REFS/2018/0353 & 0354

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF REFERENCES FROM HM LAND REGISTRY

BETWEEN

JEREMY HODSON
LISA MARIE MCQUEEN
as directors of Law and Property Lawyers Ltd,
Executors of Violet Bowers

APPLICANTS

and

PAULINE STANTON

RESPONDENT

Property Address: 56 Barretts Way, Sutton Courtenay, Abingdon OX1 4DD

Title Number: ON164605

Before: Judge Martin Dray

ORDER

IT IS ORDERED THAT:

(1) The Chief Land Registrar do:

a. Give effect to the Respondent's application dated 16 October 2017 for alteration of title number ON164605 to remove the Form A restriction registered on 3 May 2007 as if the Applicants' objection thereto had not been made; and

b. Cancel the Applicants' application dated 18 October 2017 for the entry of a restriction in Form II against the said title.

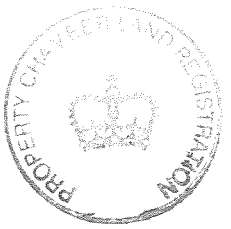
(2) Any submissions on costs (both in relation to the incidence of costs and the quantum of the costs sought by the Respondents) which the Applicants wish to make must be filed and served by 4pm on 10 May 2019.

(3) The Respondent may file and serve any counter-submissions on costs by 4pm on 17 May 2019.

Martin Dray

Judge Martin Dray

Dated this 2nd May 2019



BY ORDER OF THE TRIBUNAL

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RESPONDENT

Property Address: 56 Barretts Way, Sutton Courtenay, Abingdon OX1 4DD

Title Number: ON164605

Before: Judge Martin Dray

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 11 April 2019

Graham Stott of Counsel, instructed by Slade Legal LLP, for the Applicants.

Christopher Jones of Counsel, instructed by Royds Withy King LLP, for the Respondent.

DECISION

Introduction

1. Until her death on 5 December 2016 Violet Bowers ("the Deceased") was, together with her daughter, the Respondent, the joint legal owner of freehold property at 56 Barretts Way, Sutton Courtenay, Abingdon OX14 4DD ("the Property").

2. The question in this case is whether at that date the Deceased and the Respondent remained beneficial joint tenants of the Property or whether they then held the Property as equitable tenants in common. If the former, on the death the ownership of the Property passed to the Respondent by right of survivorship. If the latter, the Deceased's share will have passed in accordance with her last will, with the Respondent retaining her own share.

3. Specifically, the issue for determination by me is whether a notice of severance in respect of the beneficial joint tenancy was effectively given by the Deceased during her lifetime.

4. The parties to these proceedings are the Applicants, the executors of the Deceased, and the Respondent. The Applicants maintain that severance was effected. The Respondent denies this.

Background

5. The background is as follows. I believe the facts stated in this section of the decision to be uncontroversial but, if and insofar as there is any dispute about them, the following summary represents findings of fact.

6. In 1994 the Deceased and the Respondent bought the Property. They were registered as the joint legal owners at HMLR under title no. ON164605. The Property was bought pursuant to the right to buy provisions of the Housing Act 1985. The purchase was funded by a mortgage in joint names.

7. It is common ground that the beneficial ownership of the Property was then held by the Deceased and the Respondent as joint tenants.

8. The Deceased has 5 children: the Respondent, 3 sons (Jack, Peter & Marty) and one other daughter, Carol (or Carole).[1]

9. The Property was the family home. Over time the children moved out, except for the Respondent. At all material times the Deceased and the Respondent lived there. The Property remains to this day the Deceased's residence. She has lived there all her life.

10. In September 1997 the Deceased made a will. Clause 3 of that will was expressed to give all her interest (if any) in the Property to the Respondent. Given the joint beneficial ownership of the Property, that provision could only ever be operative in the event that severance were effected before death (although this would not really matter because, absent severance, the Respondent would acquire the Property by survivorship). The will provided that if the Respondent were to have died before the Deceased, her partner, Paul

[1] Different wills use different spellings.

Townsend, would be entitled to stay in the Property for his lifetime. Under clause 4 of the will the contents of the home would pass to the Respondent. The residue would be shared between the other four children: clause 5.3. However, I understand that the Deceased had no assets to speak of except the Property.

11. The Deceased made a new will in June 2004 following a bingo win shared by her with the Respondent. The will was prepared by Hodsons Solicitors. The First Applicant, the firm's managing partner, prepared it. He saw the Deceased and the Respondent. Under this will: (a) the Deceased's interest in the Property was expressed to be given to the Respondent or, in the event of her dying first, Mr Townsend: clause 5; (b) the residue was to be shared between all five children: clause 7.

12. Shortly before 4 April 2007 the Deceased returned to Hodsons Solicitors. She again saw the First Applicant. She was driven to the solicitors by Marty. She saw Mr Hodson. She gave instructions to change her will. Those instructions were that the Respondent was to be excluded from inheriting any part of the Deceased's estate, including the Deceased's share of the Property. Instead, everything was to pass to her other four children: clause 4(b). The Deceased told Mr Hodson that the reason for her marked change of mind was that the Respondent was aggressive towards her and showed a lack of consideration. The Deceased requested that the solicitors send all mail to her to a neighbour's home, 50 Barretts Way. She did not wish the Respondent to see it.

13. On 16 April 2007 the Deceased went back to the solicitors following receipt of letter from Mr Hodson dated 4 April 2007. She told him that she wanted to proceed on the basis that the Respondent would not be a beneficiary of her estate.

14. The above is reflected in handwritten and typewritten attendance notes which Mr Hodson made. It is also explained in the letters he wrote dated 4 April 2007 & 23 April 2007 (the latter of which enclosed a revised draft will and an accompanying letter to go alongside the will explaining the situation regarding the Respondent). The later letter was addressed to the Deceased c/o 50 Barretts Way.

15. On 25 April 2007 the Deceased again attended the solicitors' office. On that occasion she executed the new (and what transpired to be her last) will. Mr Hodson was a witness, as was one Susan Holden, a receptionist. In accordance with her instructions to Mr Bowers, the will duly excluded the Respondent from inheriting any part of the Deceased's estate.

16. Mr Hodson was aware that, if the will were to be practically effective, it was necessary to sever the beneficial joint tenancy of the Property. To this end he prepared a notice of severance. The notice was signed by the Deceased, also on 25 April 2007. It includes the following text:

> "By virtue of Section 36(2) of the Law of Property Act 1925 I hereby give notice to my said daughter Pauline Stanton of my desire to sever from the date of this notice our joint tenancy in equity over the Property and hereby separately declare that the joint tenancy is thereby duly severed in equity to the intent that we shall from the date of

this notice hold the Property and the future proceeds of sale as tenants in common in equal shares."

