CLAIM No: K10CL238

IN THE COUNTRY COURT AT CENTRAL LONDON

BUSINESS & PROPERTY LIST

BEFORE RECORDER ROBERT McALLISTER

IN THE ESTATE OF ROBERT FREDERICK HARRINGTON (deceased)

BETWEEN:

JILL ANNETTE LANGLEY

Claimant

and

(1) GUIXIANG QIN

(2) ZHIBIN SHI

Defendants

James McKean (instructed by Rothley Law) for the Claimant

Richard Buston (instructed by Barrister Richard & Partners) for the Defendants

Hearing dates: 12 – 15 February 2024 ; 12 April 2024

JUDGMENT

Introduction

1. This reserved judgment follows a 4-day multi track trial concerning the estate of Robert Harrington ("the Deceased"), who was born on 1 May 1926 and died on 26 May 2020 aged 94. The Claimant was represented at trial by Mr James McKean and the First Defendant by Mr Richard Buston.

2. The Deceased was pre-deceased by his first wife, Elieen Harrington, who died on 9 January 2018. They had been married for 66 years and had a single child, Jill Langley (née Harrington) who is the Claimant ('the Claimant').

3. The Deceased married Guixiang Qin ('the Marriage'), now Mrs Harrington ('the First Defendant'), on 25 June 2019 when he was 93 and she was 54. The First Defendant is sometimes referred to as Chelsea (see e.g. Bundle 1/page 32 [1/32]).

4. The Claimant alleges that this was a predatory marriage ([paragraph 22 of the Particulars of Claim [1/15]). There is a dispute as to how long the Deceased and the First Defendant knew each other and in what capacity. It is alleged by the Claimant that the "First Defendant was the Deceased's paid carer" (Particulars of Claim, paragraph 4 [1/12]).

5. The Deceased purported to make a will dated 24 March 2020 ('the Will') [1/55 – 56], which is the subject matter of this claim. The Will was drafted by Fraser Dawbarns and the Deceased visited their offices twice. The Will names the First Defendant, or in her place the Second Defendant (the First Defendant's adult son from a previous relationship Mr Zhibin Shi), as sole beneficiary and executrix. The Second Defendant played no part in the trial, save for the service of a witness statement.

6. The size of the estate is unknown, but it includes a home at North Farm, 15 Gayton Road, King's Lynn, Norfolk PE30 4EA ('Gayton Road'), which was purchased for £373,000.00. In late 2018, there was over £200,000.00 in the Deceased's current account. The Claimant raises questions about where the money has gone.

7. The Claimant asks the Court to pronounce against the Will by reason of:

   a. The Deceased's lack of testamentary capacity to make the Will;

   b. The Will having been made without the Deceased's knowledge and approval; and/or

   c. The undue influence exerted on the Deceased by the First Defendant which procured the Will.

8. The Defence [1/36] denies the claim. In short summary, the First Defendant said that it was the Deceased's own decision to "to do a new Will and wanted to instruct Fraser Dawbarns as he had been told they were the best in the area… It was his decision and apart from helping my Husband get their offices I had no part in the process. He trusted the solicitors and if there is a problem with the Will it is in my opinion entirely their fault."

9. More generally, the First Defendant says that her marriage to the Deceased was based on love and affection and that any difficulties in the relationship between the Deceased and the Claimant were longstanding and pre-dated the First Defendant's relationship with the Deceased.

10. In Reply [1/39] the Claimant pleads that "It is noted that the First Defendant does not ask the Court to pronounce in favour of the 2020 Will".

11. If the Will is set aside, the Deceased will have died intestate, as his previous wills, dated 10 June 1997 and 4 May 2012 [1/57 – 62], were revoked by the Marriage. The Deceased's capacity to marry is not formally challenged.

Brief Procedural history

12. On 22 December 2020, the Claimant applied for pre-action disclosure of the Deceased's medical records, being disposed of by consent on terms [1/43 – 44].

13. Proceedings were issued in the High Court on 29 March 2022 [1/9].

14. Directions were given at a Costs and Case Management Conference by Master Pester on 20 April 2023, whereupon the claim was transferred to this Court [1/45 – 48]. Directions included both parties being permission for expert evidence (paragraph 6) and as to disclosure by reference to CPR rule 31.6.

15. Further directions were given by order of HHJ Dight CBE on 14 August 2023 [1/49], 31 August 2023 [1/50], and 10 October 2023 [1/51].

16. The Claimant applied for permission to serve witness summaries, and for specific disclosure, on 29 September 2023. Those applications were decided by HHJ Johns KC on 29 January 2024 [1/52 – 54] and a relatively extensive order was made against the Defendants to exhibit or explain why it might be that the Defendants were unable to serve documents in respect of the bank statements of the Deceased, the application for grant of probate, the value of the estate, correspondence between Defendants and the Deceased, correspondence with any solicitors relating to property transfer and any testamentary documents. Further directions were given for trial, including for the Defendants to make any provision for any interpreter considered reasonably necessary.

17. The First Defendant produced a statement dated 7 February 2024 exhibiting some documents, but broadly stating that there were no (or no further) documents of the classes specified, that requests from third parties said to be holding the documents had been refused.

The trial

18. The Court has been assisted by skeleton arguments and written closing submissions from both Claimant and First Defendant and heard from the following witnesses:

    a. Dr Hugh Series, Consultant old age psychiatrist. the Claimant's expert witness [2/82 – 123].

    b. Joanne King, who purchased the Deceased's former house [2/65 – 66];

    c. Reverend Catherine Dixon, who conducted Mrs Harrington's funeral [2/70 – 71]

    d. Simon Langley, the Deceased's grandson [2/54 – 60];

    e. Christopher Quilter, the Deceased's nephew [2/61 – 63];

    f. The Claimant [2/3-53, various statements];

    g. The First Defendant [2/72-78].

19. At the outset, it should be observed that there was little to overlap in time and space between the Claimant, Simon Langley and Christopher Quilter on the one hand and the First Defendant on the other. That is to say, that there is little/no disputed oral evidence as between those witnesses. There was no real dispute about the evidence of Joanne King. There was, however, room for dispute about who the Deceased was and how he behaved, over time, and how any contemporaneous documents (of which there are relatively few) fit in to understanding the Deceased, particularly at the time of the making of the Will in March 2020. Reverend Catherine Dixon's involvement with the Deceased, and to a lesser extent the Claimant, was brief but came at an important time in the chronology.

20. Much of the cross-examination of the First Defendant concerned the nature of her relationship with the Deceased, her knowledge or involvement in alleged attempts to create a will post-marriage and her involvement in the Will and her knowledge/involvement in the movement of sums from the Deceased's bank accounts.

21. Because of the nature of some of the allegations against the First Defendant, I gave her a general explanation about the privilege against self-incrimination and several reminders. She did not claim the privilege and it was not claimed on her behalf.

22. Whilst I cannot resolve all factual disputes and the truth or otherwise of all assertions made, in particular by the Deceased, there are a number of elements of what was recorded to have been said by the Deceased to Fraser Dawbarns in March 2020 that can be judged against the evidence overall, included letters apparently written by the

Deceased (or in his name) and what he said to Reverand Dixon. Recurring themes that form part of the narrative include:

a. How long had it been since the Deceased had seen (or had said he had seen) the Claimant, and in what circumstances, with references to 30 years, 7-8 years and about 2 years appearing in writing.

b. The extent of any rift or estrangement between the Deceased occurring upon the Claimant's marriage to her husband Mitchell Langley in 1987.

c. The Claimant's reporting the care of her mother in the Deceased's hands to social services in 2017.

d. Historic allegations that the Claimant stole horses from the Deceased.

The law

23. Both Claimant and Defendant set out key aspects of the relevant law in their skeleton arguments and in written closings. There is not much dispute as to the law. There is significant dispute of the application of it.

24. Standard of proof is the civil standard: the balance of probabilities. The burden is generally on the party asserting a fact or seeking to prove an issue, but see below as to the burden of proof in relation to testamentary capacity.

Testamentary capacity

25. Both parties refer to *Banks v Goodfellow* (1870) LR 5 QB 549. The Claimant referring more specifically to paragraphs 39-47 of *Simon v Byford* [2014] EWCA Civ 280, in particular where Lewison LJ confirmed (paragraph 39) that "the general common law test for testamentary capacity is that laid down in *Banks v Goodfellow*" and which (by quoting the trial judge's reliance on *Sharp v Adam* [2006] EWCA Civ 449, itself quoting Cockburn CJ in *Banks)*, Lewison LJ noted that it is essential to the exercise of a power of disposition by a will that a testator:

> '[a] shall understand the nature of the act and its effects; [b] shall understand the extent of the property of which he is disposing; [c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, [d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties…'.

26. Lewison LJ noted (paragraph 39) that "it is important to emphasise that at this stage we are dealing with capacity, in other words with potential." Continuing at paragraph 40 "capacity depends on the potential to understand. It is not to be equated with a test of memory", quoting Erskine J in *Harwood v Baker* (1840) 3 Moo PC 282:

> "…in order to constitute a sound disposing mind, a Testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard; but that he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom by his will he is excluding from all participation in his property."

27. The Claimant referred to dicta of Briggs J in *Key v Key* [2010] EWHC 408 (Ch), where he comments upon "the Golden Rule" (paragraphs 6-8) and, later, the development of psychiatric medicine since *Banks v Goodfellow* "without in any way detracting from the continuing authority" (paragraph 95). In paragraph 97 Briggs J said the following about the burden of proof:

> "The burden of proof in relation to testamentary capacity is subject to the following rules:
>
> i) While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity.
>
> ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity.
>
> iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity nonetheless."

28. The Defendant draws the Court's attention to paragraph 98: that the decision on capacity is not to be delegated to experts.

29. The Defendant relies on *Parker v Felgate* (1883) 8 P.D. 171 saying that the case "provides that as long as a testator had capacity at the time that instructions for the Will were given, the level of capacity at the time of execution is that the testator must understand that they are executing a Will prepared in accordance with their instructions. The evidence is clear that the deceased knew that he was executing the will in line with his instructions of 13th March 2020, so any decline in Cs cognitive ability between the instructions and the signing does not change anything". [sic]

30. In respect of "the Golden Rule", the Defendant submitted: "The deceased lawyers were highly experienced lawyers who wrote a detailed note and was seen by three lawyers. There was no doubt in their minds that the deceased had capacity and so the golden rule not applicable." Further "The Golden Rule is not an absolute rule, ie it is not the case that if it is followed the Will is valid and if it is not followed the Will is invalid. Instead, it is a matter of industry good practice for the Will drafter to observe the rule to avoid, insofar as possible, claims that the Will is invalid."

31. It is asserted by the Claimant that the Will cannot be propounded in the absence of evidence from any attesting witness citing *Belbin v Skeats* (1858) 1 Sw & Tr 148) and that, in any event, there is no counterclaim. Whether these issue are live, and how to deal with them appropriately, depends on my findings on the claim. If it succeeds, they do not arise.

Undue influence

32. The Claimant referred the court to the principles of undue influence as summarised by Lewison J in *Edwards v Edwards* [2007] WTLR 1387 at paragraph 47:

> 'There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:
>
> i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;
>
> ii) Whether undue influence has procured the execution of a will is therefore a question of fact;
>
> iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;
>
> iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.
>
> v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;
>
> vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The

will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;

vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny". The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;

viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone;

ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent.'

33. In the First Defendant's skeleton argument, it is said that "Lewison J, in *Edwards v Edwards* [2007] EWHC 1119 (Ch) provides that to prove undue influence, the facts must be inconsistent with any other hypothesis". However, the Claimant relies on dicta of Master Pester in *Abdelnoor v Barker* [2022] EWHC 1468 (Ch) at 49:

'Whilst Lewison J stated that what must be shown is that the facts are "inconsistent with any other hypothesis" other than undue influence, this is to overstate the position. The standard of proof is the normal civil one of the balance of probabilities. As counsel for the Claimants pointed out, an allegation of undue influence is a most serious one to make: see *Re Good (deceased) Carapeto v Good* [2002] EWHC 640 (Ch). It is a species of fraud, which requires strong and cogent evidence to prove […]'.

34. The Claimant also says that undue influence is typically established by way of inference, relying on dicta of HHJ Jarman KC, sitting as a Judge of the High Court, in *Jones v Jones* [2023] EWHC 1457 (Ch) at paragraph 59:

> ‘Finally, I turn to consider whether the will was the product of undue influence exerted by Ceri Jones on her mother. There is no direct evidence of such influence in the present case, but as Mann J observed in *Schrader v Schrader* [2013] EWHC 466 (Ch) , there rarely is. Undue influence is more usually established by inference from all the circumstances.’

35. After circulating this judgment in draft, Counsel drew my attention to *Rea v Rea* [2024] EWCA Civ 169, handed down after trial on 23 February 2024. Lord Justice Newey reviewed well known authorities on the civil burden and standard of proof generally and those relating to undue influence specifically, concluding (paragraph 32):

> “…I would accept that undue influence can be proved without demonstrating that the circumstances are necessarily inconsistent with any alternative hypothesis. On the other hand, the circumstances must be such that undue influence is more probable than any other hypothesis. If another possibility is just as likely, undue influence will not have been established. When making that assessment, moreover, it may well be appropriate to proceed on the basis that undue influence is inherently improbable.”

36. The Claimant relies on “red flags” for vulnerability to undue influence set out within the report of Dr Series [2/115-116].

The evidence

37. I rehearse the majority of the evidence that I heard, although in summary form at times. I also pause to comment on the evidence where helpful to do so.

Dr Hugh Series

38. Dr Hugh Series, Consultant old age psychiatrist, adopted his report dated 21 August 2023. His written report, in his summary of conclusions, set out that [2/84]:

> “1.1.1…towards the end of his life the deceased was suffering from cerebrovascular disease, causing the blood circulation to the brain to be compromised. There is no formal assessment of his cognitive function close in time to the making of the 2020 will, but the claimant has pointed out a number of errors in the information that he gave the solicitor who took instructions which, if correct, suggests that there was some impairment of his memory”.
>
> “1.1.2 If the Court accepts the non medical evidence, in my opinion, on balance, it demonstrated that the deceased was most likely suffering from a paranoid delusional disorder arising in the context of failing cognitive function. I think it is more likely than not that his delusions about his daughter’s behaviour towards

him had poisoned his mind and led to his excluding her from his will. However, I do not think that the evidence available is sufficient to suggest that he was unable to understand the nature and effect of the act of making a will or that he would have been unable to understand the extent of his estate. In my opinion, on balance, he was not able to weigh the claim of his daughter effectively because his paranoid delusions against her poisoned his mind, and he may (if his daughter's statement can be relied on) have been unable to recall the true history of her relationship with him and his wide, and he therefore lacked testamentary capacity."

"1.1.3 In my opinion, there are a number of red flags which suggest that the deceased may have been vulnerable to undue influence… I offer no opinion on the fact of whether undue influence took place, only that in my opinion he was vulnerable to it."

