

**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2019] UKUT 308 (LC)**

**UTLC Case Number: LREG/61/2018**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*LAND REGISTRATION – alteration - appeal by way of re-hearing from FTT - whether mistake to be corrected - no mistake proved on facts - Land Registration Act 2002 Schedule 4 -appeal dismissed*

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER) UNDER S.11, TRIBUNALS COURTS AND ENFORCEMENT ACT 2007**

**BETWEEN:**

**MRS FIAZ AKHTAR**

**Appellant**

**And**

**SLOUGH BOROUGH COUNCIL**

**Respondent**

**Re: 3 Montem Lane,  
Slough,  
SL1 2QU**

**Before: His Honour Judge Stuart Bridge**

**Royal Courts of Justice**

**on**

**11-12 June 2019**

Justin Bates and Ayesha Omar, instructed by Orrick Herrington & Sutcliffe LLP, all acting *pro bono*, for the Appellant  
Scott Stemp for the Respondent

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The following cases are referred to in this decision:

*Norwich & Peterborough Building Society v Steed* [1993] Ch 116

*Baxter v Mannion* [2011] 1 WLR 1594

*NRAM Ltd v Evans* [2017] EWCA Civ 1013; [2018] 1 WLR 639

# DECISION

## Introduction

1. By an application dated 26 April 2015, Mrs Fiaz Akhtar applied to the Land Registry to alter the proprietorship register of title number BK259653. The register stated that the registered proprietor of 3 Montem Lane Slough, with absolute title, was Qazi Mohammed Qureshi. Mrs Akhtar's application sought the replacement of Mr Qureshi's name as registered proprietor with her own. Although he was given due notice of the application, Mr Qureshi neither responded nor objected and took no part in the proceedings.

2. The application was however opposed by Slough Borough Council who, having been served with the application, objected to it. The context is that the Council had brought criminal proceedings against Mr Qureshi and other individuals (including Mrs Akhtar) and, with a view to seeking a confiscation order pursuant to the Proceeds of Crime Act 2002 (hereafter "POCA"), had obtained a restraint order restricting dispositions of 3 Montem Lane without its prior consent. The Council had sought to freeze the property as it was identified as a valuable asset which once sold would facilitate the payment of a substantial sum by Mr Qureshi in the confiscation proceedings. The restraint order was protected by the Council entering a restriction in the proprietorship register.

3. The First-tier Tribunal (hereafter "FTT") directed the registrar to cancel Mrs Akhtar's application to alter the register. The Tribunal granted Mrs Akhtar permission to appeal by way of re-hearing, giving its reasons as follows:

1. "The application for permission to appeal raises an arguable case that the first-tier tribunal (FTT) misunderstood parts of the evidence or omitted to deal with it in the decision (including, for example, evidence about domestic abuse).
2. The FTT's reasoning as to whether there was a mistake on the register is also questionable. The FTT found that the transfer bears the witness' name and address but that the signature is not his (paragraph 54 vii). No findings were made about why the signature was not the witness' signature (although at paragraph 58 the judge appears to accept that it was forged by someone else). The registrar would not have registered the transfer if he had been aware of these facts and there is therefore an arguable case that the judge was in error in his assessment of whether, on his findings about the attestation, there was a mistake on the register.
3. As I intend to direct that the appeal proceed by means of a rehearing of the application no purpose would be served by granting permission to appeal on the allegations concerning the quality of the interpretation of the evidence or other suggested procedural irregularities".

4. In this appeal, Mrs Akhtar's contentions have been essentially the same as they were in the FTT. It is accepted that, pursuant to an application by Mr Qureshi dated 13 October 2010, the

Registry removed Mrs Akhtar's name from the proprietorship register of 3 Montem Lane, replacing her name with that of Mr Qureshi. The Registry did so in reliance upon a document dated 3 September 2007 which on its face effects the transfer of 3 Montem Lane from Mrs Akhtar to Mr Qureshi. Mrs Akhtar contends in this appeal, as she did before the FTT, that she did not sign that document (or, in the alternative, that if she did sign it she did so under duress) and that her signature was not properly attested.

### **The hearing**

5. The Council has been represented by Scott Stemp of counsel, not only before the FTT and the Tribunal, but also for the entire duration of the proceedings in the Crown Court. At the hearing before the FTT, Mrs Akhtar was not legally represented, although her daughter Farzana Yasmin acted on her behalf. It should be said that the factual and legal issues arising are not by any means straightforward, and it is difficult to see how a litigant who is elderly, frail and unable to communicate in English could have prosecuted this appeal without the benefit of legal representation. It is therefore fortunate that Mrs Akhtar has been represented *pro bono* by Justin Bates and Ayesha Omar of counsel, as well as Orrick Herrington & Sutcliffe LLP, who have put forward her case with consummate professionalism, vigour and skill in the very best traditions of the Bar.

6. Mrs Akhtar was the only witness to be called before the Tribunal. She was assisted throughout by an Urdu interpreter, and in view of her age and infirmity she was given breaks of at least 20 minutes both morning and afternoon and informed that if she needed a break at any other time she only had to ask.

7. There were two preliminary issues which had to be determined: whether the respondent could rely upon evidence provided in written form by Mrs Akhtar's former solicitor Mr Bokhari who had acted for her in the criminal proceedings; and whether the respondent could rely upon an expert hand-writing report of Mr Robert Radley commissioned by Mrs Akhtar and served on the respondent for the purposes of those criminal proceedings. I gave brief oral rulings on these two issues in the course of the hearing of the appeal, permitting Mr Bokhari's evidence to be admitted, subject to substantial redactions being made, and allowing reliance upon the evidence of Mr Radley. I shall explain the reasons for these rulings in the decision which follows.

8. A great deal of the evidence was in written form, and it was agreed by counsel (following resolution of the preliminary issues) that I could treat all documents contained within the two trial bundles as evidence, with the single exception of those parts of Mr Bokhari's statements which were redacted as a result of my oral ruling above.

### **The properties and the people**

9. The factual background is relatively complex, and while the focus of the hearing and of this decision is on the transfer document which led to the entry onto the register of Mr Qureshi as

proprietor of 3 Montem Lane in 2010, the evidence in the trial bundles ranges much more widely.

10. Central to the case is a single family. The appellant, Fiaz Akhtar, was born in Rawalpindi in what is now Pakistan in 1935: she is now 83 years of age. She is uneducated, and although she can speak and understand Punjabi and Urdu, she cannot speak or understand English. When she was 20, she married Mohammed Anwar, and she first came to the UK in 1970. They had five children, four sons and one daughter: Rubnawaz Anwar (born 25 December 1964); Mohammed Niwaz Khan (date of birth not given, but the second son); Mansoor Khan (born 4 January 1972); Mohammed Sarfraz Khan (born 28 May 1974); and Farzana Yasmin (born 1 November 1980).