17. The Notice concludes with text in respect of the intended counter-signing of the notice by the Respondent to confirm receipt.

18. On 2 May 2007 Mr Hodson wrote (specifically, he dictated and there were typed by his secretary Sharon Henderson) two letters. Each bore the reference JH.SH.B1518.2.

19. One such letter was addressed to the Deceased, again c/o 50 Barretts Way. It: (a) advised that notice of severance had been sent to the Respondent (see below); (b) advised that an application had been made to HMLR to register the notice of severance (see below); (c) enclosed a copy of the executed will.

20. This letter was kept by the neighbour who lived at 50 Barretts Way, Jenny Roberts, until 2010 when it was handed by her to Marty Bowers. Marty Bowers retains the same to this day. He produced the envelope and its content (the letter and the will). The envelope bears a postmark of 2.5.07, having been franked at Hodsons offices, showing 44p postage paid. The envelope is a window envelope, through which can be seen the name of the addressee and the address both as typed on the enclosed letter. The envelope bears Hodsons Solicitors' crest/logo.

21. The other letter was written to the Respondent. It was addressed (on its face) to the Respondent at the Property. It reads:

> "I enclose herewith, on behalf of Mrs Bowers, a Notice of Severance of the Joint Tenancy at 56 Barretts Way. A copy of this has today been sent to the Land Registry for them to note the Register accordingly.
>
> You should consider seeking independent legal advice in respect of the consequences of severance of the joint ownership.
>
> I would be grateful if you could acknowledge safe receipt of this Notice by signing an returning the enclosed copy."

22. This letter was sent, if it was sent at all, by ordinary first class post. Neither registered post nor recorded delivery post was used. Mr Hodson was not au fait with the fact that had such postal methods been served, then (pursuant to s.196(4) of the Law of Property Act 1925) service would have been effective by virtue of the very act of posting (unless the letter was returned undelivered in the dead letter service).

23. As mentioned in the two letters, also on 2 May 2007 Mr Hodson caused to be submitted to HMLR an application in Form AP1 in respect of the notice of severance which he was seeking to achieve. HMLR raised a requisition on 3 May 2007. It required the submission of a Form RX1. It also requested that Mr Hodson lodge a certificate confirming that the notice of severance had been served on the Respondent in accordance with the proviso to s.36(2) of the 1925 Act.

24. The proviso reads:

> "…. where a legal estate … is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire …. and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance."

25. On 9 May 2007 Mr Hodson duly lodged a Form RX1, seeking the entry of a Form A restriction. He also wrote:

> "Please accept this letter as our certificate to confirm that Notice of the Severance was served on Pauline Stanton by letter posted to Mrs Stanton's residential address. A copy of that letter dated 2nd May is enclosed."

26. HMLR then acceded to the application and entered a Form A restriction on the register of title with effect from 3 May 2007 (the date of the original application).

27. On 21 June 2007 Mr Hodson again wrote to the Deceased, although this time addressed to her at the Property. He reported that HMLR had "completed the severance of the joint tenancy in the property at 56 Barretts Way" and enclosed a copy of that document (the updated official copies of the register), explaining in the process that "the property is now held by you and your daughter as to 50% each."

28. The Respondent was kept in the dark about the changes to the Deceased's will. Marty was aware of what his mother was doing, i.e. disinheriting the Deceased. He (and the rest of the family, if and insofar as they knew) kept quiet. As a result, the Respondent only discovered the truth following the death of the Deceased.

29. The fact that this news was hidden from Respondent during the Deceased's life, is corroborated by: (a) a text message exchange between the Respondent and Marty following the Deceased's death in which Marty wrote, "… she was too scared to tell you"; (b) an attendance note dated 11 October 2016 written by Mrs McQueen (as to whom see below) which records, "Pauline is aware that her mother has a Will and her mother has left everything to Pauline" (this, I find, referring to the essence of the 2004 will, in the context that the Deceased's only asset of significance was the Property itself); (c) a note which (I find) the Deceased dictated to a friend, Mrs Pottinger, on 22 November 2016 (i.e. just a couple of weeks before her death), which handwritten note the Deceased signed, and which includes the text, "I am worried because a son got me to change the house a long time ago but I did not want to … this is my only chance to make sure Pauline keeps her home with Paul and I want this to be my last will and testament and tell my son I'm sorry."

30. Coincidentally, also shortly before the Deceased's death the Respondent and Mr Townsend had on 11 October 2016 attended on Slade Legal LLP (as Hodsons Solicitors had by then become) in connection with their own wills. They met with the Second Applicant,

Mrs McQueen. Mr Townsend had terminal cancer. He was not expected to live more than a couple of months or so. They were getting their affairs in order.

31. Astonishingly, Slade Legal disclosed in this litigation the contents of the instructions given by, and advice given to, the Respondent and Mr Townsend in 2016 – without seeking, let alone obtaining, their blessing to that course, and despite the clear conflict of interest between their acting for the Applicants in this litigation and having acted for the Respondent in that context. I consider this to have been a manifest breach of privilege and confidentiality. However, the Respondent did not submit that the material in question should be ignored by me; in fact, she relied on it in support of her case. Therefore, I proceed on the basis that the material is before me by consent, privilege having been waived.

32. The Respondent told Mrs McQueen in 2016 that she did not want any part of her estate passing to her family. She wanted the Deceased to have the right to remain at the Property for the rest of her life (if the Deceased were to outlive the Respondent). Subject to that, she wanted her residuary estate (including the Property) to pass to Mr Townsend (with provision over in the event of his prior death).

33. Mrs McQueen sent the Respondent and Mr Townsend draft wills under cover of a letter dated 25 October 2016. In it she commented on the key provisions of the wills. She alluded to the Deceased being given (by clause 5) a right of residence, with the Property being held on trust for her benefit for the rest of her life.

34. Following the death of the Deceased the right of residence clause was removed from the Respondent's draft will, and she (and Mr Townsend) executed their wills in January 2017.

35. Mr Townsend died in early 2017.

36. In October 2017 the Respondent applied to HMLR for the removal of the Form A restriction, maintaining that the Property had become hers alone. The Applicants objected to this, maintaining that the restriction remained appropriate because of the claimed (but disputed) inter vivos severance of the joint tenancy.