"1.1.4… I think it more likely than not that he would have been able to meet the test for capacity to marry…"

39. Accordingly, the starting point with the evidence of Dr Series was that the third and fourth limbs of *Banks v Goodfellow* and undue influence were potentially in issue but that Dr Series was, in part, relying on the non-medical evidence of the Claimant being accepted by the Court. I note that he gave evidence first, so was not cross examined with the benefit of anything that had come out in oral evidence and which might affect the written evidence upon which he relied. In broad terms, the First Defendant says that key "inaccuracies" relied on by the Claimant as evidence of delusions are not inaccuracies or are not material.

40. Dr Series answered questions with care. He effectively rejected the contention that earlier or longstanding personality traits potentially shown in the written evidence of the Deceased being difficult undermined his opinion.

41. Dr Series was careful not to venture into matters that are for the Court to decide (e.g. where there are competing facts). However, he was able to comment that, where there are multiple disputed facts, some things said by the Deceased might be thought to be within a tolerance and some might be more delusional. He considered that some might be more relevant to *Banks v Goodfellow*, for examples if it was not true that the Claimant had not visited for a particular period of time. He said that context was important.

42. In re-examination, Dr Series distinguished between capacity for marriage and testamentary capacity, recognising that the law gives a relatively low threshold for marriage, giving his view that most people are likely to have capacity to marry given what one needs to understand. Dr Series commented that marriage is widely understood

in society and that the focus is the act of marriage (and is not person specific). He noted that what marriage is and what it means are very widely understood. By contrast, he commented that testamentary capacity requires much more specific understanding of the estate and the potential claimants on that estate, i.e. who and what the claim is and what might they have done to deserve more or less. Dr Series said that that was specific information requiring memory and the process of weighing up which can often be very difficult.

43. When asked if the Deceased would pass the second limb of *Banks v Goodfellow* if he was wrong about the size of estate, Dr Series said that it would depend how far out the answer was, contrasting e.g. an estate of £950,000.00 with one that was worth £1,000.00 with no house. When asked what the position would be if the difference was £400,000.00 rather than £1m, Dr Series said that it was a matter for the Court.

44. Dr Series was asked about cognitive assessments. He said that the AMTS/MMTC was a very poor assessment of executive function and that you could still get top marks if delusional.

45. Dr Series thought that the two attendance notes from Fraser Dawbarns were not very rigorous capacity tests, partly because he did not see any attempt to verify what information the Deceased gave about the estate and no attempts were made to understand his relationship with his daughter, which was neither challenged or verified.

46. Dr Series was asked, if the Court thinks the Deceased's instructions were "substantially inaccurate", would this lend weight to his conclusion. If the finding was that the Deceased was substantially incorrect then cognitive function was worse than the AMTS suggested, and then delusions could more easily arise. If a person cannot recall something then they cannot check if it is correct. Dr Series considered that delusions come out of both personality and cognitive function. Dr Series went further, suggesting that evidence of abnormal personality throughout life would bring a diagnosis of a paranoid personality disorder 'more strongly into the frame'.

47. Overall, it is clear that the evidence of Dr Series certainly leaves a finding of either a lack of testamentary capacity or undue influence open to me, subject to my factual findings and, in particular, the accuracy of what Fraser Dawbarns were told and the context of that.

Reverend Catherine Dixon

48. The second witness was Reverend Catherine Dixon, who appeared pursuant to a witness summons. Again, she was a straightforward witness with no obvious reason to take sides. I set out her evidence relatively fully. Rev. Dixon adopted a letter she wrote in July 2021 as her evidence. The letter largely concerns her meeting the Deceased at his

home in January 2018 in the week prior the funeral of Mrs Eileen Harrington and then the funeral itself on 18th January 2018.

49. In her letter, Rev. Dixon noted that she found the Deceased to be "a difficult character", he was "quite angry and spoke about suing the Queen Elizabeth Hospital where his wife had been treated shortly before her death, but his reasoning seemed unclear and it didn't seem as if he had any basis on which to take such action. He was clearly looking to blame someone or something for his loss but strikingly framed it in terms of what he had suffered rather than what she had suffered. He told me very little about her as a person; I am willing to share my notebook with my record of that visit". Rev. Dixon wrote that "He made it clear to me that I was not to say anything about them as a couple in church during the service" and that "He chose the hymn 'Jerusalem' for the service, telling me it was because he had lived there during his military service, and that he was a retired Army Major". Further, Rev. Dixon noted that the Deceased "told me that he had been estranged from his daughter Jill for 30 years" and that "I felt uneasy during my time with Mr Harrington. He struck me as a man who wanted his own way and was quite forceful and demanding in his tone. He seemed angry and frustrated, and very isolated from the world".

50. Rev. Dixon noted that "I was struck in the week after the funeral that a member of staff from the funeral directors emailed and said she wondered if there was any way we could reach out to Mr Harrington and invite him to church events as he seemed so isolated and vulnerable. I have never before or since been approached in such a way".

51. In answer to questions in cross examination, Rev. Dixon said that typically she would spend an hour at the home visit so imagined that this visit was of similar duration. She confirmed that the only meetings were at the house and the funeral. When asked whether the Deceased was alert and aware, Rev. Dixon said that he was very agitated and out of sorts. Rev. Dixon agreed that he was not a pushover and that he had been very clear about what he wanted and did not want, for example there being no narrative of Mrs Harrington's life at the funeral.

52. Rev. Dixon said she was surprised to see the Claimant at the funeral as the Deceased had said she would not be there. When asked whether she could recall any reason being given for the estrangement, Rev. Dixon could not recall anything beyond noting 30 years duration. Rev. Dixon agreed that it was possible that the reference to 30 years was not literal, but was sure that she recorded 30 years. Rev. Dixon described how usually family speak extensively but that the Deceased had not done so and so she had limited notes as a result. It was put to Rev. Dixon that the Deceased did not say that he hadn't seen the Claimant for 30 years. Rev. Dixon said that she couldn't say what the exact words used were. I pause to note that there is correspondence that also goes to this issue

[1/159], where the Deceased's own words are that he had told Rev. Dixon that "we haven't seen our daughter in 30 years".

53. It was put to Rev. Dixon that the relationship deteriorated over 30 years rather than becoming estranged. Rev. Dixon said that the Deceased did not offer other information – just that they were estranged and she took it at face value. Rev. Dixon could not offer anything further about what was said by the Deceased about his military career beyond her written evidence.

54. Re-examination elicited from Rev Dixon that she stood by her notes and that she had an excellent reputation and feedback for funerals.

55. I asked about the reference in her letter to safeguarding and the Deceased appearing to be a vulnerable adult. Rev. Dixon said that she did not feel comfortable being on her own with the Deceased. She thought the Deceased was unpredictable and she was worried. Rev. Dixon said that she would have taken a third party had there been a further visit.

56. In further cross-examination arising form the above, Mr Buston asked about the Deceased's physical and mental presentation. Rev. Dixon said that the Deceased was somewhat confused and acting out as she has seen in other people when they feel out of control and that he was almost bullying and this put her ill at ease. Rev. Dixon did not think it was just arising out of bereavement but was a wider issue.

57. Whilst Rev. Dixon can only provide a snapshot, the timing is important, being after the alleged estrangement or deterioration between the Claimant and the Deceased (of whatever length) and (depending on my findings) before the First Defendant says that she met the Deceased.

58. On the one hand, the Deceased's presentation at the home visit is supportive of general evidence, including on the Claimant's side, that the Deceased was always difficult and selfish, potentially bullying and further, that there were issues upon which he became fixated (in this case the potential litigation about which he was unable to make his rationale understandable to Revd. Dixon). I pause to note that Rev. Dixon did not claim to have any legal knowledge, but clearly found the explanation offered to be difficult to follow. Whilst I have not seen Rev Dixon's notebook (which her letter offered) I have no reason to doubt that her letter reflects her notes. It follows, therefore, that in January 2018 the Deceased was making reference to being estranged from the Claimant for 30 years (i.e. since about 1988, the Claimant having married Mitchell in 1987) and that he claimed to be a retired Army Major. On balance, I find that the Deceased was stating both that he was a retired Army Major and that he had been estranged from the Claimant for 30 years.

59. There is a consistency between what Reverand Dixon described in her letter, derived from her notes, and the Deceased's own letter written shortly after the funeral [1/159] and discussed below, reinforcing the accuracy of her evidence about what the Deceased had said (the Deceased's own words are that he had told Rev. Dixon that "we haven't seen our daughter in 30 years" (emphasis added). It is notable (and discussed below, the Fraser Dawburns [1/66-7] attendance note says "very little contact with Jill" save for at his late wife's funeral. By 24 March 2020 [1/72] the attendance note says "They was little or no contact and in fact the only time he had seen her was around 7 or 8 years ago at a funeral" (here is, therefore, an absence of reference to the Claimant's presence at the January 2018 funeral in the second attendance note) and "All of that changed when she had married her husband and effectively they had been cut out", which is a further version of the 30 years estrangement narrative given that the marriage took place in 1987.

Joanne King

60. Joanne King also gave evidence having answered a witness summons. She adopted the witness summary in the bundle. Her evidence that she had a brief direct interaction with the Deceased in the context of purchasing Hill House, Wareham, King's Lynn from the Deceased in late 2014 (exchanging contracts in February 2015). The witness summary said that the Deceased had asserted that there was a well in the garden, but was inconsistent about the location and that no well has in fact been found. Cross-examination elicited that she met the Deceased once only, for a relatively short period of time. Asked whether the Deceased struck her as "compos mentis", Mrs King said "I don't recall". This evidence does not add much to the overall picture save for a snapshot of the Deceased providing some information that was untrue. However, I cannot assess whether the Deceased was asserting the existence and or location of the well as true or merely possible, whether he had any belief in what he said and what his purposes might have been. I place little weight on this evidence.

Christopher Quilter

61. Mr Christpher Quilter gave more wide ranging evidence of his relationship with the Deceased, his uncle and of the Deceased's relationship with others. He adopted his statement dated 28 September 2023 and was cross-examined.

62. In summary, he characterised the Deceased as a difficult man, who got worse over time. He said that the Claimant tried to maintain a relationship with the Deceased. Much of Mr Quilter's evidence, on clarification in cross-examination, stemmed from around 2013/2014.

63. Mr Quilter alleged that the Deceased stole his Rolex watch when he had gone round to help.

64. Mr Quilter agreed that the Deceased could be quite rude, stubborn, that he knew what he wanted and liked to get own way. He said he was "a very difficult man" and that "in last few years I had very little to do with him" which was after the Deceased moved from Wareham (which other evidence puts as 2015). He would visit the Deceased regularly before the Deceased moved. Mr Quilter said that the Deceased "never had friends, but I would help him".

65. Mr Quilter was cross examined about an incident involving a bike. He described an incident in 2010-2012, possibly before, where the Deceased accused Mr Quilter of stealing the Deceased's bike when in fact Mr Quilter had given it to the Deceased. Mr Quilter said that the Deceased accused him of cycling it to Norwich which Mr Quilter rejected, given the distance and that he had a car.

66. Mr Quilter was cross examined about his allegation that the Deceased saying "I want Mitchell [the Claimant's husband] to die before me so that I can put a hog weed on his grave and dance all over it". Mr Quilter put this as being before 2012. He said that those sorts of comments were very typical. He agreed that the Deceased had been unhappy with the level of contact he had with the Claimant and that he would complain about it over the course of several years. In cross-examination, Mr Quilter described an event where the Deceased persuaded him to go round to the Claimant's with a shotgun to be nasty to Mitchell saying "he made me go round as a heavy; luckily no one was in". He offered that the Deceased kept tabs on the Claimant and that "he bullied me a bit to go with him" and that "I think he wanted to see how things were going with her". Mr Quilter thought that the Deceased was "a little bit jealous – Mitchell was a real nice bloke".

67. Mr Quilter agreed with the proposition that the Deceased felt that Mitchell had taken the Claimant away. Mr Quilter said that there had been issues since they got married 30 years ago, but offered that "I thought it got better once he got over it" and that "Jill used to go to look after her mum" and that this was evident when he himself visited. Mr Quilter said that the Deceased stayed unhappy with Mitchell and that that never changed but that the relationship between the Deceased and the Claimant "wasn't 100% but that was his part not Jill's part" and that there was more contact with the Claimant in the last 10 years. Mr Quilter agreed that in the previous 20 years "it dried up a little bit bust she kept in contact with her mum… but not her dad".

68. In re-examination, Mr Quilter said his own relationship with the Deceased deteriorated over the last 10 years. He had helped the Deceased move from Essex to Norfolk and they got on quite well. In later years, the Deceased was a lot harder work to work with and he got a lot more aggressive and more of a bully and lot more bad tempered. The Deceased came across as much more demanding of people around him and he was doing things that didn't seem right: he fell in a pit and threw a chair in the garden and that he had Mr Quilter rushing about doing things. Mr Quilter said "I went to see Jill

about it and said that something was not right. Mr Quilter confirmed that the Claimant "went round a lot", i.e. in the last 10 years, saying "every time I was there she would be there". That must have been in 10 years prior to 2015.

69. Again, I have recounted Mr Quilter's evidence in quite some detail. He stuck me as a straightforward witness trying to assist the court. He readily conceded suggestions about dates of events where other evidence suggested that the timing might be wrong in his written evidence.

70. Mr Quilter readily offered evidence in cross-examination that could potentially be contrary to the Claimant's case, for example a long standing difficult relationship between the Claimant and the Deceased going back 30 years substantially arising from her marriage and volunteered the episode of the Mr Quilter and the Deceased going to the Claimant and her husband's home with a shotgun. These point, in part, to there being a longstanding rift of some degree between the Claimant and the Deceased. However, Mr Quilter also spoke of the relationship improving and the Claimant being present at her parents home and her looking after her mother pre-2015. I remind myself that other documents and photographs support both an ongoing relationship and a caring role by the Claimant for her mother, including DWP documentation about carer's allowance being paid in April 2015 [1/124].

71. It is difficult to place too much reliance on the dates offered by Mr Quilter, but the general narrative broadly fits other evidence. Anchoring the different attitudes across a 20 year time period from around the Claimant's marriage to Mitchell, would put the reduced contact from 1987 to 2007 and the improved contact over the next 10 years as 2007 to 2017. These periods do not quite fit with Mr Quilter's own evidence that he did not see the Deceased after 2015, but they do partly fit with the Claimant's own evidence of providing care to her mother between 2012-2015, the social services call in 2017. Simon Langley's evidence (see below) also spoke of regular visits in the mid-2000s. Moreover, the 2012 will tends to show that there was no complete relationship breakdown at that stage, which is broadly consistent with Mr Quilter's evidence. Therefore, I broadly accept Mr Quilter's first hand evidence of a deterioration in relationship between the Deceased and the Claimant for about 20 years against a background of the Deceased being a difficult man who was jealous of the Claimant's relationship with Mitchell Langley but that, importantly, that relationship improved again at least for a significant number of years prior to 2015. That is consistent with the evidence about the making of the 2012 will which, in my view, provides a significant piece of objective evidence about the family dynamic at that time.