11. I take the above dates of birth from Mrs Akhtar's "section 17 statement" submitted in the course of POCA proceedings. In the same statement, she mentions that she was separated from her husband for 30 years prior to his death on 9 October 2009 although she remained in the family home due to her culture and the dishonour of divorce and that "she ran her personal and financial affairs independently from her late husband."

12. All the properties with which we have been concerned are in Slough. I shall deal briefly first with the three properties not directly in issue in this appeal:

In 1984, Mrs Akhtar and her husband purchased 131 The Crescent. That is the property which Mrs Akhtar referred to as "the family home" and it is where she and her husband lived with their children.

In 1986, they purchased 20 Wexham Road, and the eldest son Rubnawaz, newly married, left the family home and moved in. Mrs Akhtar notes in her statement that at some point after 2006 Mansoor Khan took over the property, but that she became legal owner in 2011.

In 1993, they purchased 6 Wellesley Road, the property being transferred initially into her name and that of Mohammed Sarfraz Khan, but in 1998 it was transferred to her daughter Farzana Yasmin. I understand that that is the property which is currently occupied by Mrs Akhtar, her daughter and her daughter's family.

13. In 1991 Mrs Akhtar and her husband purchased 3 Montem Lane. Mrs Akhtar states that by that time her husband had retired and that the property was transferred into the names of their second and third sons Mohammed Niwaz Khan and Mansoor Khan, both of whom were working and who were therefore able to obtain a mortgage (with Skipton Building Society). The intention was that the children would look after their parents in their declining years. In 1994, there was a disagreement between the two brothers, following which Mansoor Khan "bought out" his brother, became sole registered proprietor, and changed his name by deed poll to Naseem Hamed. For the purposes of exposition, and in the interests of clarity, I intend to refer to him nevertheless as Mansoor Khan, as indeed does Mrs Akhtar in her various statements in these and previous proceedings.

14. The Land Registry copies pertaining to 3 Montem Lane establish that its title was first registered on 21 December 1987, that title absolute was vested in Mansoor Khan and Muhammed Khan on 12 April 1991, and that a charge, itself dated 2 April 1991, in favour of the Skipton Building Society, was registered on the same day. From 18 November 1994, title absolute was vested in Mansoor Khan alone.

15. The Register records that title absolute remained in Mansoor Khan until 13 August 2004 when it was vested in Fiaz Akhtar; and then on 14 October 2010, Qazi Mohammed Qureshi became registered proprietor. The Register notes that the value stated as at that date was £175,000. It is these dispositions which have in the course of these proceedings fallen into issue and to which I must attend in the course of this decision.

16. In brief, Mrs Akhtar contends that she became registered proprietor in 2004 following an agreement in 1999 with Mansoor Khan arising out of his difficulties in meeting the mortgage repayments. Her husband (and his father) was also party to that agreement, which was only given effect to some five years later. Mrs Akhtar denies that, having become registered proprietor in 2004, she ever voluntarily transferred 3 Montem Lane to Mr Qureshi. She contends that either she did not sign any document effecting a transfer, and her signature was forged or in some other way transposed onto the transfer documents, or she did sign but under duress from Mansoor Khan. In these proceedings, Mrs Akhtar has sought to alter the register by removing the entry onto the register of Mr Qureshi as proprietor in 2010.

17. The Council does not accept that Mrs Akhtar did not sign the transfer document, relying in part upon expert hand-writing evidence of Dr Pugh but principally attacking the credibility of Mrs Akhtar in view of a number of apparently inconsistent statements she has made in the years since 2010. By referring to further expert evidence of Mr Radley (which appears to undermine her assertion in evidence that she signed the transfer document in 2004) the Council also seeks to cast doubt on Mrs Akhtar's credibility.

18. The Council does not, however, seek alteration of the register to restore the title to its position prior to the 2004 entry. Such an alteration would fail to achieve the Council's objectives in ensuring that Mr Qureshi remains registered and 3 Montem Lane form part of his assets in the POCA proceedings it has taken against him. Indeed, that being the consequence of such an alteration, it does not seem that the Council would have standing to apply.

19. The appellant objected to the admission of the evidence of Mr Radley in the course of the current proceedings. The point was made that the respondent was not claiming that the 2004 transfer was void: as mentioned above, if such a claim were upheld, that would frustrate the council's objectives as Mrs Akhtar would no longer be the registered proprietor of 3 Montem Lane. The respondent however contended that the evidence of Mr Radley was material to the issue of Mrs Akhtar's credibility when one considered the documents submitted to Mr Radley as she attempted to establish, in the course of the criminal proceedings, that she was not the owner of 3 Montem Lane. I ruled in favour of the respondent as it was clear to me that Mr Radley's evidence could cast material light on the credibility of Mrs Akhtar, itself a central issue in this case.

## **The criminal proceedings**

20. Although the focus in these proceedings is on the entry made on the Register on 14 October 2010, the Council contend that subsequent events are highly relevant when addressing the issues in this case. It is therefore important to summarise the protracted proceedings, including POCA confiscation proceedings, which have taken place in the criminal courts.

21. In October 2010, Mrs Akhtar was charged with breach of an enforcement notice (served under section 179 of the Town and Country Planning Act 1990) in relation to a structure that had been erected at 20 Wexham Road. On 4 January 2012, she pleaded guilty in the magistrates' court (on the day that the matter had been set down for trial) and she was committed for sentence to the Reading Crown Court. POCA proceedings were then initiated against her. She made a statement pursuant to section 18 POCA on 25 May 2012, and then, following a section 16(3) POCA statement by the Council's financial investigator on 13 June 2012, she submitted a further statement pursuant to section 17 POCA on 3 August 2012. No confiscation order was ever made against Mrs Akhtar, but the statements she made in the course of the confiscation proceedings are relevant to the issue of the credibility of the evidence she has given in the course of the current application and I shall return to them below.

22. The Council was at the same time investigating benefit claims made in relation to the various properties owned by the family. Before charges were made, the Council sought a restraint order against Mrs Akhtar pursuant to section 41 POCA from the Reading Crown Court. A statement by the Council's financial investigator (Matthew Chugg) dated 25 January 2012 asserted, among other things, that Mrs Akhtar "owns the property known as 3 Montem Lane... The property is charge free and the approximate value of the property would be estimated to be in excess of £200,000." On 26 January 2012 HH Judge Grainger granted a restraint order against both Mrs Akhtar and her daughter Farzana Yasmin.