37. The Applicants also made their own application to HMLR for the entry of a Form II restriction. The Respondent in turn objected to this.

38. Both contested applications were subsequently referred to the Tribunal and, the references being conjoined, both are now before me for decision.

39. I heard the case on 11 April 2019. Each party was represented by counsel for whose assistance I am grateful. Oral evidence was called from a number of witnesses, each of whom was cross examined. In addition the Respondent relied on a statement from one Margaret Hamilton. In reaching my decision I have had regard to all the evidence (written and oral), although in this decision I focus only on that which I consider to be the most material.

The issues

40. So far as the all-important notice of severance is concerned:
    (1) The Applicants maintain that the notice was effectively served on the Respondent (by being posted to the Property as described above) in May 2007.
    (2) For her part, the Respondent denies receipt and disputes due service. She challenges: (a) whether the notice was ever in fact entrusted to the post; (b) if sent, the address to which it was sent; (c) whether it arrived at the Property. She also contends that, if the letter did arrive at the Property, it was intercepted by the Deceased acting in concert with Marty Bowers – with the result that the Respondent claims she never saw it.

The posting of the notice of severance

41. Mr Hodson outlined his involvement in the events of 2007, essentially as I have set it out above. As a busy practitioner with a large caseload and management duties in the firm besides, he was (understandably) unable – especially given the considerable passage of time – to speak to the events from direct recollection. He was necessarily dependent on the picture recorded by the contemporaneous documentation on file.

42. I found Mr Hodson to be a patently truthful witness. I reject any notion that, because a claim may potentially lie against his firm if it transpires that the notice of severance was not effectively served, this induced or caused Mr Hodson to give false evidence.

43. Mr Hodson was the only witness who spoke about the sending of the letter of 2 May 2007 (enclosing the notice of severance). The Applicants had obtained a statement from Mrs Henderson but did not disclose or rely on it, and I ignore and attach no significance to the references in Mr Hodson's second witness statement to her statement.

44. It was suggested to Mr Hodson that the account of standard mailing procedures given in his second statement was based on the knowledge of Mrs Henderson alone. He rejected that. In my judgment, the phraseology of the statement does not so indicate; it simply paints a picture that Mrs Henderson's statement would have corroborated Mr Hodson's account. Moreover, I accept Mr Hodson's evidence that he had personal knowledge of the relevant procedures. I find that, quite naturally, he did.

45. Mr Hodson explained that he would dictate letters. Mrs Henderson would type them. She would bring them to him for signing and approval. Having done so, he would personally deliver them to the dedicated post room. The team in the post room would frank the mail and place the franked post in a post bag ready for collection by Royal Mail. He said that the system was robust and not prone to failure. I accept Mr Hodson's account in this regard of the firm's standard procedures.

46. As indicated in paragraph 41 above, Mr Hodson candidly accepted that he had no direct recollection of the posting of the notice of severance in this case and that his account is based on a review of the file and his standard practice; it is what he believes he would have done and what would likely have happened.

47. It was submitted that accordingly Mr Hodson's evidence about the posting of the notice was entirely conjectural. I disagree. Evidence of standard procedures alone may not necessarily be determinative of a specific matter in any given case but nonetheless it is material to be weighed in the balance, especially if there is no particular reason to doubt that the process was followed, or its inherent reliability, in the instant case.

48. It was also submitted that, given shortcomings in some of Hodsons' dealings (see e.g. paragraph 31 above and paragraph 80 below) and the absence of full record keeping, I should conclude that the postal procedures of the firm were sloppy. I do not so find. I do not believe that any failings in other respects undermine the simple, straightforward and effective arrangements which I accept were in place in connection with the sending of mail from the solicitors' office. I regard it as of no significance that Mr Hodson did not note on the file that the letter/notice had been posted. No solicitor records the taking of the various component administrative steps in the postal process in relation to each piece of outgoing correspondence.

49. Although (as I explain below) the notice was not received by the Respondent herself and despite the fact Hodsons never obtained a counter-signature, there is (I consider) no particular reason to conclude that the firm's clear and well-established procedures were not followed in this case or that the same failed, internally, for some unidentified reason. I do not believe that on the balance of probabilities the notice of severance was not actually posted. Admittedly it was not received but its non-receipt is, in my view, more likely to be attributable to the letter having gone astray after posting (for some or other cause, as to which see below) rather than down to the very act of posting not have occurred.

50. What is more, there is the important fact that Mr Hodson told me (and I accept) that, faced with the HMLR requisition, he checked that the letter had indeed been posted. He said that he would not have given the confirmation/certification sought by HMLR willy-nilly, without making such a check. He was certain he would have taken such steps. This would, he said, have entailed his going to post room to get the staff to conduct a sweep to ascertain that the letter had not been misplaced and inadvertently left unsent. He concluded that the result of such process must have been clear because he had then felt able to write as he did to HMLR. I find that Mr Hodson was conscious of his duty to act diligently and responsibly when replying to HMLR and that in the circumstances the likelihood is that such a search was indeed undertaken and that it yielded a nil return. This underscores my belief that the likelihood is that the letter/document was properly sent from the solicitors' offices.

51. I also take account of the fact that the other letter of 2 May 2007 from Mr Hodson (that written to the Deceased at 50 Barretts Way), i.e. a contemporaneously produced letter, was undoubtedly posted (and, indeed, received): see paragraphs 19 & 20 above.

52. In all the circumstances I find that the letter of 2 May 2007 with the enclosed notice of severance was, on the balance of probabilities, correctly prepaid and posted (i.e. dispatched) by Hodsons Solicitors.

53. So far as the address to which that letter with the notice of severance was sent, I find that on the balance of probabilities it was addressed and sent to the Property. The covering letter was correctly addressed on its face to the Property. In this respect it was clearly distinguishable from the letter of even date sent to the Deceased c/o 50 Barretts Way. There is no reason to speculate that e.g. a non-window envelope was used for the notice of severance. There is still less reason to conclude that a member of the post team decided (without any instruction from Mr Hodson) to re-address the correspondence to c/o 50 Barretts Way. Although there was a note on the file that correspondence to the Deceased was to be sent to that address: (a) that did not apply to letters to third parties; (b) in any event, I cannot conceive that a member of the post room would have had access to the file and acted unilaterally.

What happened to the notice of severance?

Receipt by the Respondent herself?

