these statements support Ms Adepoju's evidence that estate agents were used for at least some of the properties. Thus:
- 106.1. The entry for a receipt of £510 on 20th July 2015 is described on the statement as "Ashford 31 Queensland Court".
- 106.2. A month later on 19th August 2015 the bank statements show a receipt of £650 with the same description.
- 106.3. Similarly on 19th September and 19th October 2015.
107. I accept the interpretation which Ms Adepoju put on those entries to the effect that Ashfords were estate or letting agents who were receiving the rent for Queensland Court and forwarding net of expenses and, no doubt, commission to Mrs Adepoju. The smaller amount shown for 20th July 2015 is explained as the net rent for a month in which certain expenses were discharged out of it.
108. In my judgment what Mr Akinola said about the use of estate agents in his document headed "Constructive Trust Claim" represents in broad terms the position. That is that initially professional services were used; but that as time went on more of the letting arrangements were effected by Mr Akinola and Mrs Adepoju, with less input or assistance from estate agents. Some estate agents remained involved; for example Ashfords in relation to collection of the rent from Queensland Court and its maintenance.
109. In his document headed "Constructive Trust Claim" Mr Akinola said that from the beginning and until Mrs Adepoju's death all activities in relation to the properties were: "carried out solidly between us two only, no one in between, except paid workmen. Managing and maintaining those properties were joint efforts, we would go painting, cleaning, decorating these properties ourselves, and sometimes we will work till early hours, week days and weekends."
110. The exception for outside paid labour reduces the force of that statement. It also fails to take account of the work which I have already found that Ms Adepoju did to Halbutt Street.
111. In their Defence it is alleged by Mr Oyadare and Ms Adepoju that Mr Akinola was a letting agent who was paid £450 per month in consideration of his property management services for Mrs Adepoju, in addition to "other sundry gratitude bestowed on him by the Deceased for such works". I do not think that Mr Akinola was engaged or employed by Mrs Adepoju as a letting agent. I consider that he fulfilled some of the tasks of a letting agent in respect of some of the properties for some of the time.
112. I think the true position was that Mr Akinola's initial involvement in the management and maintenance of the properties was slight; but increased as his relationship with Mrs

Adepoju became deeper in and after 2004 and more so after they went through the marriage ceremony in Nigeria in 2006. That conclusion is supported by the theme which I consider runs through Mr Akinola's document which is headed "Constructive Trust Claim" to the effect that he was entitled to an interest in the properties by reason of his marriage to Mrs Adepoju. In that document, after the passage which I have quoted above, Mr Akinola wrote:

"Not only, I was the brain behind the property business from the start till her death, I was the person who mostly had the responsibility for the management and maintenance of the properties. I made financial, physical, emotional and managerial investments into a property business going concern.

No payment was offered or received by me for all the efforts expended, all because we were married and lived together as husband and wife that the accrued benefits are for us two and our two children (the family).

These properties were managed as if they were in joint names for equal beneficial interests"

113. I do not accept that Mr Akinola was "the brain behind the property business from the start". Ultimately he did not contend that he had contributed more financially than the £3,000 which he alleges he put towards the purchase of Blanche Street, which I have already held was not purchased as part of a business. The statement that it was "all because we were married" confirms my view that his involvement in the business built up after the marriage ceremony in 2006. The reference to two children also does so because it must be a reference to Ms Adepoju and to James. James was not born until 2011.
114. The focus on Mr Akinola's relationship with Mrs Adepoju continues later in the document headed "Constructive Trust Claim". Under the heading "Important Features of This Claim" Mr Akinola wrote, amongst other things, that the significance of the relationship included "the marriage in Nigeria, the child and joint management of the business constituted the common intention of 5 above to have equal share." "5 above" is a statement that "As life partners, we treated the properties as family owned and run business to which we have equal interests regardless of contributions." Whether Mr Akinola or Mr Akinola and Mrs Adepoju treated the properties as a business in which they had equal shares is a question which I need to determine.
115. The focus on the family in the document headed "Constructive Trust Claim" continues under the headings "Management and Maintenance" and "Administration".
116. Under the first of those headings Mr Akinola wrote that he "had responsibility as the only 'man of the house' to look after the properties, the tenants and their needs - the customer service manager of the business, which included physical, mental, emotional and financial commitments." He then listed various practical matters which he said that he dealt with. I accept that in the period after 2006 Mr Akinola dealt with these things, but not that he was the only person dealing with them or carrying them out.
117. Under the heading "Administration", Mr Akinola wrote that "All administrative work relating to both the property business and her nursing work were mainly handled by me. Mr Akinola then set out a list of matters which he said he dealt with. The first item on this list was "Annual property tax returns". These were notable for their absence so far as

the documents in the hearing bundle were concerned. I infer from the failure of Mr Akinola to produce copies of his tax returns and from the passage I set out below in a letter dated 14th November 2017 from HMRC to Mr Oyadare's solicitors that the tax returns showed the rents as Mrs Adepoju's and that Mr Akinola's tax returns did not show him as being in receipt of a share of the rents. The passage in HMRC's letter is as follows:

“My colleague, Mark Fairgrieve, advised you over the phone yesterday the deceased had completed her Self-Assessment (SA) returns for the years 2010, 2011, 2012, 2013 & 2014 advising she was renting out 12 properties, please see enclosed.”

118. The enclosures with HMRC's letter were not in the hearing bundle.
119. The document headed “Constructive Trust Claim” is dated 7th December 2016. I consider that it is of some significance that it does not mention the £3,000 which Mr Akinola says that he contributed towards the purchase of Blanche Street.
120. Ms Adepoju accepts that Mr Akinola was involved in the management of the properties. She says he was paid about £450 per month in addition to other gifts from Mrs Adepoju during her lifetime.
121. Ms Adepoju exhibited what she said were the relevant bank statements showing evidence of payment of £450 per month to Mr Akinola. The exhibited statements comprise the run of HSBC statements which I have already referred to. In addition there is (i) a summary covering periods for the current account after November 2015; and (ii) a statement for what appears to be a deposit account in Mrs Adepoju's name for the period June to August 2015.
122. The current account statements show monthly payments out of £450 by way of standing order. The description of the payments is: “KEN AKINOLA JAMES AKIN”.
123. Mr Akinola said that these payments were made to him so that he could pay them on to Mrs Adepoju's family in Nigeria who were looking after James. He said that they had to fund everything in Nigeria for James. When asked why Mrs Adepoju did not pay the £450 per month direct to Nigeria, his answer was that he was the one who had to pay. He believed that James was his son. He said the £450 per month only started some two years after James was born.
124. In cross-examination Ms Gleyze asked Mr Akinola whether he had any evidence of his making payments of £450 per month to Nigeria. Mr Akinola said that he had said so before Deputy Master Hansen. In other words it was just his say so. There was no documentary evidence before me of payments being made by Mr Akinola to Nigeria of £450 per month or of any other sum. If he has been making such payments, I would have expected Mr Akinola to have produced bank statements of his own showing such payments. There were none.
125. Ms Adepoju explained the reference to James Akin in the description of the payment as just being a carried over reference from some earlier payment which Mrs Adepoju must have made to Mr Akinola for James's benefit. That was speculation on Ms Adepoju's part. I was not shown evidence of any such earlier payment.

126. Mr Akinola was taken by Mr Gleyze to a copy of an email dated 12th December 2014 sent by Mr Akinola to Mrs Adepoju. In this email Mr Akinola wrote, amongst other things:
“YES, I took £5,000 from you to invest in a risky business, we remortgaged to buy cars, you pay me £450 every month, all for which I am grateful. Against those, think, about all what we have created both here and Nigeria, think from the beginning.”
127. That passage indicates strongly that the £450 per month was paid by Mrs Adepoju to Mr Akinola; not by Mrs Adepoju to Mr Akinola for him to use in paying for the upkeep of James in Nigeria. The phrase “we remortgaged to buy cars ... for which I am grateful” is neutral. The word “we” indicates it was properties in which they were both interested which were re-mortgaged, but the fact that Mr Akinola was grateful, is indicative of his not having a right to the re-mortgage proceeds or to the car or cars. The reference to “what we have created both here and in Nigeria” could be to their property portfolio or portfolios, but is not indicative that the English properties which were vested in Mrs Adepoju’s sole name formed part of a portfolio in which Mr Akinola was interested. As I have already mentioned, he and Mrs Adepoju had jointly acquired at least two properties in Nigeria.
128. If, as Mr Akinola said, the obligation to pay for James in Nigeria was an obligation imposed on him and not on Mrs Adepoju, it would follow that the payment of £450 per month by Mrs Adepoju to Mr Akinola was voluntary so far as James was concerned. Mr Akinola said that he was grateful that Mrs Adepoju was paying him the £450 per month and that before that he (alone) had been paying for James. Mr Akinola said that the payments only started about 2 years after James was born. That time coincided with the time at which Mr Akinola said that the amount of work which he was doing in respect of the properties began to increase because of Mrs Adepoju’s illness.
129. Having heard Mr Akinola in the witness box, I have little doubt but that, as he said, in 2015 he considered he was James’s father and that he was responsible, at least in part for funding his maintenance by Mrs Adepoju’s family in Nigeria. However, having regard to the lack of any documentary evidence as to the times and amounts of any payments which Mr Akinola may have made to Mrs Adepoju’s family in Nigeria for looking after James and to the terms of the email of 12th December 2014, I find that the £450 per month was not paid to Mr Akinola solely for the purpose of its being forwarded on by him to Mrs Adepoju’s family in Nigeria. He could have applied it or some of it for that purpose if he wished to do so, but he was not obliged to do so.
130. My conclusions on the factual issue of payments to Mr Akinola in respect of his work in relation to the properties are that:
- 130.1. For the last 2 years or so of her life Mrs Adepoju paid Mr Akinola £450 per month that was partly in recognition of the additional work which he was doing in respect of the properties and partly so as to enable him to fulfil his obligations in respect of James.
 - 130.2. Before then and back to 2004 Mr Akinola received occasional rewards out of the rents or re-mortgaging proceeds of the properties, such as the purchase of a car, but otherwise did what he did in relation to the properties by reason of his developing relationship with Mrs Adepoju and, particularly in the period after James was born, for the benefit of the family group comprising him, Mrs Adepoju, James and Ms Adepoju.

