Neutral Citation Number: [2023] EWHC 73 (Ch)

Case No: PT-2019-000803

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 19/01/2023

Before :

MRS JUSTICE JOANNA SMITH DBE

- -

Between :

(1) SIMON KEVIN FRAIN (AKA SIMON KEVIN REEVES, AKA BILL REEVES)
(2) MARK RYAN MCKINNON

Claimant

- and –

(1) LOUISE MICHELLE REEVES
(2) DANIEL CURNOCK

Defendant

Mr C Darton KC, Mr M Karia and Mr H Fraser (instructed by **LLP Solicitors**) for the **Claimants**
Ms E Jones KC and Mr P Adams (instructed by **Hodge Jones & Allen**) for the **First Defendant**
Mr TJC Grey (instructed by **Janes Solicitors**) for the **Second Defendant**

Hearing date: 14 December 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 January 2023, by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Joanna Smith:

1. This is my judgment following the hearing of two applications made pursuant to CPR81.3(1) and CPR 81.3(5)(b) for permission to commence committal proceedings in circumstances where it is alleged that each of the two Defendants (respectively "**Louise**" and "**Mr Curnock**") have knowingly made a false statement (in Louise's case) in four documents verified by a statement of truth and (in Mr Curnock's case) one document verified by a statement of truth. The Claimants to the applications (separately "**Bill**" and "**Ryan**") are Louise's brother and nephew respectively. Where I refer to parties by their first names, it is for ease of reference only; no disrespect is intended.

2. The applications arise further to underlying, bitterly contested, probate proceedings ("**the Proceedings**") in respect of the estate of the late Kevin Reeves ("**the Deceased**"), father to Louise and Bill and grandfather to Ryan. The Deceased died in 2019. At the heart of the Proceedings lay the validity of a 2014 Will ("**the 2014 Will**"), leaving 80% of residue to Louise and the remaining 20% to her sister, Lisa. Louise commenced the Proceedings against various members of her family, including Bill and Ryan, in October 2019 seeking probate of the 2014 Will. Bill and Ryan filed defences alleging want of knowledge and approval in respect of the 2014 Will and counterclaimed for probate of an earlier will ("**the 2012 Will**") which split 80% of the residue between Louise and her siblings Bill and Lisa equally, with the remainder to be split between Ryan and his sister, Ria. They also alleged undue influence against Louise.

3. Mr Curnock is a solicitor who had been charged with preparing the Deceased's 2014 Will and was at that time working at Christopher Green McCarrahers Solicitors ("**CGM**"). He gave evidence at the trial of the Proceedings in support of Louise's case that the 2014 Will was the Deceased's last valid will. An issue that arose at the trial was the extent of the relationship between Mr Curnock and Louise (the main beneficiary of the 2014 Will) in the period prior to its execution. It bears emphasis that Mr Curnock was not a party to the Proceedings.

4. Judgment was given in the Proceedings by Michael Green J ("**the Judge**") on 31 January 2022 (*Reeves v Drew & Ors* [2022] EWHC 159 (Ch)) ("**the Judgment**"), dismissing the claim of undue influence but holding that Louise had not proved on the balance of probabilities that the Deceased knew and approved the contents of the 2014 Will. The Judge accordingly pronounced for the 2012 Will. In his Judgment, the Judge made findings of fact against Louise and Mr Curnock which the Claimants (at least in their submissions) wish to pray in aid in support of the Contempt Applications. An important issue in these applications is whether they should be entitled to do so on grounds of admissibility, fairness and reliability.

The Applications

5. The facts alleged to constitute a contempt as against Louise are set out in a Contempt Application dated 18 July 2022 as follows:

> "The Claimants apply to bring proceedings for contempt of court against the Defendant, Ms Louise Reeves, on the basis she knowingly made false statements in four documents verified by signed statements of truth in the course of the proceedings in Reeves v Drew & Ors [2022] EWHC 159 (Ch), being:

> a) Her Reply & Defence, dated 15 November 2019. In paragraph 14, Ms Reeves stated that she "did not know Mr [Daniel] Curnock until after the deceased executed the 2014 Will [on 7 January 2014]". That statement was made intentionally or recklessly without a[n] honest belief in its truth.
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> b) Her response dated 12 August 2020 to a request for further information pursuant to CPR 18 (dated 20 February 2020) with the Answer -
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> "After the 2014 Will had been executed"
>
> (to the question (request for further information) -
>
> "When did the Claimant [Ms Louise Reeves] first meet Mr Curnock")
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> That statement (response) was made intentionally or recklessly without a[n] honest belief in its truth.
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> c) Her First Disclosure Statement, dated 19 March 2021, which was made knowingly or recklessly without a[n] honest belief in its truth in that Ms Reeves failed to disclose the existence of emails, phone calls, and text messages from herself to Mr Daniel Curnock which were in her control.
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> d) Her Second Disclosure Statement, dated 21 May 2021, which was made knowingly or recklessly without a[n] honest belief in its truth in that Ms Reeves failed to disclose the existence of phone calls, and text messages exchanged from herself to Mr Daniel Curnock which were in her control".

6. Pausing there, I note that although particulars of the alleged knowledge or recklessness are provided in relation to the claim in respect of the First and Second Disclosure Statements, no particulars are supplied in relation to the similar allegation in respect of Louise's Reply & Defence or her response to the February 2020 request for further information. This was pointed out by Ms Jones KC on behalf of Louise, noting that it was a "problem", but (perhaps with an eye to the observations of Davis LJ in *Ocado Group Plc v McKeeve* [2021] EWCA Civ 145 at [88] to the effect that the general direction of travel is to eschew unwanted elaboration in this sort of case) she did not seek to suggest that Louise was not clear as to the case that she had to meet simply by reason of this lack of particularisation and nor did she seek to persuade me of any failure on the part of the Claimants to comply with the requirements of CPR 81.4. For ease of reference, I shall refer to the statements relied upon by the Claimants in the order they are set out in the application against Louise as the First, Second, Third and Fourth Statements.

7. The application against Louise goes on to say that it is "brought alongside an interlinked application to bring proceedings for contempt of court against Mr Daniel Curnock".

8. The facts alleged to constitute contempt as against Mr Curnock are set out in a separate Contempt Application of the same date in the following terms:

> "1. The Claimants apply to bring proceedings for contempt of court against the Defendant, Mr Curnock, on the basis he knowingly made a false statement in a witness statement, dated 2 December 2019, supported with a signed statement of truth, for the purposes of the proceedings in Reeves v Drew & Ors [2022] EWHC 159 (Ch).
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> 2. In Mr Curnock's witness statement he stated: "I only met Louise [Reeves] for the first time when I went for a meeting to discuss the terms of the trust, of which we are both trustees, which was after the deceased's Will was signed [on 7 January 2014]." That statement was made intentionally or recklessly without honest belief in its truth".

9. Again, no particulars in support of the assertion as to Mr Curnock's mental state were provided, but Mr Grey, acting on behalf of Mr Curnock, also did not suggest that his client had been unable to understand the case he was required to meet, although he did submit that that case had been substantially (and improperly) developed in the Claimants' skeleton argument – a point to which I shall return later. Mirroring the application against Louise, the Contempt Application against Mr Curnock states that it is "brought alongside an interlinked application to bring proceedings for contempt of court against Ms Louise Reeves". I shall refer to the statement on which the Claimants rely against Mr Curnock as "**the Curnock Statement**".

10. The supporting evidence attached to both applications is in the form of an affidavit dated 18 July 2022 from Mr Raj Kumar Mehta, a solicitor and managing director of the Claimants' solicitors ("**Mehta 1**"). I shall return to this evidence in due course, but for present purposes I note:

    i) first, that the applications are said to be "relatively narrow"; in so far as Mehta 1 sets out a number of "serious findings" made in the Judgment against both Louise and Mr Curnock, those findings are expressly said to have been referred to "merely as background". For the purposes of the Contempt Applications, the Claimants do not rely upon any allegation of fraud or conspiracy against either Defendant. As a consequence, it is the Defendants' case (with which I agree) that there is no scope for any such allegations to be advanced at any future substantive hearing.

    ii) second, that although the applications against Louise and Mr Curnock are closely connected (and rely upon the same evidence) they are formally separate and I shall need to consider them separately.

    iii) third, that in so far as the applications involve the allegation that Louise and Mr Curnock made false statements to the effect that they had not met prior to the execution of the 2014 Will, it is accepted by both Louise and Mr Curnock that their statements were false, albeit that it is their case that they were innocently made.

The Judgment and the Procedural Background

11. In the Judgment, the Judge was careful to avoid making any direct findings of fraud or collusion against Louise and Mr Curnock, although he found that their evidence was untruthful and he expressed the view that his finding that it had not been established that the Deceased knew and approved the content of the 2014 Will may carry with it a 'strong implication' of fraud by Louise.

12. Louise applied for permission to appeal on the grounds (amongst others) that the Judge had in fact made findings of fraud when it was not open to him to do so. This was rejected by Asplin LJ and then, following a reconsideration pursuant to CPR 52.30, by Lewison LJ, who observed that the Judge had been "scrupulously careful" to avoid making a positive finding of fraud. He went on to observe that:

> "The closest he went was to say that Mr Curnock's evidence was not truthful; and that there was a "strong implication" of fraud by [Louise]: see J para 347, 348, 407, 408. He did not find that there had been a fraudulent conspiracy between [Louise] and Mr Curnock; although he was of the view that there was more to their relationship than they were prepared to accept or that emerged from the available documents (see J para 73). **It is not an inevitable inference from what he did find that there was a fraudulent conspiracy at the date when the will was executed: it is no more than a possible inference**" (**emphasis added**).

13. This finding was consistent with submissions made on behalf of Bill and Ryan in opposition to the CPR 52.30 application, to the effect that the Judge made no findings of fraud and that, accordingly, there was no question of procedural unfairness in the conduct of the trial. It was also consistent with the case advanced by Bill and Ryan at trial to the effect that they were not contending that any of Louise's witnesses had conspired to present a false case and that they did not intend to plead or pursue a case in fraud.

14. In applying for permission to appeal, Louise sought permission to rely on fresh evidence. This is said by Ms Jones to be highly relevant to the Contempt Applications. The fresh evidence (which Asplin LJ found did not satisfy the *Ladd v Marshall* test) concerned the question of whether Louise and Mr Curnock had met in February 2013 (some 10 months before the execution of the 2014 Will) in connection with a property transaction known as "Rowan Close". Further to the oral submissions at the hearing before me, it now appears to be common ground that a piece of evidence deployed by Bill and Ryan at the trial in support of this alleged meeting is nothing of the sort. I need not go into the detail for present purposes, but Ms Jones makes the point that the Contempt Applications do not seek to rely on the assertion that Louise and Mr Curnock met during the Rowan Close transaction "doubtless because Bill and Ryan recognise that [such allegation] cannot possibly be made out". This is of significance to her submissions as to the reliability of the Judgment.

15. For completeness, I should add that following her unsuccessful attempt to appeal the Judgment, Louise made an application to the European Court of Human Rights, which remains outstanding. Partly by reason of the existence of that application, Louise applied on 6 December 2022 for this hearing to be adjourned. In their successful opposition to

the adjournment application, the Claimants relied upon a witness statement from Mr Mehta dated 28 November 2022 ("**Mehta 2**") in which he said this:

> "…the contempt proceedings are brought on the basis that Ms Reeves and Mr Curnock signed false statements supported by signed statements of truth. **The proceedings are based on those documents and not the comments made by Michael Green J**…" (**emphasis added**)".