54. In legal terms, the fact (if it be the case) that the Respondent herself may not actually have received the notice of severance is not, without more, determinative in her favour. This is because by s.196(3) of the 1925 Act a notice is sufficiently served if it is left at the last-known place of abode in the UK of the person to be served. This is so even if the intended recipient does not actually receive it: *Kinch v Bullard* [1998] 4 All ER 650.

55. Subsection (3) applies to notices sent by ordinary post, provided there is evidence of the delivery of the letter in question *to the subject property*, as there was in *Kinch v Bullard*. That proof may take a variety of forms, e.g. evidence from the postman, from a resident of the property, from a housekeeper etc.

56. It was submitted that for the purposes of s.196(3) putting the notice into the post, i.e. entrusting its delivery to the Royal Mail, is sufficient. It was said that under s.196(3) service by ordinary post is taken as effected when the notice would be delivered in the normal course of post (although no reliance was placed on s.7 of the Interpretation Act 1978 in this case). It was submitted that *Kinch v Bullard* supports this. I reject this. The essence of the decision (as the headnote indicates) is that s.196(3) is engaged "if a notice could be shown to have been *left at* the last-known abode ... of the addressee". As appears from the decision, this requires proof of actual delivery, not mere posting (cf s.196(4) in relation to recorded delivery post). Although Neuberger J alluded at 658f to delivery "in the normal course of post", he did not say that there is a presumption of service in such course; he was merely reciting that he had found on the facts that "the notice was left at the last known abode ... by the postman putting it through the letter box of the property in the normal course of post". The critical and operative part of that finding was the delivery of the notice to the property by its being put through the letter box.

57. However, provided actual delivery is established (by the party on whom the burden rests, there being a dispute in this regard in this case), I acknowledge that it is perfectly possible for the intended recipient not to receive a notice herself but nonetheless for the notice to be effectively served.

58. Nonetheless, it may be appropriate and instructive to consider whether the intended recipient did receive the notice. If she did, service will plainly have been achieved. If not, the circumstances surrounding the non-receipt may potentially (in some cases at least, such as where (as here) interception is alleged) serve to shed light on what happened to the notice itself.

59. So I proceed first to consider whether the Respondent herself received the notice before going on to consider the fate of the notice itself (e.g. whether it was delivered to the Property and whether it was intercepted).

60. The Applicants' three witnesses did not positively allege that the notice had been delivered or received. Mr Hodson plainly could not speak to what happened to it after it left the offices of Hodsons Solicitors. Neither could Mrs McQueen (who was not even with the firm back in 2007).

61. As for Marty Bowers, he did not suggest that he had ever seen the notice of severance, or (for that matter) that he had had any cause to believe that it had reached the Property or the Respondent. His evidence was silent on the point, except that he testified that he knew nothing about the significance of a notice of severance at the time. The highest he put matters (when repudiating the plea of alleged interception) was, "*If the letter enclosing the Notice of Severance was delivered by post* then it would have been put on the side for the Respondent with all the other post."

62. On the other hand, the Respondent expressly and firmly denied ever having seeing the notice.

63. I find that the Respondent never received the notice. I accept her evidence in this regard. I consider the Respondent to have been an honest and credible witness. I find it incredible that she would have received the notice and yet not reacted adversely to it in any way, given the fact that, as Marty Bowers knew and confirmed, the Deceased apparently did not want to tell the Respondent that she had changed her will – essentially for fear of just such an adverse reaction. Yet reaction (before the death of the Deceased) there was, I find, none.

64. The Respondent accepted that she has a temper. She also said that she had been clear with her mother from the outset that the Property was jointly owned by them and that if her mother ever severed the joint tenancy she (the Respondent) would sell up and go, rather than paying for the Property, its upkeep and improvement. She knew the difference between the different forms of beneficial ownership. I accept this evidence. In my view, the Respondent would not have taken the notice at all well. But as it was matters never came to a head because the Respondent had no idea about the notice of severance.

65. For the Applicants it was submitted that (i) the (undisclosed) will and (ii) the notice of severance were/are distinct. I acknowledge that, as Mr Hodson envisaged, it is legally possible and legitimate for the former to be kept secret and only the latter made known. I also accept that severance alone would not *necessarily* have resulted in a different

outcome so far as the ultimate destination of the Property was concerned. However, in the circumstances, and given the nature of the Respondent's personality, I cannot conceive that the Respondent would not have smelled a rat and made a real fuss if she had been notified of severance. This is because of what it would have signified. It would have materially changed the position from: (a) the pre-existing situation in which, on her mother's death, she would own the whole Property lock, stock and barrel (which is how she had seen matters ever since the purchase of the Property in 1994); to (b) one in which her mother's share would pass to her only if so decreed by her mother's will. Moreover, the potential significance of such change is obvious: why (absent particular reason, such as tax planning, never here suggested as a candidate) sever the tenancy unless one is also intending to alter the end result by an associated change of one's will?

66. In cross examination the Respondent said that if she had learned of the new will it would have alerted her (to something untoward) because the Deceased had no assets except the Property. I regard this as entirely credible. Indeed, counsel for the Applicants accepted in closing that the circumstance might "excite suspicions" that there had been a dealing with the property. This reflects the fact that the status of the ownership of the Property and its devolution under a will are, on any view, closely associated matters, even if not inextricably linked.

67. I find that the Respondent did not react to the 2007 notice of severance in any way for the very reason that she never saw it herself.

68. Non-receipt of the notice of severance by the Respondent is also in line with the fact that she never counter-signed and returned the same. Hodsons Solicitors might have picked this omission up but they failed to do so. Their failure does not alter the fact that the notice of severance was never acknowledged.

69. I am fortified in my finding of non-receipt of the notice by the Respondent by the fact that (as I find) when the Respondent saw Mrs McQueen in 2016 she expressed a belief that the property was held as joint tenants, although she accepted that the point should be checked. I consider that this is borne out by: (a) the manuscript note made by Mrs McQueen which reads, "Pauline Stanton & Violet Bowers – jt"; (b) the typed attendance note of 11 October 2016, "*It is believed that the property is held as Joint Tenants* but we will need to check".

70. In her oral evidence Mrs McQueen at one point sought to indicate that the Respondent was not sure about the ownership status. However, I do not accept that the Respondent had any real doubt on that score. I believe that the Respondent firmly thought she was a joint tenant (and that she would automatically take on the death of the Deceased); it was simply that she accepted that Mrs McQueen ought, prudently, to verify that. This tallies with paragraph 7 of Mrs McQueen's witness statement, "*Miss Stanton said she believed the property was owned as joint tenants* but accepted that the position needed to be checked." That was the clear impression which I find the Respondent gave to Mrs McQueen, wholly consistent with her ignorance of any earlier severance.