- 130.3. As regards the position before 2004: I have already held that Mr Akinola was doing less in that period than he did later. I accept Mr Akinola's evidence that he did not receive payments from Mrs Adepoju during that period.
131. I have already mentioned Mrs Adepoju's illness. Sadly she fell ill with ovarian cancer. She became more ill as the time went by until her death. That explains why Mr Akinola did more in respect of the properties in the last few years of Mrs Adepoju's life than he had done previously.
132. Mr Akinola was taken by Ms Gleyze to an email from Mrs Adepoju to him dated 17th June 2015; that is a month before Mrs Adepoju died. The email referred to Mr Akinola trying to help; then continued:
"in most cases I loose while you have nothing to lose".
133. Ms Gleyze put it to Mr Akinola that that was because the properties were Mrs Adepoju's. Mr Akinola's answer was that if there was a default on the mortgages, the properties and the mortgages were in Mrs Adepoju's name so, he said, "technically she would have more to lose". I find that explanation unconvincing. If the properties were beneficially owned in equal shares and were re-possessed, then both Mrs Adepoju and Mr Akinola would be the losers. It would only be if the properties were in negative equity that Mrs Adepoju's liability to the mortgage lender would not be paid out of the net proceeds of sale but in that event if there was truly a 50:50 joint venture or partnership, Mr Akinola would have been responsible as between him and Mrs Adepoju for 50% of the shortfall.
134. Mr Akinola said that the reason the properties were not put into joint names was that he was concerned that if his name was on them, his wife, Mrs Akinola, might make a claim to them.
135. In the Probate Action Mr Akinola alleged that he believed that he and Mrs Akinola had been divorced in 2002. All the properties except for Blanche Street and Halbutt Street were bought after 2002. In cross-examination in these proceedings Mr Akinola said that he was still worried about his ex-wife after 2002. In my judgment that is not inconsistent with Mr Akinola having believed that he was divorced. Ancillary financial relief orders might have followed after the divorce itself.
136. Mr Akinola was taken to a copy of a certificate of occupancy of some land in Nigeria dated 22nd December 2010. The certificate certifies that Mr Akinola and Mrs Adepoju had a statutory right to occupy the land for 99 years from 1st January 2010 at a yearly rent of 10,000 Naira. Mr Akinola said that he had no issue with Mrs Akinola coming after the property in 2010.
137. Mr Akinola was taken to a copy of an agreement dated 18th September 2009 for the purchase by him and Mrs Adepoju of a one acre plot of land in Nigeria for 600 Naira. Mr Akinola said he had no concern about Mrs Akinola in Nigeria. He said he was quite comfortable in Nigeria. He had married Mrs Adepoju in Nigeria.
138. New Road was not bought until 16th August 2007, well after Mr Akinola and Mrs Adepoju had been through the marriage ceremony in Nigeria and long after Mr Akinola alleged that he believed that he had been divorced from Mrs Akinola. By then I consider

that any concern that Mr Akinola might have had about a claim by Mrs Akinola should have been remote and would not have been a good reason for the property not being vested in his and Mrs Adepoju's joint names if they had both been intended to be its owners

139. After Mrs Adepoju's death disputes arose between Ms Adepoju and Mr Akinola as to the administration of Mrs Adepoju's estate.

140. On 10th February 2016 Ms Adepoju started what I have referred to as the Probate Action against Mr Akinola. The main issue in the Probate Action was whether Mr Akinola was the widower of Mrs Adepoju so as to be interested under her intestacy. A second issue which Mr Akinola had to succeed on in order to establish his interest under Mrs Adepoju's intestacy was that Mr Akinola's marriage to Mrs Akinola was not still subsisting at the time of marriage ceremony between Mr Akinola and Mrs Adepoju in April 2006.

141. Ms Adepoju claimed to be Mrs Adepoju's sole surviving next-of-kin.

142. Mr Akinola's Defence in the Probate Action was dated 26th May 2016. Mr Akinola signed the statement of truth applicable to it.

143. In paragraph 5 of that Defence Mr Akinola alleged that he was validly married to Mrs Adepoju under Nigerian law. In paragraph 6 of that Defence Mr Akinola alleged that further or in the alternative that he was the partner of Mrs Adepoju and further or in the alternative that:

“[Mr Akinola] has equitable interest in the estates (properties) of the deceased; he has managed the estate for 14 years without getting paid.”

144. What that Defence did not mention was any financial contribution by Mr Akinola towards the acquisition of the properties. In particular it did not mention the alleged payment of £3,000 towards the acquisition of Blanche Street.

145. In his witness statement in the Probate Action dated 6th July 2016 in support of his Defence Mr Akinola explained when his and Mrs Adepoju's "love relationship" started in 2002 as I have mentioned above. In paragraphs 6, 7 and 8 he described the basis of his claim to an equitable interest in the properties. At that time his claim to an equitable interest was in substance secondary to his claim based on his having been the husband of Mrs Adepoju, nevertheless I consider that it is relevant that at this time his claim to an equitable interest was based on what happened in and after 2002, and there is no mention of the £3,000 or of Blanche Street being jointly owned. Those paragraphs read:

“6. Our love relationship started in 2002 when I visited her at home in Canning Town. She informed me that her husband had died in a motor accident some few months. That was how we started our loving relationship. She was not driving when we met and I have taken her to work and picked her up from work regularly. She worked with the agency and worked across many London Hospitals both NHS and Private Hospitals. I later assisted her to buy a car (Nissan Micra) It was in the days where there were no Sat Navs, I always follow her and guide her through until such time as she knew her way.

7. We discussed about property and investment. And we both decided that I should know more about properties and investment in properties. We decided

to become partners and I then trained as a mortgage broker to enhance my knowledge on how to raise finance for property purchases both for buy to lets and residential. We put the property in her name because we were afraid that my ex spouse may be demanding for financial relief from me if she knows that we have property with another woman which may cause us trouble.

8. We moved in together in 2004 when we bought a new built property and we started living together in a situation akin to marriage.”

146. In that statement Mr Akinola then explains about the traditional marriage ceremony which he and Mrs Adepoju went through in Nigeria in 2006 and the birth of James on 11th June 2011. In paragraph 12 of that statement Mr Akinola says that in “the meantime”, which I take to mean from 2004 to 2011, he and Mrs Adepoju acquired other properties in Nigeria “for commercial reasons and our future settlement in Nigeria.” Then in paragraph 13 of that statement Mr Akinola says:

“We have 11 properties in the UK and 6 properties included landed properties in Nigeria (either in her name or our joint names. She has six bank accounts in the UK and 4 Bank Accounts in Nigeria.”

147. The holding by Mr and Mrs Adepoju of properties acquired for commercial reasons in Nigeria in Mrs Adepoju’s sole name or in Mr Akinola’s and Mrs Adepoju’s joint names appears to me to be relevant in that it shows that where they intended properties to be held jointly they could and would put the properties in their joint names and that they made distinctions between the properties, with some being held by Mrs Adepoju and some being held jointly.

148. In that statement dated 6th July 2016 Mr Akinola makes no mention of the £3,000 or the completion statement in respect of Blanche Street.

149. In my judgment it is of some relevance that Mrs Adepoju supported Ms Adepoju in the purchase of two properties for her. The first was in Brighton and was bought in 2008. The second was in London and was also purchased in 2008. Mr Akinola does not claim that either of these properties formed part of the business assets.

150. On 7th December 2016 Master Matthews gave judgment in the Probate Action.

151. Before considering some elements of that Judgment I make clear that, as was accepted by all counsel, Master Matthews’s observations on the veracity of the parties are not admissible evidence before me on any question as to veracity or credit. Nor are Master Matthews’s findings of fact admissible, except insofar as they may give rise to an issue estoppel as between Mr Akinola and Ms Adepoju. On the other hand Master Matthews’s recitals of facts and matters before him are admissible hearsay evidence of those facts and matters.

152. Master Matthews observed that the evidence in support of the allegation that Mr Akinola was divorced from Mrs Akinola was very limited. The evidence in that regard before me is also very limited. I think there is only one addition to the evidence in that regard before me. That is a copy of a screenshot from Mr Akinola’s mobile phone showing a message he received from Mrs Akinola on 17th October 2010. He said it was this which led him to believe that divorce proceedings had been instituted against him by Mrs Akinola. The text reads: “divorse papers coming your way. thanks”. That is hardly

convincing evidence that a divorce had taken place or, in my view a sound basis for Mr Akinola to think that it had or had not. There was no documentary evidence before Master Mathews or before me of the alleged divorce. Master Matthews ruled against Mr Akinola on that issue. He held that he was not satisfied that there was ever a divorce between Mr Akinola and Mrs Akinola. Whether or not there has been a divorce between Mr Akinola and Mrs Akinola is not directly relevant to the issues before me and I make no finding in that regard. There is no reason to suppose that Mr Akinola or Mrs Adepoju were aware of the interrelationship of the English law rules of domicile and polygamous marriages or, if they were, that they knew that their effect would be to invalidate their marriage in the eyes of English law if Mr Akinola was still married to Mrs Akinola. I consider that at least so far as Nigeria and Nigerian law was concerned Mr Akinola and Mrs Adepoju believed that they had been validly married as a result of the April 2006 ceremony.

153. Master Matthews held that but for the difficulty over the divorce from Mrs Akinola and domicile the April 2006 marriage ceremony was a valid marriage ceremony.
154. Master Matthews further held that, subject to further argument about the identity of the person to be appointed, an independent administrator should be appointed of Mrs Adepoju's estate.
155. Following agreement between the solicitors for Mr Akinola and Ms Adepoju, on 26th January 2017 Master Matthews ordered that Mr Oyadare be appointed administrator of Mrs Adepoju's estate.
156. A grant of letters of administration of Mrs Adepoju's estate was made to Mr Oyadare on 30th May 2017. The Grant showed the gross value of the estate at £2,658,768 and the net value at £1,331,268.
157. After Master Matthews' judgment in the Probate Action it was established in Nigeria, following DNA testing, that Mr Akinola was not the father of James. The papers before me indicated that it was even possible that Mrs Adepoju was not the mother of James.

The witnesses

158. I have already stated above that there are many parts of Mr Akinola's evidence that I accept. However, on certain key questions I consider that his evidence of what occurred did not represent what actually occurred. I consider that so far as possible Mr Akinola did not deliberately tell untruths, but that he built up in his mind a belief that certain things which he thought ought to have occurred or which he hoped or wished had occurred had in fact occurred when in reality they had not occurred. I find that in some respects he was then forced into giving unconvincing and untrue evidence as to certain matters in order support his false beliefs or wishful thinking.
159. As regards Mr Oyadare: I consider that he was a truthful, though careless witness. In particular on a number of important points, statements which appeared on their face to be statements of fact turned out to be merely statements of his opinion or deduction from what he had read or seen or statements based on hearsay without the sources being identified. For example in his statement dated 17th July 2018 he says that Blanche Street

was bought in 1999 by Mrs Adepoju and Dr Adepoju. He can have had no first hand knowledge of whether Dr Adepoju was a purchaser.

160. As regards Ms Adepoju: I consider that on some matters she exaggerated or expressed as facts things which she thought had happened or ought to have happened or not happened. In cross-examination in answer to questions about which she admitted she had no direct knowledge, her cover-all answer was that Mrs Adepoju had told her. For example on the key question of whether Mrs Adepoju intended that Mr Akinola should have a beneficial interest in the properties it was easy for her to say that Mrs Adepoju had told her that she had no such intention. I give that statement little weight in deciding the issue of intention, basing myself instead primarily on the objectively ascertainable facts and Mr Akinola's own evidence.

Findings on the key factual issues

161. I do not accept Mr Akinola's evidence that Mrs Adepoju gave him the statement of account in respect of Blanche Street. Mr Akinola provided no detail as to when, why or in what circumstances he alleges that she did this. In his statement dated 14th September 2018 exhibiting a copy of the document he simply said I attach to this witness statement copies of documents relating to the Tenant's Incentive Scheme and the purchase of 16 Blanche Street as pages 4 - 13 of Exhibit OKA2". He does not there explain how or when he came by these documents.

162. Mr Akinola did not mention the completion statement in the Probate Action in 2016 or in his document dated 7th December 2016 which is headed "Constructive Trust Claim".

163. Mr Akinola denied knowing who had written the handwritten note on the completion statement. If Mrs Adepoju had given the statement to him as he alleged and it already had the handwritten note on it, I consider it probable that she would have told him why she was giving him the statement and what the relevance of the handwritten note was. Mr Akinola gave no evidence in that regard.

164. Mr Akinola appears to have had access to Blackthorn Road. Indeed it is his case that it was his home. I find that he took the Blanche Street statement of account from Blackthorn Road at some time after Mrs Adepoju's death.