Simon Langley

72. Simon Langley, the Claimant's son and the grandson of the Deceased, adopted his statement and was cross-examined. I deal with his evidence in a more summary way.

73. In the main, Simon Langley's evidence was that he thought that the Deceased had undiagnosed mental health issues. He agreed that the Deceased was difficult and stubborn. He also offered "deluded". He recalled visiting his grandparents after school in the 2000s (having been born in 1992). He recalled that the Deceased could be quite mean when emotional. He denied that there was a lot of friction between the Deceased and the Claimant, saying that the friction was between the Deceased and his father (i.e. Mitchell Langley). He gave evidence about the Deceased being irrational and behaving oddly. Mr Langley thought that the Deceased had delusions of grandeur and that he thought everything he had was the biggest and best such as his car, even when that was not objectively true. Mr Langley said that the Claimant was consistent with the time she spent with her own mother over the years, but maybe that this was a bit more when she was suffering with dementia. He agreed that this was difficult for everybody and that the Deceased was not coping well. When asked whether the Deceased was Mrs Harrington's main carer he said "Yes, because he refused to get additional care support". He was asked whether this was because the Deceased was proud" to which he replied "no, because he was tight" and that he did not want to part with his money to pay for care and that he would spend money on himself but not his wife.

74. I sought to clarify the timings of Mr Langley's visits to his grandparents. Mr Langley confirmed that the drop off point for his high school was 150 metres from their Downham Market home at the time and that he went to that school from 2003-2008.

75. Whilst Mr Langley gave evidence openly and was, in my view, a frank witness, I remind myself that I should take some care when considering Mr Langley's evidence due to his age at the time that some of it took place and (as with other witnesses) the length of time since some of the events recalled take place. Further, I must acknowledge the risk that Mr Langley's evidence is shaped by his own family's narrative over time, much of that occurring when he was a child. That said, his evidence about his visits to his grandparents in the mid 2000s, anchored around school years and location helps to support a period of time where the Claimant was clearly involved in her own parents' day to day lives in this period despite there being friction between, on any view, the Deceased and Mitchell Langley and the Deceased having, on any view, a difficult character. This time frame of visits is also broadly consistent with Mr Quilter's evidence. Whilst I have no doubt, as Mr Langley himself said, that his generation are more conscious of mental health issues than previous generations, I do not place any weight on anything he said that might venture into areas which are the preserve of expert witnesses.

The Claimant – Jill Langley

76. The court heard from the Claimant. Generally speaking, the Claimant gave very long narrative answers to questions. The Claimant was quick to anticipate the questions and tell her version of events. I do not seek to recount all of her several (overlapping) written statements and oral evidence in this judgment, but seek to draw out key evidence. The

Claimant spoke of her love for her parents. She appeared to have a genuine affection for her father, the Deceased, despite there clearly (on any view) being difficulties in the relationship between her and her father and between her mother and father over time. The Claimant thought that the Deceased controlled her mother and that she (her mother) had no friends as a result. The Claimant thought the Deceased relied on the Claimant for work (until her marriage) and on her mother for domestic duties for his benefit. This included the Deceased paying the Claimant £30.00 per week from age 17 until her early 30s when she was working hard in the various businesses of the family and, on her account, innovating (a leather business, a freezer business alongside the butchers) and bringing in hundreds of thousands of pounds over the years. The Claimant said that she understood that this would be reflected in being the ultimate beneficiary under her parents' wills.

77. The Claimant found it difficult to accept, when it was put to her that there was any breakdown in communication or relationship with the Deceased. The Claimant said that she advised him against moving to Gayton Road due to the distance from her. She thought that he shouldn't be buying a house requiring building work at his age.

78. In broad terms, the Claimant described that the Deceased was against her marriage to Mitchell Langley. That there were breaks in her relationship with her father, but that they were not estranged. The Claimant was extremely reluctant to accept that there might be something in the Deceased saying that they were estranged when there was no contact, especially after she called social services in 2017. Rather, on her account, the Deceased self-isolated by moving house, which she had advised against.

79. When asked about a photo album mentioned in one of the letters in the bundle [1/159], the Claimant said this was a photo frame with photographs in it, which was disclosed for the first time in court, having been kept at her home.

80. A number of letters appear within the bundle pages 154-162 described on the bundle index as "Letters from the Deceased" under the earlier heading of "Claimant's documents". Rather surprisingly, based on the index, the Claimant denied seeing the letter at page 156. On its face, it is written by the Deceased whilst his first wife was still alive and is addressed from Hill House, i.e. written in 2015 at the latest (the Claimant said the Deceased lived there 2009-2015 and suggested this might be from 2013). The letter said: "I've wanted to speak to you for months but you haven't answered my telephone calls". I apologised to you for my actions the last time you were here, what more do you want?"

81. The Claimant also denied ever seeing the letter at page 157. On its face, written by Deceased from North Farm House (therefore from 2015 onwards). The Deceased writes "After our overwhelming meeting in Tescos Downham Market" and that he is "hoping you will except my invitation to you, for afternoon tea and a chat" and "When you saw

me in hospital… you done a runner, which I thought was rather rude. But I would like this to be forgotten so we can move on and begin to get to know each other again". The Claimant denied seeing her mother in Tesco, Downham Market or that there was any invite. When being asked about this letter, the Claimant said "I was there if he'd given me a call. I didn't get this letter or invite. I wasn't absent through choice". The Claimant denied "doing a runner".

82. Whilst the issue about whether they were sent and/or received or not is curious (their presentation as the Claimant's documents on the bundle index suggests that they were sent and received), neither of those letters [1/156 and 1/157] suggest or threaten disinheriting the Claimant. They suggest some relatively recent contact and some breakdown in the relationship, but they each offer reconciliation and even an apology from the Deceased. On balance, I find that they were written by the Deceased. I cannot accept that they were not received by the Claimant given how they appear in the bundle, although her denials were not fully tackled in cross-examination. I find that the Deceased was expressing a hope to have a continued relationship with the Claimant either side of 2015 and without threatening to disinherit her. Whilst it is possible that these were written for the benefit of others and not intended to be sent to the Claimant, on balance I cannot conclude that this is the case.

83. The Claimant accepted that she received a further letter from the Deceased [1/154], which she suggested was from 2017. It is addressed from "North Farm" and includes a reference to "the way we have been treated over the past 30 years by you and that village idiot. I can't forgive you for the police at the wedding and cutting the fence to take the horses and also the social services… "you have made me change the will which as you know everything was in your name. You've lost approximately a million pounds due to your behaviour." However, later, the letter is more equivocal: "Were sorry your going to lose out on the will and everything else you've got but ive got no alternative action. If I get any more trouble from you I shall put it in the hand of my solicitor. Im not going to be dominated by you or the village idiot. Now we know where we stand. Were very happy at the moment." [sic]. The Claimant described the reference to "past 30 years" as "utter rubbish" and gave various examples of being involved with her parents with reference to a car crash, dad's fall and mother's days. Broadly speaking, for reasons set out above, I accept that there was a continuing, if variable, relationship up to about 2015.

84. In my judgment, the latter passages suggest a threat to change the will but only "If I get any more trouble from you", the trouble potentially being the complaint to social services referenced earlier and which is clearly the focus of the third and largest paragraph of the letter (and which I do not quote here). The fact that the letter is written by the Deceased with reference to "we" shows that it is probably pre- January 2018 and I find that the Claimant to be right that it is from 2017. I note that, importantly, there is no supporting evidence for the Deceased's will being changed around 2012 and his re-

marriage to the First Defendant. For completeness, there is no evidence that Eileen Harrington's will being changed either (the Claimant still being the executor as at the date of death –[1/82]).

85. Further, the reference to "you have made me change the will which as you know everything was in your name. You've lost approximately a million pounds due to your behaviour" suffers from a lack of clarity as there is no evidence of any will where everything was in the Claimant's name (neither 1977 nor 2012) unless viewed on the hypothesis that both of the Claimant's parents have died. I find, accordingly, that there were material errors in this letter and that, despite the concerns raised by the Deceased about a comparatively recent issue of the complaint to social services, the 2012 will was not changed or revoked (and neither was Eileen Harrington's). The letter lends support to the narrative that the Deceased had a tendency to seek to control people by reference to his money, he did not actually follow through before either of Eileen Harrington's death or his re-marriage.

86. The Claimant was taken to a further letter [1/158], addressed from Noth Farm and, therefore, falling within the period 2015-2019. It appears to have been written by someone (claiming to be a school teacher) on behalf of "Bob". The Claimant denied receiving this. The letter contains "Im giving you the chance to sign an apologie letter, and i will find it in my heart to forgive you for everything you have done to us! Other wise the bomb will drop!... You will be reported to social security for with-drawing money from the careers allowence and the Will will be revoked, in other words the atom will fall" [sic]. The Claimant said that she did not receive this letter, but explained that it was her father's way to control people with money. The Claimant said the only time when not seen her parents was when it got so bad at Hill House. I pause to note that the corresponding letter of apology seems to be that at page 162 discussed below.

87. The Claimant was taken to a further letter [1/159] which the Claimant agreed that she received and said that it was from about January 2018 (which is consistent with the context of her mother's funeral having recently taken place). The letter, which was appended to the Particulars of Claim [1/29], written from 15 Gayton Road and signed off "Bob" refers to or asserts a number of matters:

> "We saw the al queda walking about and was wondering who he was. If i'd known it was him i'd have told him to piss off."
>
> "I saw you talking to the Reverend Catherine Dixon and laughing, I'd already seen the rev the week before the funeral to talk about what family she didn't have. I told her there was only me left now and that we haven't seen our daughter in 30 years".
>
> "I saw Eileen take her last breath and it broke my heart."

"Why did you bother showing your face at the funeral when you never bothered when she was alive after marrying him and when she really needed you".

"All mum's clothes are here if there's anything you want you can come and get it within two weeks. If my box of photos and album are not returned I will be forced to contact the police as you took them without consent and have left me with no photos."

"I never thought buying some hay would come between us. This letter will be the last contact I ever attempt to make."

88. I note that there is no reference to wills, inheritance or disinheritance, reinforcing the view that there had been no change as at the date of writing.

89. In her evidence, the Claimant said that "al quaeda" would refer to her son (not Simon Langley) who was at the funeral. When asked if the Deceased knew that her son was not a member of Al Qaeda, the Claimant said she did not know what he thought, it was delusional, but did refer to the fact that her son does have a big beard. The Claimant's evidence included (again) a denial of not having seen her parents for 30 years, describing the allegation as nonsense and referred to various reasons including the photographs in the bundle of family events, the fact that her parents babysat for their children and that her mother had assisted at the Claimant's farm's fishing lake. I pause to note that the photographs in the bundle are not terribly recent, but do show the Claimant, her parents over the years, including with her sons when they were what appears to be up to primary-school aged children. The Claimant also said that the necklace she wore was brought back from Morocco in 2011/12. Photographs disclosed in court of the Claimant's mother were said to be from 2013/4.

90. Further, the Claimant denied the reference [1/159] to the Deceased being present at Elaine Harrington's last breath, which evidence I accept.

91. The Claimant was taken to a further letter [1/161], a letter addressed to "Adalf M'Langley" from "a very pissed off man, BOB" written from North Farm House, 15 Gayton Road. The Claimant accepted that this was received by her husband in about 2015. The letter makes various allegations including that Mitchell Langley poisoned the Claimant against her parents and that "you have completely broken up our family over the past 29 years! Its absolutely ruined our lives and don't see why you should get away with it." The Claimant said that it shows the Deceased's state of mind.

92. The Claimant further denied receiving a letter [1/209] apparently written 2 years after her mother's death (therefore around 2020), in which it is written "you treated your mum terrible and you treated me the same… "I am writing to let you know that I am totally finished with you and your family. And you and your family will not get anything

from my will. I am starting new life now. I am married last year". I pause to note that this appears within the bundle with the Defendants' documents and post-dates the Deceased's marriage to the First Defendant. The Claimant denied any ill treatment of her mum by her. She considered the letter to be a result of her father's mental decline.

93. I have no reason not to accept that Claimant's evidence that she visited her mother in hospital in 2017 and at Lower Farm care home in late 2017 as set out in paragraoh 26 of her written evidence [2/19]. Further, I have no reason to doubt the Claimant's evidence in 2017 that the Deceased "brought Mum to my house unexpectedly, with Mum wearing a nappy and a dressing gown with holes in it. He just dumped her at my front door and drive off with no explanation. That is when I rang Social Servies, I was so concerned about his inability to look after her." This was amplified in oral evidence. It is echoed in the Deceased's correspondence [1/154]. It was clear that the Deceased could not cope and that he was felt that the Claimant would assist. This suggests, again, that there was no complete estrangement at that time, that Eileen Harrington needed more care than she was being provided with (although there clearly was a carer who was not the First Defendant mentioned in correspondence and medical records) and the Deceased was struggling to cope and had his own medical issues.

94. The Claimant was taken to [1/162], which takes the form of an apology for the Claimant and her husband to sign and was asked about the matters listed. The Claimant agreed that she called social services, saying it was out of love for her mother due to the pitiful condition that her mother had been left in by a 91 year old man who hadn't done the right thing for the last 4 years. When asked about the allegation of stealing horses, the Claimant said that it was when she was aged 20 and they were worth nothing. When asked about the dispute over the fence, the Claimant agreed in part: "He asked me to collect it at Snowre Hall in August 1987". The Claimant said that the Deceased did not want her to get on or to marry. The Claimant was asked about her wedding and the Claimant explained that she went to live with Mitchell and they decided to get married with uncle Geoff giving her away. The vicar's friend was a police sergeant and searched the Deceased's house for guns. The Claimant said that this (i.e. her Father's behaviour) was not normal and that she was 32 years old (the implication being that she was old enough to decide to move out and ger married). Once again, the Claimant said that she called social services for good reason.

95. In my judgment, there is clearly as some truth in each of the references in the letter of apology which the Deceased asked the Claimant to sign [1/162, read together with 1/158] in that there had been disputed between the Claimant and her father relating to (1) her marriage to Mitchell (with related police involvement and an absence of the Deceased being there), (2) horses, (3) the Claimant reporting care-related issues of her mother to social services, I note that only the 3rd post-dates the 2012 will and there is no evidence that there was any new will before the Deceased met the First Defendant

and not until after they were married. Whilst it is certainly possible that the Claimant's call to social services could have irrevocably altered her relationship with the Deceased, any threat to change his testamentary intention at the time that these documents were drafted was not carried out prior to the First Defendant coming on the scene and are not referenced in the post-funeral letter [1/159].

96. In my judgment, matters which had been problems but which had been laid to rest or which had not lead to the Claimant being disinherited came back to life in the last few years of the Deceased's isolation. It was in that state, more or less, that the First Defendant comes on to the scene. No doubt she was a sympathetic ear.

97. The Claimant was asked about the "photo album" and produced a frame with photographs in to the court. The Claimant thinks that the Deceased was delusional to think that it was his. The Claimant said that she purchased the frame in charity shop and put photos in it printed from her iPad. Further photographs were volunteered to be shown in court, but this potential for further inspection was not pursued by the parties.