23. In due course, on 27 July 2012, HH Judge Grainger heard applications by Ms Yasmin and by Mr Qureshi (as the registered proprietor of 3 Montem Lane) for discharge of the restraint orders. He was critical of the Council's financial investigator for misleading the court in the application as he had failed to carry out an up-to-date search of the register of 3 Montem Lane which would have revealed that Mr Qureshi, and not Mrs Akhtar, had been the registered proprietor since 14 October 2010. Despite making such criticisms, however, HH Judge Grainger refused to discharge the orders that he had made.

24. By then, summonses had been issued against Mrs Akhtar and Farzana Yasmin (on 28 June 2012). Mrs Akhtar was accused of dishonestly claiming means tested benefits (council tax benefit and pension credit) between 1997 and 2012 by failing to disclose her ownership of 3 Montem Lane and 20 Wexham Road and substantial savings contained in various bank accounts. Ms Yasmin was accused of dishonestly claiming similar benefits (council tax benefit and housing benefit) over a shorter period (2008 and 2009) by failing to disclose her ownership of 6 Wellesley Road and substantial savings held in bank accounts with her mother. Mrs Akhtar served a defence statement in those proceedings on 21 January 2013 asserting, among other

things, that she had “never been the beneficial owner” of 3 Montem Lane, and on 13 August 2013 a further amended defence statement was drafted by counsel and served on her behalf.

25. The Council’s investigation then widened, criminal proceedings were commenced against both Mansoor Khan and Qazi Qureshi, and a further application for a restraint order was made against Mrs Akhtar, the order being granted by HH Judge Wood on 21 October 2013. The provisions of the restraint order specific to 3 Montem Lane were protected by the entry of a restriction on the proprietorship register.

26. The trial of the defendants was listed for July 2014. Mansoor Khan was found unfit to plead, but, on 12 July 2014, the second day of the trial of the other three defendants, Qazi Qureshi and Farzana Yasmin both pleaded guilty to conspiracy to defraud, each on a written basis (accepted by the prosecution for sentencing purposes but not insofar as confiscation was concerned). As a result the prosecution proceeded no further with the other counts against those defendants or any of the counts against Mrs Akhtar, those counts being left on the file in the usual way (that is to say, not to be proceeded with without the leave of the Crown Court or the Court of Appeal).

27. Qazi Qureshi pleaded guilty on the basis that his involvement in the conspiracy was limited to taking receipt of 3 Montem Lane and using it and allowing it to be used for the avoidance of council tax liability at the direction of Mansoor Khan, as well as allowing the address to be used, at Mansoor Khan’s direction, for a claim for employment support allowance. He denied any knowledge of, or wider involvement in, any wider criminality on the part of Mansoor Khan. On 17 December 2014 he was sentenced by HH Judge Grainger, a 12 month community order being imposed with a single requirement that he perform 250 hours’ unpaid work. POCA proceedings for a confiscation order were adjourned.

28. Farzana Yasmin pleaded guilty on the basis that she accepted that her application for housing benefit was fraudulent in that she failed to disclose her ownership of 6 Wellesley Road, that the total value of her benefit claim was £5,888, but that she had no involvement in any fraud regarding council tax or any other benefit. She contended, and the prosecution accepted, that she did what she did at the behest and direction of her brother Mansoor Khan. She was sentenced at the same time as Qazi Qureshi, a 12 month community order being imposed in her case with a single requirement that she perform 120 hours’ unpaid work. Although confiscation proceedings were adjourned, by the time these returned to court Ms Yasmin had paid back the sum of £5,888 and no confiscation order was ever made.

29. It remained for Mrs Akhtar to be sentenced for breach of the enforcement notice, having been committed to the Crown Court for sentence almost two years previously following her guilty plea in the magistrates’ court. HH Judge Grainger imposed a conditional discharge for 12 months. He accepted that she did not speak or write English, that she lived “entirely within her own community” and that she was dependent on members of her family for help “in relation to all matters”. The judge held that Mrs Akhtar was not herself responsible for building the structure at 20 Wexham Road, and the fact that matters had taken so long in the magistrates’



court may have been due to advice she had received from her son (that is, Mansoor Khan). The confiscation proceedings in relation to Mrs Akhtar were not to be proceeded with further.

30. In due course, a confiscation order was made under POCA on 7 October 2015 in relation to Mr Qureshi in the sum of £300,000. It was declared (by consent) that Mr Qureshi's benefit from his offending amounted to £350,000 but that his assets totalled no more than £300,000, hence the confiscation order was limited to the amount that was available. Mr Qureshi was given three months to pay, and the default sentence set at three and a half years' imprisonment.

31. Compensation was ordered to be paid by Mr Qureshi out of the moneys confiscated in the sums of £145,045 to the Council and £10,267 to the DWP. The principal asset in the available amount was 3 Montem Lane (its then valuation being £245,102), but there were other assets including Mr Qureshi's share in a flat off the Edgware Road. The restraint order of 13 October 2013 was varied so that 3 Montem Lane could be sold.

32. By this time Mrs Akhtar had applied to alter the register of 3 Montem Lane, and she now applied to the Crown Court to vary the confiscation order, reference being made to section 10A POCA. HH Judge Grainger refused her application on 5 February 2016, taking account of the fact that the person now claiming ownership of 3 Montem Lane had on a number of occasions unequivocally asserted that she claimed no interest in it. In the course of his ruling, he noted, somewhat wryly:

“There may be a number of reasons for the apparent change in tune by Mrs Akhtar but one, of course, is that now, unlike earlier, there are no confiscation proceedings against Mrs Akhtar as opposed to anybody else.”

HH Judge Grainger took the view that it was sensible for the issue in relation to ownership of 3 Montem Lane to be determined by a specialist court or tribunal rather than by the Crown Court, and noted that there were already such proceedings 'afoot'.

33. The criminal proceedings therefore form an essential background to the application currently being made. It should be noted that the extent of Mrs Akhtar's involvement in criminality was extremely limited, and it is clear from the sentencing remarks (and the sentence imposed) that the judge found her culpability to be very low. That said, both Mr Qureshi and Mrs Yasmin admitted, in the court of those proceedings, to acting fraudulently in relation to benefit claims, and Mansoor Khan, while found unfit to plead, was clearly implicated in the fraudulent activities being conducted.

### **The jurisdiction to alter the register**

34. Schedule 4 to the Land Registration Act 2002 (which has effect by virtue of section 65 of the same Act) sets out the scope and extent of the circumstances in which the registrar (and therefore the FTT) may alter the register. Where such an alteration (a) involves the correction of a mistake and (b) prejudicially affects the title of a registered proprietor, it is defined as "rectification": see Schedule 4, paragraph 1.

35. By paragraph 5 of that Schedule:

“The registrar may alter the register for the purpose of-

- (a) correcting a mistake,
- (b) bringing the register up to date,
- (c) giving effect to any estate, right or interest excepted from the effect of registration, or
- (d) removing a superfluous entry.”