16. In their skeleton argument for the hearing of the adjournment application, the Claimants reinforced this point:

> "…whilst the judgment of Michael Green J gives a considerably detailed and methodical account of the evidence, C1/C2 do not need to rely on it to prove that there is a strong prima facie case, and the case stands independently of it. As Mr Mehta stated in his affidavit at para 16, passages from the Judgment were "provided merely as background to the subject of this application which is relatively narrow". Indeed warnings of contempt proceedings were sent to D1 and D2 almost a year before the Judgment was handed down".

The Law

17. As Marcus Smith J observed in *Patel v Patel* [2017] EWHC 1588 at [17], the question of whether permission to bring a committal application should be given involves consideration of "a series of overlapping elements". Mehta 1 summarises the law relevant to contempt proceedings generally and much of the law appears to be common ground, albeit there were some small differences of emphasis between the parties.

18. The authorities have repeatedly identified the need for the court to "exercise great caution" before granting permission to bring contempt proceedings (*KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280 at [17]) and *Makdessi v Cavendish Square Holdings BV* [2013] EWCA Civ 1540 (Commercial) per Christopher Clarke LJ at [79]:

> "…It is not in the public interest that applications to commit should become a regular feature in cases where at or shortly before trial it appears that statements of fact in pleadings supported by statements of truth may have been untrue."

19. The approach to be adopted by the court to applications for permission is set out in detail in various cases to which I was referred by the parties, including *KJM Superbikes* at [16]-[17]; *Stobart Group Ltd v Elliott* [2014] EWCA Civ 564, per Gloster LJ at [44]; *Newson-Smith v Al Zawawi* [2017] EWHC 1876 (QB) per Whipple J at [6]-[12] and *Patel.* Without trying to re-invent the wheel, I set out the key passages from *Newson-Smith* at [6], which summarise that approach:

> "a) The question for the Court at this stage is not whether a contempt of court has in fact been committed, but whether proceedings should be brought to establish whether it has or not.

b) Because proceedings for contempt of court are public law proceedings, when considering whether to give permission the Court must have regard to the public interest alone. That involves two key considerations:

   i) Is the case one in which the public interest requires that the committal proceedings should be brought; and

   ii) Is the applicant a proper person to bring them?

c) A number of factors are likely to be relevant to the assessment of the public interest in any given case. On the one hand, there is a public interest in drawing the attention of the legal profession and potential witnesses to the dangers of making false statements to the Court. On the other hand, the Courts should guard against exercising the discretion too freely in favour of allowing proceedings to be pursued by private persons. Specifically:

   i) the court should not grant permission unless there is a strong prima facie case that the allegations will be proved to the criminal standard at a substantive hearing;

   ii) the Court must not stray into determining the merits of the case at the permission stage;

   iii) in cases where false statements are at issue, the applicant must show a strong prima facie case not only that the statement was false but also that it was known at the time to be false;

   iv) in assessing the strength of the applicant's prima facie case, the Court will take account of all the circumstances of the case, and will have regard in particular to the circumstances in which the statement was made, the state of the maker of the statement's mind, including his understanding of the likely effect of the statement, the use to which the statements was put in the proceedings, the extent to which the false statements were persisted in, and any delay in warning the respondent that he or she may have committed contempt by making a false statement at the earliest opportunity; and

   v) The court must guard against the risk of allowing vindictive litigants to use committal proceedings to harass persons against whom they have a grievance.

d) The Court must also consider whether it is proportionate to allow committal proceedings to be brought. That involves an assessment of the strength of the case against the respondent(s), the amounts in money terms which were involved in the proceedings in which the allegedly false statements were made

> and which were affected by those statements, the likely costs involved on both sides, and the amount of court time likely to be involved in managing and hearing the matter.
>
> e) The Court must also consider whether contempt proceedings would further the overriding objective of the CPR to deal with cases justly".

20. To Whipple J's observation at [6](c)(iv) above, to the effect that the court will take account of all the circumstances of the case, including the use to which statements were put in the proceedings, I add that:

    i) as Christopher Clarke LJ made clear in *Makdessi* at [73], "the extent to which a statement has been persisted in is plainly a relevant consideration", although the fact that the maker of a statement has recanted before trial does not make an application to commit inappropriate.

    ii) as is clear from *Stobart* at [111], whilst there is a strong public interest in ensuring that knowingly false statements made by parties in court proceedings do not go unpunished, it is important to "stand back and look at the overall reality of the litigation". The fact that the allegedly untrue statements have been considered in underlying proceedings and have, where appropriate, led to adverse consequences for the defendant is a factor which will militate against granting permission.

21. Whipple J went on in *Newson-Smith* at [7] and [8] to make some specific observations relevant in cases involving alleged false statements:

> "[7] …First to establish a contempt, the false statement must have been made with the intention that, or at least in the knowledge that it was likely that, the administration of justice would be interfered with as a result, see Tinkler v Elliot [2014] EWCA Civ 564 at [44]:
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> > "in order for an allegation of contempt to succeed it must be shown that…in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice" citing Edward Nield v Loveday [2011] EWHC 2324 (Admin)
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> [8] Secondly, a false statement is one which was not true, and which when made the maker knew was not true, or did not honestly believe to be true. There is a fine dividing line between mere carelessness or negligence on the one hand, and recklessness in the making of the statement on the other. Recklessness is sufficient mens rea for contempt (Berry Piling Systems Ltd at [27]). However, a statement is made recklessly only if the maker
>
> > "consciously has no idea whether it is right or wrong ... Recklessness is a concept which judges can address as they do in a criminal context. Logic also suggests that a

> person who represents as true something which he or she consciously does not know whether it is true or not is consciously misleading the Court and that should be considered as contemptuous" (ibid, at [28])
>
> Optimism or even carelessness in the making of statements will not be sufficient to establish that a party is in contempt (ibid, at [30(c)])."

22. On the subject of the meaning of recklessness in the context of making false statements, Whipple J referred at [10] to *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829, an authority to which I was also taken by the parties in this case. Having referred to a passage at [42] in the judgment of Lloyd J in that case, Whipple J said this at [12]:

> "The passage cited refers to Mr Ereshchenko 'applying his mind' to the truth or otherwise of the relevant statement. That reflects what Akenhead J said in Berry Pilings, namely that a false statement is made when the maker 'consciously has no idea whether it is right or wrong" (see [28]). There must be a subjective element – that is, a conscious engagement with the issue which is the subject of the statement – before it can be said that the statement, if it turns out to be untrue, was made recklessly and thus without an honest belief in its truth. Anything less than conscious engagement is likely to amount to mere carelessness".

23. The parties' submissions on the law appeared to diverge on two issues:

    i) First, as to the extent to which it is appropriate for a court at the permission stage to consider the merits; the Claimants on the one hand emphasising that, at this stage, the court is not concerned with the substance of the complaint and should be careful not to stray into the merits (see *KJM Superbikes* at [20]), and the Defendants on the other hand submitting that the test of strong prima facie case requires the court to have regard to what would have to be proved in order for the underlying allegation of contempt to succeed at trial.

    ii) Second, as to the approach the court should adopt in a case where a claimant invites the court to infer dishonesty.

24. As to the first issue, I do not consider there to be any real tension in the authorities on this point. In *KJM Superbikes* Moore-Bick LJ made clear at [16] that when considering the central question of whether it is in the public interest for proceedings to be brought, "among the foremost" of the many factors to be considered is "the strength of the evidence tending to show not only that the statement in question was false but that it was known at the time to be false". Making a similar point in *Berry Piling Systems v Sheer Projects Limited* [2013] EWHC 247 TCC, Akenhead J said (at [30(a)]) that "Without straying into the merits, the judge can, as the Court in *Malgar* and *Kirk* did, review critically the evidence to satisfy himself or herself that there is [a strong prima facie case]". It is so as to avoid prejudicing the outcome of the application if permission is given that the court must say no more about the merits of the complaint than is necessary

to resolve the permission application. However, the court is plainly required to evaluate whether the necessary evidential threshold has been reached on the materials before it.

25. While I accept the Claimants' submissions that (in this case) the question of the Defendants' state of mind when they made the statements is one which could ultimately only be determined following cross examination at a substantive hearing of the Contempt Applications, I reject any suggestion that, at this stage, I cannot and should not consider with care, the available evidence as to their individual states of mind. This will involve "viewing the evidence of claimant and defendant as a whole" (see *Ocado* at [85]) and considering whether that evidence raises a prima facie case of sufficient strength to justify permission being given.

26. As to the second issue (the approach to adopt where the court is being invited to draw inferences) Ms Jones submits that at trial, a proposed inference of dishonesty will only be drawn against a defendant if it is the only available inference. In support of this proposition, she draws my attention to *Ereshchenko* at [40]:

> "It was and is common ground that, if and insofar as the Bank's case depends on the judge drawing an inference as to Mr Ereshchenko's state of mind, **then the Bank's case can only succeed if the inference of dishonesty is the only possible inference that can reasonably be drawn**. If more than one reasonable inference could be drawn and if any of them is inconsistent with a finding of contempt, then the Bank's application must fail. The judge recorded this at paragraph 132(iv), citing Teare J in his judgment on the committal application in relation to Mr Ablyazov [2012] EWHC 237 (Comm), who in turn relied on what David Richards J said at paragraph 30 in Daltel v Makki [2005] EWHC 749 (Ch), an observation that was not contested or questioned on the appeal by Mr Makki to the Court of Appeal, [2006] EWCA Civ 94" (**emphasis added**).

27. In reply, Mr Darton KC, on behalf of Ryan, points out that in *Ocado,* the Court of Appeal dealt with the question of inferences in a rather different way, observing at [85] that it did no harm on the facts of *Ocado*, to consider whether, applying the criminal standard, the case for committal gives rise to a sufficient case to answer:

> "Cases derived from circumstantial evidence and inference can often be powerful cases in the criminal context. Mr Weekes emphasised that a conclusion to the criminal standard based on inference cannot be drawn if another possible inference is also available. That indeed, reflects the criminal law…But in a criminal trial context the overall test remains whether there is evidence upon which a reasonable jury, properly directed, could infer guilt…A jury may be perfectly entitled, depending on the evidence, to reject the suggestion of other possible inferences which may be postulated. I do not wish to push too far the analogy between a submission of no case to answer at the close of the prosecution case in a criminal trial context and a decision on whether there is a sufficient prima facie case for the purposes

> of a permission application under CPR Pt 81.14 (not least because the latter kind of application involves viewing the evidence of claimant and defendant as a whole). Nevertheless in my view, in the present circumstances, it does no harm to consider whether Ocado's case, **in the postulated absence of a rebuttal**, gave rise, applying the criminal standard, to a sufficient case to answer…In my judgment, it is wholly plain that it did" (**emphasis added**).

28. Having reviewed *Ocado* with care, I do not consider, however, that the court was there dealing with a situation in which there was genuinely more than one inference on the claimant's evidence.