71. I add that I find that at no time did Mrs McQueen disabuse the Respondent of her belief and inform her that it appeared that the Property was actually owned as beneficial tenants in common. Although Mrs McQueen did check the position and did obtain an official copy of the register on 13 October 2016 which altered her to the 2007 Form A restriction, there is nothing on file (either in the form of an attendance note or a letter) which records that information (or any related advice) having been passed on (or given) at that time.

72. The Respondent denied ever having been so informed or advised. I believe her. Again, had she been so advised, I find that she would have reacted strongly. Reaction there was none – until after the death of the Deceased (when the truth about everything emerged).

73. Mrs McQueen claimed at one point in her oral evidence that she had raised the matter (i.e. reported the discovery) in a telephone conversation with the Respondent in 2016 (who denied this). I do not accept the claim. I believe that Mrs McQueen was speaking about what, with hindsight, she hopes or thinks she might have done, not what she actually did. As stated, there is no mention of this in the file or, for that matter, in her witness statement. When pressed, she conceded that she might not have mentioned the severance to her client on the basis that it was, from her perspective, no longer something which needed to be addressed (in the light of the Form A restriction which, to her, rendered action to sever the joint tenancy unnecessary). I find that she did not mention the point; there was no discussion of it; the news was not relayed.

74. The Respondent was criticised for acting in way which, had it been put into action (i.e. had her mother not died before her will was implemented) would have seen the joint tenancy severed. She was accused of trying to have her cake and eat it. I fully recognise the inconsistency between (a) the Respondent's steadfast insistence that the intention always had been, and was, that the Property be held as joint tenants and (b) the apparent willingness to do away with that – even though the Respondent rather sought to downplay that by insisting that any issue of severance was merely the product of Mrs McQueen's advice rather than something she (the Respondent) instigated. However, in my judgment the key point is not what the Respondent may have intended to do in the future (or what she might have done had matters taken a different course, i.e. had her mother's death not intervened). Rather, all that matters is what the Respondent believed to be the position at the time. As to this, as explained above, I find that the Respondent had no awareness of any notice of severance, believed herself to be a joint tenant and was not informed to the contrary by her solicitors.

75. I have thus found that the Respondent did not herself receive the notice of severance. But I do not lose sight of the fact that it is perfectly possible that the notice was nonetheless delivered to the Property itself (which might be effective service in law: see paragraphs 54-57 above). I must thus now consider the possible alternatives regarding what happened to the notice itself.

Why was the notice of severance not received by the Respondent?

76. It strikes me that there are three possibilities. The first is simply that the notice was not delivered to the Property. This would of course explain its non-receipt by the Respondent.

The second is that the notice arrived at the Property but was then accidentally mislaid so that it never came into the Respondent's hands. The third is that the notice, having been delivered by the postman, was deliberately intercepted so that the Respondent remained ignorant of it.

77. In the light of s.196(3): (a) the first scenario would not be effective service (see paragraph 56 above); (b) the second scenario would see valid service (see paragraph 57 above); (c) in the third scenario prima facie service would have been effected but it would be necessarily to consider whether the interception disqualified the sender from so asserting (something explored in paragraphs 122 et seq below).

Was the notice delivered but accidentally mislaid?

78. The second possibility was not expressly canvassed or pressed in evidence or submissions before me. In the circumstances I consider it inherently unlikely. Marty Bowers says in his statement, paragraph 7:

> "I do not accept ... that my mother could have intercepted this letter. She was illiterate, as the Respondent states and she would not have been able to read the names on the envelopes. She relied upon the Respondent or others, including me and my siblings to read her post for her. *If the letter enclosing the Notice of Severance was delivered by post then it would have been put on the side for the Respondent with all the other post.* I also believe that my mother would not have appreciated the significance of trying to prevent the Respondent from receiving the Notice of Severance ...."

79. At one point in his oral evidence Marty Bowers indicated that his mother could have recognised the names on correspondence so as to sort them between the different family members. However, he later rowed back and accepted that whilst his mother might have been able to recognise her own name and initials, she would have needed assistance from family members to deal with and sort the post generally.

80. I find that this – which accords with the account given the witness statement – is the more accurate version. It also tallies with the Deceased's acknowledgment of her general inability to read or write, as recorded in the closing part of the letter dictated to Mrs Pottinger. Even though Mr Hodson did not appreciate that the Deceased was illiterate when he met her, I do not believe that this casts any doubt on the point; rather, it is my view that Mr Hodson's assessment of the Defendant was less thorough that it ought to have been.

81. So, given that the Deceased would, I find, merely have collected all the post and "put it on the side", for (literate) others to review, I believe that the chances of the notice of severance (itself sent under cover of a letter addressed clearly to the Respondent and, I conclude on the balance of probabilities, enclosed in a formal, branded envelope from the solicitors – just like the one sent to the Deceased c/o 50 Barretts Way on the very same day) going astray by reason of a mere accident (e.g. inadvertent misfiling) following its arrival at the Property to be remote. I discount the possibility.

Non-delivery, or interception?

82. That leaves the first and third possibilities identified in paragraph 76 above.

83. The Respondent herself inevitably has no direct knowledge of what befell the notice after it was posted from Hodsons' office. Beyond proving (as she has) a want of personal receipt, she cannot herself establish what happened to it.

84. However, the Respondent called a witness, Patricia (Patsy) Bowers, the ex-wife of Marty Bowers (married to him from 1996 to 2012), who claimed that Marty Bowers had confessed and boasted to her at the time (back in 2007) that he was engaging in a scheme with the Deceased to ensure, amongst other things, that the Respondent's post from the solicitors (i.e. the notice of severance) was intercepted.

85. Patricia Bowers said that Marty had let it be known to her that: (a) he felt it unfair that the Property would go to the Respondent on the death of the Deceased, especially since the pair of them had shared the 2004 bingo win in 2004; (b) he was going to ensure that the Deceased changed her will; (c) in 2007 he told the Deceased to do that, and took her to the solicitors, later saying that he had booked the appointment whilst the Respondent was away on holiday with Mr Townsend; (d) after the meeting(s), he had said 'it was done' and that the Respondent wouldn't know what had hit her when the Deceased died.