36. Paragraph 6 then provides:

“(1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.

“(2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor’s consent in relation to land in his possession unless-

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake; or
- (b) it would for any other reason be unjust for the alteration not to be made.

“(3) If on an application for alteration under paragraph 5 the registrar has power to make the application, the application must be approved, unless there are exceptional circumstances which justify not making the alteration.”

### **The issues in this application**

37. It is for the applicant Mrs Akhtar to satisfy the Tribunal, on the balance of probabilities, that each of the statutory conditions has been met and that the Tribunal should therefore alter the register in her favour. She contends that there is a mistake on the register in that Mr Qureshi should not have become registered proprietor in relation to 3 Montem Lane because the document which had led to his entry on the register (the TR1 dated 3 September 2007), despite outward appearances, had not been signed by her nor had its execution been properly attested.

38. In order to establish that there was a mistake, Mrs Akhtar must prove first that:

- (1) the TR1 form was not signed by her; or, if the TR1 was signed by her, it was signed under duress of circumstances; or
- (2) the TR1 form was not properly attested (in this case, that Marian Siminuic did not witness her signature or, if he did, that he did not sign the form in her presence).

39. I do not consider that Mrs Akhtar has discharged the burden of proof in either of these respects and I shall explain why.

***Was the TR1 form signed by Mrs Akhtar?***

40. If Mrs Akhtar had not signed the TR1, she would have remained the registered proprietor of 3 Montem Lane. She contends that she did not sign, and therefore that she is entitled to rectification of the register in her favour. She does accept that she signed another document (the proof of her identity, the “IP1”) on 11 October 2010 which enabled Mr Qureshi to make his application to change the register two days later on 13 October 2010. But she claims that she did so under duress.

41. The problem faced by Mrs Akhtar is that she has made a number of statements in the context of her application for benefits and in the course of the criminal proceedings which do not support, and positively undermine, the position she now adopts. In addition, statements have been made apparently on her behalf and with her authority by her daughter Farzana Yasmin which contradict the account she puts forward.

42. Before referring specifically to the inconsistencies, it is necessary to mention the role of Farzana Yasmin. Ms Yasmin represented her mother in the FTT, where no legal representation was available to her. In this Tribunal, Ms Yasmin was present throughout the hearing, in order to support her mother and I assume to assist her legal representatives. In view of the fact that Mrs Akhtar was apparently unable to remember matters of detail and that she has been living with Mrs Yasmin since her husband’s death in 2009, Ms Yasmin may have been able to offer useful evidence in support of her mother’s case. She was not however called to give any evidence before the Tribunal. She was herself convicted of fraud in the course of the criminal proceedings on the basis that she failed to disclose her ownership of property when making an application for housing benefit and it may have been thought that in the circumstances the credibility of any evidence she did give would be compromised.

43. I should also refer to Mrs Akhtar’s solicitor Mr Bokhari who acted on her behalf in relation to the criminal proceedings. As a result of allegations being made by Mrs Akhtar about his conduct in those proceedings, the respondent sought, and obtained, a statement from Mr Bokhari who is no longer practising in this jurisdiction but has returned to his native Pakistan. Counsel for Mrs Akhtar objected to this course of action and challenged the admissibility of such evidence on the grounds that it would breach the relationship of professional privilege that exists between a client and her solicitor. Counsel for the respondent accepted that, in the absence of an express waiver of that privilege (which Mrs Akhtar refused to give), there did not appear to be grounds upon which the court could admit evidence concerning the content of a client’s instructions, or the manner in which such instructions were given. Mr Bokhari’s evidence was therefore only admitted by agreement with very substantial redactions having been made.

44. The evidence of Mr Bokhari, as redacted, is to the following effect. He states that he was called to the Bar in 2003, and “cross-qualified” as a solicitor the following year. He refers to his former firm QB Aliyan Solicitors which he controlled for approximately seven years prior to 2016 when he relocated to Pakistan. His firm represented both Mrs Akhtar and her daughter Farzana Yasmin throughout the criminal proceedings. Mr Bokhari states that Mrs Akhtar “appeared to be a frail and a naïve lady who did not have a care for worldly affairs. It was

evidence to me that, on account of her illiteracy and lack of adoption of the British culture, she was a lady who had spent her life caring for her husband and children. Mrs Akhtar came across as a devout Muslim and incredibly kind-hearted. She did not speak any English and understood very basic English phrases; which were not many.”

45. Mr Bokhari explained that he attended upon Mrs Akhtar at her home address in view of her mobility problems, and that he ensured that he took instructions from her directly and not through her daughter or anyone else. Although Mrs Yasmin accompanied her on almost all the occasions that he saw Mrs Akhtar, he would sit alone with Mrs Akhtar in her front room and there would be no interference from Mrs Yasmin or her husband.

46. With regard to Mansoor Khan, Mr Bokhari confirms that he did not seek any instructions or guidance from him. Mansoor Khan was of course a co-defendant in the criminal proceedings brought against his mother and sister. However, Mr Bokhari states that he did meet him on one occasion at the initiative of Mrs Yasmin, ostensibly to discuss Mrs Akhtar’s involvement (or lack of it) in 3 Montem Lane and other properties. The meeting took place at a McDonalds because Mansoor Khan was suspicious that Mr Bokhari might record what was discussed. In fact, the meeting proved to be completely futile as Mr Khan was not willing to engage with the Slough Borough Council or provide any evidence, verbal or documentary, to assist in their enquiry.

47. The evidence of Mr Bokhari is limited. It does not, however, support Mrs Akhtar’s contention that he was acting contrary to her interests and in cahoots with Mansour Khan. The problem faced by the appellant, and one that has not been overcome, is that, in the absence of her waiving privilege, it is not possible to conduct an effective investigation into the circumstances of her relationship with Mr Bokhari. Moreover, the Tribunal takes the view that it may infer, from her refusal to waive privilege, that Mr Bokhari is unlikely to support the contentions she has made about his professional conduct.

#### *Statements in benefit applications*

48. Mrs Akhtar made a claim for Pension Credit on 18 May 2010. The completed form, which answers the question “Apart from the place where you live, do you or your partner own any other property or land in this country or abroad?” by means of an X over the ‘No’ box, is apparently signed twice by Mrs Akhtar in the presence of Mr David Roberts, a civil servant employed by the Department of Work & Pensions, on 2 July 2010. Mr Roberts’s written evidence is to the effect that he visited Mrs Akhtar at “the property” (that being, it seems, 131 The Crescent, the family home) on three occasions, and that on the third visit she completed the form, being accompanied by her daughter who acted as interpreter. Mr Roberts was not required by the appellant to give evidence before the Tribunal, I assume because his evidence was not challenged.