29. In *Ocado*, within minutes of being notified of an Order for Search of Premises and Preservation of Evidence, the solicitor defendant gave instructions to his clients' IT manager to "Burn it" (or "Burn all"), in consequence of which various IT accounts were deleted. The judge rejected the application for permission to make a committal application, but the Court of Appeal overturned that decision. The evidence from the solicitor was that he had made no more than an error of judgment but, as is clear from [83] of the judgment, his counsel maintained that, even without such evidence, Ocado could not establish a strong prima facie case.

30. On the facts, however, Davis LJ considered that submission to be "not acceptable" on the grounds that it "shows no regard to any sense of realities". He went on to observe at [84] that "The obvious inference, **in the absence of an explanation**, was that the 'Burn' instruction…was that destruction of at least the 3CX app was intended in order to prevent Ocado studying it for the purposes of its case: an intent to thwart the administration of justice in other words" (**emphasis added**). Pausing there for a moment, unlike in *Ereshchenko*, the Court of Appeal was here concerned with a situation where, on Ocado's case (and absent any explanation), there was apparently only one obvious inference.

31. In paragraph [85], on which Mr Darton relies, Davis LJ was dealing with the submission that there was evidence of innocence available by reason of the rebuttal evidence, but that even in the absence of that evidence, there was no strong prima facie case. In that context he considered whether, in the absence of any such evidence of rebuttal, there was nevertheless a sufficient case to answer, applying the criminal standard. He held that there was (which, given his remarks as to the "obvious inference", is unsurprising). He went on to consider the effect of the rebuttal evidence in paragraph [86] where he observed that the solicitor's case, in effect, involved a requirement that the court accept his evidence of innocence at the permission stage, but that that would not be the right approach when a judge "is in principle not entitled to explore or make detailed findings of fact and when Ocado has had no opportunity to test what is being said in cross-examination".

32. In my judgment, *Ocado* does not affect or undermine the proposition that where more than one inference may reasonably be drawn at trial in relation to evidence advanced in support of a committal application, the claimant will be unable to establish a strong prima facie case to the criminal standard. Mr Darton was unable to show me any authority to the contrary.

Are the Claimants entitled to rely upon the Judgment?

33. The Defendants each take different points in respect of the Judgment. Ms Jones, on behalf of Louise, accepts for present purposes that the Judgment is admissible – it is a judgment given in underlying proceedings between the same parties to the committal proceedings and so does not fall foul of the rule in *Hollington v Hewthorn* [1943] KB 587 - but she points out that it is common ground that the weight to be attached to it would be a matter for the trial judge in the substantive contempt proceedings and that evidence can be called by Louise to rebut any weight it may have (see *Bailey v Bailey* [2022] EWFC 5, per Peel J at [17(vii), (ix) and (x)]).

34. In addition, however, she submits that where (i) Mehta 1 refers to the Judgment only as "background"; and (ii) Mehta 2 expressly says that the Contempt Applications are based on the pleadings and disclosure statements signed by Louise and "not the comments made by Michael Green J", the Claimants must be held to that position and should not be permitted to place any substantive reliance on the Judgment. She invites me to reject the attempts by the Claimants at this hearing to rely upon the Judgment as evidence against Louise. Alternatively, if I am minded to treat the Judgment as evidence in support of the application against Louise, Ms Jones submits that I should be wary of attaching any real weight to it owing to the fact that the "Rowan Close" issue permeates the Judgment and renders the findings against Louise inherently unreliable.

35. Mr Grey, on behalf of Mr Curnock, adopts Ms Jones' submissions as to the limitations placed by the Claimants themselves on the evidence on which they rely in support of the Contempt Applications. In addition, he submits that where Mr Curnock was not a party to the Proceedings, the rule in *Hollington v Hewthorn* renders the Judgment inadmissible as against him. If he is wrong about that, he submits that it would be wholly unfair on Mr Curnock to attach weight to the Judgment, partly because of his status as a witness at the trial and partly because of the impact of the "Rowan Close" issue.

36. Turning first to the scope of the evidence on which the Claimants rely, it was not always clear from the submissions of Mr Darton and Mr Karia (acting for Bill) whether they were seeking to rely on the Judgment as evidence in the Contempt Applications or not. In their joint skeleton argument it was submitted that, subject to the question of weight, which would need to be determined at the substantive hearing, "[t]he Judgment can safely be relied on as prima facie evidence which supports the independently existing strong inferences that the statements were made intentionally/recklessly" but that "the case stands independently of it on the basis of objective and contemporaneous documents and records". During oral submissions:

    i) Mr Karia sought to draw a distinction between *Patel*, a case he said was "squarely based on the [underlying] judgment" and this case which is "squarely based on the document [sic]".

    ii) Mr Darton said that the relevant part of the findings in the Judgment to the Contempt Applications was "that [the Defendants] had met and had known each other prior to the execution of the [2014] Will" – in other words the admitted fact of a meeting on 11 December 2013;

    iii) Having referred to Mehta 1 in which the Judgment is identified as "background", Mr Darton said this in his reply in response to Ms Jones' submissions:

> "[Mr Mehta] refers to the judgment as background. He does not say, 'we are eschewing the judgment we do not accept the judgment'. What we have said, at the risk of repetition, is we are seeking to prove the falsity of those limited statements based on the admissions, based on the documentation that I have taken you to. It is a question of inference which I have addressed you on. That does not mean, and I am baffled by this, that we are somehow accepting or bound to accept that Michael Green J's judgment was wrong. It does not mean that we are not able to take these two defendants, if we go forward, to evidence they gave at the trial where it goes to the question of their state of mind. It simply is looking at it in those terms".

37. In any application for committal, which potentially carries with it very serious consequences for the defendants, it is essential that such defendants have a clear and complete understanding of the evidence on which the claimants rely. There should be no ambiguity over the case that is being advanced against them. As Davis LJ said in *Ocado* at [89], "the application should, within its four corners, contain information giving sufficient particularity of the alleged contempt to enable the alleged contemnor to meet the charges". If the application is grounded in the underlying judgment of the court, then it should say so; if it relies upon that judgment for the inferences that it invites the court to draw, then it should also make that plain.

38. In my judgment it is neither fair nor reasonable to leave defendants in doubt over the nature of the case they must meet, or, as here, to suggest that the allegations as set out in the application are capable of standing on their own and that the Judgment is merely "background", whilst at the same time inviting the court to have regard to findings in the Judgment which raise the spectre of potential fraud and conspiracy going far beyond anything that is directly alleged against the individual defendants. That the Claimants were here trying, on occasions, to ride these two horses was illustrated both in their skeleton argument, in Mehta 1 and in oral submissions:

    i) in their skeleton, the Claimants suggested that Mr Curnock "had a propensity to act deceptively in relation to the probate dispute" (referring to an email of 15 April 2019, discussed in the Judgment at [330]-[332]) and that he "had the propensity to mislead and obfuscate in order to avoid scrutiny being applied to the 2014 Will. Lying about when he met [Louise] is consistent with that". This assertion was nowhere to be found in Mehta 1, as Mr Grey rightly pointed out, and it was, in my judgment, plainly an attempt to deploy findings adverse to Mr Curnock in the Judgment and to persuade the court of the inevitability of Mr Curnock's dishonesty in relation to the Curnock Statement: "Lying about when he met Louise is consistent with that". This addition to the skeleton was neither appropriate nor fair and eventually Mr Darton withdrew the offending paragraph confirming that it was not part of his case.

    ii) In Mehta 1, notwithstanding that the findings in the Judgment are said to have been provided as "background", the key paragraph in which the Claimants seek to make out their case that the statements were made intentionally or recklessly (paragraph 47), includes three sub-paragraphs at (g), (i) and (k) which seek to rely on observations made by the Judge, first to the effect that Mr Curnock's preparation of the 2014 Will was "not merely incompetent, it was reckless and quite possibly

dishonest"; second as to Louise's "ruthless and manipulative" tendencies and, third, on findings that the statements made by Louise and Mr Curnock were "deliberate attempts to conceal the full extent of [their] interactions in relation to the preparation of the 2014 Will".

iii) In oral submissions, Mr Darton asked the rhetorical question, why would Mr Curnock be receiving so many texts if he had only met Louise once, a question which plainly nodded at findings in the Judgment as to the extent of the interaction between Louise and Mr Curnock in advance of the signing of the 2014 Will which, at least on the face of the application and the evidence, the Claimants are not now seeking to rely upon, a point that was swiftly identified by Ms Jones.

39. Notwithstanding the content of the Claimants' skeleton argument, I do not consider that it would be appropriate in this case to have regard to any of the findings in the Judgment in determining the overarching question of whether this is a case in which the public interest requires that the committal proceedings should be brought. The evidence against the Defendants describes the Judgment as "background" and makes it clear that the applications are made by reference to the documents relied upon in those applications and not on anything said by the Judge. That was the position adopted by the Claimants for the purposes of the adjournment application and I do not consider that it would be fair or just to permit the Claimants now to bolster their case on inference by reference to the Judgment. The Claimants have nailed their colours to the mast of the applications and witness statement on which they rely, together with the existence of various additional communications between the Defendants to which I shall return in a moment. The question of whether there is a strong prima facie case sufficient to justify a substantive hearing must be determined on that evidence. Whilst the Judgment is plainly background in that it provides the context in which the Committal Applications are made, it is no more than that.

40. In all the circumstances I need not consider the weight to be attached to, or the reliability of, the Judgment in consequence of the "Rowan Close" issue, although I am bound to say that the Claimants' admission that (without apportioning blame) misleading evidence was relied upon in relation to that issue, may very well be of significance in the context of both weight and reliability. However, as I was addressed in some detail on the question of the admissibility of the Judgment against Mr Curnock, I should address that question before moving on.

41. It appeared to be common ground at the hearing that the question of admissibility of the Judgment falls to be determined by the court at this stage. This seems to me to be right – the question of whether there is a strong prima facie case must be determined in light of the available evidence and, if the Judgment is inadmissible then (whatever the position as to reliance on the Judgment in the evidence) it could not form part of the case advanced by the Claimants against Mr Curnock.