165. The handwritten note on the statement was clearly written by or on the instructions of a person who knew Mrs Adepoju and Mr Akinola reasonably well because he or she used the familiar shortened forms of their names: "Akin" and "Bola". On the balance of probabilities I consider that the handwriting was not that of Mrs Adepoju. That is because neither Mr Akinola nor Ms Adepoju say that it was, and both of them should know what Mrs Adepoju's handwriting looked like. Ms Adepoju said that the handwriting of the note was Mr Akinola's. He denied that.

166. On the very limited evidence before me I consider that on the balance of probabilities the handwritten note was written by Mr Akinola or at least on his instructions. What persuades me of that is the vagueness of Mr Akinola's evidence about how he came by the statement and as to whose the handwriting is, coupled with the failure of Mr Akinola to produce or refer to the statement of account in 2016. It must have been apparent at the end of 2016 that there was no documentary evidence to support his claim to have

contributed financially to the purchase of the properties. It would have been easy to add or to cause an addition to be made to the handwritten note in an attempt to show that Mr Akinola had made a financial contribution.

167. For essentially the same reasons, again on the balance of probabilities, I find that Mr Akinola did not pay £3,000 to Mrs Adepoju to be used for the purchase of Blanche Street.
168. Having regard to the circumstances and facts surrounding the purchase of Blanche Street as set out above, I find that Blanche Street was bought as a home for Mrs Adepoju and that she had no intention that Mr Akinola should have a share in it.
169. As set out above, I find that the position in respect of payment by Mrs Adepoju to Mr Akinola in respect of the work done by him in relation to the properties was as follows:
 - 169.1. For the last 2 years or so of her life Mrs Adepoju paid Mr Akinola £450 per month.
 - 169.2. That payment was partly in recognition of the additional work which he was doing in respect of the properties and partly so as to enable him to fulfil his obligations in respect of James.
 - 169.3. Before that period and back to 2004 Mr Akinola received occasional rewards such as the purchase of a car, but otherwise did what he did in relation to the properties by reason of his developing relationship with Mrs Adepoju and, particularly in the period after James was born, for the benefit of the family group comprising him, Mrs Adepoju, James and Ms Adepoju.
 - 169.4. As regards the position before 2004: I have already held that Mr Akinola was doing less in that period than he did later. I accept Mr Akinola's evidence that he did not receive payments from Mrs Adepoju during that period.
170. I find that at the times of purchase of Blanche Street and of the buy-to-let properties, Mrs Adepoju positively did not intend that Mr Akinola should have a beneficial interest in the properties and had not agreed with Mr Akinola that he should have. I also find that such an intention did not subsequently arise in Mrs Adepoju in respect of any of those properties (including Blanche Street). I find that any beliefs which Mr Akinola may have had about having an interest in the properties were one sided and were not shared by Mrs Adepoju.
171. In reaching those conclusions I find the following matters particularly compelling:
 - 171.1. The fact that the properties, including New Road which was not purchased until 2007, were acquired in Mrs Adepoju's sole name.
 - 171.2. The fact that the net proceeds of sale of the two properties which were sold during Mrs Adepoju's lifetime were received by her, not by Mr Akinola.
 - 171.3. The fact that the rents from the properties were received by Mrs Adepoju, not by Mr Akinola.
 - 171.4. The existence of the Nigerian properties bought for commercial purposes, some in joint names and some in Mrs Adepoju's sole name which demonstrates that when Mr Akinola and Mrs Adepoju intended that properties should be jointly owned, they could arrange that.
 - 171.5. The main basis for Mr Akinola's claims in 2016 being based on his supposed marriage to Mrs Adepoju in 2006.
 - 171.6. The failure to suggest that 22 Sussex Road or any other property in which Mr Akinola had an interest should be included within the arrangements.

- 171.7. The coincidence of the start of the payments of £450 per month with the increase in the amount of work which Mr Akinola had to do in relation to the properties by reason of Mrs Adepoju's illness.
172. On the other side of the scale I have taken into account in particular of the following, but in my assessment they do not come close to outweighing the factors mentioned in the immediately foregoing paragraph:
- 172.1. The work which I have found that Mr Akinola did in relation to the properties as giving rise to a possible inference of an intention that he should have an interest in the properties. However, having regard to what I have found as to the nature, timing and intensification of that work, I consider that the work which he did before 2004 was insufficient to raise such an inference, and that after 2004 the "interest" which Mr Akinola had in the properties was not a proprietary one, but an interest in the wider sense that they were assets which belonged to his supposed wife who and whose assets it was natural for him to support as well as such support being in the likely interest of the whole family, including himself as Mrs Adepoju's supposed husband and possible legatee.
- 172.2. Mr Akinola's evidence as to his beliefs about having an interest in the properties. However, as mentioned above, I find that those beliefs were one sided and were not shared by Mrs Adepoju.
- 172.3. The reason given by Mr Akinola for the properties having been acquired in Mrs Adepoju's name. That may have weighed with Mr Akinola in not pushing Mrs Adepoju to provide him with a proprietary or legal interest in the properties, but I consider that it is of little weight in deciding whether Mrs Adepoju ever had an intention that Mr Akinola should have a proprietary interest in the properties. The period from when Mr Akinola said he was separated from Mrs Akinola in about 2002 down to Mrs Adepoju's death in 2015 was more than long enough for any concerns over claims by Mrs Akinola either to have dissipated or to have been realised.
173. Blackthorn Road is different from Blanche Street and the buy-to-let properties because it was bought as a home for Mrs Adepoju and Ms Adepoju and as a place where Mr Akinola could stay from time to time with Mrs Adepoju. After the ceremony of marriage in Nigeria it became more of a home for Mr Akinola. Of the factors which I have found compelling on the issue of common intention in relation to the buy-to-let properties, only the following apply to Blackthorn Road:
- 173.1. The fact it was acquired in Mrs Adepoju's sole name.
- 173.2. The existence of the Nigerian properties bought for commercial purposes, some in joint names and some in Mrs Adepoju's sole name which demonstrates that when Mr Akinola and Mrs Adepoju intended that properties should be jointly owned, they could arrange that.
- 173.3. Insofar as the period down to 2006 is concerned, the main basis for Mr Akinola's claims in 2016 being based on his supposed marriage to Mrs Adepoju in 2006.
- 173.4. The failure to suggest that 22 Sussex Road or any other property in which Mr Akinola had an interest should be included within the arrangements.
174. On the other hand I have accepted Ms Adepoju's evidence that this property was found by her and bought at her insistence. Also, the Particulars of Claim and Mr Devereux-Cooke's submissions made no special reference to this property, but treated it as part of the general property portfolio. Overall I am not satisfied that Mrs Adepoju ever

had an intention that Mr Akinola should have a beneficial share in Blackthorn Road. Looked at objectively I consider that it cannot be inferred that Mrs Adepoju intended Mr Akinola to have a beneficial interest in Blackthorn Road.

175. The acquisition of Blanche Street was simply the acquisition by Mrs Adepoju of the property in her own name with no intention that Mr Akinola should have a beneficial interest in it. Thus, looked at at the time of purchase, Blanche Street belonged legally and beneficially solely to Mrs Adepoju. There was no direct financial contribution to the purchase from Mr Akinola so as to give rise to a resulting trust.
176. That is not the end of the analysis in relation to Blanche Street because a common intention may be inferred from the parties' whole course of conduct in relation to the property. An inference of a common intention that Mr Akinola should have a beneficial interest in Blanche Street would be contrary to my findings that Mrs Adepoju positively did not intend that Mr Akinola should have a beneficial interest in the properties and that such an intention did not subsequently arise in Mrs Adepoju. In my judgment the whole course of conduct in relation to the property does not justify such an inference.
177. Accordingly I find that, subject to Mr Akinola's case as to a post-death contract or estoppel, Mr Akinola has no beneficial interest in Blanche Street.
178. As regards the buy-to-let properties: Mr Akinola did not make a direct financial contribution to their purchase so no resulting trust arises in relation to them.
179. The buy-to-let properties were acquired in Mrs Adepoju's sole name. Mr Devereux-Cooke sought to persuade me that because the buy-to-let properties were purchased as investments and because Blanche Street effectively became a buy-to-let property when Mrs Adepoju bought and moved to Blackthorn Road, the burden which, as per Lady Hale in *Stack v Dowden* [2007] UKHL 17 at para.68, a person seeking to show that the parties intended their beneficial interests to be different from their legal interests and in what way did not apply.
180. I accept Mr Devereux-Cooke's submission that the law as it stands requires a different approach to the question of whether a constructive trust exists as between domestic and commercial situations. However, in respectful agreement with Lewison LJ in *Geary v Rankine* [2010] EWCA Civ 555 at para.18, I consider that the burden of establishing a "common intention" constructive trust is all the more difficult to establish where the property was bought as an investment rather than as a home.
181. Mr Devereux-Cooke referred me to *Laskar v Laskar* [2008] EWCA Civ 347. That was a case in which a mother and daughter had bought a council house in their joint names as an investment. The Court of Appeal considered that it would not be right to apply the *Stack v Dowden* approach in such case, but held that even if the *Stack v Dowden* approach was adopted, the presumption that the beneficial interests followed the legal interests was, on the facts, rebutted, and that the beneficial interests should be substantially proportionate to the financial contributions made by the parties. Neither the application of the *Stack v Dowden* presumption nor a result based on the financial contributions made by the parties would assist Mr Akinola in the present case, because the acquisitions were in the sole name of Mrs Adepoju and because Mr Akinola did not make any direct financial contributions to the acquisitions.

182. I consider that the correct approach in the case of the acquisition of a property for investment purposes is that set out by Lewison LJ in *Geary v Rankine* [2010] EWCA Civ 555.

183. In *Geary v Rankine* the parties were in a relationship and they had a son. Mr Rankine purchased a guesthouse as an investment. It was a cash purchase by Mr Rankine using his own savings. There was no mortgage. At the time of the purchase it was not intended that they should live in the property. Nor at that time was it intended that either of them would run the guest house business. Rather, Mr Rankine purchased it as a commercial investment and the business was to be run by a manager. The judge accepted Mr Rankine's evidence that at the time the intention was that they would continue to live in London and that he would arrange for someone to manage the business in Hastings. However, there were difficulties with the manager which manifested themselves quite quickly and Mr Rankine himself moved down from London to try and run the business himself. Mrs Geary remained in London working as a receptionist. After a further short time Mr Rankine found that he could not cope either, so Mrs Geary moved down to Hastings, but they still retained their London home in case they decided to move back. Once Mrs Geary was settled in Hastings she became involved in the business. The judge found that she helped with the cleaning, she helped when there were students there, she prepared three meals a day and she dealt with some of the paper work and bank work, assisting Mr Rankine, who was not good either with documents or figures.

184. At paragraphs 18 - 21 Lewison LJ set out the approach as follows:

18. [...] The applicable principles had been settled at the highest level in *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 and *Jones v Kernott* [2011] UKSC 53 [2011] 3 WLR 1121. The starting point is the legal title. In this case legal title was in Mr Rankine alone. Thus Mrs Geary has the burden of establishing some sort of implied trust; normally what is now termed a "common intention" constructive trust. The burden is all the more difficult to discharge where, as here, the property was bought as an investment rather than as a home. The search is to ascertain the parties' actual shared intentions, whether express or to be inferred from their conduct. In *Jones v Kernott* it was pointed out that there are at least two exceptions. The first is where there is a presumption of a resulting trust. That presumption may arise where the partners are business partners as well as domestic partners. In the present case if it applies that exception would work in Mr Rankine's favour since he provided all the money.