98. The Claimant was asked about the 2012 will. The Claimant said that the Deceased was quite happy in 2012 when the will was made: "he asked me to go. I was executor of mum's estate". It was suggested to the Claimant that the Deceased did not want her to benefit from that will [1/60], it being put to her that the Claimant would benefit in the residuary, comparing to the previous 1977 will [1/57] where the estate was to be split between the Claimant and her mother.

99. It was suggested to the Claimant that there was a change by 2012 and the Claimant was asked why the Deceased did that. The Claimant said that in 2012 she was the beneficiary of her mother's estate. She said that it was always made clear that her hard work and what she'd earnt for him meant that the estate would be hers one day.

100. In my judgment, whilst the reference to being "beneficiary" in oral evidence may be seem as an inadequate or incomplete answer, it is consistent with the Claimant's understanding of the ultimate position arising following the death of both her parents had the Will not been revoked (together with her understanding of her mother's will) – see e.g. paragraph 4 of "Draft v1/ Second Witness Statement of Jill Langley" [1/13] repeated/clarified e.g. at paragraph 3 of a different "Second Witness Statement" [1/23] that "in 2012 from which I benefitted entirely as his only child, subject to my mother doing so". That paragraph also gives the context of the Will being made and that the keys and details of the alarm system and keys at Hill House were given to the Claimant at that time. Further, and something that was not explored in oral evidence: clause 2 of the Will [1/ 60] expresses that Eileen Harrington had made a will in similar terms to the Deceased but that they were not mutual wills. The Co-operative document from 4 September 2018 [1/81] shows that Eileen Harrington's estate went to the Deceased.

101. In oral evidence the Claimant said that she was not aware that there was a change in 2012. The Claimant explained orally (reflecting her written evidence) that she was at the house when the wills were made, who was where in the house and that there was no upset or disagreements.

102. I do not accept the suggestion on behalf of the First Defendant that in 2012 the Deceased was actively seeking to put the Claimant in a worse position than under the 1977 will. Firstly, this does not reflect the evidence I have heard of the relationship at that time (despite their clearly being ups and downs), in circumstances where the Claimant's unchallenged evidence was that she was a carer for her mother from 2012-2015 and when the Claimant's understanding reflected the practical reality of being the ultimate beneficiary, assuming that both her parents died before her without revoking the wills or remarrying. Further, whilst not offered in evidence as an explanation, I take judicial notice of the fact that there was a potentially significant inheritance tax change in 2007, such that one spouse's nil rate band could be transferred to the surviving spouse. This provides an objective reason which *may* explain a change from the 1977 to 2012 wills. Other advice or circumstances may have been relevant. I do not place any great weight on the 2007 tax change, save to note that it is an example of why there may be changes to the estate planning which are justified and which point away from the Deceased actively seeking to reduce the Claimant's position under the will. The more significant point, as made by the Claimant, is that she was the ultimate beneficiary of her parents' estates absent remarriage or a further will being made.

103. When it was put to the Claimant, in the context of her allegation of a predatory marriage, that she did not have contact with the Deceased and the First Defendant at the time that the First Defendant knew the Deceased, the Claimant said that the Deceased would tell people about what he owned and all about his money and that he was very open to abuse.

104. Finally, the Claimant was cross-examined over where the Deceased had lived (the context being that recorded by Fraser Dawbarns that the Deceased said that he was from Southend. The Claimant said the Deceased never lived in Southend. She commented that with no traffic, the 30 mile trip might take 40 minutes to 1 hour from where they lived nearer Billericay, and before the family moved to Norfolk. The Claimant said that the Deceased should have remembered.

105. In re-examination, the Claimant discussed her shopping for her mother which she said she did to get better things than the cheap things the Deceased purchased. She explained a reference she made to "cheap carers" being people who lived on the Gayton Road estate rather than through an agency, and that the Defendant paid in cash. The Claimant explained that one concern about her father moving to Gayton Road was that she thought he was too frail and not safe to drive. The Claimant explained about stepping back from providing care in 2013/14, explaining that his was for only a couple of weeks.

The Claimant explained with reference to one of the letters [1/157] that it was 30 miles from the Tesco in Downham Market to the house in Gayton Road and she questioned why her parents would be shopping there at the time. The Claimant confirmed that her parents lived in Downham Market 2003-2009. The Claimant confirmed the date of her own marriage as 14 November 1987. With reference to the photo frame, the Claimant explained that the photographs were taken of her mother in 2013-2014 at the Claimant's home. Finally, in respect of the 1977/2012 wills she was asked "if the 2012 will were valid, who would benefit?" to which the Claimant said "myself and my sons".

106. I have no reason to doubt the Claimant's general evidence about growing up, including living at home until her early 30s and how she contributed to family businesses (butchers, freezer shops, leather jacket). Firstly, it was a fairly warts and all narrative, including elements of her father being difficult and opposed to her marriage to Mitchell. I accept her evidence that she had effectively been prevented from marrying her childhood sweetheart by her Father's reaction and that her mother had a very narrow world due to the Deceased being controlling and that she had no friends.

107. There came a time when she left home, to move in with Mitchell and started to work on his farm. The Claimant did not shy away from the fact that her leaving upset her father. The picture painted in oral evidence was of a more difficult relationship than the written evidence suggested. The Claimant offered that the Deceased was somewhat incestuous in that he saw her as a trophy once she was an adult and that her mother was cast aside. She described the Deceased as jealous and controlling and angry. The Claimant described her father's isolation after the death of her mother, including the Claimant visiting her father's neighbours in July 2021, which was not challenged.

108. Whilst I find that the Claimant did try to shy away from elements of the evidence that might show anything approaching an estrangement rather than a difficult relationship, I accept the overall evidence that there was an active continuing relationship up until 2015, particularly between 2012 and 2015. There was a more distant relationship post-2015, but not so much so as to prevent the Deceased from taking Eileen Harrington to the Claimant's for her to care for her in 2017, but there was a further reason for division in 2017 when the Claimant called social services.

The First Defendant

109. The First Defendant gave evidence through an interpreter. Despite some initial confusion as to whether the First Defendant required a Cantonese or Mandarin Interpreter, and which language was being used, it was fortunate that the interpreter was able to interpret in either and Mandarin was used. The court was told that the First Defendant's understanding of English was better than her speaking. The First Defendant adopted her statement dated 29 September 2023 [2/72-78] which is written in English. The First Defendant gave evidence over the bulk of two court days.

110. Initially, she was cross-examined by Mr McKean about her previous marriage, her move to England, her study and work. The First Defendant said that she studied law in China, amongst other studies. She described this as "general law" and that she specialised in immigration and family and that she was a law consultant in China.

111. The First Defendant said that she had not disclosed her divorce certificate in these proceedings as she did not think it was relevant. She had shown it to the Council before her marriage to the Deceased. The First Defenant said that her first husband is a judge of the Zhejiang province High Court. When asked whether he was a rich man, the First Defendant said that there were benefits, including housing, for working for the government and that they did not have money problems. When asked whether she received money on divorce, the First Defendant said that she did not need his money before or after as she had worked since she was 18 years old and that she received no money on divorce. Her first husband is 2 years older than her. The First Defendant agreed that she worked in a pub when she came to the UK and had not worked as a lawyer. She agreed that she gave up a legal career in China to work in a pub in England. When it was suggested that it reduced her finances to move to the England, the First Defendant said that she had the money. She worked in the pub for language and it was only part time and then, later, she was promoted. Her MBA cost £10,000.00 per year and she did one and a half years. Her son's university costs £22,000.00 per year in 2014 where he studied engineering for 3 years. The First Defendant confirmed that he was not a solicitor, but had "for a long time assist part time in China". When asked whether she told the deceased that her son was a solicitor, she ultimately agreed, although said that "he is solicitor assistant – it's the same". The First Defendant denied that her son's studies and the move from London to East Anglia was expensive because she had savings and her mother and her son's dad paid 50% and there was further assistance from relatives. In Norwich, the First Defendant helped her son and had some part time work in an Italian restaurant.

112. The First Defendant denied working as a carer at that time, suggesting it was 2-3 years after her son started studying. The First Defendant then denied working as a carer at all. She added "since I met lover I take care of him." The First Defendant agreed that she only cared for the Deceased. She said "at the beginning I did not ask for money. After a few months he just gave me money. He doesn't allow me to work." The First Defendant asked if she agreed that at some point she became a paid carer for the Deceased and replied "I didn't consider it at this level because I love him". The First Defendant said that this came about when they had lived together for 3-4 months. The First Defendant was referred to her statement which stated that she moved in in February 2019, to which she agreed. It was put to her that she was being paid 3-4 months later, but the First Defenant said that it was giving not paying and that it was in the context of getting married and to get a ring and clothes for the marriage. The First Defendant confirmed that the summer of 2019 was the first time she received money

from the Deceased. It was suggested that money was provided much earlier, with reference to bank statements from 21 March 2019 [1/178] showing £5,000.00 transferred to Guixiang Qin with a reference "care". The First Defendant said that "it's his transfer to me but I don't really know it". The First Defendant said "I didn't know he gave me so much money". A series of questions and answers followed, which included the First Defendant saying "I didn't know until now". She denied it was a lot of money for her. The First Defendant denied that she asked for the money. The First Defendant was asked how the Deceased had her bank details. She said "he asked me for them a few times… so I gave them to him".

113. The First Defendant was questioned about the reference in her witness statement to the Deceased proposing in April 2019 and she was asked whether she would now say it was March. The First Defendant said that "he said he liked me at the very beginning". The First Defenant said the Deceased proposed "2-3 times. I think the first is around February/March. No March for the first time". It was put to her that if she moved in in February 2019 the proposal was within 1 month of moving in. The First Defendant was asked why, if the money was for a ring, was "care" used as the reference on the bank statement. The First Defendant said that she did not know why. When put to her that this proves that she was a paid carer for the Deceased in March 2019 the First Defendant said "I don't know". She denied that they first met with her as a carer.

114. In my judgment, elements of the First Defendant's evidence on the above topics were unsatisfactory. There was a reluctance to accept that there was any paid care role and to explain why bank transfers from the Deceased to her had the reference "care".

115. The First Defendant was asked about the advert she said she responded to prior to their first meeting. She said that she could not remember. She said that she didn't think she would fall in love with him in response to being asked why she couldn't recall. She said she had no reason to keep a copy of the advert. She described the advert as offering free food and drink at Christmas. The First Defendant accepted that there would be a telephone number in the advert. She said that the Deceased was a gentleman when they spoke. She said that she didn't really notice what her impression was of him. She didn't really care and did not go to his home at that time. She denied that the Deceased was very deaf. She said his hearing was very good and "his eyes and ears and speaking are really good". It was put to her that Fraser Dawbarns recorded that he was a little bit deaf. The First Defendant said that when he "got emotional maybe a little bit". The First Defendant said that the Deceased was a really smart man and that he would drive her around without a sat nav or GPS, including visiting his friends and that he took her to the seaside and they had fish and chips, which she paid for but he fought her to pay.

116. The First Defendant denied that their first conversation was difficult due to his deafness and her English. She denied again that she met him as his paid carer. The First Defendant was taken to her statement [2/73] where she said that the advert was in

Autumn 2018. She then corrected a reference to speaking in January 2018 to meaning 2019. It was put to her that the advert might be latter in 2018 as it related to Christmas dinner. The First Defendant said it was too long time ago to be precise on the month. The First Defendant said they first met after Christmas, in January 2019. She agreed that she moved in in February 2019 and that he proposed in March 2019. She agreed that it developed extremely quickly. She denied again that they met with her as a paid carer and denied that they met in late 2018.

117. The First Defendant was asked about her first meeting with the Deceased. She said they had been speaking for some time. She said that she did not know he was that age. He picked her up from the station. She wasn't physically attracted to him when she first saw him, but she thought he was rather adorable and that he acted and spoke like a gentleman and he was a pretty humorous and smart person. She thought his car was black but not a Mercedes. She denied that she linked a smartly dressed man in a black Mercedes (which she denied it being) with money. In her eyes, she did not see a rich old man as suggested to her. She denied that she saw an opportunity to make money. She said the Deceased became attractive after about a month, after they had talked a lot and made plans and went to the beach. It was suggested that she was attracted to the lifestyle. She said she admired the way he speaks and his experience and he taught her how to cook British cuisine, given that he had been a butcher, including marinading beef and that he taught her to cook various dishes.

118. The First Defendant described various interests the Deceased had, including music and singing and that he was a really good driver. She said she only knew about him having to stop driving 1-2 months before his death. She said that he was driving in March 2020, contrary to solicitor's attendance note from that time. The First Defendant said that sometimes he drove and sometimes he did not.

119. The First Defendant was taken to the attendance note of 13 March 2020 [1/67] where the following is noted "He said he had only recently bought a Mercedes car but was not able to drive it." The First Defendant said that it was not explicable in a sentence or two. "Sometimes he cannot really go to the toilet himself… sometimes he could drive, other times not". The First Defendant said that his health stopped being really good a few months before death, roughly 3-4 months. It was pointed out that he died on 26th May 2020 and the First Defendant rather resiled from what she had just said, denying that his health was bad saying he was ok. The First Defendant was taken to the Deceased's medical records from 23 January 2020 [3/46] and asked whether she maintained that his health was good in January 2020. She said "sometimes he went to hospital [but] it doesn't mean [he was] really sick". It was put to her that he had had a stroke. The First Defendant said that the Deceased told her that he had had a slight stroke and that he had been discharged home. The First Defendant said that she visited every day. The First Defendant was taken through references to slurred speech. The First Defendant explained that she was worried for him and called the ambulance but

said that the Deceased was a warrior and that he did his exercises. She denied that the Deceased was deluded about his health, such as his denial that his speech was affected. The First Defendant said that it was only the last month that he couldn't handle himself and so she took care of him for the last 2-3 weeks. It was put to her that she was being inconsistent from 2-3 months down to 2-3 weeks.

120. The First Defendant denied the picture painted of the Deceased being an angry man or controlling. She said that he was adorable and had a clear mind. The First Defendant said that she and he called the Claimant many times. The First Defendant denied that the Deceased had bragged about cars and being a millionaire and said that she did not ask about his money or cars. She said that money was his thing and nothing to do with her. She said that "I don't know if he'd leave it to me or not".

121. The First Defendant was taken to a further medical note from 25 September 2017 [B3/27] where the East of England Ambulance Service raise concerns about financial or material abuse by a carer, said to be paid £400.00 per week in cash and the Deceased saying that he was going to buy her a house and car. The First Defendant said that she was not there in 2017, that he has several accounts and several carers but "it's not me".