42. Having considered the authorities with care, I agree with Mr Grey that the Judgment is not admissible against Mr Curnock, whether by reason of a straightforward application of the rule in *Hollington v Hewthorn*, or by reason of the absence of any 'fairness' justification for it to be relied upon. I say that for the following main reasons:

i) The rule in *Hollington v Hewthorn* is encapsulated at 596-597 of the judgment of Goddard LJ as follows: "A judgment obtained by A against B ought not to be evidence against C".

ii) The "foundation" of the rule in *Hollington v Hewthorn* has been explained more recently by Christopher Clarke LJ in *Rogers v Hoyle* [2014] EWCA Civ 257 at [39]:

> "findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge") and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor the expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard". The rationale for this rule is "the preservation of the fairness of a trial in which the decision is entrusted to the trial judge alone" ([40]);

iii) Applying the *Hollington v Hewthorn* rule that a judgment is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties (a rule that was recently reaffirmed in *Crypto Open Patent Alliance v Craig Wright* [2021] EWHC 3440 (Ch) by HHJ Paul Matthews (sitting as a Judge of the High Court)), the Judgment should not be admissible against Mr Curnock.

iv) However, Mr Karia submitted that there is authority in support of the proposition that, because the rationale for the rule is fairness, there will be circumstances in which findings of fact made in earlier proceedings will be admissible against a non-party to those proceedings, thereby effectively overriding the rule. He drew my attention to *Bailey* at [17(v)]:

> "…the rule in Hollington v Hewthorn has been applied to exclude previous judgments only in cases of separate, distinct proceedings and/or involving different parties. **Even then, as both Hoyle v Rogers and JSC BTA Bank v Ablyazov demonstrate, the earlier decision may be admitted (or perhaps more accurately, not excluded) if fairness so requires**" (**emphasis added**).

v) It is not clear to me that the Court of Appeal in *Rogers v Hoyle* was intending to imply in paragraphs [39] and [40] that the question of admissibility (even in a case involving different sets of proceedings and different parties) will ultimately be a matter of "fairness". On the contrary, my understanding of those passages, set out

above, is that Christopher Clarke LJ was merely explaining the rationale for the rule. However, the passages to which I was taken in *JSC BTA Bank v Ablyazov* [2017] EWHC 2906 (Comm), a decision of Sir Ross Cranston, which are all set out in paragraph [13] of *Bailey*, certainly show the judge in that case determining that the rule in *Hollington v Hewthorn* "turns on fairness" and that in the very particular circumstances of that case, there was no unfairness to Mr Shalabayev in giving weight to findings made in earlier proceedings to which he had not been a party.

vi) Mr Karia also relied on *Patel* for the proposition that an earlier judgment was admissible against witnesses to the proceedings. However, I observe that, although Marcus Smith J did accept without any difficulty in *Patel* that the judgment itself represented strong prima facie evidence against the respondents (including witnesses to the proceedings), he did so in circumstances where the allegations against each of the respondents included allegations of contempt in the face of the court (as is clear from [8(e)] of the judgment), a very different situation from the one with which I am concerned. It does not appear to have been suggested to Marcus Smith J that he could not rely upon the underlying judgment on the facts of *Patel*.

vii) Given my decision that this application must be determined without reference to the Judgment, there is no need for me to determine whether the rule in *Hollington v Hewthorn* is now subject to an overarching question of 'fairness' (as opposed to being a rule borne out of the need for fairness). On balance I tend to think that it is not subject to a question of fairness, but if I am wrong about that, then in my judgment the Claimants have identified no good reason for the proposition that, on the facts of this case, requirements of fairness militate in favour of reliance upon the Judgment in the Contempt Application against Mr Curnock. As Mr Grey submits, Mr Curnock was unrepresented in the Proceedings and unable to present evidence or shape the issues at trial. I understand his evidence under cross examination to have been tightly controlled, as one might expect. He had no opportunity to challenge any evidence and no opportunity to make his own submissions or respond to submissions made by the parties as to his integrity, honesty and truthfulness; his circumstances are very different from those of Mr Shalabayev in *JSC*. I would have thought these are the very circumstances in which a third party to the original proceedings should be able to take full advantage of the rule in *Hollington v Hewthorn* and thus ensure that his trial in later proceedings is transparently fair.

The Complaints against Louise

43. Turning then (with caution) to the evidence, I must consider the various overlapping factors to which I have referred: whether there is a strong prima facie case (without straying into the merits), whether committal is in the public interest, proportionality and the overriding objective. Although I must consider each of the complaints against Louise separately, in practice many of the same arguments arise in respect of the various factors.

The Background to the complaints

44. The false statements on which the Claimants rely against Louise arise in two pleadings (the First and Second Statements) and two Disclosure Statements (the Third and Fourth

Statements). Looked at in the round, it appears that in relation to all four statements, the key underlying allegation is that Louise met Mr Curnock once on 11 December 2013 and that she deliberately sought to hide that fact, first by making the First and Second Statements and, second, by not disclosing the existence of emails and phone records which would have established the fact of that meeting, together with a level of interaction between herself and Mr Curnock.

45. The pleadings concern positive assertions, verified by statements of truth, that Louise "did not know" (the Reply and Defence) and had not "met" (the response to the Request For Information) Mr Curnock until after the Deceased executed the 2014 Will. These assertions were made respectively on 15 November 2019 and 12 August 2020.

46. Mehta 1 says that these statements were "proved false" by the subsequent disclosure in February 2021 by Mr Clayton Drew (temporary Personal Representative and therefore the first defendant in the Proceedings) ("**Mr Drew**") of approximately 15 emails ("**the Emails**") which included an email sent by Mr Curnock to Louise on 12 December 2013 ("**the 12 December Email**") in which he wrote:

> "Morning Louise,
>
> Nice meeting you yesterday. Hope the horses didn't cause too much trouble….
>
> After you left we just discussed the will, and dad said that he would like you and Clayton to act as the executors with the power for you to appoint another executor and trustee if you wish…
>
> I will get the draft trust and draft will sent over next week. When I come over to get it all signed it would be good if you are there too so I can explain the terms of the discretionary trust and your role…
>
> The tea was perfect, glad I had one now!
>
> Dan"

47. The Emails evidence communications between Louise and Mr Curnock in the lead up to the signing of the 2014 Will. The earliest of the Emails (dated 28 November 2013) is from Louise to Mr Curnock and is concerned with setting up an appointment between Mr Curnock and the Deceased. It appears to be cut off at the bottom and so could be part of a chain that goes back earlier than that. The Emails are relied upon by the Claimants as showing that Louise had been "intrinsic to arranging the preparation of the 2014 Will" and it is said that the Emails were "often in very familiar terms". A number of the Emails are addressed to, or signed off, "Dan" and "Lou". In general terms, the Emails appear to be concerned with setting up a discretionary trust for Ryan and with arrangements for the 2014 Will, including sending draft documents and setting up an appointment with the Deceased. The only Email which refers to a meeting between Louise and Mr Curnock on the 11 December 2013 is the 12 December Email: "[n]ice meeting you yesterday".

48. Following disclosure of the Emails, a letter dated 3 March 2021 was sent to Louise's solicitors warning that the Claimants were considering proceedings for contempt of court. On 25 March 2021, Louise's solicitors replied to this letter accepting that she had met Mr Curnock on 11 December 2013, but maintaining that she did not "know" Mr Curnock before the execution of the 2014 Will in that: "Your assertion wrongly suggests that 'know' means the same thing as 'met once briefly'".

49. Despite the Emails having been sent to (and from) Louise's email address (villaloubella@outlook.com), there was no reference to them in her First Disclosure Statement, verified by a statement of truth on 19 March 2021. Her Second Disclosure Statement, also verified by a statement of truth, did list the Emails but said this:

> "The Claimant had in her possession and control the email account villaloubella@outlook.com, but the items listed at 6-20 [i.e. the Emails] in the List of Documents below did not appear when she conducted her search of that email address. The Claimant only came into possession of hard copies of items 6-20 when they were disclosed to her by the First Defendant".

50. The Claimants complain that, in addition to the First Disclosure Statement not mentioning the Emails, it also made no mention of "phone calls and text messages" sent by Louise to Mr Curnock "which were in her control". A similar complaint is made in respect of the Second Disclosure Statement.

51. Mehta 1 explains that by a request for information made on 2 July 2021, Louise was asked what communications she had had with Mr Curnock's telephone number prior to the execution of the 2014 Will. It goes on to say that Louise did not respond to this request in her response of 16 July 2021, that her solicitors then continued to prevaricate over providing mobile phone records and that "[a]s Ms Reeves continued to refuse to disclose her phone records" Bill applied to the court for an order requiring her to do so, which application resulted in an order for disclosure dated 16 August 2021. The disclosure of Louise's phone records provided evidence of four telephone calls and 38 text messages sent by Louise to Mr Curnock between 23 December 2013 (the day of a meeting between the Deceased and Mr Curnock) and 7 January 2014 (the day on which the 2014 Will was signed). There is no evidence of the content of the calls or texts.

52. A couple of observations are important at this stage. First, it is common ground that the mobile phone ("**the Mobile Phone**") from which Louise made these phone calls and sent text messages to Mr Curnock in December 2013 was not in Louise's "control" at the time of the First and Second Disclosure Statements. Second, as also appeared to be common ground at the hearing, a phone call is obviously not a document which can be disclosed and there is no requirement for a party to disclose that she made phone calls in a disclosure statement. Third, it is common ground that the Mobile Phone was in the possession of Bill and Ryan in 2021 and did not, in any event, still hold the text messages. The fact that texts had been sent and calls made (although not their content) was only identified following phone records being obtained from Vodafone. Leaving aside the failure to disclose the Emails for a moment (which arises in the context only of the Third Statement), the essence of the complaint in respect of the Third and Fourth Statements (although not made clear in the Contempt Application itself or in the evidence in Mehta 1) would therefore appear to be that Louise should have disclosed, from memory, the former existence of text messages to Mr Curnock sent some 7 ½ years earlier on a phone

she did not have in her possession, and that she should have requested from Vodafone a copy of her phone records for December 2013.

53. Mehta 1 addresses the inferences that the Claimants invite the court to draw in relation to both Louise and Mr Curnock in the sub-paragraphs to [47]. With the exception of sub-paragraphs (g), (k) and part of (i), which set out findings from the Judgment to which I have already referred and which I have already held cannot form part of the evidence on which the Claimants rely against the Defendants, it is important that I set the sub-paragraphs out in full. They amount to the totality of the Claimants' evidence as to the Defendants' states of mind:

> "[47] I understand that the Claimants must show that Ms Reeves and Mr Curnock made those false statements intentionally or recklessly without honest belief in their truth. I would respectfully submit this is self-evident, because:
>
> a. The degree of contact, ranging over numerous emails, phone calls, and text messages refutes the possibility that both Ms Reeves and Mr Curnock could simply have forgotten about meeting/knowing each other before the 2014 Will was signed.
>
> b. Not only did both Ms Reeves and Mr Curnock "forget" about meeting and then arranging the 2014 Will over the course of numerous and apparently familiar, emails, text messages, and phone calls they also conveniently both took the same line that they only knew/met each other after the 2014 Will had been signed on 7 January 2014.
>
> c. For Ms Reeves's part, it is absurd to say that she would have forgotten being an integral part of arranging and making the 2014 Will which would bestow upon her an 80% share of her father's residuary estate, and a substantial fortune, at the exclusion of her brother, niece, and nephew.
>
> d. For Mr Curnock's part, it is absurd to say that he would have forgotten the extraordinary circumstances of the main beneficiary of the estate being directly involved in arranging a will which would have concerned, by quite some margin, the largest estate he had ever dealt with.
>
> e. Accordingly, it is all the more implausible that they both 'misremembered' the events in the same way, and both came to a version of events which conveniently removed Ms Reeves from ever being involved in the making of the 2014 Will and accordingly removed her from the Court's suspicion by distancing and misstating the contact and familiarity between them.
>
> f. At the time Ms Reeves and Mr Curnock made these statements, they knew there were no documents which had been disclosed which could prove they were untrue. It would have been clear to

> both of them that the circumstances surrounding the making of the 2014 Will would be far less suspicious if the Court believed that they did not know each other and had not met before it was signed.
>
> g. …
>
> h. It would also have been clear to both that the less suspicion the Court held over the circumstances of the preparation of the 2014 Will, the more likely it would be that the Court would decide in Ms Reeves' favour as to its knowledge and approval by the Deceased.
>
> i. …
>
> Ms Louise Reeves was, simply put, furthering her own personal interests. In this case, Ms Louise Reeves stood to gain somewhere in the region of £50 million from disguising from the Court her involvement in the preparation of the 2014 Will and her familiarity/contact with Mr Curnock.
>
> j. Despite the emails being sent between Mr Curnock and Ms Reeves, they were not disclosed. They were not included in the original will file. It was only as a result of the solicitor's firm who employed Mr Curnock at the relevant time disclosing the documents to Mr Drew (First Defendant in those proceedings who was the temporary personal representative of the deceased's estate), who in turn had to disclose the documents to the parties, that they came to light.
>
> k …".