19. The second is where it is clear that the beneficial interests are to be shared but it is impossible to divine a common intention as to the proportions in which they are to be shared. Whether the beneficial interests are to be shared at all is still a question of a party's actual shared intentions. An imputed intention only arises where the court is satisfied that the parties' actual common intention, express or inferred, was that the beneficial interest would be shared, but cannot make a finding about the proportions in which they were to be shared. The relevant principles are summarised in paragraphs 51 and 52 of *Jones v Kernott*:

"[51] In summary, therefore, the following are the principles applicable in a case such as this, where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of their beneficial interests.

(1) The starting point is that equity follows the law and they are joint tenants both in law and in equity.

(2) That presumption can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change.

(3) Their common intention is to be deduced objectively from their conduct: "the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words and conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party" (Lord Diplock in *Gissing v Gissing* [1971] AC 886, 906). Examples of the sort of evidence which might be relevant to drawing such inferences are given in *Stack v Dowden*, at para 69.

(4) In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, "the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property": Chadwick LJ in *Oxley v Hiscock* [2005] Fam 211, para 69. In our judgment, "the whole course of dealing ... in relation to the property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions.

(5) Each case will turn on its own facts. Financial contributions are relevant but there are many other factors which may enable the court to decide what shares were either intended (as in case (3)) or fair (as in case (4)).

[52] This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above."

20. In a single name case of which this is one the first issue is whether it was intended that the claimant should have any beneficial interest in the property at all. If that issue is determined in the claimant's favour, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But the common intention has to be deduced objectively from their conduct.

21. Having rejected the claim Mrs Geary and Mr Rankine had a common intention at the time of the purchase that Mrs Geary should have a beneficial interest in Castle View, the judge went on to consider whether that common interest subsequently changed. It is important to stress that the object of the search is a common intention; that is, an intention common to both parties. So Mrs Geary had to establish that despite the fact that the legal title to the property remained in Mr Rankine's sole name, he actually intended that she should have a beneficial interest in it. As I have said that actual intention may have been expressly manifested, or may be inferred from conduct; but actual intention it remains.”

185. Applying those principles to the facts of the present case:

185.1. Mr Akinola has the burden of establishing some sort of implied trust; normally what is now termed a "common intention" constructive trust. The burden is all the more difficult to discharge where, as here, the property was bought as an investment rather than as a home. The search is to ascertain the parties' actual shared intentions, whether express or to be inferred from their conduct.

185.2. Without applying the burden of proof, let alone the “more difficult” burden referred to by Lewison LJ, I have found that Mrs Adepoju did not have such an intention. An inference of a common intention that Mr Akinola should have a beneficial interest in any of the English properties would be contrary to my findings that Mrs Adepoju positively did not intend that Mr Akinola should have a beneficial interest in the properties and that such an intention did not subsequently arise in Mrs Adepoju. In my judgment the whole course of conduct in relation to the property does not justify such an inference.

185.3. Mr Akinola does not get past the first hurdle (the first issue referred to by Lewison LJ in paragraph 20 of *Geary v Rankine*) of showing that it was intended that the claimant should have any beneficial interest in the property at all.

185.4. The first of the exceptions mentioned by Lewison LJ in paragraph 18 in *Geary v Rankine*, that is to say the presumption of a resulting trust, does not apply in the present case because Mr Akinola did not make any financial contribution to any of the acquisitions.

185.5. The second of the exceptions mentioned by Lewison LJ in paragraph 19 in *Geary v Rankine* does not apply because in the present case my findings are that it was not intended by Mrs Adepoju that the beneficial interests were to be shared. Mr Akinola’s case does not get as far as requiring the size of any beneficial interests to be assessed.

186. Accordingly I find that, subject to Mr Akinola’s case as to a post-death contract or estoppel, Mr Akinola has no beneficial interest in any of the buy-to-let properties.

187. That leaves Blackthorn Road. That is different from the buy-to-let properties because it was bought as a home for Mrs Adepoju and Ms Adepoju and as a place where Mr Akinola could stay from time to time with Mrs Adepoju. After the ceremony of marriage in Nigeria it became more of a home for Mr Akinola. It follows that the legal approach in respect of Blackthorn Road should be the *Stack v Dowden* and *Jones v Kernott* approach without any “more difficult” burden being applied. However, my findings that I am not satisfied that Mrs Adepoju ever had an intention that Mr Akinola should have a beneficial share in Blackthorn Road and that looked at objectively I consider that it cannot be

inferred that Mrs Adepoju intended Mr Akinola to have a beneficial interest in Blackthorn Road are fatal to Mr Akinola's claim to a common intention based constructive trust in relation to this property. Again Mr Akinola does not get over the first hurdle of showing that Mrs Adepoju ever had an intention that he should have a beneficial interest in this property.

188. Accordingly I find that, subject to Mr Akinola's case as to a post-death contract or estoppel, Mr Akinola has no beneficial interest in Blackthorn Road.

The claim based on contract

189. The validity or otherwise of the claim based on an alleged contract depends on the basic law as to offer and acceptance.

190. That basic law is explained in Chitty on Contracts 33rd ed as consolidated with its 1st Supplement at paragraphs 2-001 to 2-003 as follows:

“2-001

The first requirement for the formation of a contract is that the parties should have reached agreement. Generally speaking, the law regards an agreement as having been reached when an offer made by one of the parties (the offeror) is accepted by the other to whom the offer is addressed (the offeree or acceptor). However, such an agreement may still lack contractual force because it is incomplete, because its terms are not sufficiently certain, because its operation is subject to a condition which fails to occur or because it was made without any intention to create legal relations.

2-002

In deciding whether the parties have reached agreement, the courts normally apply the objective test, which is further discussed at para.2-003 below. Under this test, once the parties have to all outward appearances agreed in the same terms on the same subject-matter, then neither can, generally, rely on some unexpressed qualification or reservation to show that he had not in fact agreed to the terms to which he had appeared to agree. Such subjective reservations of one party therefore do not prevent the formation of a contract.

2-003

An offer is an expression of willingness to contract on specified terms made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed. Under the objective test of agreement, an apparent intention to be bound may suffice, i.e. the alleged offeror (A) may be bound if his words or conduct are such as to induce a reasonable offeree to believe that he intends to be bound, even though in fact he has no such intention. [...]"

191. Continuing from the same source:

“2-026

An acceptance is a final and unqualified expression of assent to the terms of an offer. The objective test of agreement applies to an acceptance no less than to an offer. [...]

2-031

A communication may fail to take effect as an acceptance because it attempts to vary the terms of the offer. Thus an offer to sell 1,200 tons of iron is not accepted by a reply asking for 800 tons; an offer to pay a *fixed* price for building work cannot be accepted by a promise to do the work for a *variable* price; and an offer to *supply* goods cannot be accepted by an “order” for their “*supply and installation*”. Nor, generally, can an offer be accepted by a reply which varies one of its other terms (e.g. that specifying the time of performance), or by a reply which introduces an entirely new term. Such a reply is not an acceptance; but it may, rather, be a counter-offer, which the original offeror can then accept or reject and the new offeror can revoke prior to its acceptance. On the other hand, statements that are not intended to vary the terms of the offer, or to add new terms, do not disqualify the acceptance, even where they do not precisely match the words of the offer. It is, moreover, submitted that, if the introduced term merely makes express what would otherwise be implied, it does not destroy the effectiveness of the acceptance. Nor will the introduced term have this effect if it is merely a declaration by the acceptor that he is prepared to grant some indulgence to the offeror, e.g. to condone late payment in return for specified interest. Similarly, it is submitted that an acceptance which asks for some indulgence to the offeree is, nevertheless, effective, so long as it is clear that the offeree is prepared to perform even if the indulgence is not granted: e.g. to buy for cash if his request for credit is refused. The test in each case is whether the offeror reasonably regarded the purported acceptance “as introducing a new term into the bargain and not as a clear acceptance of the offer”. In the case of continuing negotiations, the court must look at the whole correspondence between the parties. It is also possible for a communication which contains new terms to amount at the same time: (1) to a firm acceptance of the offer; and (2) to a new offer to enter into a further contract. In such a case, there will be a contract on the terms of the original offer, but none on the terms of the new offer, unless that, in turn, is accepted.”

192. The initial offer in the present case was made in a letter dated 21st March 2017 from Mr Oyadare, addressed to Mr Akinola and to his solicitors (“the Offer Letter”).
193. The letter is headed:
 “RE THE ESTATE OF MEDINAT BOLA ADEPOJU (Deceased)
 DATE OF DEATH: 27 JULY 2015
 OFFER TO MR OLADIMEJI KEHINDE AKINOLA”
194. The opening words of the first paragraph of the letter read:
 “Further to our meetings and various discussions of this matter I am now able to write to formally confirm the oral offer I made following my recent meeting with the other party and her solicitors. [...] I am acting in the best interest of all beneficiaries of the estate [...]”
195. Under the heading “The entire history of the matter to date” Mr Oyadare wrote:
 “I have carefully noted the arguments from Miss Adepoju and Mr Akinola with particular reference to Mr Akinola claim of joint ownership of all properties because of his relationship with the deceased. Miss Adepoju is not in agreement with this assertion [...]”

196. On the second page of the letter under the heading “Disagreement”, Mr Oyadare wrote:
“Both parties are in disagreement on what is due to Mr Akinola, but there is a need to compromise and the shifting of entrenched positions in order to move forward very quickly. The 50% sought by Mr Akinola is not possible given the facts we all know. The proposed offer per this letter has the blessings Miss Adepoju - most reluctantly”
197. Under the heading “Avoidance of further litigation” Mr Oyadare wrote:
“One of the reasons for this compromise solution/offer is to avoid going back to court - will be very expensive [...]
198. The next heading is: “Available net assets - see attached spreadsheet”. Unhelpfully a copy of the spreadsheet said to have been attached was not included in the hearing bundle. The text which followed that heading was as follows:
“These comprise 11 properties, all very heavily mortgaged; available for distribution to beneficiaries are the realised equity: meaning the market values/sale receipts less mortgages, taxes, selling and other estate running expenses and charges.

THE OFFER TO MR OLADIMEJI KEHINDE AKINOLA

25% OF THE NET ASSETS - AS SET OUT ABOVE

IN FULL SETTLEMENT OF ALL CLAIMS, ENCUMBRANCES
ENTITLEMENTS, FEES AND OTHER CHARGES

ACCEPTANCE

Kindly let me have Mr Akinola’s formal acceptance in writing

Ps

This is given in absolute good faith, and as a fair and equitable solution, and without prejudice.”

199. The first candidate put forward on behalf of Mr Akinola for an acceptance of that offer is an email dated 19th May 2017 from Mr Akinola’s solicitors to Mr Oyadare. The body of that letter reads:
“We have taken instruction from our client and he is content to accept your offer of 25 Percent of the Estate before Inheritance Tax.

As we have explained to you on the phone that our client’s constructive trust is not subject to an inheritance tax. Moreover, the money spent by the claimant’s on litigation cannot come from the Estate We also need to stress that it should be included in your letter that the 25 percent is for constructive trust. We need an addendum to your letter as you have promised.

We look forward to hearing from you soon.”