86. Specifically, Patricia Bowers said (paragraph 10 of her statement):

> *"Marty told me that he had made sure that Pauline would not receive any correspondence from the solicitor. He told Ciss she would need to get any mail from the postman before Pauline did.* He explained that he did not want Pauline to know about the changes to Ciss' Will as he thought she would want to sell the Property if she found out."

87. "Ciss" was the name by which the Deceased was known.

88. Marty Bowers strongly denied all the allegations. He said:

> "I never conspired with my mother to conceal anything from the Respondent. I did not discuss with my mother hiding any correspondence nor did I hide any correspondence myself and I certainly never said the things Patsy Bowers claims I said. It is simply not true."

89. Marty Bowers said that his mother had changed her will of her own free will and had not been put up to it by him or any other sibling.

90. Marty Bowers attributed the claimed falsity of Patricia Bowers' evidence to the fact that they had had an acrimonious divorce. He said that she was still angry towards him.

91. There is thus a very sharp conflict of fact between these two witnesses. They cannot both be correct. I do not consider that this is a case of merely inaccurate recollection, although this is not to say that there may not be some minor errors caused by the passage of time.

All in all, I believe that the claim and rebuttal relate to such fundamental matters that, so far as the essential core is concerned, it can only be that one witness is deliberately being untruthful. The basic question, to my mind, is who is lying?

92. So far as Marty Bowers is concerned, I regret to say that I found him to be an unsatisfactory and unimpressive witness. He came across as uncooperative and defensive, if not downright evasive, and as if he had something to hide.

93. Reservations about the general reliability of Marty Bowers' evidence may be drawn from the following: (a) he said that it was his decision to divorce and that this was the reason for his ex-wife's resentment towards him, yet he had no explanation why it was that she, not he, had been the petitioner (something which he only conceded when he had no alternative); (b) as mentioned in paragraphs 78-80 above, his testimony about the extent and ramifications of his mother's illiteracy vacillated and was not consistent throughout; (c) although he refuted the notion that he had applied pressure to cause his mother to change her will, saying that he only found out about the purpose of the visit to the solicitors when he was taking her to the solicitors, I find that hard to accept: (i) because it is improbable that he would have agreed to drive her there without first enquiring about the purpose; (ii) moreover, in the light of the Deceased's note dictated to Mrs Pottinger (see paragraph 29 above), which he was unable to explain (although he accepted that his mother must have been referring to him).

94. When pressed about the Deceased concealing the change of her will from the Respondent, Marty Bowers more than once said in the witness box that she had told him that she would tell the Respondent "at a later date". Not only does the notion of delayed communication (rather than bare non-communication) not feature in his witness statement but also it just does not make any real sense. Marty Bowers claimed that his mother was scared of the Respondent who (he said) had manipulated her into leaving everything to her (and it is true that the Deceased reported concerns about the Respondent when she saw Mr Hodson). Yet if that was actually so, it is hard to conceive why his mother would have desired to keep the matter secret only initially, whilst intending to spill the beans later on.

95. Further, as it was, his mother lived for a further 9+ years. I find that in all that time neither she nor any other family member (e.g. Marty Bowers) breathed a word about the 2007 will to the Respondent, to whom the discovery came as unpalatable news, and a considerable shock (at which she was distraught), only following her mother's death. If the Deceased had really been minded to tell the Respondent, she had had ample time to do so. Her note via Mrs Pottinger rather shows that she came clean only by way of a quasi-death-bed confession borne of a feeling of guilt/remorse.

96. Marty Bowers accepted that he was not aware that the Respondent had ever found out about the change during his mother's lifetime. This was, I find, because she had never found out. The matter had been hushed up since 2007. Marty Bowers himself had been in possession of the envelope containing the letter about the will since 2010 and had said nothing. It was all a big secret.

97. Of course, the fact that there was a wish to keep the Respondent in the dark about the will, based on a fear that if she found out she might sell up and go, i.e. move out the property and cease looking after her mother, does not of itself establish that steps were actually taken to conceal the notice of severance. But (given the close alignment of the will and notice of severance: see e.g. paragraph 65 above) it is nonetheless an important part of the contextual setting against which I must evaluate the interception claim.

98. Marty Bowers said that it would have been against his (and the rest of the family's) interest to prevent the Respondent receiving the notice of severance. So it might be as a matter of law (see further below), but I consider that, although such a measure may objectively (and/or with hindsight) be seen to be counter-productive and self-defeating, Mr Bowers was not sophisticated or knowledgeable enough to appreciate this at the time. He accepted that the Respondent was deliberately, and to his knowledge, kept out of the loop about the Deceased's will. He said that he did not appreciate the significance of a notice of severance at the time. However, he was, I believe, nevertheless fully aware that what the Deceased was doing generally was, so far as the Respondent was concerned, highly sensitive. Hence his determination to stop the Respondent finding out what was happening and to prevent her receiving any letters from the solicitors.

99. By contrast, Patricia Bowers presented as a clear, consistent and impressive witness. She does not have anything obvious to gain from testifying as she did. I reject the idea that she is a woman scorned who is out for vengeance against her ex-husband. I accept her testimony that she has long since put the divorce behind her.

100. It was submitted on behalf of the Applicants that, if her evidence were correct, Patricia Bowers had incriminated herself in the commission of criminal offences. I do not believe that she did. It was not her evidence that she had herself been party to any interception of post, merely that she had been aware of the plan by her (now) ex-husband to do that and had failed to tell the Respondent the truth about that (or to report the Deceased's change of will etc.) and in that respect was party to a general cover-up. To my mind, the non-disclosure of the misdeeds of one's husband does not amount to engagement in a criminal conspiracy or suchlike with the principal; neither does it obviously constitute assisting an offender, concealing an offence or similar.

101. But, even if Patricia Bowers infringed the criminal law, it does not follow that she is lying now. Indeed, I consider that the admission against her interest rather underscores the sincerity of her testimony. She said that she felt ashamed of what she had done (or, more accurately, not done – i.e. keeping silent). This expressed sense of regret had, I believe, a ring of truth to it, in contradistinction to the evidence of Marty Bowers.

102. I do not overlook the fact that Patricia Bowers said that Marty had told her that he had booked an appointment at the solicitors when Pauline was "going way on holiday with her partner, Paul". In the light of such assertion the Respondent: (a) gave evidence about when she was on holiday in May 2007; and (b) called witnesses (Naomi Price and Nina Spearman) to speak to this somewhat peripheral matter.