Louise's Rebuttal Evidence

54. In response to Mehta 1, Louise relies upon an affidavit sworn on 14 December 2022 together with her fourth witness statement in the Proceedings dated 20 September 2021 (prepared to update her response to the Request For Further Information on this issue). Essentially, Louise denies that she engineered any form of fraud on her father and, although she accepts that she met Mr Curnock on 11 December 2013, she says that she did not remember that meeting when she made her reply to the Request For Further Information and she still does not remember it. She explains that the Deceased's office was always busy and that she often greeted people attending the office for meetings with the Deceased, including making them a tea or coffee before a meeting. She explains that the reference to horses in the 12 December Email was probably a reference to the fact that she was rushing out of the office to gather in the Deceased's horses, which sometimes escaped from their field into the road. In her fourth witness statement she said this: "…now that I have seen [the Emails] I accept I must have met [Mr Curnock] on 11 December 2013, even if just briefly". She describes the Emails as being "concerned with making arrangements for [Mr Curnock] to see my Dad about his Will". She also explains, as is common ground, that following the making of the 2014 Will she met Mr Curnock on a number of occasions in connection with a trust set up for Ryan's benefit.

55. On the subject of disclosure, in summary, Louise accepts that she did not mention the Emails in her First Disclosure Statement but says that, as explained in her Second Disclosure Statement she "did not find them when [she] searched for them". As for the calls and texts about which the Claimants complain, Louise says that, as is common ground, the Mobile Phone was not in her possession and she did not have access to it. Furthermore, she points out that her solicitors requested the Vodafone records before the hearing at which Bill sought an order for their disclosure. She explains that she has a particular style of texting which involves her sending multiple texts at once covering points which some people might put into a single text.

A strong prima facie case?

56. The evidence on which the Claimants rely to assert that the First and Second Statements are "proved false", is the content of the 12 December Email in conjunction with the additional contact evidenced by the Emails, the phone calls and the existence of the 38 text messages. Paragraph 44 of Mehta 1 says this:

> "By that time [i.e. the date of execution of the 2014 Will], they had met at least once on 11 December 2013, had talked extensively and familiarly via email from at least 28 November 2013 (though it is noted the full chain of emails has never been disclosed), and there had been phone calls and 38 text messages (though it is noted that this only includes text messages sent from Ms Reeves's phone and excludes those received)".

57. As was clear from Mr Darton's oral submissions, this is effectively the same evidence on which the Claimants rely to invite the court to infer that Louise made the First and Second Statements intentionally or recklessly without honest belief in their truth; their point being that the degree of contact "refutes the possibility" that Louise can have forgotten about meeting Mr Curnock and knowing him prior to the execution of the 2014 Will. Although I shall return in a moment to the individual sub-paragraphs of 47 of Mehta 1, that paragraph, stripped of its references to the Judgment, says little else beyond making the point that, given Louise was to benefit substantially from the 2014 Will it is "absurd to say" she could have forgotten her involvement in the Emails.

58. Looking at the evidence of the Claimants and Louise as a whole, as I must, I do not consider that the Claimants can satisfy the requirement of a strong prima facie case in respect of the First and Second Statements to the criminal standard. I say that for the following reasons:

    i) Although Louise accepts that the Second Statement (that she had not "met" Mr Curnock) is false, she does not accept that the First Statement (that she did not "know" Mr Curnock) is false and I am bound to say that I do not consider it to be at all obvious that it is false. It is common ground that the meeting between Mr Curnock and Louise on 11 December 2013 was brief and that she did not attend the meeting involving her father. The 12 December Email appears to establish little more than that she made Mr Curnock some tea. Even if Louise had remembered the existence of the Emails (and I shall come to those in a moment) the word "know" may be used in a variety of different ways – if used to convey the impression that two people have never met, then I accept that it would be false.

However, if used to convey the impression that two people do not have any substantial degree of familiarity, then it could well be accurate. That is why the context in which the statement is made is of importance.

ii) The First Statement was made in response to an assertion in Bill's Defence and Counterclaim in the Proceedings that Mr Curnock "has an established business relationship with the Claimant. The Claimant has purchased a number of properties from estates in which Mr Curnock's firm is acting". Paragraph 14 of the Reply and Defence dated 15 November 2019, if read in its entirety, is in the following terms: "The Claimant did not know Mr Curnock until after the Deceased executed the 2014 Will. She had no established business relationship with him before that". Read as a whole, one (entirely reasonable) reading of this paragraph is that its primary intention is to refute the existence of an established business relationship (a reading which is also consistent with the letter from her solicitors of 25 March 2021 in which they observe that the discovery of the 12 December Email "completely puts paid to the stance adopted by your predecessor firm…that Mr Curnock was Louise's longstanding solicitor"). If the word "know" is seen in that context, it is difficult to see that the Claimants have shown even a prima facie case that the statement is false, let alone a strong prima facie case to the criminal standard.

iii) Even assuming that the Claimants are able to establish a case of falsity in relation to the First Statement, they have adduced no direct evidence whatever (beyond the Judgment, which they cannot rely upon for reasons I have already addressed) to support the existence of a strong prima facie case that Louise knew either (a) that the First and Second Statements were false; or (b) that they were likely to interfere with the course of justice. Indeed, both in his skeleton argument and in his oral submissions, Mr Darton frankly acknowledged that the question of the state of mind of both Defendants was an issue that "will largely be determined on the basis of [their] oral testimony" at any substantive hearing. However, this is obviously not enough for the purposes of establishing a strong prima facie case.

iv) The Claimants also acknowledge that their case on *mens rea* is based solely upon inference, but they say in [47] of Mehta 1, that intention/recklessness is "self-evident". However, on close analysis, the mixture of assertion and proposed inference upon which the Claimants rely in the sub-paragraphs to [47] of Mehta 1 provides a weak basis on which to advance their case. I certainly do not consider that evidence to come close to establishing an "obvious inference" of the type identified in *Ocado*.

v) In this context, it is important that the First and Second Statements were made, respectively six and almost seven years after the events of December 2013. Mehta 1 suggests that it is "absurd" that Louise could have forgotten about her involvement in arranging a will which would have the effect of bestowing a substantial fortune on her, but he does not grapple with the obvious potential for the precise order of events which occurred so long ago to be forgotten in the absence of access to documents (or more accurately one document – the 12 December Email) which could permit those events to be reconstructed. Absent any alleged or established fraud or conspiracy in relation to the 2014 Will – and therefore approaching the application on the assumption that Louise believed that the content of the 2014 Will was known to, and approved by, the Deceased, it is

not clear why the events of December 2013 (and in particular a brief meeting at which no one alleges anything significant occurred) would necessarily have been memorable.

vi) The Claimants do not assert that Louise must have been aware of the content of the 12 December Email prior to making the First and Second Statements and indeed Mehta 1 expressly acknowledges the potential for Louise to have searched her emails but to have found nothing. The fact that there were other Emails and texts evidencing contact at the relevant time, even if Louise had been aware of them, does not, to my mind, support the proposition that she could not have forgotten about one brief meeting. The Emails contain nothing nefarious and there is no evidence as to the content of the texts and phone calls. I do not see why the fact that parties may (many years ago) have been in regular (remote) contact with each other ought necessarily to alert them to the fact that they met once briefly (see sub-paragraph (a) of Mehta 1, [47]) – even if they were able to remember that they had been in contact. Equally, where there is no allegation that Louise and Mr Curnock knew each other prior to the chain of Emails, the assertion that they spoke "familiarly" in those Emails appears to me to go nowhere. Mehta 1 also does not address the fact that it is common ground that Louise and Mr Curnock met and had more substantial interactions in early 2014 in the context of setting up the trust.

vii) Unlike the position in *Ocado*, where the Court of Appeal considered that "the obvious inference" on the Bank's evidence absent explanation, was of a desire to thwart the administration of justice, that is very far from being an obvious inference in this case. I agree with Ms Jones that (even leaving aside Louise's evidence) there are other inferences that can quite realistically be drawn here (that Louise forgot about a very brief meeting, that she confused the events of early December 2013 with the events of early 2014, that she conflated her meeting in early December with some other meeting with Mr Curnock that occurred later).

viii) Without any underlying allegation of fraud or collusion between Mr Curnock and Louise with a view to deceiving the court as to her involvement in the arrangements for making the 2014 Will, I certainly cannot see that there is only one possible inference (of intention or recklessness) that can reasonably be drawn. Turning to the other sub-paragraphs in Mehta 1 at [47]:

    a) Sub-paragraphs (b), (e), (f) and (h) seek to extract significance from the fact that both Louise and Mr Curnock forgot about the meeting. Against the background of a conspiracy between them (if relied upon), this might well be significant, but absent reliance upon any such conspiracy, I do not consider that these sub-paragraphs are anything more than speculative and somewhat far-fetched – they certainly do not carry any great evidential weight.

    b) This can be illustrated with one clear example from the Claimants' submissions, effectively seeking to advance a similar point: in his skeleton argument, Mr Darton submitted that both Defendants "stood to gain from the concealment of their relationship" prior to execution of the 2014 Will, Louise because she would gain from the expeditious and "risk-free propounding of the 2014 Will" and Mr Curnock because he "stood to relieve himself of the risk of exposure of his own impropriety or incompetence" in preparing the 2014 Will. To my mind, these statements are quite obviously influenced by

the terms of the Judgment. The reference to "risk free" clearly implies that close scrutiny of the 2014 Will would not be risk-free for Louise, a nod to the implications of possible fraud identified in the Judgment (see also sub-paragraph (i) of [47] of Mehta 1). Similarly, there is no evidence beyond the Judgment to support the assertion made against Mr Curnock and indeed, as Lewison LJ observed on the appeal, Mr Curnock might have been approaching the situation in the way that he did because he "thought that the deceased was literate", i.e. entirely innocently.

ix) Against that background, and without accepting that Louise's case as to her lack of recollection of the 11 December 2013 meeting with Mr Curnock must obviously be correct (which I cannot determine at this stage), nevertheless I accept that on the evidence relied upon by the Claimants it is realistic to suppose that there are various inferences that may be drawn about Louise's state of mind when she made the First and Second Statements. I certainly cannot say that the only inference is that she was dishonest or reckless in making the First and Second Statements, or even that that is a strong inference, as the Claimants contend. Indeed, where Bill and Ryan are not seeking to prove any underlying fraud, I agree with Ms Jones that the judge at any substantive proceedings would be bound to proceed on the basis that there was no such fraud and that, in the circumstances, an inference of dishonesty or recklessness is likely to be difficult to justify. Indeed, even if the Judgment could be relied upon in this context (contrary to the decision I have already made), it is important to observe again that the Judge made no findings of fraud or conspiracy, that he therefore did not examine the evidence with a view to determining allegations of fraud or conspiracy and that he was not in any event required to make findings to the criminal standard. Accordingly, the findings made by him would only ever be likely to attract limited weight.

x) Absent a case of fraud or conspiracy, I accept Ms Jones' submission that the argument that dishonesty/recklessness is the only possible inference and explanation for the First and Second Statements appears hopeless; it is only if Louise and Mr Curnock conspired to defraud the Deceased that it could sensibly be argued that their interactions in December 2013 must have been memorable and could not have been forgotten – if there was no such conspiracy I cannot see why their communications were obviously "significant" such that it is "incredible" that they were forgotten, as the Claimants contend.

xi) In all the circumstances, the Claimants have not established a strong prima facie case sufficient to justify a substantive hearing.