200. Looked at objectively, do the offer and the possible acceptance coincide? Was the purported acceptance of “25 Percent of the Estate before Inheritance Tax” an acceptance of what had been offered? It is possible that the offer was modified or clarified in the telephone call referred to, but there was no evidence of that before me, and I assume that it was not.

201. What was offered was 25% of the net assets “AS SET OUT ABOVE”. What was “set out above” was that the net assets comprised the 11 properties all very heavily mortgaged and that what was available for distribution to beneficiaries was the “realised equity”, meaning the market values/sale receipts less mortgages, taxes, selling and other estate running expenses and charges.
202. I interpret the offer against the background that the assets owned by Mrs Adepoju at her death were not limited to the 11 properties. For example the exhibited bank statements which I have referred to above show that Mrs Adepoju’s current account was in credit by £2,620.90 at the date of her death. Her flexible savings account was in credit by £16,026.05. In her witness statement dated 22nd February 2016 in the Probate Action Ms Adepoju said that in addition to the properties there were bank deposits which at the time of Mrs Adepoju’s death were in excess of £102,000, chattels and foreign properties. Mr Akinola’s evidence mentioned some properties in Nigeria which were in Mrs Adepoju’s sole name as well as some which were in joint names. The offer does not refer expressly to those other assets, it only refers to the 11 properties and the “realised equity” which in my judgment must mean the equity which was or could be realised from the 11 properties after deduction of mortgages, taxes selling and other “estate running expenses and charges”. In that context I interpret “estate” as meaning the whole estate of Mrs Adepoju, not limited to the 11 properties.
203. Against that background I consider that the offer distinguished between two different things: one, the 11 properties subject to mortgage. The other, what would be available for distribution from those assets for the beneficiaries of the estate. The inclusion of a description of what would be available for distribution to the beneficiaries from the properties might be explained as setting out the position for Ms Adepoju’s enlightenment.
204. In my judgment what was offered was 25% of the first of those things; that is to say a 25% interest in the 11 properties subject to mortgage. Mr Oyadare was not offering a share in any other assets of the estate. That conclusion is supported by the consideration that what Mr Akinola was claiming was a beneficial interest in the properties. He was not claiming a beneficial interest in the other assets of Mrs Adepoju’s estate.
205. By the email dated 19th May 2017 from his solicitors, Mr Akinola purported to accept “25 Percent of the Estate before Inheritance Tax”. Unless “Estate” in that context is construed as referring only to the 11 properties subject to mortgage, that was not what was on offer. Prima facie “Estate” means the whole estate of Mrs Adepoju, not just the 11 properties. I consider that the second paragraph of the email, although somewhat confusing, confirms that prima facie meaning of the purported acceptance.
206. The first sentence of the second paragraph of the email in effect makes the point that if Mr Akinola’s constructive trust claim was successful, there would be no Inheritance Tax attributable to its value because its value would have been vested in Mr Akinola before Mrs Adepoju’s death. However, the fact that that point is mentioned indicates to me that the purported acceptance was intended to be of a share of the estate free from Inheritance Tax, not of a share of the properties which would have been free of Inheritance Tax for the very reason mentioned.

207. The second sentence of the second paragraph of the email denies that the money spent by the claimant's [sic] on litigation should come from the Estate. That again in my view confirms that the purported acceptance was of a share of the net estate as a whole, not just of the 11 properties subject to mortgage.
208. Accordingly I find that the offer and its purported acceptance by the email dated 19th May 2017 did not coincide, and that a contract was not created by that purported acceptance.
209. There may be a further difficulty with the offer and the purported acceptance by the email of 19th May 2017. That is that the offer was made by Mr Oyadare and was purportedly accepted before Mr Oyadare had obtained his grant of letters of administration on 30th May 2018. Mr Oyadare therefore had no authority to act on behalf of the estate. The offer was concurred in by Ms Adepoju, but it is possible that she is not the only beneficiary under Mrs Adepoju's intestacy. If James was Mrs Adepoju's child, he would be entitled to share in the estate with Ms Adepoju and the offer was not made on his behalf. I heard little evidence on the question of whether or not James was Mrs Adepoju's child and I do not rule on that question. Accordingly I cannot determine whether or not the possible further difficulty mentioned at the beginning of this paragraph arises. I do not need to resolve the question of whether it arises or of how it might be resolved and I do not do so.
210. In an email dated 27th June 2017 from Mr Oyadare to Mr Akinola's solicitor, Mr Oyadare sent what he described as a clarification of the offer as an addendum. The second paragraph of the email specifies that the offer is of 25% of the net value of the 11 properties. That differs from the original offer as I have interpreted it, but is inadmissible for the purpose of interpreting the original offer. That paragraph reads:
"As stated in the report, he has been made an offer of 25% of the net value of the 11 properties comprised in the estate, as per the spread-sheet attached to the report."
211. The next two paragraphs of the email dated 27th June 2017 define how the value is to be calculated and when payment is to be made to Mr Akinola. The value of the properties is to be taken as their value for inheritance purposes and various deductions are to be made.
212. The last paragraph of the email dated 27th June 2017 said:
"Let me have your acceptance - within the next 14 days, otherwise I will assume that you have decided NOT to accept it; and you are reminded that the original offer was made more than three months ago."
213. That 14 day period elapsed without any attempt being made to accept the offer.
214. In an email dated 2nd August 2017 from Mr Akinola's solicitors to Mr Oyadare, Mr Akinola's solicitors say that they "refer to your offer of 25 Percent of the net estates to our client". They continue:
"Our client need clarification on the offer as to what is included and what is not included. You also need to confirm that the offer is made on the basis that our client has an equitable interest in the Estates. Our client is not subject to an Inheritance Tax and the costs awarded against Jumoke Adepoju. Our client is not subject to the legal costs incurred by Miss Adepoju."

An offer must be clear and succinct to avoid any ambiguity.

[...] We need to stress that jumoke is a beneficiary of the Estate whereas our client has an equitable interest in the property which come first before the beneficiary.”

215. That email clearly does not purport to be and is not the acceptance of any offer. Nor is it a cross-offer.

216. On 22nd September 2017 Mr Oyadare sent Mr Akinola’s solicitor and, possibly, Mr Akinola an email timed at 6:47 pm. This refers to an email which is said to have been duly received and carefully read and noted. It says that the only thing that needs further clarification and emphasis is the issue of tax deduction from the amount payable to Mr Akinola. The email continues:

“He gets: 25% (Net Receipts from the properties sold + agreed value of any property taken over by any beneficiary -

Less: Mortgages, Legal Expenses (non personal) Estate expenses, Inheritance Tax on the Estate, Funeral & Other relevant expenses & Charge)

Note: personal & legal expenses incurred by the beneficiaries will be borne by them personally and they will form no part of the estate expenses.

What is there to be split & share is the NET VALUE OF THE ESTATE/PROPERTIES

Ken’s portion will be treated as a charge on the estate & WILL BE PAID FROM THE NET ESTATE.”

217. Having regard to the circumstance that the earlier offer had lapsed, I construe that email of 22nd September 2017 as an offer or as the final part of an offer which was capable of acceptance.

218. There is a second email also dated 22nd September 2017, timed at 7:01 pm. This is from Mr Akinola’s solicitors to Mr Oyadare. It purports to accept an offer of 25%, but then goes on immediately to set out different terms to those specified in Mr Oyadare’s email of 22nd September 2017. The terms of the purported acceptance do not meet those of any then existing offer. If the original offer in Mr Oyadare’s letter of 21st March 2017 had not been “clarified” or varied by Mr Oyadare’s later emails, this purported acceptance would have been an acceptance of that original offer as I have interpreted it. However that original offer had been “clarified” and varied so that it no longer stood as an offer with the meaning that I have interpreted it as having. Accordingly the purported acceptance by Mr Akinola’s solicitor’s email of 22nd September 2017 was not effective to create a contract.

219. In the submissions made to me it was assumed that the two emails dated 22nd September 2017 were the other way around in terms of when they were sent. That assumption does not fit with the times shown on the emails; but even if that assumption was correct, the purported acceptance by Mr Akinola’s solicitors’ email of 22nd September 2017 would not be effective because by his email dated 27th June 2017 Mr Oyadare had varied what I have found were the terms of the original offer, so that the purported acceptance by Mr Akinola’s solicitors’ email of 22nd September 2017 would still not be effective.

220. In his skeleton argument Mr Devereux-Cooke sought to rely on statements in other documents which indicated that Mr Oyadare was treating Mr Akinola as a beneficiary of the estate as evidence that he accepted that Mr Oyadare had a 25% interest in the estate. The two documents were:

220.1. An email dated 24th July 2018 from Mr Oyadare's solicitors to the solicitors acting for the receiver of 116 Pittman Gardens. In this email it is said, amongst other things, that the beneficiaries of the Estate have been complaining bitterly and one of them has issued proceedings seeking the removal of the Administrator from office. The person who had issued those proceedings was Mr Akinola. Mr Devereux-Cooke submitted that it followed that Mr Oyadare recognised that Mr Akinola was a beneficiary of the estate. I think that is reading too much into a letter to a third party. Mr Akinola was a potential beneficiary, if not of the estate, then of the properties which Mr Oyadare was administering and that could have been what he meant. Even if he meant more, this letter did not amount to an acceptance of an offer, and it would be unclear what the terms of the alleged contract were.

220.2. A letter dated 11th October 2017 from Mr Oyadare's solicitors to HMRC. A copy of this letter is not in the hearing bundle, but it is referred to in the letter referred to above dated 14th November 2017 from HMRC to Mr Oyadare's solicitors concerning the estate of Mrs Adepoju. In the HMRC letter, HMRC say, amongst other things:

“In your letter you advised that you believed that the deceased's partner, Mr Akinola, had a 25% share of the deceased's estate based on there being a constructive trust.”

Mr Oyadare may have so believed or may merely have said so in his letter to HMRC, but one thing which that statement is not, is the acceptance of an offer by Mr Akinola, or the making of an offer by Mr Oyadare which was capable of acceptance by Mr Akinola.

221. It follows that by reason of there never having been a coincidence of an offer and acceptance, in my judgment there was no contract in respect of the estate or the properties as between Mr Oyadare and Mr Akinola.

Proprietary estoppel?

222. Proprietary estoppel is the final way in which Mr Akinola makes a claim to an interest in the properties or the estate.

223. The representation or belief sought to be relied upon as the basis for such a claim is pleaded as being Mr Oyadare's offer letter of 21st March 2017 (“the Offer Letter”) which I have considered above. In paragraph 19 of the Particulars of Claim it is alleged that Mr Oyadare “agreed” in that letter that Mr Akinola “did have a beneficial interest in the net assets of the Estate amounting to 25% of the value of those assets.”

224. In my view the Offer Letter did no such thing. In the Offer Letter Mr Oyadare said that he had considered Mr Akinola's claim. In a passage of the letter which I have not yet set out, Mr Oyadare wrote:

“The absence of other concrete / corroborating evidence from Mr Akinola in relation to the purchase and ownership of the properties, such as contributions towards purchase, land registry entries, written agreement / memo and other ownership confirmation documents has made his claim to lack very vital proof of joint ownership. Again, this has been the subject of various correspondence between the parties, and there is no need to repeat the details here.”