49. Mrs Akhtar initially denied that she had made a claim for Pension Credit at all and that she had never seen a form like this. She went on to say that she had not placed an X over the ‘No’ box, that one signature on the form was not hers, and that she did not recognise the other.

50. Mrs Akhtar sought to deny, in these proceedings, that she ever signed these two forms. Despite that, the two signatures which appear on the benefit claim form were provided by those acting for Mrs Akhtar in the criminal proceedings to the defence expert Mr Radley as “known writings” against which “questioned” signatures on various other benefit applications could be compared. In other words, Mrs Akhtar’s solicitors were indicating, one assumes consistent with their instructions at the time, that the signatures on the Pension Credit form were genuinely those of their client.

51. Although Mrs Akhtar has sought to distance herself from the solicitors who were acting for her at the time, as explained above she has refused to waive privilege in relation to her dealings with those solicitors, and it is therefore difficult (if not impossible) for this Tribunal to come to any other conclusion than that she has previously accepted having signed the Pension Credit claim forms.

52. It is clear to this Tribunal that in making a claim to a means-tested benefit there was an obvious motive for a claimant such as Mrs Akhtar to deny the ownership of property. In my judgment, that is what she did when she completed the form in Mr Roberts’s presence. In doing so, she was complicit in the fraud being committed.

53. As a result of the investigations by DWP, pension payments to Mrs Akhtar were stopped. On 1 April 2012 her daughter Farzana Yasmin (writing c/o Mrs Akhtar at 6 Wellesley Road) wrote to the DWP stating that Mrs Akhtar was unaware of what benefits she had been receiving and what her entitlements were, that she had never filled in any claim forms or review forms, and that she had been the victim of “elder abuse” at the hands of her son Mansoor Khan. Mrs Yasmin asked for copies of all past application forms and related documents so she could find out what had been done in her mother’s name, for an explanation and statement of reasons for the decision, and for a review of the decision to see if it could be changed.

54. The DWP responded on 1 May 2012, in a letter sent to 6 Wellesley Road, explaining that the overpayment was as a result of a failure to declare that she owned two properties other than that where she lived, when Mrs Akhtar first claimed Pension Credit. The overpayment covered a period from 24 May 2010 to 19 February 2012 and totalled £8,686.74. Mrs Yasmin responded (the copy in the bundle is not signed, but it is not contested that the letter was sent) that the case was “largely based on the false facts that she owns the properties known as 131 The Crescent, Slough and 3 Montem Lane, Slough.”

#### *Statements in criminal proceedings*

55. In the course of the criminal proceedings, Mrs Akhtar was required to provide financial information (pursuant to POCA applications) and she also provided two defence statements.

56. On 25 May 2012, she submitted a response to the POCA application in connection with the prosecution for breach of the enforcement notice (pursuant to POCA section 18) in which she stated that she had “No proprietary interest” in 3 Montem Lane. She made a further response to

the POCA application (pursuant to POCA section 17) in which she stated, in relation to 3 Montem Lane, that she “has never been the owner of this property”, and asserted (later) that she did not have any proprietary interest in it.

57. The section 17 statement continues:

“Mansoor Khan had a friend called Mr Naseem Hamed. The Defendant [that is, Mrs Akhtar] believes that Mr Hamed was the owner of 3 Montem Lane. Whilst he [Hamed] was undergoing divorce proceedings, it is the Defendant’s belief that he came to an arrangement with Mansoor Khan for the property to be transferred by way of gift into the Defendant’s [again, Mrs Akhtar] name so as to avoid any claims by his [Mr Naseem Hamed’s] former wife in the ancillary relief proceedings. The transfer into the Defendant’s name was effected without her knowledge or consent. Once Mansoor Khan informed the Defendant of this arrangement she immediately insisted that her name should be removed as the proprietor of 3 Montem Lane. The Defendant repeats the matters set out above that her relationship with Mansoor Khan has been turbulent and violent and that she has had to seek protection from the courts not only by way of a non-molestation order but also that of an occupation order.”

58. The statement continues by saying that Mr Qureshi

“is not known to the Defendant. The Defendant met him on one occasion when she was introduced by Mansoor Khan to him. On that occasion the Defendant signed some forms which she understood would release her as being registered as the proprietor of 3 Montem Lane. That is the only occasion on which the First Defendant has met Mr Qazi Qureshi.”

59. On 21 January 2013, Mrs Akhtar provided a defence statement (in relation to the prosecution for conspiracy to defraud) which she signed and which stated that she had never been “the beneficial owner” of 3 Montem Lane. It repeats for the most part the contents of the POCA statement above, albeit adding that although she had insisted that her name be removed as proprietor of 3 Montem Lane she was “forced by her son Mansour Khan to become the legal owner for a short while”.

60. An amended defence statement, drafted by counsel instructed on behalf of Mrs Akhtar, Mr Richard Sones, followed on 13 August 2013. That document repeated the assertion that Mrs Akhtar had never been the beneficial owner of 3 Montem Lane, then stated that she had never lived there and that “she was originally unaware that she was the registered freehold proprietor, and signed no documents in connection with its acquisition.” It went on to repeat the account of the circumstances in which Mrs Akhtar became registered proprietor in the first place.

61. In my judgment Mrs Akhtar’s responses to questions before the Tribunal gave further weight to the unreliability of her evidence as a whole. She denied that she had ever met Mr Qureshi, despite the clear statement she made (and repeated) in the course of the criminal proceedings. She initially denied signing her first defence statement (the second version does not appear to be signed). When she was given the opportunity, which she requested, of an

adjournment to have the first defence statement translated by the interpreter, she stated that “some of the bits are true” but “some are not”, excluding those parts of the defence statement which were contrary to her current interests. She claimed that her solicitor, Mr Bokhari, had fabricated substantial parts of her defence statement following consultation with her son Mansoor Khan, and that the two men had effectively conspired to pervert the course of justice.

62. I reject these claims. As I have indicated, I find the evidence of Mrs Akhtar wholly unreliable, and in the absence of any other evidentiary support I consider that the claims she makes about the conduct of her solicitor in the course of the criminal proceedings are wholly untenable.

63. The appellant has referred to the fact that she was in all likelihood in Pakistan at the time the TR1 was completed with her signature on it and stamps on her passport indicate that it may have been the case that on 3 September 2007 she was out of the country. I do not consider however that that is of any assistance to her case, as there is no evidence, other than the date which appears on the document, to the effect that it was in fact executed on that day.