59. Turning then to the Third and Fourth Statements, I also reject the submission that the Claimants can satisfy the requirement of a strong prima facie case to the criminal standard. My reasons are as follows:

i) Contrary to Mr Darton's submissions during the hearing, Louise does not accept that the Disclosure Statements were false. Even if they were false, I do not consider that the Claimants have provided any evidence to support the existence of a strong prima facie case that Louise knew either (a) that the First and Second Statements were false; or (b) that they were likely to interfere with the course of justice.

ii) It is certainly the case that the First Disclosure Statement failed to disclose the Emails. However, Mehta 1 appears to accept that there are a number of possibilities in relation to this statement. Indeed Mehta 1 refers to Louise's statement in the Second Disclosure Statement to the effect that the Emails did not appear when she conducted her original search and says "Notwithstanding whether or not that explanation was true…", apparent acceptance of the possibility that the statement is true. That is not evidence on which a strong prima facie case for the purposes of a committal application can be based.

iii) Furthermore, and importantly, in my judgment, the First Disclosure Statement was signed by Louise on 19 March 2021 several weeks after the Emails had been disclosed by Mr Drew. I agree with Ms Jones that in the circumstances, this allegation does not begin to get off the ground. Why should Louise have been trying to hide the existence of emails which had already been disclosed, and how could she have been intending to interfere in the course of justice by doing so? The Emails had already come to the attention of Bill and Ryan and, indeed, Bill's solicitors had written to her solicitors on 3 March 2021 specifically drawing attention to the disclosure of the Emails by Mr Drew and warning of the potential for CPR 81 proceedings to be commenced against Louise. In the circumstances there cannot have been any intention to mislead and Bill and Ryan were not misled by the First Disclosure Statement. There has in fact been no interference with the course of justice.

iv) As for the complaint that the First and Second Disclosure Statements failed to disclose the "existence of…phone calls and text messages…which were in her control", I have already pointed to matters of common ground which appear to me significantly to weaken these allegations. The Mobile Phone was not in Louise's possession and, contrary to Mehta 1, the First and Second Disclosure Statements were not "incomplete and false" by reason of the failure to disclose the fact that phone calls had been made. Further, looking as I must at the context in which the First and Second Disclosure Statements were made, I note that the Order of 15 December 2020 in the Proceedings giving directions for disclosure (which is not exhibited to Mehta 1), expressly identifies categories of documents to be disclosed. At paragraph 3(6) it refers to "[a]ny diaries/emails or other documents relating to (a) the preparations of the 2014 Will and/or (b) the arrangements of meetings relating to the 2014 Will…". At paragraph 3(8) it refers to "The text messages/emails **on the Deceased's phone** for the period from 1 January 2011 to 31 December 2014" (**emphasis added**). Whilst texts and (possibly) phone records would fall within paragraph 3(6) of the Order, there is no specific requirement for Louise to disclose text messages from the Mobile Phone or to obtain her phone records. In conjunction with the fact that there was a specific requirement to provide disclosure from the Deceased's phone, I agree with Ms Jones that this further weakens the evidence as to any intentional or reckless falsity in respect of the Third and Fourth Statements. Mehta 1 does not seek to rely upon any evidence at all to suggest that Louise understood the terms of the Order to require her to search for and disclose text messages sent from the Mobile Phone or to request old copy bills from Vodafone.

v) Focusing on the texts, Mehta 1 notes that in her solicitor's letter of 25 March 2021, Louise accepts that her memory as to the 11 December 2013 meeting "was jogged"

by the Emails and Mehta 1 goes on to assert that "conveniently, the chain of emails had failed to similarly jog her memory as to the texts she had sent to Mr Curnock". However, the difficulty with this evidence is that on a reading of the entirety of the 25 March 2021 letter, it is clear that it was confirming that the existence of the Emails had enabled Louise to reconstruct the events of 11 December 2013 but that she had "no specific recall of them". In the circumstances, it is difficult to see that there is any inference to be drawn from the failure to disclose the existence of the texts following Louise's attention being drawn to the existence of the Emails (which make no mention of any text messages), much less that there is anything "convenient" about that failure. Mehta 1 provides no evidence to suggest that at the time of the First and Second Disclosure Statements Louise was aware of the existence of relevant text messages on a phone she no longer possessed.

vi) Further, I note that although Mehta 1 seeks to give the impression in paragraphs 35 to 38 that Louise prevaricated over the provision of information in relation to the Mobile Phone records and "continued to refuse" to disclose those records such that an order had to be obtained from the court, the available documents tell a rather different story – namely that there was no outright refusal on the part of Louise to provide authority for Bill and Ryan to obtain the Mobile Phone records from Vodafone. A request was made for authority on 19 July 2021. On the same day, Louise's solicitors confirmed they would obtain her instructions. The following day they sought information from Bill and Ryan's solicitors as to how they had obtained confidential information about the start of the mobile phone connection "[b]efore we give further consideration to obtaining our client's phone records". Various emails went back and forth on 20 July 2021 on the question of the confidential information until Bill and Ryan's solicitors provided Louise's solicitors with a copy of correspondence they had engaged in with Vodafone in May 2021. This prompted an email (also on 20 July 2021) from Louise's solicitors complaining as to the conduct of Bill and Ryan's solicitors in contacting Vodafone and observing that (consistent with the point I have made above) the records were not relevant to any existing issue for disclosure as ordered by the court. The email went on to say that there was no urgency around the disclosure of the phone records which "may or may not be relevant to the wider proceedings" and that any application for their disclosure at this stage would be premature. The response of the same day indicated that delay in advance of a hearing on 26 July 2021 would be "tantamount to refusal". Although an order was made on 16 August 2021 requiring their disclosure, Louise's solicitors had requested the Mobile Phone records from Vodafone prior to the hearing on 26 July 2021 (i.e. within 7 days of the original request for authority). I shall return to the lack of evidence around the content of the phone calls on which the Claimants rely when addressing the allegations against Mr Curnock.

vii) Although not mentioned in Mehta 1, there is an indication in the inter partes correspondence that the First Disclosure Statement was originally signed by Mr Long, Louise's solicitor. This prompted a request in an email of 30 July 2021 for Mr Long to explain <u>his</u> false statement. No evidence has been produced by the Claimants addressing how this was resolved. Although this point is not determinative, it does seem to me to be potentially relevant that Louise's solicitor was prepared to sign the First Disclosure Statement and I am not clear why this was not specifically drawn to my attention.

viii) The Claimants' case on the First and Second Disclosure Statements ultimately boils down purely to the proposition that it is to be inferred that Louise's explanations are false and that these statements are conscious attempts to cover up the truth. However, this is quite plainly not the only inference to be drawn. Indeed, the evidence in support of such inference is extremely weak, for all the reasons I have identified. There are various inferences that may be drawn on the available evidence, including that (as appears to be acknowledged by the Claimants) Louise did not locate the Emails when conducting her search, that the Mobile Phone records were overlooked in circumstances where the Mobile Phone was not in Louise's possession and/or in light of the terms of the Order of 15 December 2020, that after the passage of many years Louise had forgotten about the Emails, the texts and the calls and/or had been confused about their timing and that once alerted to their existence she had made efforts to obtain them.

60. My decision that there is no strong prima facie case in relation to the four statements on which the Claimants rely against Louise is sufficient to determine this application – I am not prepared to grant permission to proceed with it on evidential grounds alone. However, having heard full argument on the point, I ought briefly to set out my views as to the remaining issues relevant to an application of this sort.

Public Interest, Proportionality and the Overriding Objective

61. In my judgment, whatever the position as to strong prima facie case, it would not be in the public interest for this application to be pursued. This is not a case in which the allegedly false statements have been persisted in so as to influence (even potentially) the outcome of the trial. When the Emails came to light, Louise immediately accepted that she must have met Mr Curnock in December 2013. Her solicitors requested the Mobile Phone records from Vodafone and they were disclosed. Bill and Ryan had every opportunity to cross examine Louise on her statements at trial. This is not a case (unlike *Patel*), where any form of underlying fraud or conspiracy is directly alleged or relied upon by the Claimants.

62. I recognise that there is a public interest in discouraging others from making false statements in the course of court proceedings and I have firmly in mind the guidance in *Berry Piling* (amongst others) at [31] as to the importance of statements of truth. However, assuming for these purposes that her statements, or some of them, were knowingly or recklessly false, Louise has already been challenged about those statements during the trial and it would appear that they have played a significant part in persuading the Judge to dismiss her case and to pronounce for the 2012 Will. For this she has already paid, as Whipple J put it in *Newson-Smith* "literally and heavily". She was ordered to pay indemnity costs following the trial and it is common ground that she has suffered a significant amount of public and media interest. I do not consider that the public would take the view that she has "got away" with her false statements or that she has not been adequately punished for them. I regard the Claimants' submission that a refusal of permission would mean that "nothing" has happened to Louise as a consequence of her alleged false statements, such that the administration of justice will be seriously damaged because others will be encouraged to regard the statement of truth as a mere formality, as neither accurate nor realistic.

63. It is clear from the authorities to which I have already referred that it is not in the public interest for every case in which it appears that a statement of truth may not have been true to result in an application to commit. Caution is required and where, as here, the statements have been corrected before trial, there has been no interference with the administration of justice and the defendant to the application has already suffered serious adverse consequences by reason of having made the statements, the court may take the view that the alleged contempt, even if proved, is not of sufficient gravity for there to be a public interest in taking proceedings. That is the view I do take.

64. Further, I consider there to be a risk that this application is brought out of a vindictive desire to punish Louise for her pursuit of the Proceedings. As Moore-Bick LJ said in *KJM Superbikes*, at [17]:

> "the wider public interest would not be served if courts were to exercise the discretion too freely in favour of allowing proceedings of this kind to be pursued by private persons. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not…".

65. The Judgment makes various unflattering observations about Bill and Ryan's litigation tactics, including that they are capable of using "strongarm tactics" should the need arise and that, in the Judge's view, Bill did not appear to be convinced by his late case of undue influence. Furthermore, I agree with Ms Jones, that there is evidence of Bill and Ryan adopting inconsistent positions designed to suit their immediate purposes, in particular in connection with whether or not the Judge had made findings of fraud (e.g. their submissions at trial, in support of their application for indemnity costs, in resisting Louise's application for permission to appeal, in support of the Contempt Applications and in resisting Louise's adjournment application) and whether or not they are seeking to place substantive reliance upon the Judgment for the purposes of the Contempt Applications. The taking of inconsistent positions to suit varying tactical purposes from time to time is characteristic of litigants determined to do what it takes to win. It is not consistent with a principled or balanced approach pursued in the public interest or a proper pursuit in the public interest of the overriding objective to deal with cases justly.