122. It was put to the First Defendant that she had not disclosed bank statements before October 2018. She said that she had not because the account was with his ex-wife so that bank would not give it to her, despite going to the bank several times. It was put to her that she had not disclosed her own bank statements from 2017. The First Defendant denied receiving cash from the Deceased in 2017 or that there were promises to her about buying a house and car. The First Defendant denied that the Deceased was vulnerable when she knew him, saying that he was smart and strong. The First Defendant said she was only told some of the details by the Deceased, including that he spent a lot on his ex wife, but not about the incident covered by the medical record. It was suggested that it was not smart to offer to buy a house and car for a carer, with the First Defendant saying it was not a decision for her. The First Defendant denied knowing at any point that social care thought that the Deceased was being abused. She denied that he was vulnerable to abuse based on what she saw. When asked if social care were wrong, she said that everyone has vulnerable times, suggesting that maybe he was sick at the time. When asked if he was vulnerable to abuse when sick, the First Defenant said that "since with me, I take care of him". She denied being a carer living at the address in 2017. She said she lived in Norwich then.

123. Whatever I find about the First Defendant and/or her actions, there is insufficient evidence (even by inference through a lack of disclosure) to conclude that she was a carer for the Deceased at the time of the medical record dated 25 September 2017. That record does, however, show that the Deceased was vulnerable to financial abuse and generally supportive of his mental capacity having declined. That is important objective evidence at an important time, being in the same year that the Deceased could not cope

with caring for Elaine Harrington and in the same year that various letters were written [e.g. 1/154].

124. The First Defendant denied taking financial advantage of the Deceased throughout the relationship and said that she never asked for money. She said she would have to think to be able to answer how much money he had given her and then said "he gave all his remaining money to me". She was asked if this was before death, to which she replied "I haven't calculated". She laughed at the suggestion that he gave her £1m. and denied it was half a million. She said it was hard to say, maybe £40-50,000.00. She said she hadn't calculated before, and thought that maybe it was £100,000.00. It was put to her that it was £300,000.00. The First Defendant denied this, saying that she did not think he had this much money. She denied being given it or taking it. It was suggested that she took between October 2018 and May 2020 almost every penny, which the First Defendant denied, saying that she didn't even go to his home in 2018. It was suggested that the transfers amount to £350,000.00. She denied this and said that she wanted to see the bank statements.

125. Mr McKean confirmed with the First Defendant that she had already confirmed that she had not disclosed her bank statements. The First Defendant repeated that she had not thought them relevant. Mr McKean pointed out that "we do not know much was received do we?".

126. The First Defendant was taken to GP records dated 4 September 2018 [3/29], where the entry reads

> "History: 1;wants capacity letter to say that he is of sound mind, daughter has made allegations that he has spent £58000 of his wife on himself – police involved – has been to solicitor and the bank. 2. Wants Viagra… Plan: advised to make longer appt for capacity assessment and letter from solicitor".

127. I pause to note that there is no mirror of the £58,000.00 allegation being made by Claimant in the evidence before me. I further note, for completeness, despite it not being explored in oral evidence that Viagra was prescribed from at least December 2015, and potentially before, seemingly becoming a repeat prescription. The 4 September 2018 entry is clearly an active request, but with little context being provided for the request.

128. The First Defendant denied any knowledge of the request for a capacity assessment, repeating that she only met the Deceased in 2019. She suggested that the police should be asked. It was suggested that the reference to a capacity letter might be needed to get a will, to which the First Defendant said "I don't know". It was suggested that in September 2018 there were attempts to make a will, to which the First Defendant said "I don't know".

129. The First Defendant was taken to [1/173] where "inheritance wills Ely" were paid £1,175 on 20 November 2018. It was suggested to her that the Deceased was trying to make a will, to which she said "no I don't know". She was asked if she ever found a will from around that time, to which the First Defendant said "no". She denied seeing any draft will from Inheritance Wills Ely. She said she had seen a will giving to his daughter, but not from 2018. It was put to the First Defendant that this suggests that Inheritance Wills Ely refused to assist due to lack of capacity. The First Defendant said "I don't know anything about happening in 2018".

130. On balance, I find that the Deceased was making enquiries about making a will in November 2018. I cannot find, on balance, that the GP entry was will-related, although it is certainly possible. I cannot find, on the evidence before me, that the First Defendant was involved in late 2018, even by inference. Whilst making enquiries about capacity or a will in the absence of the First Defendant might point away from undue influence, the most significant point arising is that there is no evidence of a will being made. The figure paid is substantial enough to suggest face to face meetings. The absence of any will arising points towards, but is not conclusive, concerns about capacity on behalf of the solicitors.

131. The First Defendant was taken to various entries in the bank statements from October 2018 to February 2019 and it was suggested that she received cash from the Deceased, which the First Defendant denied on the basis that she did not meet the Deceased until 2019. She was taken to various entries with cash withdrawals starting with £650 on 7 November 2018. The First Defendant said that she had not received any cash before February 2019. She was taken to a number of cash withdrawals at "Tesco Kings" in March 2019 totalling £1,400 over a number of days prior to the £5,000.00 direct transfer to the First Defendant discussed above. The First Defendant suggested the Deceased "bought a lot of different kind of stuff. He liked to go to shop". The First Defendant was asked whether this was used for carers, with reference to £100s a week of cash from October 2018-March 2019 and why so much, to which she replied "how could I know".

132. The First Defenant was taken to further bank statement entries [1/179] where over £1,000.00 in cash was withdrawn from 10 February 2019 to 3 March 2019 and asked if this was normal shopping. The First Defendant said "I don't know". She was taken to a payment for £3,000.00 to her on 4 March 2019 reference "G Qin" which she said was "for getting married and buying stuff". When asked if it was for a ring, she said "ring and clothes". Mr McKean reminded her that she had said the same about £5,000.00 on 21 March 2019. The First Defendant said that eventually she did not use that much – it was just a gift. She denied it was for care. She was asked whether the proposal was 1 March 2019, to which she said he repeated that the Deceased proposed several times. She did not know why one said "care" as a reference. She denied that

both payments were for care. She denied that cash withdrawals around the time were for her, rather they were "for life", which I took to mean everyday spending.

133. The First Defendant denied asking for money directly from the Deceased after March 2019. She did agree that the Deceased started to send £1000s monthly but that it was something he did willingly. She said that the Deceased was in charge of expenses and asked her not to look at what he was sending. The First Defendant maintained that she was wealthy and that she spent money too such that it was not just the Deceased paying. She said he refused to take money back. She said at first she tried to give it back but he refused. She denied that she was taking financial advantage.

134. The First Defendant was taken to another payment [1/183] for £600 with "care" as a reference on 1 April 2019 and two lots of £200 on the same day. It was suggested that there was an unusually high amount of cash going out, to which the First Defendant said "it's not that lot – if I want to work outside I earn a lot more. It's daily shopping." Asked what the £600 was for, the First Defendant said "I don't know – he just give it to me". On the same page of the bank statements, the First Defendant was taken to an entry dated 27 March 2019 to "PWISHES LEGALWILLS" for £54.85. The First Defendant said that she was not aware of that before now but then agreed with Mr McKean that in March 2019 she knew the Deceased was making a will with P Wishes Legal Wills. Asked why this was not mentioned in her witness statement, the First Defendant said "he had been looking for companies for some times". She agreed that she knew he was looking, but denied that she was helping him. She said that she was not sure what company he went for in the end. It was put to her that this was important, having claimed to move in in February 2019. The First Defendant said "I don't know what is important. I don't know he search for lawyers". It was put to her that she had just said that she did know, to which she replied "it's complicated. He's searching for different lawyers for some time and I know he doesn't want to give money to his daughter." The First Defendant denied hiding important information from the court. It was suggested that if the Claimant had not spotted this, the court would never know about attempted will making in March 2019. The First Defendant said "it's always been there, it's not hidden. It's not my account, how could I know? I only know fact he searched for lawyers. He did almost all things himself, e.g. tax, water bills." It was suggested the reason that it is hidden is because it shows that the Deceased was not in his right mind, to which the First Defendant replied "No not related to my side and I don't know the lawyers". It was suggested that it shows the Deceased was not in his right mind as he was trying to make a will 1 month after meeting the First Defendant to make a will and the First Defendant was asked why would he leave everything to her, to which the First Defendant said "A man can fall in love very easily in a day" and that there was no age limit on love. The First Defendant was asked whether a will was signed on 27 March 2019, to which she said "I'm not so sure, perhaps he didn't pay [it's] only £50.00 which is not enough, it should be £1,000s.". When asked if a will was signed, the First Defendant said "I don't know, I don't think he signed because he didn't pay."

It was suggested that he paid £54.84 and the First Defendant said "he was comparing different companies… asking for a price" and suggested this was a consultation fee. She was asked how she could know unless she was there, to which she replied "because we didn't pay. If he'd paid full amount, [he would] not go for other lawyers and find another" and that "I think he didn't go through [with making a will in March 2019] as he found another solicitor from a very big firm [where] 4 in total… all talk to him… 4 in one firm, I was outside" which the First Defendant agreed was a reference to Fraser Dawbarns in 2020. The First Defendant denied there was a draft will from P Wishes "he didn't make it at all. He was just asking". It was suggested that this was because they decided he lacked capacity, to which the First Defendant said "I don't think so. He was very healthy".

135. The First Defendant was taken to her signed witness statement of 7 February 2023 and asked if she knew what "testamentary documents" means. She said she did not. It was explained that this included a draft will and instructions. She was asked why she did not mention the March 2019 visit to P Wishes Legal Wills. She maintained that she did not know about this. She said she only knew the Deceased was searching for solicitors. It was suggested to her that she was making up her evidence as she went along. She said she never hid anything.

136. In my judgment it is of some note and some concern that enquiries were being made to what appears to be an entity holding itself out as a provider of wills in March 2019, so soon after, even on her own evidence, the Deceased and First Defendant had met, she had moved in and he had proposed, against a background of third party concerns about his vulnerability in September 2017 by the East off England Ambulance Service and Rev. Dixon's evidence about his isolation in January 2018. The fact of payments being made to the First Defendant, some labelled "care" at about the same time is of further concern.

137. The First Defendant was taken to further bank statements [1/184] showing £1,000 of direct transfers in June 2019, which the First Defendant again said were wedding-related. It was suggested that there was an accumulated total of £9,000.00 by now and that the sole photograph from the wedding [1/208] did not show a £9,000.00 wedding. The First Defendant gave evidence about the Deceased wanting a big wedding and payments being made over time and changes of mind over outfits. It was put to her that this was the cheapest wedding you could have in England such that the First Defendant had received most of the £9,000.00. The First Defendant said the Deceased gave it to her as he was happy and that he felt that he was not giving her much compared to his first wedding.

138. The First Defendant was asked about £2,000.00 of cash withdrawals on the same page to which the First Defendant commented "he wants to arrange everything before his

death. He told me he wants to be with me and wanted to transfer the house to me but he did not do that and passed away before doing so".

139. In respect of part of the second day of the First Defendant's evidence, various examples of the same points were made, which can fairly summarised as follows:

a. Bank statement showing entries from 20 May 2019 [1/185] showing a number of direct payments to the First Defendant for "care" where the First Defendant said they were either wedding related or for daily expenses or gardening. The First Defendant said that she would sometimes get the cash for convenience. Sometimes staff would be paid in cash, e.g. gardeners. The First Defendant said that as a married couple some of the cash went to her first before being distributed. It was pointed out to he that she was not yet married in May 2019 to which she replied they were engaged. She said the money were for "our" expenses.

b. A payment to "WARD GETHIN ARCHER" in King's Lynn for £51.24 on 21 May 2019. She was unsure whether they were solicitors' firm and said that she did not know whether the Deceased was instructing solicitors in May 2019. She accepted that "maybe" the Deceased was contacting solicitors in King's Lynn "he was searching for a while" and that this was "perhaps" to make a will but that she did not know whether it was to benefit her. The First Defendant said, in response to the suggestion that the Deceased was trying to make a will in May 2019 "I think so as he told me he was going to make a will but I don't know the details". The First Defendant said that she did not mention this in her witness statement as she was not sure about it. The First Defendant said that she does not know whether any other will was made apart from the one in the bundle where she and the other carer were there and waiting outside. She said she did not know of any draft wills in or around May 2019. It was put to her that Ward Gethin Archer were approached but they refused to assist on the grounds of incapacity, to which the First Defendant said "I can be sure his capacity is clear and in a good condition. I don't think somebody refuse him".

c. It was put to the First Defendant that there are 3 entries where solicitors either refused or failed to make wills, to which the First Defendant said "how could you prove it that [they] refused". It was suggested that the First Defenant deliberately failed to mention in her witness statement that the Deceased was consulting solicitors in May 2019, to which the First Defendant said she did not hide anything and said that the Deceased was "an independent person".

140. The First Defendant was taken to Bank statement entries starting 5 July 2019 [1/188] showing £3,000.00 being withdrawn over 3 days, which the First Defendant says that some was to pay for staff during the COVID period suggesting that "several times in Tesco he gave them money outside Tesco". It was suggested that this was contrary to

other witness evidence where the Deceased was reluctant to part with his money, to which the First Defendant said "he really loved his ex-wife and spent a lot caring for her" and recounted that the Deceased was angry about the Claimant calling social services and believed that social care had said that he was able to do the job. She described the Deceased as not greedy but generous. It was suggested that this money movement shows him being taken advantage of, to which the First Defendant said "From my side I don't think taking advantage of. It's his money so up to him".

141. The First Defendant was asked whether, in June 2019, she had his debit card and PIN to which she said "I don't think so". She denied taking money without the Deceased's knowledge. She accepted that, before his death, the Deceased "transferred most [of the money] to under my name as [he] knows [he is] not going to last long. Also he told me to transfer small amounts to my name before his death, about 1 week before" and that she did make transfers.

142. It was put to the First Defendant that she came to have access to his online bank account, to which she replied "yes according to his will" and that he gave her permission after his death. She explained that he gave her permission before he died to do so after his death. She denied ever having the PIN but said "only if he took me to ATM". When it was suggested that she saw the PIN, she said he told her it around Christmas 2019.

143. It was suggested that the wedding took place to benefit her, which the First Defendant denied, but only after a delay. It was suggested that she wanted to hide the marriage from the Deceased's family, to which the First Defendant said that they had tried to contact the Claimant "so many times". She said that the family were told before the wedding and the Deceased had wanted to invite them. The First Defendant resiled from her statement [2/74] where it said "My husband wanted to get married quickly without any fuss which suited me", saying that he wanted a grand wedding with his family. It was suggested to the First Defendant, that contrary to her evidence, she kept the wedding from the family as she knew they would try and stop it. She said they fell in love and were not hiding.

144. When asked who attended the wedding, the First Defendant offered the first name only of a friend of the deceased "Alan" and his wife, whose name the First Defendant had forgotten, but could recall that they had a daughter Becky. She explained that her son did not attend as he was in China. Again, the First Defendant denied that the marriage was for the purpose of financial gain and denied that the Deceased was extremely vulnerable.

145. The First Defendant was taken to medical records from 26 December 2019 [3/41] where the note says

> "93 yo male

lives alone
carer x 24 hours"

146. The First Defendant was asked why would he say he lives alone, to which she replied "maybe he was sick". It was suggested that he might have forgotten he was married. The First Defendant said "maybe because he was sick". It was suggested that he thought she was his carer not his wife, to which the First Defendant said: "Never. He was clever and smart and held my hand and ask about the family".