64. I accept the respondent’s contention that Mrs Akhtar has (either of her own volition or at the initiative of other members of her family) changed her account at various times as necessary to meet the demands of the particular application. So it was that when she applied for Pension Credit, when she was being prosecuted for non-disclosure, and when POCA proceedings were brought against her assets, she denied that she had any proprietary interest in 3 Montem Lane. However, when the respondent succeeded in obtaining a confiscation order against Mr Qureshi on the basis that he was the owner of 3 Montem Lane, Mrs Akhtar completely changed tack, claiming that she had been owner all along.

#### *Expert evidence*

65. In the course of the criminal proceedings, an expert opinion was sought by the defence from Mr Robert Radley, a Forensic Handwriting and Document Examiner with over 34 years’ experience at the time. In the context of the allegations that Mrs Akhtar had made fraudulent benefit claims, the central issue was whether the signatures which appeared on the claim forms were those of Mrs Akhtar. Mr Radley was provided by Mrs Akhtar’s solicitors with copies of a number of documents some of which were “questioned” documents, and some of which were “known writings” of Mrs Akhtar.

66. The questioned documents included six claim forms between October 1999 and April 2008, but in addition there were three other documents - an undated letter to the Pensions Department, the signature page of a transfer (that being the signature page of form TR1, the submission of which to the Land Registry resulted in the entry of Mrs Akhtar onto the proprietorship register of 3 Montem Lane in 2004), and the signature page of an undated Deed.

67. The “known writings” were those which the defence solicitors had put forward as being documents which were believed to be authentically signed by Mrs Akhtar. Those writings

included the TR1 transfer document dated 2007 the submission of which resulted in the entry of Mr Qureshi onto the proprietorship register of 3 Montem Lane. That document is of course “questioned” in the course of the current proceedings, as Mrs Akhtar now contends that the signature is not in fact hers. It is to say the least ironic that Mr Radley did not consider whether the signature purporting to be Mrs Akhtar’s on the 2007 TR1 was genuine because those instructed by Mrs Akhtar in those proceedings informed him that that was her authentic signature.

68. When he reported on 23 May 2012, Mr Radley concluded that Mrs Akhtar did not sign the 2004 TR1 and that the likelihood that she did so in a disguised or accidentally modified form may be realistically disregarded. This conclusion was inevitably based upon his instructions regarding the authenticity of those signatures with which he was provided, and if it is the case that certain documents which he was informed were “known writings” are now “questioned” by Mrs Akhtar, that is likely to affect the reliability of his opinions.

69. The appellant sought to exclude the evidence from the current proceedings. She argued through her counsel that it was not open to the respondent to contend that the 2004 TR1 was ineffective to transfer title in 3 Montem Lane to Mrs Akhtar. I did not accede to the application to exclude. The respondent was not seeking to argue that the entry of Mrs Akhtar as registered proprietor of 3 Montem Lane was mistaken (indeed to do so successfully would frustrate its objectives in resisting the application being made). Instead, the respondent wished to adduce this evidence as casting further light upon the credibility and reliability of Mrs Akhtar’s evidence, and I decided that that was a legitimate purpose.

70. The prosecution had also sought expert advice at the same stage of the criminal proceedings, obtaining a report from Ms Danuta Domgalska, a Forensic Document Examiner in the Questioned Documents Group at LGC Forensics. She examined a wider range of documents (from what was thought to be a variety of sources) but as far as the 2004 TR1 was concerned she concluded that there was ‘no support’ for the proposition that the signature was written by Mrs Akhtar. Like Mr Radley, and one presumes for the same reasons, she was not asked to consider the signatures either on the 2007 TR1 or the 2010 ID1.

71. In the course of these proceedings the defence instructed Dr Melanie Pugh, another expert Forensic Document Examiner. She has been the only expert to consider the signature purporting to be that of Mrs Akhtar on the 2007 TR1. She concluded that there was a moderate level of evidence to show that the signature on the 2007 TR1 was a genuine signature produced by Mrs Akhtar. She qualified her opinion by saying that due to the copy nature of the document provided it was not possible to exclude the possibility that the questioned signature had been transposed onto the TR1 form from another source.

72. I should add, in the interests of completion, that Dr Pugh was asked about the signature on the 2004 TR1; she said that there was a moderate level of evidence to show that it was not a genuine signature written by Fiaz Akhtar but was a simulation of her signature by some other person. To that extent, her evidence supported that of Mr Radley and Ms Domgalska.



### *The absence of Mr Qureshi*

73. Finally, the appellant made reference to the fact that “somewhat tellingly” Mr Qureshi has not participated in these proceedings, and that the covering letter apparently sent by Mr Qureshi with his application on 3 October 2010 states that “the transferor transferred by way of gift to her son in September 2007”.

74. I agree with the FTT that that letter does not materially assist with the question whether Mrs Akhtar signed the 2007 TR1 or whether there was a mistake on the register. It is an ambivalent statement from an individual who has been convicted of fraud in the course of the criminal proceedings. For the same reason, I do not consider that Mr Qureshi’s failure to participate in these proceedings can be said to indicate anything of import or significance. If he were to oppose Mrs Akhtar’s application successfully, it would result in the proceeds of 3 Montem Lane being confiscated under POCA.

### *Conclusion*

75. It is for the appellant to satisfy the Tribunal that the signature on the TR1 is not that of Mrs Akhtar. That burden has not been discharged. The expert evidence of Dr Pugh, the one expert to examine the 2007 TR1, while not in itself conclusive, supports the respondent in its contention that Mrs Akhtar is the person who signed the form. The numerous statements of Mrs Akhtar in the course of the criminal proceedings and elsewhere undermine, by their very inconsistency, what it is that she is now alleging. In short, Mrs Akhtar has been shown to be entirely unreliable as a witness of fact.

76. There is the alternative contention made by the appellant that, if the signature is hers, it was extracted by means of duress. This contention is a complete non-starter.

77. Mrs Akhtar has given evidence in the course of these proceedings to the effect that she did not sign the relevant form (the “TR1”) purporting to dispose of her interest in 3 Montem Lane to Mr Qureshi. In her written statement, dated 28 March 2019, she qualifies her assertion that “the signature on the TR1 form is not recognisable to me as mine” by saying “if it was mine, it could only have been used (sic) through some form of deception.” That is not however how she has presented in the course of her oral evidence. In response to examination in chief by Ms Omar, on being shown the TR1 she said “This is not my signature, they have done it themselves”; and she repeated this allegation in the course of cross-examination. At no stage has she elaborated upon her claim that she may have been deceived into signing the form or that she may have signed the form under some kind of duress. I have therefore arrived at the same conclusion as the FTT on this aspect of the claim: that there is no evidence of abuse upon which a finding that Mrs Akhtar signed the form under duress can conceivably be based.