225. Further on in the Offer Letter Mr Oyadare wrote:
“Both parties are in disagreement on what is due to Mr Akinola, but there is a need to compromise and the shifting of entrenched positions in order to move forward very quickly. The 50% sought by Mr Akinola is not possible given the facts we all know. The proposed offer has the blessings of Miss Adepoju - most reluctantly.”
226. The letter then goes on to make an offer as discussed by me above. It was an offer to compromise Mr Akinola’s claim. The offer was never accepted. The subsequent correspondence discussed above and other, later, correspondence shows that until as late as 11th April 2018 Mr Oyadare was prepared to enter into a compromise whereby Mr Akinola received 25% of something. The problem was that what that “something” was changed from time to time and what Mr Oyadare offered in that regard, Mr Akinola never accepted while a particular offer or version of an offer was open.
227. At one stage I understood Mr Devereux-Cooke to be submitting that a representation was constituted by the statement reported by HMRC in its letter to Mr Akinola’s solicitors dated 14th November 2017 which indicated that in a letter dated 11th October 2017 from Mr Oyadare’s solicitors they had “advised” that they believed that the deceased’s partner, Mr Akinola, had a 25% share of the deceased’s estate based on there being a constructive trust. Mr Devereux-Cooke was able to submit that that amounted to a representation because Mr Oyadare said in his statement dated 17th July 2018 that a copy of HMRC’s letter was sent to Mr Akinola.
228. Ultimately Mr Devereux-Cooke said that he was not relying on the representation in the HMRC letter. In my judgment he was wise to take that course. In my judgment that letter did not contain and did not refer to a letter (Mr Oyadare’s solicitors’ letter to HMRC) containing an unequivocal representation by or on behalf of Mr Oyadare to Mr Akinola that Mr Akinola had an interest in the properties or the estate. Nor did Mr Akinola believe that he had a 25% interest in the properties or the estate by reason of any agreement. At all times the question of what Mr Akinola should get remained in a state of negotiation. Unless and until a contract was entered into, Mr Oyadare did not recognise that Mr Akinola had any interest; only that he had a claim to an interest which Mr Oyadare was willing to compromise.
229. In my judgment the highest that it can be put in the way of representation or belief is that Mr Oyadare represented that he was willing to compromise on terms which would give Mr Akinola 25% of something measured by reference to, amongst other things, the properties or their values. In my view that is insufficient to found a claim to a proprietary estoppel. It was not an unconditional or unequivocal promise that Mr Akinola would get something.
230. Except in the email dated 27th June 2017, there was no promise or representation by Mr Oyadare that he would keep any offer open for any particular period of time. There is

no evidence that the offer in that letter was purportedly withdrawn during the 14 day period specified in the email dated 27th June 2017. In my judgment (except during that 14 day period) it was always open to Mr Oyadare to withdraw any existing offer, and he did not represent that he would not do so.

231. Mr Devereux-Cooke relied on Mr Akinola's having acted as Mr Oyadare's agent to collect the rents from the properties as detrimental reliance on a representation by Mr Oyadare that Mr Akinola had or would have an interest in the properties. There was no such unconditional representation, but even if there had been, I find that there was no detrimental reliance sufficient to justify the creation of an interest by estoppel.
232. Mr Akinola was appointed as Mr Oyadare's agent to collect the rents from the properties by a letter dated 12th April 2017. That letter contained the sentence: "You are entitled to a reasonable fees for your services." In the absence of evidence to the effect that Mr Akinola lost out on other work or was otherwise prejudiced as a result of his rent collection work for Mr Oyadare - and there is none - payment of a reasonable fee for the services is inconsistent with detriment.
233. That appointment was terminated by a letter from Mr Oyadare dated 11th April 2018.
234. Having regard to my finding that there were no sufficient representations by Mr Oyadare, or beliefs in Mr Akinola encouraged by Mr Oyadare and that there was no detrimental reliance by Mr Akinola, the claim based on proprietary estoppel fails.
235. That failure, the failure of the claim based on an alleged contract, and the failure of the claim to a beneficial interest in any of the properties as result of what occurred in Mrs Adepoju's lifetime means that in my judgment the answer to the preliminary issues ordered to be tried by the order of 11th July 2019 is that Mr Akinola does not have a beneficial interest in any of the properties listed in that order or in the proceeds of sale of any of them that have been sold. Neither does Mr Akinola have any additional or alternative claim by virtue of the matters alleged in paragraphs 18 and following of the Particulars of Claim dated 3rd December 2018.

Deputy Master Henderson
30th July 2020

ADDENDUM

JUDGMENT AS TO DISPOSAL AND COSTS

1. My substantive judgment in the Preliminary Issues is set out above. My draft of that judgment was circulated to the parties' solicitors and counsel by email on 29th June 2020 with my directions that it was a judgment to which the Practice Direction 40E – Reserved Judgments (which supplements CPR Part 40) applied. Having regard to the Covid 19 restrictions, the overriding objective, CPR 39.2(3)(g) and the nature and effect of the judgment, I also directed that:

- (1) The judgment would be handed down remotely by circulation to the parties' representatives by email and by release to the media and public on request.
 - (2) Unless the court ordered otherwise, costs, applications for permission to appeal (if any) and any other consequential matters would be dealt with on written submissions.
 - (3) If any party considered that the overriding objective required that submissions on those matters be made orally, they should request an oral hearing in their written submissions and state in those written submissions why they submitted that an oral hearing was required.
 - (4) Written submissions as to costs, permission to appeal (if sought), any other consequential matters and as to an oral hearing were to be submitted by both (i) filing on the CE File and (ii) by email to Chancery.mastersappointments@justice.gov.uk and to my email address by 4.00 pm on 7th July 2020.
 - (5) The draft judgment was confidential to Counsel, Solicitors and the parties. Neither the Judgment nor its substance was to be disclosed to any other person or used in the public domain, and no action was to be taken (other than internally) in response to the Judgment without the permission of the court, before the Judgment was handed down. Any breach of this obligation of confidentiality might be treated as a contempt of court.
 - (6) The Court was likely to wish to hand down its judgment in an approved final form. Please would Counsel submit any list of typing corrections and other obvious errors in writing via e-mail to Chancery.mastersappointments@justice.gov.uk and to my email address by 4.00 pm on 7th July 2020, so that changes could be incorporated, if I accepted them, in the handed down judgment.
2. I received submissions as to costs and lists of corrections from all three counsel, for which I am grateful.
 3. In his email to the court dated 7th July 2020 attaching his written submissions on costs and his list of typing corrections, Mr Devereux-Cooke wrote:

“As requested, please find attached my suggested corrections to the draft judgment in this matter and also my written submissions on costs made on behalf of the Claimant. For the avoidance of doubt, I do not at this time have any instructions from the Claimant to seek permission to appeal. In addition, it is not at this moment clear to me whether my previous Instructing Solicitors, OA Solicitors, are still acting for the Claimant; I have been told that they are not, but I have not seen any confirmation of their position.”
 4. Indeed Mr Akinola's solicitors had ceased to act for him. By a notice of change dated 6th July 2020, filed with the court on that date, Mr Akinola gave notice that OA Solicitors had ceased to act for him and that he would be acting in person.
 5. In his written submissions as to costs Mr Devereux-Cooke did not dispute that the general rule, that costs follow the event, should apply in this matter. He stated accurately that Mr Akinola had lost his case, and his claims.
 6. Mr Devereux-Cooke, Ms Geyze for Mr Oyadare and Mr Bowles for Ms Adepoju all submitted that this was a case for detailed, not summary assessment of the costs. I agree.

The hearing was listed for and went on for three days. There are potentially difficult questions as to the overlap and apportionment of the cost of the work done by Grayfield Solicitors when they were acting for both My Oyadare and Ms Adepoju. The summary assessment process would not operate fairly or justly as between the parties. Neither could it be truly summary. The costs and complications involved would mean that considerable time would have to be spent by me on the process. The assessments should be carried out by way of a detailed assessment by a costs judge.

7. In their written submissions both Ms Gleyze and Mr Bowles sought (i) consequential orders for the disposal of the claims in which the preliminary issues were raised; (ii) orders for costs on the indemnity basis and (iii) orders for payment on account of costs. Mr Devereux Cooke's written submissions did not deal with these matters. I considered that it would not be fair or just for me to rule upon them without having given Mr Akinola an opportunity to make submissions on them, especially as by the time that Mr Devereux-Cooke sent his written submissions to the court his Instructing Solicitors were no longer acting for Mr Akinola. Accordingly on 9th July 2020 I directed as follows:
 - 7.1. At or before 5.00pm on 10th July 2020, copies of the First and Second Defendants' counsels' written submissions of 7th July 2020 be served by their respective solicitors on Mr Akinola by email at the email address given by him on his Notice of Change of legal representative dated 6th July 2020.
 - 7.2. Mr Akinola has permission to respond to those submissions in writing. Such response to be filed and served by 4:00 pm on Friday 17th July 2020.
 - 7.3. Mr Akinola has permission to request in those submissions that there be an oral hearing of the issues raised by the First and Second Defendants' written submissions of 7th July 2020. If Mr Akinola makes any such request, he must explain in it why he submits that there should be such an oral hearing, and in particular why he considers that it would be just and proportionate for such an oral hearing to take place on those issues.
8. In accordance with those directions written submissions of Mr Devereux-Cooke, acting by way of the Bar Direct Public Access Scheme on behalf of Mr Akinola, were filed with the court on 17th July 2020.
9. Mr Devereux-Cooke did not ask for an oral hearing in respect of the consequential matters. I consider that I can and should deal with them justly on the basis of the written submissions which I have received. I proceed to do so.
10. I have made some typographical and grammatical amendments to the draft judgment and intend to hand it down by email as previously directed. I intend to append this judgment as to disposal and costs to my substantive judgment and to hand it down at the same time and by the same method.

11. I have not made any changes of substance to the draft judgment except to remove the references to Ms Adepoju having accepted that James was Mrs Adepoju's son. In his submissions of 17th July 2020 Mr Devereux-Cooke stated that "the Claimant does not agree with the contentions made for the Second Defendant that changes to the draft judgment should be made in the terms proposed." The terms proposed were those proposed by Mr Bowles in his written submissions as to the removal of statements to the effect that Ms Adepoju had accepted for the purpose of the proceedings that James was Mrs Adepoju's son. Accordingly I explain briefly why I have made changes to that effect.
12. Mr Bowles asked me to remove from my draft judgment the references to Ms Adepoju having accepted for the purposes of the hearing before me that James was the son of Ms Adepoju. He wrote in his written submissions that Ms Adepoju was adamant that she has never "accepted" that James was Mrs Adepoju's child. He wrote that she has no recollection of making such an acceptance during the course of the trial and that there is also no note (from Ms Adepoju's side) of such an acceptance being made by Ms Adepoju. My note and recollection was that under cross-examination Ms Adepoju had accepted that James was treated as a member of Mrs Adepoju's family. In the light of Mr Bowles' submissions on the point I understand that that may not be the same thing as accepting that James was Mrs Adepoju's son.
13. Mr Bowles submitted that whether or not James was Mrs Adepoju's child was of no relevance to the conclusions in the Draft Judgment, and was not a point argued before me or relied on by Mr Akinola. However, submitted Mr Bowles, a finding of an alleged acceptance that James was Mrs Adepoju's child might cause problems in Nigeria and result in further protracted litigation.
14. Mr Bowles submitted that it would be appropriate for references to Ms Adepoju giving any acceptance that James was Mrs Adepoju's son to be deleted from my Judgment prior to it being handed down.
15. In his submissions of 17th July 2020 Mr Devereux-Cooke accepted Mr Bowles's submission that matters relating to James were not directly relevant to my conclusions in my draft judgment. In my view it would be more accurate to say that they were not necessary. In my draft judgment I raised the point that if James was Mrs Adepoju's son, then he would be beneficially interested in her estate under her intestacy, which might cause further difficulties with the initial offer made by Mr Oyadare before he had obtained his grant of letters of administration. However, whether or not there were such difficulties my conclusion was that there had not been a compromise of Mr Akinola's claims. It was therefore not necessary for me to rule on whether James was Mrs Adepoju's son, and I did not intend to do so.