147. The First Defendant denied that the Deceased struggled to pronounce her name and that he called her Chelsea for that reason. The First Defendant said that Chelsea is her English name and she agreed that the Deceased used that. It was suggested that he forgot that too, using "Grace". The First Defendant explained that she used that name for the teachers when she first came to the UK.

148. The First Defendant agreed that serious amounts of money were transferred to her after they were married, saying that the Defendant did not want to give money or property to his daughter. She said that the Deceased said that the next after they were married. When it was put to her that the Deceased cannot have been thinking straight if he said that, the First Defendant replied "that's what he told solicitors". She added that she didn't know the argument between him and his daughter, but he was a man who knew his own mind and had chosen to pass his money to her after they got married. She denied that he was confused about his daughter and that he trusted and loved the First Defendant. She denied that he was paranoid or deluded.

149. The First Defendant agreed that there were transfers of £1000s a month after the wedding, including a cheque for £20,000.00 on 22 July 2019 which she said was a wedding present. She said she refused it, but accepted that she did cash the cheque. She said she told the Deceased that she would use it for them. She denied asking for it. She denied taking advantage of him. It was suggested that she took another £20,000.00 on 6 August 2019. Again, she said it was his idea and she was not happy about it. Again she denied that she was taking financial advantage.

150. The First Defendant was asked, with reference to [1/192] how many bank accounts the deceased had. The First Defendant said it was two, as far as she knew. She agreed that one was the TSB account shown and that she set it up with him "he wanted me to get a new one so I can manage my money and so he can look [at] it". It was suggested that this was set up so there could be online banking, to which the First Defendant said "He wants to add my name". When asked whether the TSB account allowed someone to log on and make payments, the First Defendant said that the Deceased could use online banking and knew how. She said she did not know if someone else could do so with his ID. When it was put to her that she told the court that she could make online payments, she said that was after his death.

151. The First Defendant was taken to a payment on 5 November 2019 to "Inheritance Legal" [1/194] which the First Defendant said she was "not so sure" whether she was aware of that. She said she could not remember whether she was aware of that the Deceased was trying to make a new will in November 2019. She said she was not sure whether they made a will at any point, but agreed it was possible. When it was suggested that she had hidden important information, the First Defendant said "I don't know details – he's independent".

152. The First Defendant was taken to her witness statement from 7 February 2024 where she said there were no further documents and she was challenged that there now might be. The First Defendant said "I don't know, I only know one [will]".

153. The First Defendant agreed when it was suggested that there were increasing payments from the Deceased over time, with reference to bank statement showing 9 December 2019 at the top [1/198]. It was suggested that there were payments of £42,000.00 in December 2019 (which was agreed) and the First Defendant was asked why, to which she replied "I don't know. I know he gives me but I don't know why and he only said that he doesn't want to give to his daughter and that he was anxious to find a solicitor". The First Defendant did not know why the relationship between the Deceased and the Claimant was not good, apart from "he told me he dislike the husband of his daughter and he was very angry when he mention his son-in law and insisted on not giving them money".

154. When asked why the transfers increased, the First Defendant said that the Deceased had his own way to do things. It was suggested that the difference was because he now had online banking, to which the First Defendant said that some of his HSBC banking was online. It was suggested that from November/December 2019 she now had access to online banking for the first time, which the First Defendant said was "impossible". She denied that she was helping herself to the Deceased's money. It was suggested that from December 2019 the direct payments increased and the cash withdrawals reduced. The First Defendant sought to explain this by him relying on her more after they were married. It was suggested that previously she took the cash but now she could transfer money directly. The First Defendant said that this was impossible and the Deceased was an independent person.

155. The First Defendant was taken to various payments of £5,000.00 made starting 22 January 2020 [1/196] which the First Defendant accepted receiving. The First Defendant said "he was pretty emotional, I refuse but he insist. I told him he would not pass away soon". It was put to her that the payments were made when he was emotional and he thought he was going to die, with the First Defendant saying "Just because he was emotional". She denied making these payments herself. She agreed that the Deceased had a stroke on or around 22 January 2020, saying that she sent him to

hospital and picked him up. She denied taking advantage of the stroke to gain access to online banking, to which she said "Never – I love him. He wouldn't trust me that much if I did not really love him".

156. The First Defendant accepted that £1,000.00s were transferred in January 2020. The First Defendant was taken through bank transfers from 10 – 28 February 2020, and 2 payments back the other way such that the Deceased's account had diminished by £43,000.00 . The First Defendant said "he just transferred it to me, I tried to refuse him and told him he was not going to die. He had a clear mind". The First Defendant said that she thought about transferring it all back, She denied that the Deceased was mentally ill. She denied taking the money herself. It was put to the First Defendant that the Deceased was in hospital on 26 February, to which she said she could not remember the exact date as he had been a few times. She did not know why a payment was made on the same day as discharge of 26 February 2020.

157. The Claimant was taken to the letter to Joanne Wood of Jacobs & Co Solicitors [1/214] with the handwritten dated of 28 February 2020 next to the Deceased's signature, and it was put to her that having just transferred £9,000.00, the Deceased was seeking to add the First Defendant's name to the house. She was asked if she wrote the letter. She said "company to help write the it and signed by my husband" but she could not remember the company and that he had called them. She did not agree that she wrote pretending to be her husband. She said he typed it, printed it and signed it and that it is not her writing. She said they both sent it to Jacobs & Co, rather than her. It was suggested that Jacobs & Co knew she was behind the plan, which the First Defendant denied, saying "No – it's husband who called". The First Defendant denied that Jacobs & Co smelled a rat and that was why they refused to put her on the title. It was suggested that this is why Fraser Dawbarns were approached. The First Defendant said that it was the Deceased who managed the legal side.

158. Before coming to the meeting with Fraser Dawbarns, I pause to make the following findings and observations:

    a. There were multiple significant payments from the Deceased to the First Defendant, by bank transfer (sometimes for "care" and sometimes not) and cheques. There are also many cash withdrawals from time to time. They are simply too numerous and for too great a total to be in contemplation of the wedding or everyday expenses or to be distributed to (I note) unnamed carers, gardeners and other staff.

    b. The figures involved might suggest that there was an element of salary/payment for care (potentially reinforced by the reference to "care" on some payments), but the First Defendant denied that she was a carer. Accordingly, I find that there are multiple and frequent payments that have not been properly explained and are,

therefore, at a minimum suspicious. Those made when the Deceased was in hospital or had just been discharged particularly so.

c. A time came when the First Defendant had access to the Deceased's PIN (she said December 2019) and online banking, about which she was inconsistent.

d. There were multiple attempts to engage the providers of will writing services over an extended period of time. Whilst some of the payments were only small (being in the region of £50.00), they suggest that some sort of screening process or consultation was not passed. Given that there was engagement of inheritance wills Ely on 20 November 2018 when I cannot find, on the evidence before me, that the First Defendant was on the scene, I cannot rule out the Deceased being sufficiently independent and self-motivated to write a will at that stage. From March 2019, however, even if these were not at the First Defendant's instigation, I find that the First Defendant would have known enough from her presence in the house and time spent with the Deceased that he was trying to engage the services of will writers, that he had a tendency to assert an estrangement with his daughter, the Claimant, and that he was persuadable to part with sums of money.

e. The attempt to transfer half of the property to the First Defendant via Jacobs & Co came to an end in circumstances that have not been satisfactorily explained when they could have been by disclosure by the First Defendant or by her calling evidence. I infer that questions were asked by Jacobs & Co to which they did not receive a satisfactory answer and/or they doubted the Deceased's capacity.

159. With respect to the meeting with Fraser Dawbarns: the First Defendant agreed that she took the Deceased to Fraser Dawbarns. It was suggested that this was "so he could make a will benefitting you" to which the First Defendant said "we wanted to go there. Not my intention initially. There were 4 solicitors there." She denied putting pressure on the Deceased to make the will. She denied knowing that the Deceased was not mentally up for making a will. She denied contacting them first, saying the Deceased called them and that she overheard. She denied listening in, and said that she did not listen carefully.

160. The First Defendant was taken to the attendance note of the first meeting on 13 March 2020 [1/66] and agreed that she and a helper were present. The First Defendant denied that this was a friend of hers despite what the attendance note says, saying that they are workers but not exactly a friend, saying it is polite to address them as a friend. The First Defendant was asked why she stayed throughout the meeting. She said she also wanted to make a will, but did not tell anyone. It was suggested that the First Defendant stayed because the Deceased was difficult to understand. The First Defendant said "he can express himself very clearly". She was asked if the attendance note was mistaken when it said that she helped the solicitor understand. She said it was not a mistake " we were there together – a conversation". She denied that she was there to make sure she

benefitted. She denied that the Deceased was very confused. It was suggested that he could not say the First Defendant's name, to which the First Defendant replied "he could say his name, and date of birth, and number and PIN and that he did not want anyone to know his passwords or anything". She was challenged on previous evidence that he had given his PIN in December 2019 and she said it was much later and it was not her "right to use the account". It was suggested that he was gesticulating rather than using her name. The First Defendant said "people do use gestures".

161. The First Defendant was asked why James Davies, the solicitor who made the attendance note dated 13 March 2020, was not a witness at trial. The First Defendant said that there were 4 lawyers, each returned a statement and if needed they are willing to be called and that it was all in the bundle. It was suggested that the reason Fraser Dawbarns have not sent anyone as a witness is because they do not want to be associated with the Will. The First Defendant then said that she did not find them or approach them. She said she contacted them later and they were really nice to her. It was suggested that Fraser Dawburns insurers may have stopped them from assisting, to which the First Defendant said she was not sure. I pause to note that I do not have any direct evidence of that.

162. The First Defendant was asked why did not she not call any witnesses to the marriage at trial. The First Defendant said that she did not think she needed to.

163. Referring to the 13 March 2020 meeting, the Frist Defendant denied the Deceased was very confused and denied that he got lots of his personal history wrong.

164. Asked about the Deceased not being a Major in the Army, the First Defendant said that he had been in the army for 12 years. The First Defendant said "I think he started at 18 and did military service for a long time". The First Defendant here said her English was not that good and she did not comprehend the details. It was suggested he invented a military career, to which the First Defendant said "I don't think he invented… He told me [he was] a kind of leader, but I'm not so sure of his title".

165. It was suggested to the First Defendant that the Deceased did not know her son's name, which she denied, saying that her son takes care of him. The First Defendant was referred to the note which said "his wife confirmed her son's name" and said that she confirmed the details. When suggested that the Deceased did not know his name, she said "he likes my son a lot and played piano in front of him". It was suggested that the Deceased had no relationship with her son, to which the First Defendant said her son helped provide care too and that the Deceased liked her son. The First Defendant asked where her son was and she said he had an exam. The First Defendant denied seeing the follow up letter dated 16 March 2020 from Fraser Dawbarns to the Deceased [1/68] or replying to it.

166. The First Defendant was taken to the attendance note of 24 March 2020 meeting [1/72] with Draser Dawbarns. She agreed she took the Deceased to Fraser Dawbarns because he could not drive. She denied taking him to make sure the will was made. She agreed that she was present and then left. She said she was sitting outside. She agreed that she could not say how he acted in the meeting. She denied he was extremely confused. When suggested that his basic personal information was wrong, the First Defendant said "you can go and ask the solicitors", to which it was suggested that that was impossible as they were not witnesses at trial. It was suggested that the reference to "the only time he had seen her was around 7 or 8 years ago at a funeral" was wrong, to which the First Defendant said "I thought he has seen her once at Elaine Harrington's funeral but otherwise it was a long time but he would miss her and mention her to me". I pause to note that there is an inconsistency between the length of time since the Deceased claimed to have seen the Claimant between the 13th and 24th March 2020 attendance notes, which was not obviously explored by Fraser Dawbarns.

167. The First Defendant was taken to further bank statements [1/204] where the entries start on 4 May 2020, and specifically transfers to her of £9,000.00 each on 5th, 7th, 15th, 16th, 17th, 18th and 19th as a selection of payments on that page totalling over £110,000.00. The First Defendant agreed they were large sums of money but suggested that she had returned these. When asked when, she said "it is complicated – by the time he get better I return it to him". The First Defendant agreed that the Deceased passed away on 26 May 2020, saying "he told me to handle matters after he's gone, and I help arrange the funeral as did my son and his friend Alan and daughter Becky". The First Defendant agreed that the Deceased's health was declining in May 2020 and that he way dying. It was suggested that she emptied his bank account, to which she said he instructed her to do so. She denied the suggestion that the Deceased had no clue one way or another saying "he knows it he has a clear mind". She said he had been eating well and then "leaves us very peacefully – there was no response I call an ambulance and the staff from Ambulance said it was peaceful like sleeping". It was suggested that she took £110,000.00 without his permission and again the First Defendant said that the Deceased instructed her to transfer the rest of it to my account as he was afraid that he could not do it by himself.

168. The First Defendant was taken to a further page of the bank statements [1/203] and it was suggested that, contrary to what was said about being devastated in her witness statement, her grief did not stop her going to the bank. The First Defendant said that, despite being very upset, she had to do things such as arranging a funeral. It was pointed out that £9,800 was transferred on the day the Deceased died and then a further £9,500, £9,500, £9,800 and £4,800 over a few days. The First Defendant said that this was carrying out his instructions and denied that it was not the behaviour of a grieving widow and denied that it was the behaviour of a predator or that it was financial abuse. She said she was carrying out his instructions. It was suggested that she knew the contents of the Will, but the First Defendant said she did not know the details but that

the Deceased had told her to see the solicitor. To this, it was suggested that maybe the Deceased might have forgotten the Will, to which the First Defendant said "I don't know exactly this thought and he's cleverer than me and I follow". A little later, the First Defendant said "had I been greedy I would not have returned the money", but that was clarified as earlier transfers rather than any transfers post-death. It was suggested that the account went from £230,000.00 in credit to zero and it was suggested that she took all or most of it. The First Defendant denied taking it as she said he gave it to her.

169. Cross-examination of the First Defendant then reverted to some general questions, the more relevant of which were:

a. The First Defendant denied meeting the Deceased before his wife died.

b. The First Defendant agreed that the Deceased was very upset, but said he had a clear mind. She agreed that one of the letters suggested he was crying every day.

c. The First Defendant said the Deceased had a clear mind and, for example, drove her to London from Norwich.

d. The First Defendant said that the Deceased was still driving in early 2020, for example to the shops. She suggested he drove himself to hospital, but then accepted that was not in 2020.

e. She agreed that a Do Not Resuscitate notice was made. She denied that he was too ill to make a will in 2020.

f. The First Defendant did not think the Deceased's eyesight was poor, save for having to wear glasses and did not think he was deaf, saying "he can hear".

g. The First Defendant accepted that she only knew about the relationship between the Deceased and the Claimant second hand from the Deceased.

h. The First Defendant denied writing a "Dear Jill… Love Dad xx" letter [1/209] from 2 years post-the death of Elaine Harrington announcing the marriage and saying that the Claimant would not get anything from the will. It was suggested that there was broken English but the First Defendant denied that she wrote it. It was suggested that there was no address at the top of the letter, such that it was not in his style, but the First Defendant still denied writing the letter.