### *Was the TR1 form properly attested?*

78. The FTT found, on the balance of probabilities, that the 2007 Transfer was not witnessed by Marian Siminiuc and that although the Transfer bore his name and address it was not his signature. This finding was based on a witness statement of Mr Siminiuc and on the FTT making a comparison of the signature on the Transfer with that on Mr Siminiuc's Romanian passport. There was no expert analysis of the two signatures of Mr Siminiuc available to the FTT (nor has any such evidence been adduced before this Tribunal).

79. The appellant relied before the FTT, and before me, upon a statement of Marian Siminiuc dated 7 July 2017. The statement was made in Romanian and a translation provided for the purposes of these proceedings. Mr Siminiuc was not made available to the respondent for cross-examination either before the FTT or before me, despite the possibility of evidence being given from a location some distance away from the court. In the circumstances, it is essential that the Tribunal examines the statement carefully both for what it says and for what it does not say and that account is taken of such evidence as there is which may support or undermine the witness's statement.

80. After confirming his name and address in Romania, Mr Siminiuc states that he "solemnly makes the statement in truth to be used in any legal matter or proceedings or courts of the United Kingdom" and continues:

"That having examined a document known as TR1 which relates to a property known as 3 Montem Lane, Slough, Berkshire, SL1 2QU

"Which is dated 03<sup>rd</sup> September 2007

"That the signature bearing my name as witness to the Execution in Paragraph 13 is not mine."

81. Mr Siminiuc explains that he makes this statement "on the request of Mrs Fiaz Akhtar who claims to be the owner of the property and I after understanding her plight I am willing to assist her in determining the facts."

82. The statement continues:

"I can confirm that I did not meet Mrs Fiaz Akhtar at any point in 2007 and did not witness this deed TR1 being executed as alleged.

"I have no idea how my name has furnished on this document and whoever wrote my name did so without my permission and knowledge.

"I can confirm that I was a temporary resident in the UK from the period of August 2004- September 2011.

"And that I undertook a post graduate ship at a university in London and that I did reside at Helsby Court.

“I therefore believe this questioned document known as TR1 dated 03<sup>rd</sup> September 2007 to be False and Fabricated.”

83. The statement is then signed, the name MARIAN MARIUS SIMINIUC written in block capitals and dated as 07-07-2017.

84. The statement is lamentably short on detail and unsatisfactory in a number of respects. The witness accepts that he was in the UK, apparently for purposes of post-graduate study in a University, for a period of seven years, and that he was residing at Helsby Court. He does not state whether he met Mrs Akhtar at any time other than in 2007, nor does he state whether he knew any of the other persons named in the TR1 or the property at 3 Montem Lane. While it is clear that Mrs Akhtar, or those advising her, were able to discover where Mr Siminiuc was living in Romania, and to contact him with a view to making this statement, it is far from clear, on the basis of this evidence, despite his acknowledgement that he lived at Helsby Court, what his relationship was with members of Mrs Akhtar’s family. It is somewhat strange that this witness, who claims to have studied in the UK for seven years at an advanced level, makes the statement in Romanian rather than English. There is no explanation for this, nor has any examination of this been able to be carried out in view of the circumstances in which this evidence was adduced.

85. The FTT felt able to compare the signature on the TR1 purporting to be that of Mr Siminiuc with that on his Romanian passport in assisting it to its conclusion that the signature on the TR1 was not his. No expert had been asked to make this comparison, and these were the only two signatures available to the FTT. It was open to the appellant, in seeking to support her claim that Mr Siminiuc had not signed the TR1, to produce other examples of Mr Siminiuc’s handwriting for expert analysis, but none was put forward.

86. There is evidence from the criminal proceedings linking the name of Mr Siminiuc to Basscroft Properties Ltd, a company linked to the defendants charged with conspiracy to defraud and referred to in those proceedings as the landlord of properties including 20 Wexham Road and 3 Montem Lane. Mr Siminiuc’s statement does not mention any link to Basscroft Properties, and he has not been able to be cross examined about any such link.

87. The FTT correctly stated that it was entitled to look at any material which has a probative value. That is not however the same as accepting such material as being true and reliable. I find it surprising that the evidence produced- the statement of Mr Siminiuc, unsupported by any other evidence- was sufficient for the FTT to be satisfied, even on the balance of probabilities, that the signature on the TR1 was not that of Mr Siminiuc.

88. I take the contrary view. Taking account of all the evidence before the Tribunal, I am of the view that the appellant has not come close to satisfying me on the balance of probabilities, as she must, that the signature on the TR1 was not Mr Siminiuc’s.

89. As the appellant has failed to prove that the signatures on the TR1 were not those of Mrs Akhtar and Marian Siminiuc respectively, she cannot establish that the entry of the name of Mr

Qureshi onto the register was wrong. There was therefore no mistake and the FTT's direction to the registrar to cancel the appellant's application was correct. The appeal must therefore be dismissed.

### *Alteration of the register*

90. That is sufficient to dispose of the appeal. I have, however, heard legal argument on the true scope and extent of the powers of alteration of the register contained in Schedule 4 to the Land Registration Act 2002. While resolution of that argument is not necessary for the determination of this appeal, it may be helpful to set out briefly the conclusions I have reached, in particular because they differ from those arrived at by the FTT.

91. The FTT, having determined that Mr Siminiuc did not sign the TR1, had to decide whether that entitled the appellant to an alteration of the Register in her favour. It held that the 2007 Transfer, being incorrectly attested, was void. However, the FTT did not accept that a void transfer was necessarily a "mistake" within the meaning of Schedule 4.

92. I have set out at [34] above the relevant statutory provisions. In order for jurisdiction to be exercised in this case, it was necessary for the FTT to conclude that there was a "mistake" to be corrected.

93. The FTT purported to apply the test for a mistake in the Register approved by the Court of Appeal in *NRAM Ltd v Evans* [2017] EWCA Civ 1013; [2018] 1 WLR 639, namely whether, had the Land Registry known the true facts at the time of the registration of the instrument, it would have done something different. It observed, with reference to Ruoff & Roper's *Law and Practice of Registered Conveyancing*, para. 49.016.01, that a failure to complete the correct form was one of the main reasons for the Registry having to raise a requisition, and that in the present circumstances the party applying for registration would have raised a requisition to have the execution of the transfer properly attested. It would have been "far from clear" that such a requisition would have produced a protest from the appellant, in view of the facts (as the FTT had found) that Mrs Akhtar had signed the TR1 herself in 2007; that when Mr Qureshi had sought to vary the restraint order on 27 July 2012 the appellant, although represented in court, did not contest Mr Qureshi's evidence that he was the sole legal and beneficial owner of 3 Montem Lane; and that Mrs Akhtar had disavowed any interest in the property when making her "section 18" statement in the POCA proceedings.