66. Allied to this latter point is an argument advanced by the Claimants which was plainly designed to meet the Defendants' point that, absent any underlying fraud or conspiracy, the Contempt Applications have no hope of surmounting the necessary evidential threshold. In response, the Claimants suggested that even if the Defendants did not have a dishonest purpose borne out of a conspiracy to defraud the Deceased, nevertheless they may have wished to cover up the extent of their interactions prior to the execution of the 2014 Will owing to the fact that they recognised these interactions to have been inappropriate given Louise's status as main beneficiary under the 2014 Will; i.e. they simply wanted the Will to be addressed quickly so as to avoid scrutiny. However, as Ms Jones correctly pointed out, the logical result of this argument is that neither Louise nor Mr Curnock deceived the Deceased, that he therefore knew the contents of the 2014 Will, and that Louise has lost a very substantial chunk of inheritance and been exposed to unfair and unjustified opprobrium in the public press. I agree with Ms Jones that the suggestion that it would be in the public interest in such circumstances to permit this application to go forward to a substantive hearing is deeply unappealing.

67. At the hearing, it was suggested to me that Ryan may not have the mental capacity to pursue the application in any event and, in particular, that he may not have sufficient understanding of the role of a private individual in pursuing an application of this type. This submission was made in circumstances where a report into Ryan's mental capacity had been provided in advance of the hearing but was said not to deal adequately with his understanding of his position as a guardian of the public interest. I need not go into the detail of this point. I ordered a further report from the medical practitioner who had carried out the original evaluation into Ryan's mental capacity and, upon sight of that further report (provided on 31 December 2022), I am content that there is no issue as to his mental capacity.

68. As to proportionality, I have regard to the guidance of Gloster LJ in *Tinkler and Anor v Elliott* [2014] EWCA Civ 564 at [44]:

> "In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective - see - Berry Piling Systems Limited v. Sheer Projects Limited (ante) at Paragraph 30(d)"

69. It is difficult to see how it could possibly be proportionate for this application to proceed to a further hearing. Although the value of the Deceased's estate was substantial, the trial consumed a considerable amount of court time and incurred vast sums in legal costs. As I have said, the allegations now made about false statements were deployed at the trial and the cross examination of Louise involved a detailed examination of her credibility, with reference to those statements. If permission were to be granted in respect of both Louise and Mr Curnock, the Claimants' position in their skeleton argument was that the substantive hearing would require no more than one week (a position that was somewhat moderated during the hearing to two days of evidence plus submissions). The Defendants say, on the other hand, that if attempts are made at the substantive hearing to rely on any form of underlying fraud or conspiracy or indeed to cross examine with a view to establishing such fraud or conspiracy, then the hearing is more likely to take something in the region of 10 days. I can see no basis on which it would be appropriate for any substantive hearing to seek to establish fraud or conspiracy given the evidence on which these Claimants rely, but in any event I do not consider that a week-long hearing, or even a three or four day hearing, would be proportionate in all the circumstances.

70. For all the reasons I have identified, I do not consider that the overriding objective would be furthered by the grant of permission.

The Complaint against Mr Curnock

71. I take the same cautious approach to the complaint against Mr Curnock, looking in turn at each of the overlapping factors to which I have already referred. I observe, however, that the way in which these applications have been advanced and evidenced, makes clear that the Claimants regard the fact that both Louise and Mr Curnock "took the same line" to be a relevant feature of their case and important in the context of establishing the

inference as to the making of intentionally dishonest, or reckless, statements. Where there is no strong prima facie case in relation to Louise, to my mind, any case premised upon their joint conduct must be significantly undermined. The same applies equally the other way around – i.e. if there is no strong prima facie case against Mr Curnock then any case against Louise premised upon their joint conduct must similarly be significantly undermined. For present purposes, however, I shall proceed to examine the case against Mr Curnock on its own merits.

Background to the Complaint

72. The complaint against Mr Curnock is of only one false statement made in the final paragraph of his witness statement of 2 December 2019 to the effect that he "only met Louise for the first time" after the 2014 Will was signed. It is accepted that the Curnock Statement was inaccurate.

73. For context, it is worth noting that the 2 December 2019 witness statement exhibits a copy of the CGM will file, which had been provided to Mr Curnock (who was no longer working for CGM at the time he made his statement) by Womble Bond Dickinson ("**WBD**"), solicitors then acting for Louise in the Proceedings. The statement was prepared at the instigation of WBD. It is Mr Curnock's evidence that the CGM will file contained the only documents available to him when drafting the statement, which did not include the Emails. Mehta 1 does not suggest otherwise. Mr Curnock's witness statement provides considerable detail about a meeting between the Deceased and Mr Curnock at the Deceased's office on 11 December 2013, with reference to a handwritten note. Mr Curnock says that Louise certainly did not attend this meeting (a statement which is not the subject of any criticism – it is common ground that Louise did not attend the substantive meeting between the Deceased and Mr Curnock on 11 December 2013). The final paragraph of the statement says this:

> "I only met Louise for the first time when I went for a meeting to discuss the terms of the trust, of which we are both trustees, which was after the Deceased's will was signed".

74. Following the disclosure of the Emails by Mr Drew, including the 12 December Email set out in full above, a letter warning of the possibility of CPR 81 proceedings against Mr Curnock was sent on 1 April 2021 by London Litigation Partnership Solicitors acting for Bill. This letter pointed out that the Emails had not been on the CGM will file and, amongst other things, identified that it was to be inferred from the content of the 12 December Email that Mr Curnock had in fact met Louise before the signing of the 2014 Will.

75. In a response of 6 April 2021, Mr Curnock emphasised that he had not had the benefit of sight of the Emails at the time of preparation of his statement (and indeed had not seen them for some 7 years[1]) but that he had specifically set out his recollection of events in his statement having regard to questions posed by Wilsons (then acting for Bill) in a letter of 11 October 2019. Mr Curnock accepted that, with the benefit of sight of the Emails, "the first time I had come into contact with [Louise] was when she made me a cup of

[1] The period was in fact 6 years at the date of Mr Curnock's statement but 7 years by the time of disclosure of the Emails.

tea", but he noted that this was a very brief encounter. He pointed out that in 2013 his work was predominantly will-based and that he would have taken instructions over the course of the year and drafted "well in excess of 100 wills". As Mehta 1 expressly records (without in any way attempting to gainsay it), Mr Curnock said in this letter that he was meeting with "at least a client a day" at that time.

76. Mehta 1 relies upon the same evidence of intentional/reckless conduct in [47] against Mr Curnock as against Louise, and I have already set this out in full above. The only additional features of Mehta 1 to which I should refer in the context of Mr Curnock are:

    i) The evidence that Mr Curnock was an experienced solicitor specialising in Wills and Probate and that "[t]herefore **in my client's view** he would have known very well the importance of the statement he was making, the importance of the contact between himself and Ms Louise Reeves (a significant beneficiary), the importance of evidence relating to the preparation of the 2014 Will and the consequences of a false statement in misleading the court that was deciding the issues in the case, of which he would have been well aware and have had an understanding of" (**emphasis added**); and

    ii) The statement that "[i]t is noteworthy that Mr Curnock would have known the importance of a *Larke v Nugus* statement he was making in the context of a probate dispute where the parties challenging the Will are by and large dependent on the solicitor telling the whole truth and especially where the Court's role is quasi-inquisitorial".

Mr Curnock's rebuttal evidence

77. In his affidavit of 12 December 2022, Mr Curnock points out that he was merely a witness to the Proceedings and that he had no access to documents, save for those appended to the disclosure applications that were made against him and the CGM will file provided to him for the purposes of preparing his witness statement of 2 December 2019. He acknowledges that the Curnock Statement is not correct, saying that at the time of signing he only had access to the CGM will file (which did not include the Emails) and that he had forgotten about the meeting with Louise on 11 December 2013. However, he denies that it was a knowingly false statement made intentionally or recklessly without an honest belief in its truth and further denies that it was intended (or could foreseeably have been likely) to interfere with the administration of justice. He says he has a vague recollection of horses escaping into fields but thought that conversation had taken place much later, in one of the trustee meetings.

78. Mr Curnock also says that he does not deny (and never has) that Louise was involved in arrangements to attend the Deceased's office so as to enable him to take instructions from the Deceased. He says that it is far from absurd that he would have forgotten one "brief encounter", that it is clear from the 12 December Email that Louise "left before any meaningful meeting proceeded" and that:

> "[t]he [Curnock] Statement was a small part at the end of the Witness Statement, which I recall was added by WBD following our conversations together in which they took the statement or when we reviewed the drafts. I do not recall considering the paragraph containing the [Curnock] Statement to be of any

material consequence one way or the other when read with the rest of the Witness Statement".

A strong prima facie case?

79. Looking at the evidence of the Claimants and Mr Curnock as a whole, again I do not consider that the Claimants can satisfy the requirement of a strong prima facie case to the criminal standard in respect of the Curnock Statement. My reasons are as follows:

i) Mr Curnock accepts that the Curnock Statement was false, but the Claimants have adduced no evidence whatever (beyond the Judgment, which they cannot rely upon for reasons I have already addressed) to support the existence of a strong prima facie case that Mr Curnock knew either (a) that the Curnock Statement was false; or (b) that it was likely to interfere with the course of justice. Following the letter of 1 April 2021 drawing his attention to the Emails, Mr Curnock immediately admitted its falsity and did not seek to suggest otherwise when giving his evidence to the court at trial.

ii) The only evidence of the meeting with Louise on 11 December 2013 is to be found in the 12 December Email which (it is common ground) refers only to a fleeting meeting. It is also common ground that the CGM will file was provided to Mr Curnock for the purposes of preparing his witness statement of 2 December 2019 and that it did not contain the Emails. It is not suggested that Mr Curnock had access to the 12 December Email at the time of making the Curnock Statement, or that he had access to any of the other Emails or text messages which evidenced communications between Mr Curnock and Louise in late November and December 2013. Yet, at the heart of the complaint against Mr Curnock, lies the assertion that it is "absurd" to suggest he could have forgotten the 11 December 2013 meeting with Louise given the existence of the Emails, the 44 text messages and the phone calls (in respect of which there is no content).

iii) In my judgment, this case does not begin to get off the ground. Just as the Claimants' case against Louise seems to be heavily premised upon an assumption of nefarious activity, so the same applies here. Yet, absent the Judgment and absent any allegation of collusion, there is absolutely no basis whatever to determine that the only possible inference from the existence of the Emails and the texts is that Mr Curnock intended to conceal the fact of the 11 December 2013 meeting with Louise or was reckless about that meeting. His statement was made many years after the meeting, without access to key documents and in circumstances where his professional relationship with Louise had continued after the 2014 Will, thereby increasing the risk of confusion over precise dates. Mehta 1 does not gainsay the suggestion that at the relevant time he was a busy solicitor with a will-based practice who saw "at least a client a day". Mr Curnock's witness statement dealt in detail with his meeting on 11 December 2013 with the Deceased, as evidenced in his handwritten note, and (absent a written record) there is no evidence to suggest that a brief meeting with Louise in advance of the meeting with the Deceased, during which he was given "tea", would have been memorable.