170. The First Defendant agreed that she applied for the grant of probate and that she sent the accounts to HMRC [1/80] and that she made the declaration that they are true. It was suggested that it was false, in particular as to there being no gifts and lifetime transfers. It was suggested that she was hiding the gifts made to her.

171. The First Defendant was taken to the Grant of Probate [1/79] (which was later recalled) which records "The application has stated that the gross value of the estate in England and Wales amounts to £425,000.00 and the net value amounts to £425,000.00" and the corresponding figures on the HMRC accounts [1/80]. It was suggested to the First Defendant that leaving box 9,1 about gifts and lifetime transfers empty was not true as more than £150,000.00 had been transferred. The First Defendant said "when I was filling the form I don't know how to." It was suggested that 11.2 was untrue as £12,000.00 cash was declared whereas the bank statements show £40,000.00. The First Defendant thought it was irrelevant. When it was suggested that false information was provided to HMRC she said "I don't know there were mistakes on it". The First Defendant was taken to box 11.8 declaring the value of 15 Gayton Road as £373,000.00. The First Defendant agreed that this reflected the purchase price. She denied knowing that it would be worth more in 2020. The First Defendant denied being told that it was worth £575,000.00 (this having been mentioned in correspondence from the Deceased at [1/159]). It was suggested that she paid no regard to the falsely low value, to which she said she did not do it on purpose. When it was suggested that the First Defendant might be worried about the Claimant seeing the value of the estate, and that a lower value would reduce the likelihood of the Claimant coming after her. The Defendant denied this.

172. I find that, on balance, the declaration to HMRC was false in respect of a failure to declare lifetime transfers. I find that, on balance, the cash declared to HMRC was lower than that in the bank account [1/204]. These alone or together show a willingness to mislead HMRC and, potentially, the Claimant. This raises doubts about the First Defendant's credibility. The value of 15 Gayton Road may have been underdeclared, the figure used being the purchase price rather than a new valuation. However, I can not make a finding that it is false as I do not have sufficient evidence of valuation at the material time.

173. The First Defendant was asked questions about the funeral and it was suggested that all she did was to arrange a basic funeral without family. The First Defendant said that she attended and her son and two friends, their daughter and the staff from the Co-op. She said she invited the blood-relatives: "I have tried to send letter and call her but no one responding, I waited for a reply for three weeks". It was suggested that she could have visited in person and she said she did not want to visit and get no greeting. It was suggested that the real reason not to tell was because of her worries, having taken all of the Deceased's money, which she denied. It was suggested that she hid the funeral as she had the marriage, which was denied. it was suggested that the simple grave was not consistent with a relationship of love. The First Defendant said she was still in grief and had not had time. She was shown a photo of the Deceased's grave [1/165] which she said cost £640.00. She denied it was the cheapest possible grave and said it was consistent with his wishes. She said he had told her to hire a helper to help her after his

death and to not spend too much on the funeral. She said he no longer wanted to be buried with his ex-wife. She denied the real reason was that she had lost interest after the inheritance. It was suggested that "you took everything" and the reply was "He gave me".

174. The most significant issues coming out of re-examination were it being said that the Deceased had two carers that the First Defendant met, that the Deceased paid them at first and then after marriage she would pay them in cash weekly.

175. I asked the First Defendant a few questions. I was told that her son, the Second Defendant was at Limerick University for a year. Noting that she had lived near Heathrow in the past, I asked whether the Deceased had come with her to Hounslow, which I understood he had not. I asked about cash withdrawals in Hounslow [1/185] on 19 June 2019, to which I did not get a satisfactory answer.

The Second Defendant, Zhibin Shi

176. For completeness, I have read the witness statement of the Second Defendant. He did not attend trial. I indicated to the parties that I would potentially consider his statement, subject to the weight to be applied. In circumstances where the trial had been known about for some time and little effort was made to comply with provisions as to the service of hearsay notices, I place no weight on the Second Defendant's statement.

Closing submissions

177. I do not rehearse all of the closing submissions, which I received in writing from Mr McKean (15 pages) and Mr Buston (30 pages), but select those most relevant to the parties' cases and the decisions I have to make.

Claimant's closing

178. Mr McKean, for the Claimant, focuses on what he says is the "totally unsatisfactory" nature of the First Defendant's evidence, the absence of disclosure of bank statements which could have resolved any doubts about whether the First Defendant was "on the scene" earlier than she admitted (which the Claimant maintains) and would have made good any assertion that she was too wealthy to be concerned with the potential financial benefits of her relationship with the Deceased. The Claimant points to multiple attempts to engage solicitors/will makers over time as suspicious, suggesting that capacity was doubted by them.

179. The following of Mr McKean's submissions on the evidence of the First Defendant and generally are particularly compelling:

a. "There is a real possibility that D1 has hidden testamentary documents: wills, draft wills, or instructions thereto, a breach of her obligations under CPR r 57.5, her general disclosure obligations, and the order of HHJ Johns KC dated 29 January

2024 [1/52 – 54]. Paragraph 12 of her witness statement of 7 February 2024 now looks doubtful."

b. "The revelation that the Deceased was attempting to make a will… as early as March 2019 to benefit D1 was a startling one [1/183]). There can be no explanation for this behaviour other than mental illness, manipulation, or both."

c. "D1 says she tried to invite C to the wedding. C denies this. The Court will have to decide which evidence it prefers. If C was aware of the wedding, it was a strange oversight for her to do nothing about it – to take no steps to protect her father or (on a cynical view) her inheritance for another year. (In contrast, she entered a caveat almost immediately after learning of the Deceased's death [1/235].)"

d. "D1's explanation was that the Deceased wanted to give her the money to prevent C getting hold of it. True or untrue, that is damning for the defence. If the Deceased genuinely believed, two years after he had last seen her, that C was coming for his money and he was better off giving it to a relative stranger, his paranoia was advanced indeed. Alternatively, D1 was trying to justify her financial abuse."

180. In respect of the meetings with Fraser Dawbarns, Mr McKean submits:

> "The solicitors performed a brief and totally inadequate capacity assessment, without reference to *Banks v Goodfellow* (1870) LR 5 QB 549. On 24 March, they clearly did not familiarise themselves even with the attendance note of the previous meeting, where they would have seen the Deceased's story of his 'estrangement' with C change from '2018' to '7 to 8 years'. No weight at all can be placed on their conclusions about capacity. Undue influence was barely even tested – D1 was present throughout the first meeting and right outside during the second.
>
> Crucially, there is no evidence at all that the Deceased read the letter at [1/74] containing the draft will – D1 said she knew nothing about it – and no evidence at all that he knew or understood what was going on at the second meeting. Ds cannot discharge the burden of proof in respect of knowledge and approval that falls on them."

181. The Claimant asks the Court to draw adverse inferences on the basis of the written submissions made in the skeleton argument.

182. In respect of Testamentary Capacity, Mr McKean says:

> "The 2020 Will and indeed the Deceased's recent history of will-making were irrational. The burden falls on Ds to prove the Deceased's capacity. They cannot.

> Dr Series' dismissal of the relevance of AMTS or MMTS tests for determining executive function or personality disorder was credible and is consistent with the view of the editors of Theobald on Wills at 4-024 that they may be 'of relatively little use in assessing testamentary capacity' [237 of first authorities bundle].
>
> The evidence of paranoid delusion is overwhelming. The Deceased seems to have developed an entirely new personality."

183. Mr McKean asks the Court to find 15 false, fixed beliefs, formed and maintained in the face of evidence to the contrary, citing *Clitheroe v Bond* [2021] EWHC 1102 (Ch) at paragraph 153(b). Some of these I have made findings on or commented on, whilst considering the evidence above.

184. Paragraph 153(b) of *Clitheroe* provides:

> "In order to establish whether a delusion exists, the relevant false belief must be irrational and fixed in nature. It not an essential part of the test that it is demonstrated that it would have been impossible to reason the relevant individual out of the belief if the requisite fixed nature can be demonstrated in another way, for example by showing that the belief was formed and maintained in the face of clear evidence to the contrary of which the individual was aware and would not have forgotten."

185. Mr McKean put forward 15 false, fixed beliefs maintained in the face of evidence to the contrary:

> "In January 2018, the Deceased and the Claimant had been estranged for 30 years [2/71; 1/159];
>
> In March 2020, the Deceased had not seen C for 7 – 8 years [1/72];
>
> The Claimant had mistreated or neglected Eileen Harrington ('*the way she treated his late wife*') [1/66];
>
> The Claimant had mistreated the Deceased;
>
> The Claimant had stolen the Deceased's horses [1/66];
>
> The Deceased had spent a lot of money on C [1/66];
>
> The Deceased had lived in Norwich before he moved to King's Lynn [1/67];

The Deceased had been a clothing manufacturer [1/72];

The Deceased had originally lived in Southend [1/72];

The Queen Elizabeth Hospital had caused Mrs Harrington's death and even that she had never been seriously ill [2/57; 2/70; M/28];

The Deceased had been a major in the army [2/70];

There was a well in Hill House (unchallenged) [2/67];

Christopher Quilter's bike theft [2/62];

Mitchell Langley was a rogue [2/62]; and

His '*clapped out*' Mercedes was the biggest and best car in the area (Simon Langley's oral evidence);"

186. In respect of knowledge and approval of the will, Mr McKean submits:

> "A will made to benefit a carer will excite the suspicion of the Court, especially where that same carer has engaged in lavish self-enrichment as the testator's expense.
>
> Ds must prove the Deceased's knowledge and approval. Again they cannot. There is no evidence at all that the Deceased saw the draft will or that any proper explanation was given on 24 March 2020. The failure to call any witnesses who could prove this is surely fatal to Ds' case, as is the unchallenged evidence of C's witnesses that the Deceased struggled to hear and understand."

187. In respect of undue influence, Mr McKean submits:

> "Undue influence is usually proved by inference (*Jones v Jones* [2023] EWHC 1457 (Ch) at paragraph 59). Not so here. There is a wealth of evidence of D1 seeking to control and manipulate the Deceased for financial gain, even after death. This includes impersonating the Deceased in correspondence, using his debit or credit card, and accessing his online account. It is difficult to imagine an individual's assets being stripped more completely.
>
> The Deceased was so deluded and vulnerable, it would have taken little to manipulate him. This was surely not a case of threats – careful persuasion, the right word here and there, playing on the Deceased's imagined grievances and irrational suspicions, this would have been enough. The Deceased had already formed a distorted idea of his daughter, but the suggestion that she was

imminently coming for his money, such that he had to make a will and even start transferring it – this must have come from D1. D1 also had to arrange appointments with a number of solicitors, until she found one that missed the red flags.

The Deceased's brash and selfish behaviour, especially towards C and Mrs Harrington, may make it difficult for the Court to see him as a victim. But it is important to remember how physically and mentally vulnerable he became. For a man who prized money to be reduced to handing out cash in Tesco so that his daughter could not 'steal' it was an abject decline. In rare moments, he may have realised what D1 had done to him. In his medical notes at [3/21], he 'begged' doctors not to let him to go home, and threatened to 'kill himself' if they did".

188. In respect of the issue over attestation/the counterclaim and *Belbin v Skeats*, Mr McKean invites the Court to deal with the matter as follows:

> "Determine the claim as it stands. If it succeeds, the point need not be considered;
>
> If the claim fails, determine the status of the counterclaim. If the Court is satisfied that the grant is valid and / or that there need be no counterclaim again the point need not be considered; and
>
> If the Court dismisses the claim and finds the grant to be invalid, the only issue will be attestation. C can consider whether to consent to Ds' application or take the point further."

Defendant's closing

189. The Defendant's lengthy closing submissions started by seeking to limit the effect of Dr Series' evidence on the basis that it was contingent on the taking the Claimant's evidence at face value and that, in fact, the oral evidence about the Deceased showed that Dr Series had an incomplete picture. Mr Buston set out that:

> "Dr Series went on to say that if the court finds Mr Harrington;
> - Had seen his daughter in the time period he said he had not;
> - If the claimant did provide the help to the deceased that she said she did;
> - If The allegation of Stolen horses was untrue;
> - If the Claimant did not steal the Deceased Photo Album;
> - Was not a Major in the Army;
> - If it was incorrect the deceased last saw his daughter 7/8 years ago at a funeral.

> If all those points are true it would not be a delusion. That view in my submission is too black and white. The context of what is said, and said to who, is of upmost important as well as the context of Mr Harringtons somewhat difficult and diminishing relationship with his daughter.
>
> …
> Regrettably for the claimant the personality traits that she [sought] to say were a recent thing were not - That was just who he was and as a consequence carry significantly less weight to show lack of testamentary capacity then if these traits only appeared in later life.
>
> Finally in respect of Dr Series evidence, when Dr Series explained how such a disorder could have impacted Mr Harringtons testament capacity he explained that again if the evidence of C - 6 -
> is true such as Mr Harringtons failure to remember the help the claimant had given him, then if he was suffering from those delusions then he may not been able to appreciate Cs claim on his bounty.
>
> In Submission, Dr Series based his conclusion of delusions of the Claimants evidence which if true would have meant he lacked the executive function understand the help that the claimant gave him and appreciate her potential claim on his bounty."

190. Mr Buston had the following to say about the Claimant:

> "Despite C being very reluctant to admit it, it is clear that the relationship she had with her farther started to go downhill on marriage, maintain an overall downward trend throughout her marriage, however going into significant freefall from when the claimants mother got diagnosed with dementia which put more strain on an already problematic relationship which resulted in the claimant reporting her dad to social services in 2015[1] for failing to care for his then wife.
>
> Its is clear that the claimant calling social services on her dad was a significant event, though surprisingly something the claimant tried to play down as he references this in a number of letters."

191. Mr Buston commented on the Deceased's views as set out in the various pieces of correspondence. Mr Buston said that the Claimant's failure to accept any breakdown of

[1] In my view, the evidence about this episode all pointed to it being in 2017.

relationship, even after 2017 undermines her credibility. Mr Buston then comments upon four alleged incidents in turn:

> "A) Accusations that she stole her ponies;
>
> B) Accusations that she stole a photo album;
>
> C) Accusations that she called the police at her wedding;
>
> D)Accusations that she had been cruel to her mother."

192. Mr Buston highlighted evidence that showed that there was a basis to the disputes within A and C. He submitted that B could have been a mistake and fell short of a delusion. In respect of D, Mr Buston said "The claimant refused to accept dispute over her mothers care could. Have been what the deceased meant that she had been cruel to her mother, however the claimant accepted that by her stepping away and withdrawing care her mother would have suffered."

193. In respect of the 2012 will, Mr Buston says:

> "The 2012 Will is evidence of a declining relationship between C and her dad. C in her oral evidence admitted that she did not know that Dad had changed the will in 2012 effectively cutting her out.
>
> This will is significant in that it shows long before D1 appeared on the scene and at a point that the deceased relationship with C was moving apart to such an extent that he removed her from the Will. Its also of note that C says the deceased had mental capacity (B2, p15 – "I am sure that the balance of his mind was sound that he was mentally ok").
>
> When considering whether the Will was rational, the court had regard to the individual testator's personality, his intentions and history of prior Wills. *Wilkinson and others v Hicken* [2023] EWHC 1983 (Ch)"

194. I pause to note that the first of Mr Buston's comment on the oral evidence of the Claimant is not consistent with my understanding of it as detailed above.