94. As a result, the FTT concluded at [63]:

"On the balance of probabilities I find that the Transfer would have been correctly attested following the requisition and re-submitted to the Land Registry who would have proceeded to register it. It follows that the Land Registry would not have done anything differently in 2010, had the true position been explained to them and the correct procedure followed. I therefore conclude that no mistake was made when the 2007 Transfer was registered."

95. Mr Bates, on behalf of the appellant, has criticised, I consider with some justification, this reasoning of the FTT. Although not necessary for the disposition of this appeal, it is important that the Tribunal, in explaining why this reasoning is flawed, briefly considers the principles upon which tribunals are to proceed when applications for alteration of the Register are made.

96. As the FTT note, in *NRAM Ltd v Evans*, above, the Court of Appeal referred with apparent approval at [49] to the formulation advanced by the editors of Megarry & Wade's *Law of Real Property* in 2012 (see 8<sup>th</sup> edition, 7-133; a similar passage appears in the recently published 9<sup>th</sup> edition at 6-133):

“What constitutes a mistake is widely interpreted and is not confined to any particular kind of mistake. It is suggested therefore that there will be a mistake whenever the registrar would have done something different had he known the true facts at the time at which he made or deleted the relevant entry in the register, as by: (i) making an entry in the register that he would not have made or would not have made in the form in which it was made; (ii) deleting an entry which he would not have deleted; or (iii) failing to make an entry in the register which he would otherwise have made.” (Footnotes omitted).

97. The Court of Appeal also approved a similar passage in *Ruoff & Roper*, above, at 46.009:

“ ‘Mistake’ is not itself specifically defined in the 2002 Act, but it is suggested that there will be a mistake whenever the registrar (i) makes an entry in the register that he would not have made; (ii) makes an entry in the register that he would not have made in the form in which it was made; (iii) fails to make an entry in the register which he would otherwise have made; or (iv) deletes an entry which he would not have deleted; had he known the true state of affairs at the time of the entry or deletion. The mistake may consist of a mistaken entry in the register or the mistaken omission of an entry which should have been made. Whether an entry in the register is mistaken depends upon its effect at the time of registration...”

At [52], Kitchin LJ, as he then was, states:

“It will be noted that both these formulations focus on the position at the point in time that the entry or deletion is made. That, so it seems to me, must be right. If a change in the register is correct at the time it is made it is very hard to see how it can be called a mistake.”

98. Kitchin LJ then went on to consider whether it was necessary to draw a distinction (as contended by both Megarry & Wade and *Ruoff & Roper*) between a void and a voidable disposition. This was central to the resolution of the appeal in *NRAM v Evans* where the disposition was not void but voidable. Kitchin LJ, having considered dicta of Jacob LJ in *Baxter v Mannion* [2011] 1 WLR 1594 and comments of the editors of Emmet & Farrand on Title which argued that transactions induced by fraud (and therefore voidable) should lead to alteration of the register on the ground of mistake, decided (at [56]) that the distinction between void and voidable dispositions was “principled and correct” and supported by the decision of the Court of Appeal in *Norwich & Peterborough Building Society v Steed* [1993] Ch 116. He concluded, at [59]:

“In my judgment, the registration of a voidable disposition such as that with which we are concerned before it is rescinded is not a mistake for the purposes of Schedule 4 to the LRA 2002. Such a voidable disposition is valid until it is rescinded and the entry in the register of such a disposition before it is rescinded cannot properly be characterised as a mistake. It may be the case that the disposition was made by mistake but that does not render its entry on the register a mistake, and it is entries on the register with which Schedule 4 is concerned. Nor, so it seems to me, can such an entry become a mistake if the disposition is at some later date avoided. Were it otherwise, the policy of the LRA 2002 that the register should be a complete and accurate statement of the position at any given time would be undermined.”

99. Applying these principles to the current facts, I do not agree with the FTT that it was right to conclude, having determined that the disposition was not properly attested, that the entry of Mr Qureshi on the register as proprietor was other than by mistake.

100. By section 25(1) of the Land Registration Act 2002, a registrable disposition only has effect “if it complies with such requirements as to form and content as rules may provide.” Rule 58 of the Land Registration Rules 2003 provides that a transfer of a registered estate must be in prescribed form (the relevant form here being Form TR1) and by Schedule 9 to those Rules that form (save where it is by way of assent) must be executed as a deed. The general formalities for the execution of deeds are laid down by the Law of Property (Miscellaneous Provisions) Act 1989, section 1(3)(a) of which requires a person executing a prescribed form to sign it in the presence of a witness who attests his or her signature. It follows that a failure to attest the form properly will result in the disposition failing to have effect, and being void.

101. The disposition, had it failed to satisfy the prescribed formalities, would have therefore been void not voidable, and that would have remained the position at the time the disposition was presented to the Registry to make Mr Qureshi the registered proprietor. Had the true facts been known to the registrar, namely that the disposition was void, the registrar would have “done something different”: he or she would have refused to enter Mr Qureshi on the register as proprietor.

102. The relevant time for considering whether a disposition is void is the date that the disposition is presented for registration. The question for the FTT, should it be later contended that the registration was a mistake, is simply whether the registrar should have refused to make the entry on the register. In this case (on the assumption that the disposition was void) that question permits only one answer: the application would have been refused.

103. It may be that the registrar would, in response to the application, have raised a requisition. It may be that, had a requisition been raised, the defective form of the disposition would have been addressed to the satisfaction of the registrar. This may be because (as the FTT surmised) that a requisition would have produced no protest from Mrs Akhtar who, as has been fully explored above, made a number of statements on other occasions denying any claim to legal or beneficial ownership of 3 Montem Lane. But the simple fact is that, whether or not the registrar promoted, by way of requisition, a course of action which may have ultimately led to

the disposition being registered, there can be no doubt that, had the true facts been known, the registrar would not have entered Mr Qureshi on the register as proprietor of 3 Montem Lane.

104. In short, if a person is registered as proprietor pursuant to a void disposition, such as a forged transfer, that is a mistake. If the disposition is only voidable, however, the registration of the disponent as proprietor will not be a mistake unless the disposition has been rescinded prior to registration taking place.

105. The fact that there is a mistake does not mean that the register must necessarily be altered. Paragraph 5 of Schedule 4 confers power on the registrar (exercisable on direction by the FTT in cases such as these) to alter the register, albeit a power that is carefully prescribed, and that becomes, in certain circumstances, a duty. But alteration of the register is not automatic, and the registrar (or the FTT as the case may be) must apply the provisions of Schedule 4 in order to decide whether to alter the register on being satisfied that a mistake has been made.

Dated: 22 October 2019

**HHJ Stuart Bridge**