iv) Furthermore, there is no evidence before the court to suggest that Mr Curnock had any appreciation whatever of the significance or otherwise of his evidence in the

final paragraph of his witness statement relating to when he first met Louise, much less that Mr Curnock would have known that such evidence was likely to interfere with the course of justice. There is no evidence that he was provided with the pleadings in the Proceedings or any other witness statements and no evidence that he had a clear understanding of the likely evidential issues in the case, including the possibility that there would be any controversy over his relationship with Louise. I note that the lengthy letter from Wilsons dated 11 October 2019 raising numerous questions for Mr Curnock does not specifically ask about any relationship he may have had with Louise. At this stage I obviously cannot determine whether Mr Curnock's evidence that the Curnock Statement was the product of conversations with WBD is correct, but looking at the witness statement as a whole, the final paragraph certainly appears to be something of an after-thought; it refers to a substantive meeting with Louise to discuss the trust. The assertion in Mehta 1 that it is "the client's view" that Mr Curnock would have been well aware of the issues in the Proceedings is not evidence and does not support the proposition that he must have remembered a fleeting meeting which he had apparently not recorded in his note.

v) Presumably in an attempt to bolster the case against Mr Curnock, Mehta 1 refers to the texts from Louise and then says "[t]his only accounts for those text messages which Ms Reeves had sent to Mr Curnock and excludes the number which she most probably received in response". However, there is no evidence whatever that any such texts were sent by Mr Curnock in response and I agree with Mr Grey that this is nothing more than speculative assertion. It is wholly inadequate for the purposes of establishing a strong prima facie case. Further, and in any event, even if Mr Curnock had remembered that he had received texts from Louise in the weeks prior to the signing of the 2014 Will, I fail to see why this means he must therefore have recalled that he met her fleetingly when she gave him tea. The allegation against him is not that he deliberately sought to conceal the extent of his relationship with her, but purely and simply that his statement that he did not "meet" her until after the 2014 Will was signed is false. In this context, I agree with Mr Grey that the attempt to combine the evidence against Mr Curnock and Louise in Mehta 1 by referring to their evidence about "meeting/knowing" each other (see paragraph [47(a) and (b)]) is potentially misleading.

vi) As for the calls, the Mobile Phone records disclose four calls, three of which are of no more than 2 seconds each, the strong and inevitable inference being that no conversation of any kind took place, for whatever reason (albeit I note that Mehta 1 makes no attempt to make this clear). As for the final call, it lasted for 1 minute and 30 seconds, taking place on 23 December 2013, the day on which the Deceased met with Mr Curnock. Even assuming that Mr Curnock and Louise spoke on this occasion, the content of the call is unknown.

vii) Standing back and having regard to the realities, the court has only 15 short Emails, predominantly concerned with arranging logistics for the execution of the 2014 Will or in relation to the proposed trust, together with evidence of texts sent by Louise and one substantive phone call - but no indication as to the content of the texts or the call. These most certainly do not lead to the inevitable inference of dishonesty or recklessness in making the Curnock Statement. On the contrary, there appear to me to be many, far more likely inferences on the available evidence: that

Mr Curnock forgot about a fleeting meeting; that Mr Curnock, as a busy practitioner, was most unlikely to remember such a meeting absent a documentary prompt (particularly where his note of the meeting on that day obviously did not refer to his having met Louise); that although he may have had some recollection of horses escaping, he confused the timing of the meeting etc. The fact that he was an experienced solicitor in the field of wills and probate does not appear to me to change matters.

viii) Turning to Mehta 1 at [47], and ignoring sub-paragraphs (g), (i) and (k) for reasons I have given, I cannot see that it is in any way "self-evident" that Mr Curnock made the Curnock Statement intentionally or recklessly without an honest belief in its truth. As I have already said, I cannot see how the Emails, phone calls or texts can possible "refute the possibility" that Mr Curnock can have forgotten the 11 December 2013 meeting with Louise, particularly in circumstances where those communications contain nothing whatever to suggest any fraud or conspiracy, where there is no evidence that these communications were anything other than perfunctory and no evidence that Mr Curnock had access to them or remembered their existence when signing the Curnock Statement ([47(a)]). If he had remembered them, they would not necessarily have alerted him to the fact that he had met Louise briefly on 11 December 2013.

ix) I repeat what I have already said above about paragraphs 47(b), (e), (f) and (h) of Mehta 1, which are in my judgment purely premised upon the speculative undertone of conspiracy and collusion between Louise and Mr Curnock. In any event, as for (f), I do not understand how Mehta 1 can properly assert that Mr Curnock "knew there were no documents which had been disclosed which could prove that [the Curnock Statement] was untrue" and therefore that "it would have been clear" to him that the circumstances surrounding the making of the 2014 Will would be far less suspicious if the court believed that he and Louise had not met before it was signed". As a witness with no access to the disclosure beyond limited documents he had been provided with, it is wholly unclear what evidential basis exists for such assertion, beyond, yet again, a supposition of collusion between Louise and Mr Curnock which is not borne out in the Claimants' evidence. The same point may be made in relation to the suggestion that a fleeting meeting at which Louise had apparently simply provided Mr Curnock with tea, was in any way "suspicious".

x) As for the assertion in 47(d) that it is "absurd to say" that Mr Curnock would have forgotten the "extraordinary circumstances of the main beneficiary of the estate being directly involved in arranging a will which would have concerned, by quite some margin, the largest estate he had ever dealt with", I agree with Mr Grey that the appropriate response is "why?". There is no evidence before the court to show that Mr Curnock's perception of this case was any different from any other case, or that he considered it to be different, or particularly memorable, by reason of the amounts of money involved. It appears to be common ground that he charged a standard fee. This paragraph strikes me as little more than speculation. Equally, the fact that the Emails were not disclosed in the original will file ([47(j)] does not appear to me to take matters any further absent any evidence as to why that might have been the case. There is certainly nothing to suggest that Mr Curnock had

taken steps to conceal the Emails or to remove them from the file, and Mehta 1 does not make any such allegation.

xi) I have already addressed paragraph 53(f) of the Claimants' skeleton argument, which plainly sought to expand the case against Mr Curnock beyond the evidential boundaries identified in Mehta 1 and has been withdrawn.

80. As with the application against Louise, my decision that there is no strong prima facie case in relation to the Curnock Statement is sufficient to determine this application – I am not prepared to grant permission to proceed with it on evidential grounds alone. However, once again, I briefly set out my views as to the remaining issues relevant to the application.

Public Interest, Proportionality and the Overriding Objective

81. A number of the same considerations apply to the application involving Mr Curnock as apply to the application against Louise. In particular, I repeat my observations about proportionality in the context of the use of court time and resources.

82. On the subject of the public interest, the Claimants argued at some length in their skeleton argument that Mr Curnock's statement was a *Larke v Nugus* statement, i.e. a statement provided by a solicitor pursuant to his professional obligation as the solicitor involved in the preparation of a will to provide evidence as to the execution of that will and the circumstances surrounding execution to anyone involved in proving or challenging the will. The guidance in *Larke v Nugus* [2000] WTLR 1033 is intended to deal with the practical problem that a person seeking to challenge a will often has no direct knowledge of the circumstances of its preparation and execution, whilst the best witness is dead.

83. In short, the Claimants submit in their skeleton that honesty in a *Larke v Nugus* statement is "fundamental to the working of this jurisdiction's probate system" and that the granting of permission to bring contempt proceedings "will have a salutary effect in bringing home to those who prepare and propound wills the importance of complete honesty when making witness statements".

84. I am bound to say that I am not overly impressed with this argument. First, as Mr Grey observes and as I have recorded above, Mehta 1 refers to *Larke v Nugus* only in passing with something of a light touch. Although it could be read as suggesting that Mr Curnock's statement was in fact a *Larke v Nugus* statement, it does not say that Mr Curnock's witness statement was produced in response to a *Larke v Nugus* request. On his feet, Mr Grey submitted that Mr Curnock's statement was not a *Larke v Nugus* statement, something which appears to be borne out by Wilsons' letter of 11 October 2019 which expressly refers to the fact that they had proposed (to WBD) a joint approach to Mr Curnock for a *Larke v Nugus* statement, which proposal had been rejected by WBD.

85. In response to a question from me during the hearing, Mr Darton accepted that there was certainly no evidence of a formal *Larke v Nugus* request, although he maintained that in the context of a probate dispute, Mr Curnock must nevertheless "be assumed to have understood the importance of his statement and the importance of the last paragraph", thereby apparently moving away from focussing purely on some form of enhanced public interest, and instead seeking to attach significance to the status of Mr Curnock's statement for the purposes of the establishment of a strong prima facie case. I have

already addressed the reasons why I do not consider this to be an appropriate assumption or inference on the available evidence.

86. Second and in any event, I do not consider that the question of whether Mr Curnock's statement is indeed a *Larke v Nugus* statement carries with it the significance (from a public interest perspective) for which Mr Darton contended in his skeleton argument. I accept Mr Grey's submission that it is of the utmost importance to the administration of justice that any witness statement from a solicitor (or indeed any other person) verified by a statement of truth should be true. I see no distinction in this regard between a *Larke v Nugus* statement provided in probate proceedings and a statement provided by a solicitor in any other form of litigation. Unlike ordinary citizens, solicitors owe duties to the court and it will always be an extremely serious matter if they make a statement of truth (which the court will expect to be able to rely upon) which turns out to be false. I reject any suggestion that the court should approach false statements from solicitors differently depending upon the nature of the proceedings, or that there is some form of enhanced duty of honesty in probate proceedings or, as a corollary, an enhanced degree of public interest in pursuing a false statement made in a *Larke v Nugus* statement.

87. The bottom line here is that Mr Curnock made a single false statement of truth in his statement to the court six years after the events with which his statement was concerned in circumstances where there is no evidence that he had any clear understanding of the nature of the issues in the Proceedings or the scope of the existing disclosure. Upon discovering that it was false, he corrected it and no longer maintained his original position. The court was not in any way misled by the Curnock Statement and he was cross examined about it at the trial, continuing to maintain that he could not remember the 11 December 2013 meeting with Louise. His cross examination led to the Judge making highly uncomfortable and professionally embarrassing findings against Mr Curnock. In all the circumstances (and even assuming a strong prima facie case) I cannot see that it is in the public interest for a substantive hearing to take place, with all of the expense and use of resources that would involve. Mr Curnock's professional reputation has already been dragged through the mud and there is no real public interest in putting Mr Curnock through the further ordeal and disruption of a substantive hearing.

88. Once again, there appears to me to be a risk that these proceedings are being brought purely as a means of harassing Mr Curnock. Unpleasant attacks were made on his reputation at trial (to which I need not refer here) which were unsupported by evidence and I repeat the points made above about the general approach of the Claimants. I also observe that there are a number of occasions in the Mehta 1 statement where the phrase "in my clients' view" appears (including in the context of seeking to justify what Mr Curnock "would have known" about the issues in the Proceedings). This appears to me (at least potentially) to indicate an inadequate appreciation of the fact that these are not proceedings which should be pursued for the benefit or advantage of private individuals.

89. In all the circumstances (and even assuming a strong prima facie case) I would not have been prepared to permit this application to go to a full hearing. It would not have furthered the overriding objective to do so.

Conclusion

90. I refuse permission and these applications for committal are dismissed.