195. Mr Buston points to elements of the evidence of both Simon Langley and Christopher Quilter as showing just how difficult the Deceased was over a long period of time.

196. In respect of testamentary capacity:

> "The will appears rational on the face of it for two reasons:
>
> 1) Its not irrational to leave your estate to your wife;
>
> 2) Given the 2012 Will removing C from the Will, then what followed ie the relationship between C and the deceased totally breaking down in the last 7/8 years of his life it cant be said that not including C in his will is irrational."

197. I pause to note that I do not see (2) in the same way as Mr Buston. In any event, Mr Buston says that the Court should assume testamentary capacity.

198. Considering *Clithero v Bond* and the 4th limb of *Banks v Goodfellow*, Mr Buston submits:

> "It can't be said, even on Cs evidence that any alleged delusion is fixed. Whilst in many cases an obvious way to demonstrate the fixed nature of a false belief is to lead evidence that the testator could not be reasoned out of it, that is not a necessary part of establishing a delusion [102].
>
> The correct approach is to conduct a *"holistic assessment of all the evidence. This would take account of the nature of the belief, the circumstances in which it arose and whether there was an evidential basis for it, whether it was formed in the face of evidence to the contrary, the period of time for which it was held and whether it was the subject of any challenge"* [104].
>
> The majority of what C alleges re the deceased can be explained. In short what C has done is dredge up various incidents over the last 30 years and sort to use these as incidents that show lack of capacity – yet C failed to inform the court that these accusations were often long standing and significant disputes.
>
> A holistic approach needs to consider the very fraught relationship, the dwindling contact over the last 30 years, the change in the 2012 Will, and the non-existent relationship in the last 7/8 years."

199. Mr Buston then comments upon the various factual disputes including, 30 year estrangement recorded by Rev. Dixon; living in Southend rather than Billericay; the rank in the army attained by the Deceased; the place of death on the death certificate. Mr Buston seeks to explain that none of these were delusions. Rather, they were exaggerations or reflected a wider context.

200. In respect of knowledge and approval, Mr Buston submits that the claim must fail on this ground:

The authorities now show that if the testator has the Will read to them or its contents are imparted in some other way so that the testator understood what was in the Will when they executed it, there is a presumption of knowledge and approval. *Re Morris* (deceased) [1970] 1 All ER 1057 *Gill v Woodall* [2010] EWCA Civ 1430

if the Will is challenged on the basis of lack of knowledge and approval, the court will require satisfaction, on the balance of probabilities, that the testator knew and approved – this is evidenced from the solicitors notes.

201. The thrust of the submissions on undue influence were as follows:

"The deceased had repeatedly threatened C that he would remove her from his will. This happened long before D1 came into the picture. In those circumstances it cant be said that D1 exerted influence to take C out of the Will as he was going to do this before he even met D1.

Undue influence – should not be used as a screen behind which to make veiled charges of fraud and dishonesty. *Low v Guthrie* [1909] AC 278. In my submission this is precisely what has happened. What C allege is fraud and dishonestly which has no impact on the fundamental case."

202. Mr Buston's submissions focus upon the Claimant's evidence and the other evidence she called. Relatively little is said about the First Defendant or some of the matters upon which she was cross-examined.

a. In respect of payments for wills, it is said that they are small payments and that there might be many reasons why enquiries were made and that there is no evidence that there was attendance at a solicitors and/or a refusal to engage.

b. In respect of money, it is said that:

"The bottom line is that married couples are free to transfer wealth between themselves without incurring tax liabilities.

It's submitted that D1s evidence in relation to the withdrawals in Hounslow from the deceased account, while D1s answer and then subsequent answer may be cause of further question – regardless its submitted that the answer is just not relevant to the questions that the court have to answer."

c. In respect of allegations of taking money through use of the PIN or online banking, the following is said:

> "While the accusations are strongly denied, even if it was true, this would be evidence of theft and not undue influence or lack of capacity. In fact, the opposite as, if what C says was true, D1 would be doing it behind the deceased back implying capacity. Furthermore, if it was necessary for D1 to create a new bank account and assist the deceased to close his old account and transfer to the new account this would show that C1 did not have enough influence over the deceased to get him to transfer his assets to her. This again does not help Cs case as its evidence of capacity, (though at best theft / fraud which is strongly denied and in any event in the context of a marriage is complex)."

203. In respect of the issue arising over whether there is a counterclaim, Mr Buston maintains that there is a counterclaim but puts forward a contingent application for an adjournment, depending on the court's findings.

Analysis and conclusions

204. I have commented on and made certain findings in respect of the evidence generally as I reviewed it. It is clear that I generally accepted the evidence of the Claimant, albeit I consider that she minimised some of the difficulties in her relationship with the Deceased. In broad terms, I have found the First Defendant unable to satisfactorily explain the transfers of money to her over time and her description of the development of her relationship with the Deceased so speedily raises concerns.

205. Whilst Mr Buston may be right, in a narrow sense, that a married man leaving his estate to his wife and not benefitting his adult child may be rational, in my judgment the Claimant has satisfied the evidential burden so as to raise a real doubt about capacity, based on the expert medical evidence of Dr Series (noting that it is contingent on the Claimant's evidence), there having been previous concerns of financial abuse by an unnamed carer, the speed of the development of the relationship between the Deceased and the First Defendant and there being some evidence that the First Defendant was the Claimant's carer.

206. It therefore falls to the Defendants to prove the Deceased's testamentary capacity. On a narrow view, they have not served medical evidence and have not called solicitors involved in the making of the will and any capacity assessment that Fraser Dawbarns might have undertaken. There is no evidence that Fraser Dawbarns considered the previous will from 2012.

207. In any event, I find that the 3rd and 4th limbs of *Banks v Goodfellow* are not satisfied based on the medical evidence of Dr Series when assessed in light of the evidence. In particular, the following delusions are made out from the 15 false, fixed beliefs

maintained in the face of evidence to the contrary put forward by Mr McKean. I agree with Mr McKean's characterisation of the following as false, fixed beliefs maintained in the face of evidence to the contrary (i.e. "delusions" in the relevant sense) and find accordingly:

a. "In January 2018, the Deceased and the Claimant had been estranged for 30 years [2/71; 1/159]"; I have already given this some consideration this when reviewing the evidence, above. I find that the Deceased made repeated assertions that this was the case, and that there was a theme of other versions of it, i.e. that his relationship with his daughter had effectively ended from the point of her marriage, which was in 1987. The evidence overall shows that the relationship was difficult, at times, but that it improved over time after the marriage to Mitchell and there were regular visits, particularly in the later 2000s and the Claimant had a caring role from 2012-2015 with a short withdrawal in about 2013.

b. "In March 2020, the Deceased had not seen C for 7 – 8 years [1/72]"; The length of time since seeing daughter inconsistent over the course of a week. Without hearing from makers of the attendance notes, that is a glaring inconsistency. There is a stark difference in the Deceased's account between the two meetings with Fraser Dawbarns in space of a week. Whilst the assertion that the Deceased had not seen the Claimant since his late wife's funeral was correct in the 13 March 2020 attendance note (and is supported by the Claimant's own evidence, further supported by Rev. Dixon to the extent that she confirms both of them being present on 18 January 2018) the assertion recorded at the 24 March 2020 attendance note that "the only time he had seen her was around 7 or 8 years ago at a funeral" was plainly wrong (which would mean 2012-3). The fact that this was not further explored by Fraser Dawburns raises concerns. In any event, wider evidence in the case, particularly from the Claimant, was of her having a consistent role in her mother's care 2012- 2015. Whilst I am conscious that a one off "error" in the chronology on its own would probably not be delusional, the context of repeated assertions of lengthy estrangements (of up to 30 years) is delusional.

c. "The Claimant had stolen the Deceased's horses [1/66]"; Whilst I would be cautious if this was a single issue, I find that it is part of the Deceased's delusion that his relationship with his daughter had not maintained over the years, particularly in the period up to 2015. On the evidence before me, the Claimant took her own horses away.

d. "The Deceased had been a major in the army [2/70]"; I find that this became a repeated refrain by the Deceased in the later years of his life, including to the First Defendant and Fraser Dawbarns. It is contrary to the Claimant's evidence and there is no corroborative evidence. It is suggestive of a delusional state of mind about a core part of an adult's personal history. I cannot expect that it is mere exaggeration,

as suggested on behalf of the Defendants. I accept the evidence of the Claimant that the Deceased was a private in the Army on national service for a year]. I accept the evidence of Rev. Dixon that the Deceased asserted in January 2018 that he was a retired Army Major. The First Defendant also gave evidence that the Deceased told her that he was an Army Major or some other leadership role and served for 12 years. I have no reason to doubt that James Davies of Fraser Dawbarns recorded correctly on 13 March 2020 that "Mr Harrington told me that he had been a major in the army". Whilst I have difficulties accepting aspects of the First Defendant's evidence, it seems likely that she would be told something similar at around the time. It follows, that I find that the Deceased was repeatedly misstating his career history at various times from January 2018 to March 2020 amounting to a delusion.

208. I do not find the remaining 11 propositions set out by Mr McKean as made out as "delusions" in the relevant sense. That is not to say that I accept that what the Deceased appeared to assert was true. Whilst I do not consider that there was any mistreatment of Eileen Harrington or the Deceased in terms of care, there were breaks in care and the Deceased may have considered himself let down come 2017. The context of the care propositions risk turning a difference in impression into a delusion. Nor am I persuaded that the reference to living in Southend or Norwich before King's Lynn or to being a clothing manufacturer to be sufficiently material departures from reality to qualify as delusions in the sense required, despite being demonstrably wrong (Southend) or selective in the other examples. Further, the final four propositions are of insufficient importance to consider alone. However, as I have observed when considering the witness evidence and, in particular, the letters appearing in the bundle, it is clear that the Deceased did become fixated upon aspects of his relationship with the Claimant over time, including a dislike for Mitchell Langley.

209. The proposition of "The Queen Elizabeth Hospital had caused Mrs Harrington's death and even that she had never been seriously ill [2/57; 2/70; M/28]" may have had a delusional basis. It is certainly correct that Rev. Dixon could not understand the basis of the Deceased's complaint and it is an issue upon which he appears to have become fixated for a while, apparently giving an interview to the local press. I simply have insufficient evidence to find this issue starkly as a delusion in the sense required.

210. In his closing, Mr Buston set out four alleged incidents of particular note, two of which are not covered immediately above, and it is convenient to deal with them here:

> "B) Accusations that she stole a photo album;
>
> C) Accusations that she called the police at her wedding;"

211. I prefer the Claimant's evidence over the photograph album, actually being a frame, and containing photographs that she took on her iPad in about 2013. Accordingly, it is an example where I consider that the Deceased was wrong to assert what he did, but I do not think it crosses the threshold into a delusion. In respect of there being police at the wedding, I find that there certainly was police involvement in searching the Deceased's house. His assertions about police in the letter of apology [1/162] therefore has some truth to it, but I am unable to resolve the full factual basis. I do not rely on it as a delusion.

212. Accordingly, I find that the 3rd and 4th limbs of *Banks v Goodfellow* cannot be satisfied. The Deceased could not and did not appreciate the claims to which he had to give effect as in his mind at the time the Claimant had not been in his life since 1987 and their last meeting had been at around the time that the 2012 will was made (under which she was the residual beneficiary) rather than continuing until at least 2015. At this time, the Deceased was also labouring under a false understanding of his own career history and own family history (extending to false understandings of the arc of the previous 30 years). I find that he lacked testamentary capacity and the claim succeeds in that regard.

Want of knowledge

213. The Deceased was a vulnerable elderly man who had before his marriage to her made significant transfers to the First Defendant marked "care" in circumstances when it is denied by her that she was employed in that role, and made further transfers which the First Defendant said were wedding related and upon which I found her evidence unsatisfactory. Post-marriage, more significant transfers were made which might in an appropriate case be explicable as a married couple simply rearranging their finances, but in the circumstances of the evidence overall, including the swiftness of the relationship developing, the age difference and my findings above about the First Defendant's actions in respect of the bank accounts and HMRC returns contain a significant element of impropriety.

214. In my judgment, the Defendants have not discharged the burden on them to establish that the Deceased did know and approve the contents of the Will, given the circumstances of this testator as described above. I have no confidence that the Deceased read the draft will himself and I accept the evidence that he had some visual and auditory limitations. The second Fraser Dawbarns attendance note does not go far enough. Accordingly, the claim also succeeds on this basis.

Undue influence

215. Dr Series set out a number of "red flags" for undue influence [2/115-116]. The fact that the ambulance service highlighted the risk of financial abuse from an unnamed carer in 2017 is significant. There is evidence from the Claimant of self-isolation post 2017 and, perhaps more importantly, Rev. Dixon of her concerns and those of the funeral providers in 2018. The fact that payments were made for "care" from the Deceased to

the First Defendant in early 2019 suggests that the relationship started on a basis that was not what the First Defendant tells the Court. There was clearly an element of control by the First Defendant of the Deceased and his finances that increased over time.

216. It is clearly the case that elements of the Deceased's delusions described above were representative of themes about which he had used to threaten the Claimant to disinherit her in the past in correspondence, largely stemming from his view that the Claimant's marriage to Mitchell was some sort of schism. On the basis that the First Defendant met the Deceased in early 2019, he was already telling others (e.g. Rev. Dixon) that there was a 30 year estrangement. Whilst this might suggest that the die was cast, and there was little to influence, this would ignore the fact that there had been no such disinheritance prior to the First Defendant coming on the scene and their marriage. The numerous enquiries for will services does, in my judgment, show that there was shopping around which (on hr own evidence) the First Defendant knew about and in my judgment was involved in. I also find that she was involved in the correspondence with Jacobs & Co about the transfer of the half share in the house, which was unsuccessful. Not only do these lend support to question marks about capacity being raised, they tend to suggest a guiding hand which I find to be the First Defendant's. It would have taken very little, from early 2019, to build upon the Defendant's stated views about his estrangement (which I find were delusional) and put these into effect for her financial benefit.

217. The anomaly is the most substantial payment of all the potential legal services payments made to "inheritance wills Ely" of £1,175 on 20 November 2018 [1/173], pre-dating the First Defendant's arrival on the scene (on the balance of the evidence before me), but I draw an inference about the lack of disclosure by the First Defendant of matters that could have assisted from that solicitor's file and hold that it is safe to infer that there was either a lack of capacity at that date or a will or other evidence that would harm the Defendant's case. Accordingly, it does not help her defend the allegation of undue influence.

218. Accordingly, I find that the Claim succeeds on undue influence.

Conclusions

219. On the basis of the Claim succeeding on the above bases, the issue of whether or not there is a counterclaim and what might need to be done further to propound the Will does not arise.

Recorder Robert McAllister
12 April 2024