103. Without in any way impugning the integrity of the various witnesses on this rather tangential point, the holiday-related evidence was not wholly consistent or, ultimately, of great consequence. The Respondent said that she was on holiday in May 2007 first with her friends (in Egypt) and later with Mr Townsend (in Spain), whereas the witnesses put the order of events the other way. As to that, I prefer the sequence to which the witnesses spoke. Further, on any view, all the evidence focussed on events in May 2007, when it is apparent that the meetings at Hodsons Solicitors occurred in April 2007; it was only the notice itself that was sent in May 2007.

104. I have considered this point carefully. There is prima facie some force in Marty Bowers' evidence (and the Applicants' case) that he would not have known how long it would have taken for any notice to be drawn (something which lay in Mr Hodsons' hands, and there is no suggestion whatsoever of any impropriety on his part, and I would reject any such notion) or when it would be delivered, and hence in his assertion that it is not credible that he arranged for the notice to be served when the Respondent was on holiday: see e.g. paragraph 6 of his statement.

105. However, this is not actually quite what Patricia Bowers alleged. She said (paragraph 6 of her statement):

> "Marty later told me that he knew Pauline was going away on holiday with her partner, Paul, so he had booked an appointment for Ciss with her solicitors for when Pauline was away."

106. So the focus of Patricia Bowers' statement was on the timing of a visit to the solicitors, not in relation to the timing of the service of any notice of severance.

107. Further, Patricia Bowers did not say that the Respondent and her partner were abroad in Spain at the time of such visit, merely that they were away on holiday. In her evidence the Respondent explained that, working for the prison service, she worked nights and had a one week on, one week off, shift pattern. During her weeks off, she could well be away "on holiday" visiting friends, even though this might be in the UK. I accept this evidence, which dovetails with the account given by Patricia Bowers.

108. Also, I note that Patricia Bowers' account is simply one which reports what Marty Bowers is said to have told her. Therefore, if there are any minor errors in the report, I believe that the errors are just as likely to have been in what she was told by him as in what she has relayed.

109. As it is, I consider that Marty Bowers (who was round at the Deceased's house almost every day) could easily have arranged at least one of the visits when the Respondent was away, whether in the UK or further afield. Indeed, I find that he did just that. As regards other visits, as the Respondent said (and I accept), given her night shifts (meaning she was accustomed to sleep in the day), it would not have been at all difficult for these to have taken place without her being aware of them.

110. All in all, I do not consider that the holiday point undermines or causes me to doubt the overall veracity of Patricia Bowers' evidence.

111. It will be apparent that I prefer the evidence of Patricia Bowers to that of Marty Bowers. Insofar as their versions of events differ, I unhesitatingly accept hers rather than his. I conclude that she gave true evidence whereas he gave a false account.

112. I find, in particular, that Marty Bowers was instrumental in persuading his mother to alter her will and affairs in order to cut-out the Respondent: see e.g. the note written by Mrs Pottinger which paints a clear picture of the Deceased having been so manipulated. I also find that he did all this behind the Respondent's back and, along with the Deceased, proceeded to keep matters secret from her: ibid. Further, I find that he told Patricia Bowers that he had instructed his mother to get the post from the solicitors first, before the Respondent did (to ensure she remained oblivious of what was happening).

113. In my view, therefore, Marty Bowers was active in assisting his mother to maintain a shield which meant that the Respondent was not aware of developments, both in relation to the will and any related matters such as the notice of severance.

114. In the circumstances, and given that the Respondent did not receive the notice of severance, I am satisfied on the balance of probabilities that the scheme hatched by Marty Bowers was put in action and that the most likely scenario is that the letter from Hodsons Solicitors enclosing the notice of severance did arrive on the doormat at the Property but was then wrongfully intercepted.

115. Marty Bowers suggests that his mother alone could not have intercepted the letter because of her illiteracy but I regard this as a red herring. She could easily intercept (i.e. put aside) *all* post; that did not require any ability to read. Then, as Marty Bowers says, with his assistance, the mail could be reviewed, as was standard practice in the house, and any relevant letter intercepted. I find this is what happened.

116. For the Applicants it was contended that there was no evidence of the Respondent's mail at large having been opened/tampered with. How then was the notice of severance itself targeted? The answer is that it would not have been at all difficult and would not have required the post to be opened: (a) its receipt was anticipated; (b) what is more, any letter from Hodsons Solicitors would have been discernible as such from the branding on the envelope and the post-mark added by the franking process.

117. It was also submitted that Patricia Bowers referred to a scheme to intercept all incoming post, not just that from the solicitors. However, that is not what her witness statement says: see paragraph 86 above. And it is not what I understood her evidence to be. It is plain that the "scheme" to which she spoke was one in which the Deceased and Marty would obtain all the post and then filter it, extracting any mail from the solicitors (but that alone). That is, I find, what was occurred.

118. All in all, I find that, in accordance with a plan devised by Marty Bowers, the Deceased (in conjunction with Marty Bowers) connived to ensure that the notice of severance sent

by Hodsons never found its way into the Respondent's hands. The scheme was planned and it bore fruit.

119. I find that Marty Bowers boasted about this to Patricia Bowers. The pair of them remained silent on the matter. The truth only came to light after the death of the Deceased.

120. The Deceased belatedly came to regret her behaviour (not just – as the letter dictated to Mrs Pottinger might literally be read as saying – the change of her will, but rather the whole escapade) but, as I have said, the truth did not emerge during her lifetime.

121. Referring back to paragraph 76 above, it follows that, having ruled out the second possibility, I prefer the third possibility to the first possibility. I find that the Respondent did not receive the letter but that this was not the result of an unfortunate mishap but, rather, the product of an engineered and implemented strategy by the Deceased (and Marty Bowers) to deny the Respondent all knowledge of her mother's dealings in connection with the Property.

The legal effect of interception

122. In my judgment, it is impossible for the Applicants (standing in the shoes of the Deceased) to assert service of the notice of severance in circumstances where, as I have found, the Deceased connived with Marty Bowers in the interception of the document with the result that it never reached the named addressee, the Respondent. The contrary conclusion would be repugnant and be tantamount to using the law on service (here, s.196 of the 1925 Act) as a vehicle to permit deliberately wrongful conduct. In my judgment, the wrongful conduct on the part of the Deceased deprives the Applicants of the ability to be heard to assert regular and effective service of the notice of severance.