16. Mr Devereux-Cooke submitted that a child can be a child of a family even if not born to parents of that family. He submitted that adoption is a well-recognised process by which a child can join a family and attain legally recognised status as a child of the family. It may be a possibility, submitted Mr Devereux-Cooke that, in Nigeria, the Claimant and the late Mrs Adepoju adopted James. That may be a possibility. However, as Mr Devereux-Cooke also accepted, no evidence was adduced by any party in the present proceedings as to what had happened in Nigeria.
17. In those circumstances I consider that it is only fair and just that there should not be a risk of my judgment including any decision or indication by Ms Adepoju of an acceptance that James was Mrs Adepoju's son. I have amended the draft judgment accordingly and my substantive judgment as handed down contains no such decision or indication.
18. The Defendants ask for orders that, consequentially on my judgment, the two sets of proceedings ("the Part 8 Claim" and "the Part 7 Claim") in which the preliminary issues which were ordered to be determined be dismissed. Mr Devereux-Cooke submits that a better course of action would be for the proceedings to be stayed subject to a condition that they are to be dismissed unless within a period of (say) 3 months an application was made to restore the claims.
19. The Part 8 Claim was issued on 30th May 2018. In the Part 8 Claim Mr Akinola sought the removal of Mr Oyadare as administrator of the Mrs Adepoju's estate. Mr Akinola claimed to be a beneficiary of the estate by reason of having, "by consent, a 25% beneficial interest arising out of a constructive trust in the assets of the Estate", but, as the endorsement on the Claim Form read: "is not a beneficiary as defined by section 50(5) of the Administration of Justice Act 1985 because he does not have a beneficial interest under the Intestacy Rules". Mr Akinola also sought an account of the Estate.
20. As a result of my judgment Mr Akinola has no interest in the estate or its assets. In consequence he has no standing to make the claims which he has sought to make in the Part 8 Claim. Mr Devereux-Cooke has submitted that I should not dismiss the Part 8 Claim but should stay it conditionally as mentioned above because, he submits, there are clearly aspects of the administration of the estate which require investigation. That may or may not be the case. But, even assuming in Mr Akinola's favour that that is the case, that does not appear to me to be a good reason for continuing the Part 8 Claim. The claim should not be allowed to continue on the off chance that Mr Akinola might come up with another ground or reason for his having standing in respect of the administration of the estate. Indeed such an attempt would probably be an abuse of process under *Henderson v Henderson* (1843) 3 Hare 100 principles. Nor should the claim be allowed to continue on the off chance that someone else might apply to be substituted for Mr Akinola. Mr Akinola has no standing to continue the claim. There is no other claimant. If another person has standing to bring proceedings and wishes to do so, they can start new proceedings for that purpose. Currently the Part 8 Claim should not exist. Mr Akinola

has no right or interest in its continuing. In my judgment, applying the overriding objective, the Part 8 Claim should be dismissed and I will so order.

21. The Part 7 Claim is a claim for a declaration and consequential orders pursuant to s.14 Trusts of Land and Appointment of Trustees Act 1996, alternatively “under the Court’s equitable jurisdiction of proprietary estoppel, in relation to the Estate of” Mrs Adepoju. My judgment on the Preliminary Issues means that those claims fail. There is no reason for the Part 7 Claim to continue. It should be dismissed and I will so order. I do not order the dismissal of the Part 20 counterclaim, which, pursuant to CPR 20.3, will continue to exist, at least for the time being.
22. On costs, as I have already mentioned, it is common ground amongst the parties that costs should follow the event. I agree. Mr Akinola has made the Part 8 and Part 7 Claims. He has lost on the Preliminary Issues and he has lost on the Part 8 and Part 7 Claims. In the course of the hearing I queried why Mr Oyadare and Ms Adepoju needed to be separately represented at the trial of the Preliminary Issues or, indeed, why Mr Oyadare needed to be represented at all for that purpose. I still have concerns in that regard. However, it seems to me that questions of this nature and as to whether my concerns are well-founded are things which can be considered and taken into account by a costs judge on a detailed assessment. Accordingly I will order Mr Akinola to pay both Defendants’ costs of the determination Preliminary Issues and of the Part 7 and Part 8 Claims; though without affecting or varying such pre-existing orders for costs in the proceedings (if any) which may have been made.
23. Ms Gleyze and Mr Bowles ask for orders that their clients’ costs be assessed on the indemnity basis. Ms Gleyze on behalf of Mr Oyadare seeks an assessment on the indemnity basis for the entirety of the proceedings. Mr Bowles on behalf of Ms Adepoju seeks an assessment on the indemnity basis from 4th September 2019.
24. Ms Gleyze has sought to rely on my finding that Mr Akinola added or caused to be added the handwritten addition to the completion statement in respect of the Blanche Street property as taking the case out of the norm. By way of reminder, what I found in that regard in paragraphs 165 and 166 of my substantive judgment was:

“165. The handwritten note on the statement was clearly written by or on the instructions of a person who knew Mrs Adepoju and Mr Akinola reasonably well because he or she used the familiar shortened forms of their names: “Akin” and “Bola”. On the balance of probabilities I consider that the handwriting was not that of Mrs Adepoju. That is because neither Mr Akinola nor Ms Adepoju say that it was, and both of them should know what Mrs Adepoju’s handwriting looked like. Ms Adepoju said that the handwriting of the note was Mr Akinola’s. He denied that.

166. On the very limited evidence before me I consider that on the balance of probabilities the handwritten note was written by Mr Akinola or at least on his instructions. What persuades me of that is the vagueness of Mr Akinola’s evidence

about how he came by the statement and as to whose the handwriting is, coupled with the failure of Mr Akinola to produce or refer to the statement of account in 2016. It must have been apparent at the end of 2016 that there was no documentary evidence to support his claim to have contributed financially to the purchase of the properties. It would have been easy to add or to cause an addition to be made to the handwritten note in an attempt to show that Mr Akinola had made a financial contribution.”

25. Ms Gleyze submitted that this meant that Mr Akinola had deliberately concocted evidence (following the 2016 proceedings which he lost) in order to support a claim which he must have known was weak, if not hopeless.
26. I do not accept the second limb of that submission. There is no evidence as to what advice Mr Akinola did or did not receive as regards the strength of his case. The very fact that the Defendants were prepared to offer him 25% of something connected with the value of the estate or of the properties, as discussed in my judgment, would be an indication that the Defendants did not consider his case to be hopeless.
27. As regards the suggestion of “deliberate concoction of evidence”: Mr Devereux-Cooke submitted that there was no indication in my judgment that the handwritten additions were deliberately made for the purpose of supporting the Claimant’s (subsequent) claims. He pointed out, correctly, that the accusation was not put to the Claimant or made at trial. What was put to Mr Akinola was that it was his handwriting. Nevertheless, if, as I have found on the balance of probabilities, the additions were made by Mr Akinola or on his instructions in circumstances where it was apparent that there was no documentary evidence to support his claim, it is difficult to see why the additions were made if it was not for the purpose of strengthening Mr Akinola’s case. Indeed at the end of paragraph 166 of my judgment I place some reliance on the ease with which that could have been done for that purpose as supporting my conclusion that the additions were made by Mr Akinola or on his instructions. Hence, despite the fact that the allegation that the additions were made for the purpose of strengthening a “weak” case, I consider that Mr Akinola’s purpose in making them or causing them to be made was to strengthen his case.
28. As so analysed and stripped of derogatory language and of the allegation as to Mr Akinola’s knowledge of the weakness of his case, as distinct from Mr Akinola’s knowledge that there was no documentary evidence to support his claim, Ms Gleyze’s case on this point is watered down to a case that Mr Akinola making or causing the additions to be made for the purpose of strengthening his case is a factor which takes or which I should take into account in considering whether Mr Akinola’s conduct of the litigation has been unreasonable or out of the norm so as to justify the making of an indemnity costs order.
29. Where the paying party has been guilty of some sort of lack or probity of conduct deserving of moral condemnation, that is a factor which may take a case out of the norm

and may make an indemnity costs order appropriate. In my judgment Mr Akinola's making or causing the additions to be made for the purpose of strengthening his case is conduct deserving of moral condemnation. I remind myself of Mr Devereux-Cooke's oral submission that "somewhere there is a big lie". In substance I have found that it is Mr Devereux-Cooke's client, Mr Akinola, who is guilty of the "big lie". In my judgment that is conduct deserving of moral condemnation. It is certainly a factor which I should take into account in considering whether to award costs on the indemnity basis.

30. Ms Gleyze sought to rely upon the offers and counteroffers referred to in my substantive judgment and Mr Akinola's failure to accept them and to pursue the proceedings as unreasonable conduct. I do not consider that any such failure or pursuit by Mr Akinola was unreasonable conduct which might make an order for indemnity costs appropriate.

31. Both Ms Gleyze and Mr Bowles relied on a "without prejudice save as to costs" offer which was made by a letter dated 14th August 2019 from OA Solicitors who were then acting for both Mr Oyadare and Ms Adepoju, and on Mr Akinola's failure to accept it as justifying an indemnity costs order. By 14th August 2019 Deputy Master Lloyd had, by his order dated 30th July 2019, ordered the trial of the Preliminary Issues.

32. The relevant part of the 14th August 2019 letter read: "... we enclose a Part 36 Offer the terms of which are self-explanatory." Enclosed was a Form N252A. Amongst other things, this Form:
 - 32.1. Was headed "Offer to Settle".
 - 32.2. Contained in the heading the reference to the Part 7 Claim, but not to the Part 8 Claim.
 - 32.3. Stated that Mr Oyadare and Ms Adepoju "make this offer to settle pursuant to Part 36 of the Civil Procedure Rules 1998."
 - 32.4. Had the box ticked which indicated that the offer was intended to be a defendant's Part 36 Offer.
 - 32.5. Stated: "If the offer is accepted within 21 days of service of this notice, the defendant will be liable for the claimant's costs in accordance with rule 36.13."
 - 32.6. Had the boxes ticked which indicated that the offer was to settle the whole of the claim.
 - 32.7. Provided as follows in the details of the offer being made box:

"This Part 36 offer relates solely to the Claimant's Claim issued by the High Court of Justice of 27 December 2018.
The Defendants make the following Part 36 offer to the Claimant in the terms that the Claimant is invited to withdraw the Claim issued on 27 December 2018 on a 'drop hand' basis and also in accordance with Part 36 CPR 1998."
 - 32.8. Provided that the offer did not take account of all of the Defendants' counterclaim dated 25 January 2019.