123. Neuberger J (as he then was) expressed a clear view (albeit *obiter*) to like effect in *Kinch v Bullard*. At 657h-658a he said:

> "... it cannot be right for a sender of a notice, who had intentionally taken steps to ensure that it did not in fact come to the attention of the addressee, to contend that it was served on him. In other words, whatever s.196 provides, it could not be relied on by the sender of a notice as an engine of fraud. *The very purpose of serving a notice is to convey information, with legal consequences, on the addressee: it cannot be right that the sender of a notice can take positive steps to ensure that the notice does not come to the attention of the addressee, after it has been statutorily deemed to have been served, and then fall back on the statute to allege that service has none the less been effected."*

124. Those remarks (echoed by similar observations at 658b-e and 658g-h) are directly apposite in the present case. In my judgment, they provide the answer to these proceedings.

125. Counsel for the Applicants sought to overcome the obvious hurdle presented by the dicta. He submitted that the principle identified by Neuberger J which precludes the

server of a notice from relying on their own wrong is not engaged in a case where the notification allegedly comes in two stages from two sources, namely (a) directly from the server (in the form of the notice of severance itself) and (b) thereafter from HMLR (in the form of notification of the pending and/or completed application for a Form A restriction). He contended that in such a situation the culprit cannot be said to have *ensured* that the intended recipient would never know of the notice of severance, for (even if the stage one notification is avoided) the stage two notification is unaffected.

126. I am unable to accept this submission, both in principle and on the facts of this case.

127. As a matter of principle, it is readily apparent from the above dicta that it does not lie in the mouth of the sender of a notice whose very acts have brought about its non-receipt by the addressee to contend that, nonetheless, due service is effected. The fact that it is possible that the existence of the notice may indirectly come to the attention of the addressee via a third party is nothing to the point. It in no way alters the fundamental concealment of the notice itself (which notice, as a result, never comes into the addressee's possession). It does not detract from the fact that steps were "intentionally taken ... to ensure that [the notice] did not in fact come to the attention of the addressee".

128. At 658e Neuberger J spoke of a "sender of a notice who ... has taken positive steps to thwart its ultimate purpose, namely to be served on the addressee". Such description of circumstances precluding reliance on the service provisions of the 1925 Act vis-à-vis the notice applies precisely to the facts of the present case.

129. I do not believe that, when elsewhere (see paragraph 123 above) he used the verb "ensured", Neuberger J was intending to draw any distinction between a case in which: (a) the sender intercepts the notice and where is no chance of the existence of the notice being reported through another source; and (b) the sender intercepts the notice but there is such a possibility, and I reject any such claimed distinction. All that is required, in my judgment, to engage the principle that s.196 cannot be relied on by the server in relation to the service of a notice of severance is a finding (as I have made in this case) that the server has been involved in steps designed, and themselves effective, to prevent receipt *of the actual notice*. In that scenario the server (who has effectively "ensured" that the notice is not received) cannot rely on the notice itself to effect the severance.

130. It might be that, if written notification of severance were achieved through other means (e.g. via a third party), this might perhaps be sufficient to bring about severance – although one can foresee that interesting questions might then arise as to whether such indirect communication (as opposed to the direct receipt of the actual notice of severance) comes within the scope of the proviso to s.36(2); matters of agency etc. might arise. For example, service of notification by HMLR that a Form A restriction has been entered is not itself direct service of the notice of severance, merely material from which it may possibly be deduced that HMLR has been informed that a notice of severance has (allegedly) been served.

131. In any event though, on the facts of this case there is simply no evidence that the HMLR ever wrote to the Respondent in connection with or following the entry of the Form

A restriction, still less when, in what terms and enclosing what (if anything). There is no evidence of any such communications, as was accepted by counsel for the Applicants. There is also no evidence that any such correspondence (if sent) was ever received by the Respondent. Indeed, the Respondent's evidence (see e.g. paragraph 9 of her affidavit) was that she had never seen anything from HMLR. Given that, as I have outlined, the Respondent was none the wiser about what had happened during her mother's lifetime, I find that there was indeed no such receipt. Consequently, there was nothing which served to displace the ignorance of the situation which, at root, had been caused by the Deceased's interception of the notice of severance.

132. Therefore, I need not grapple with such interesting questions as might have arisen if it had been proved that correspondence had been sent and received from HMLR; such matters are hypothetical on the facts of this case.

133. All in all, in all the circumstances it is not open to the Applicants now to assert that, despite the interception of the notice of severance, the joint tenancy was effectively severed. I hold that it was not.

Miscellaneous

134. At the end of the hearing counsel for the Applicants advanced an alternative argument, namely that severance was effected by Mrs McQueen's obtaining of the official copy of the register (as to which see paragraph 71 above). This contention had not been foreshadowed in the statements of case, skeleton arguments or, indeed, in the evidence. I directed written submissions. No submissions were filed. I was informed that the Applicants had decided not to put any forward. In response I advised that I *required* such submissions if the point was to be pursued. No submissions were forthcoming. Accordingly, I treat the argument as abandoned.

Conclusion and disposition

135. To summarise: I have found that the notice of severance was posted by Hodsons but not received by the Respondent and that the reason for the non-receipt was the interception of the relevant letter by the Deceased acting in concert with Marty Bowers. I conclude that in these circumstances the notice of severance was not validly and effectively served. Consequently, the joint tenancy of the Property remained unsevered. On the death of the Deceased the Respondent acquired the Property by right of survivorship.

136. It follows that: (a) the Form A restriction is inappropriate and should be removed; (b) the Form II restriction is inappropriate and should not be entered. I shall direct the Chief Land Registrar accordingly.

Costs

137. I have received costs schedules from both parties. In this jurisdiction costs normally follow the event. My provisional view is that as the successful party the Respondent should recover her costs from the Applicants. (I have previously awarded the Respondent her costs of an application by the Applicants to adduce further evidence. If the Respondent is awarded the costs of the proceedings, such award will subsume the earlier

award and obviate the need for a separate assessment of the costs of the application.) If the Applicants contend otherwise, they must file and serve written submissions on the point by 4pm on 10 May 2019. In any event, the Applicants must by the same time file and serve any written submissions they wish to make in relation to the quantum of costs sought by the Respondent (namely, £29,838.40 inclusive of VAT). If such submissions are received, the Respondent may and serve file any counter-submissions by 4pm on 17 May 2019. Thereafter I shall proceed to determine and assess the incidence and quantum of costs.

Martin Dray

Judge Martin Dray

Dated this 2nd May 2019

PROPERTY CHAMBER LAND REGISTRATION

BY ORDER OF THE TRIBUNAL