33. The 21 day period for acceptance expired on 4th September 2019. Hence Mr Bowles’s submission that the indemnity basis should apply from then.
34. Ms Gleyze submitted that the offer did “not technically comply with all requirements of Part 36”. Mr Bowles submitted that the offer “was in terms of a “drop hands”, which (it has to be accepted) would not usually be covered by the costs consequences of Part 36.” Mr Devereux-Cooke submitted:
 “[T]he Claimant notes the acknowledgement made for both First and Second Defendants that this letter did not constitute an effective CPR Part 36 offer. That, it is submitted, must be correct.”
35. Mr Bowles’s submission does not go that far. Neither Ms Gleyze nor Mr Devereux-Cooke sought to explain why the offer did not comply with the requirements of CPR 36.
36. CPR 36 contains a self-contained procedural code about offers to settle made under the procedure set out in it. An offer purportedly made under the CPR 36 code which does not in fact operate under the code may nevertheless be an offer which is relevant to the reasonableness or otherwise of a party’s conduct of the litigation.
37. CPR 36.2(2) provides that nothing in Section I of CPR 36 (which for present purposes is the relevant Section, Section II being concerned with Road Traffic Accidents, employers’ and public liability claims) prevents a party making an offer to settle in whatever way that party chooses, but that “if the offer is not made in accordance with rule 36.5, it will not have the costs consequences set out” in Section I in deciding what order to make about costs.
38. CPR 36.5 sets out certain requirements for a Part 36 offer. In my judgment these are all satisfied. I set these out with my conclusions below. CPR 36.5 provides that a Part 36 offer must-
- (a) “*be in writing*”. The 14th August 2019 offer is undoubtedly in writing.
 - (b) “*make clear that it is made pursuant to Part 36*”. The 14th August 2019 offer does that.
 - (c) “*specify a period of not less than 21 days within which the defendant will be liable for the claimant’s costs in accordance with rule 36.13 or 36.20 if the offer is accepted.*” The offer complies with this requirement.
 - (d) “*state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so which part or issue*”. The offer is expressed in its printed part to be an offer to settle the whole of the claim.
 - (e) “*state whether it takes into account any counterclaim*”. The offer states that it does not take into account all of the counterclaim.
39. In my judgment the offer is outside Part 36 for a more fundamental reason.

40. If a purported Part 36 offer contains terms as to costs or otherwise which are inconsistent with the scheme of Part 36, the offer cannot be a Part 36 offer. However, where, as here, an offer purports on its face to be made under Part 36, then as a matter of interpretation, I should, if possible, construe the offer as being within Part 36 (*Neave v Neave* [2003] EWCA Civ 325).
41. The substantive offer was that the Claimant was “invited to withdraw the Claim issued on 27 December 2018 on a ‘drop hand’ basis and also in accordance with Part 36 CPR 1998”. I consider that in the context of a possible compromise, the usual meaning of “drop hands” is that the claim or claims should be discontinued with each side bearing its own costs. That would be inconsistent with Part 36. Further, there is no procedure for “withdrawing” a claim. The nearest relevant procedures are discontinuance the claim or the obtaining of an order dismissing or staying the claim.
42. Having regard to the words “and also in accordance with Part 36” and to the express statement in the offer as to the defendant being liable for the claimant’s costs in accordance with rule 36.13, I have considered whether it is possible to construe the offer as an offer that Mr Akinola should agree to discontinue the claim or to have it dismissed or stayed and for the offer to remain consistent with the Part 36 scheme whereby in the event of his accepting the offer within the “relevant period” the claim would be stayed under CPR 36.14 and Mr Akinola would be entitled to his costs of the claim up to the date of service of the notice of acceptance in accordance with the provisions of Part 36.
43. CPR 36.14(1) provides that if a Part 36 offer is accepted, the claim will be stayed. CPR 36.14(2) provides that in the case of acceptance of a Part 36 offer which relates to the whole claim (as the 14th August 2019 offer does), the stay will be on the terms of the offer. That leads to the difficulty that the offer is for the “withdrawal” of the claim. In my judgment it is not possible to construe “withdrawal” of the claim in the context of the 14th August 2019 offer as including a stay. If there is a stay the proceedings would continue to exist. If there was a “withdrawal”, whatever that might reasonably be thought to mean, the proceedings would cease to exist. This line of analysis is reinforced by the consideration that the usual meaning of “drop hands” is that each side should pay its own costs. If that was what was intended by the offer, then there would be no problem with the proceedings ceasing to exist, but if the CPR 36.13 costs consequences were to follow from the acceptance of the offer, the proceedings would need to continue to exist so that there were proceedings in which Mr Akinola’s costs could be assessed.
44. It follows that in my judgment the 14th August 2019 offer was not a Part 36 offer. In my judgment, it is a factor of little weight on the question of whether I should order costs on the indemnity rather than the standard basis. In my judgment Mr Akinola’s failure to accept the offer should not be categorised as so unreasonable as to justify an order for indemnity costs.

45. I have already mentioned my concern as to whether Mr Oyadare and Ms Adepoju needed to be separately represented at the trial of the Preliminary Issues or, indeed, why Mr Oyadare needed to be represented at all for that purpose. That is because although it might be proportionate to have the luxury of a trustee or personal representative represented at a trial where the real battle was between alleged beneficiaries if the trial involved millions of pounds worth of property, it could well be disproportionate in the case of where the value in issue was small. Whether 25% of the net value of the estate was some £750,000 as submitted by Ms Gleyze or some £333,000 as submitted by Mr Devereux-Cooke, I consider that the trial of the Preliminary Issues, and quite possibly some or much of the earlier work, lies somewhere on the spectrum between those two extremes. I consider that it would be unjust to order an assessment on the indemnity basis which excluded the possibility of the costs judge making a proportionality based assessment by reference to where on the spectrum he or she were to find that the claims lay.
46. I consider that that factor outweighs the moral condemnation which Mr Akinola's making or causing the additions to be made to the completion statement deserves and any little weight which might be attached to his failure to accept the 14th August 2019 offer. Accordingly I will not order an indemnity basis assessment.
47. Both Ms Gleyze and Mr Bowles have sought orders for payments on account of costs pursuant to CPR 44.2(8). There is no good reason not to make such orders and I will make such orders.
48. Ms Gleyze has sought an order for a payment on account of £45,000. Mr Bowles has sought an order for a payment on account of £15,000.
49. Ms Gleyze has provided me with two Statements of Costs made by her Instructing Solicitors ("Grayfields"). One in respect of the Part 8 Claim (totalling £28,915.00, inclusive of VAT) and one in respect of the Part 7 Claim (totalling £40,170.00 inclusive of VAT). The costs set out in the Part 8 Claim statement are the costs of Mr Oyadare alone. The costs set out in the Part 7 statement are in respect of Mr Oyadare and Ms Adepoju because the same solicitors represented both of them up to the hearing of the Preliminary Issues. Ms Gleyze suggests that some £20,000 of the £40,170 are Mr Oyadare's alone, and the remaining £20,000 odd are shared costs of Mr Oyadare and Ms Adepoju, making, on a broad brush basis, a total in respect of the Part 7 Claim of some £30,000 for Mr Oyadare and some £10,000 for Ms Adepoju. Taking the Part 7 and Part 8 Claims together, that makes a total of some £59,000 inclusive of VAT for Oyadare.
50. Mr Bowles has provided me with a Statement of Costs made by his Instructing Solicitors ("Palmers"). This relates only to the costs of Ms Adepoju and to her costs of the trial of the Preliminary Issues. It is for the total sum of £19,140 inclusive of VAT. Of this

£922.50 plus VAT is attributed to solicitors' work in reviewing file from the previous solicitors. In my judgment, even if that £922.50 plus VAT and a few more small sums are deducted for duplication of work, an overall figure of some £15,000 plus VAT to include counsel's fees for a three day trial in the High Court is *prima facie* both reasonable and proportionate and is not likely to be reduced to any great extent on a standard basis assessment.

51. Mr Devereux-Cooke submitted that there were some arithmetical errors in the Statement of Costs provided by Palmers. However, even taking these into account the total sum as calculated by Mr Devereux-Cooke was £15,781.66 plus VAT. That is slightly more than the £15,000 plus VAT figure which I consider is *prima facie* reasonable and proportionate for the three day trial. Even without taking into account that proportion of the Grayfields' costs which are Ms Adepoju's responsibility, I consider that the £15,000 plus VAT sought by Mr Bowles is a reasonable sum to order Mr Akinola to pay on account of Ms Adepoju's costs. It is clearly so when it is considered that some of the Grayfields' costs will also be Ms Adepoju's responsibility. Accordingly I will order Mr Akinola to make a payment of £15,000 plus VAT on account of Ms Adepoju's costs.

52. Mr Devereux-Cooke has submitted a fairly detailed critique of Mr Oyadare's costs as specified in the two Grayfields' Statements of Costs. As regards the Part 7 Claim Mr Devereux-Cooke submits that for various reasons the total should be reduced from £40,170 inclusive of VAT to £20,781.60 plus VAT. On Ms Gleyze's approach to apportionment of Palmers' costs of the Part 7 Claim, three quarters of that figure would be attributable to Mr Oyadare. That is some £15,000 inclusive of VAT or some £12,500 plus VAT. That is comparable with the £15,000 plus VAT which I have held was *prima facie* reasonable and proportionate for Ms Adepoju's costs of the trial of the Preliminary Issues.

53. Overall I consider that there is a real possibility of a costs judge making a very substantial reduction in Mr Oyadare's costs of the Part 7 Claim on the basis that it was unreasonable or disproportionate for Mr Oyadare to participate in the preparation for and trial of the Preliminary Issues in the way or to the extent to which he did. I consider that there is a real possibility that Mr Oyadare's costs of the Part 7 Claim could be assessed as low as £5,000 plus VAT. In substance all that was required of him in respect of the Part 7 Claim was to provide such relevant documents as he had and, possibly, to explain what oral offers or oral amendments or possible oral compromise agreements were discussed by him. His evidence on all those points was disappointingly sparse or vague. In those circumstances I consider that a reasonable sum to order Mr Akinola to pay in respect of Mr Oyadare's costs of the Part 7 Claim would be £5,000 plus VAT. I will so order.

54. The Part 8 Claim was a direct attack on Mr Oyadare and *prima facie* he was justified in seeking to defend himself against the allegations made against him by Mr Akinola. I have not tried or investigated those allegations. I am not in a position to judge whether

they were well or ill-founded. They have fallen away as a result of Mr Akinola's lack of standing, though some aspects of them may be visited or revisited in the context of the continuing counterclaim.

55. As with the Part 7 Claim, Mr Devereux-Cooke has submitted a fairly detailed critique of Grayfields' Statement of Costs in respect of the Part 8 Claim. The cumulative effect of that critique if made good would be to reduce the sum specified in Grayfields' Part 8 Claim Statement from £28,915 to £13,705, inclusive of VAT. Without deciding the points one way or another, it appears to me that Mr Devereux-Cooke's critique, particularly as to the amount of time spent on various aspects, has sufficient force to make it possible that on an assessment the amount of Mr Oyadare's recoverable costs would be reduced by a significant amount, if not to the full extent to which Mr Devereux Cooke submits they should be. Having regard to the nature of the Part 8 Claim, I consider that Mr Oyadare's costs are unlikely to be assessed at as low as £13,705 inclusive of VAT. However I consider that there is a real possibility that Mr Oyadare's costs of the Part 7 Claim could be assessed to a figure in the region of £15,000 plus VAT. In the circumstances I consider that a reasonable sum to order Mr Akinola to pay in respect of Mr Oyadare's costs of the Part 7 Claim would be £14,000 plus VAT. I will so order.

56. My orders as to costs are only concerned with the inter-party liabilities under the court's powers as to the costs of litigation. They are not intended to and do not deal with any question of whether Mr Oyadare in his capacity as administrator of Mrs Adepoju's estate or as trustee of the properties is entitled to reimburse himself in respect of any or all of his costs out of the estate or the properties.

Deputy Master Henderson
30th July 2020