Neutral Citation Number: [2022] EWHC 159 (Ch)

Case No: PT-2019-000803

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

IN THE ESTATE OF KEVIN PATRICK FRAIN (AKA KEVIN PATRICK REEVES)

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

Date: 31/01/2022

Before :

THE HONOURABLE MR JUSTICE MICHAEL GREEN

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Between :

LOUISE MICHELLE REEVES **Claimant**

- and -

(1) CLAYTON PETER DREW
(2) SIMON KEVIN FRAIN (AKA SIMON KEVIN FRAIN, AKA BILL REEVES)
(3) LISA MURRAY
(4) MARK RYAN MCKINNON
(5) CHERIE ADELINE MCKINNON **Defendants**

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Thomas Dumont QC and Paul Burton (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Claimant**
Giles Richardson (instructed by **Stevens & Bolton LLP**) for the **First Defendant**
Constance McDonnell QC, Maurice Holmes and Hamish Fraser (instructed by **London Litigation Partnership**) for the **Second Defendant**
Clifford Darton QC and Maurice Holmes (instructed by **London Litigation Partnership**) for the **Fourth Defendant**
The Third and Fifth Defendants were present but unrepresented

Hearing dates: 9-12, 15-19 and 22-26 November 2021

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE MICHAEL GREEN

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and other websites. The date and time for hand-down is deemed to be 10am on 31 January 2022

Mr Justice Michael Green :

A. INTRODUCTION

1. Kevin Patrick Reeves (aka Kevin Patrick Frain) (the **deceased** or **Kevin**) was an extraordinary man who during his life built a fortune of up to £100 million from nothing. He died, unexpectedly, on 3 February 2019 at the age of 71 although he had been unwell for many years with chronic obstructive pulmonary disease, COPD, or emphysema. His death has unleashed a bitter feud between his children and grandchildren that culminated in a three week trial during which I heard from 49 witnesses about whether a will made by the deceased on 7 January 2014 (the **2014 will**) was his valid last will and testament.

2. The Claimant, Ms Louise Reeves (the **Claimant** or **Louise**)[1] is the youngest daughter of the deceased. She seeks to uphold the 2014 will and asks the Court to pronounce in favour of it in solemn form of law. Under the 2014 will, the Claimant received a specific property and the deceased's Rolls Royce Phantom but most significantly she was left 80% of the deceased's residuary estate. Her half-sister, Lisa Murray, the Third Defendant (**Lisa**) was left the remaining 20% of the residuary estate, together with a specific property. Lisa supports the Claimant in these proceedings and gave evidence for her.

3. On the other side and opposing probate being granted of the 2014 will is the Second Defendant, Simon Frain (aka Simon Reeves, aka Bill Reeves) (**Bill**) who is the second son of the deceased. He says that the deceased did not know and approve the contents of the 2014 will; alternatively that it was procured and executed by the deceased as a result of undue influence exercised by the Claimant on him. Bill seeks to propound an earlier will made on 18 April 2012 (the **2012 will**) by which the deceased's residuary estate was split as to 80% between the Claimant, Lisa and Bill (ie 26.67% to each child) and the remaining 20% was split equally between the Fourth and Fifth Defendants (**Ryan** and **Ria**, respectively). Ryan and Ria are both grandchildren of the deceased as their father is Mark Reeves (**Mark**), the eldest son of the deceased. Mark was estranged from the deceased and did not feature in any will of the deceased. Ryan is separately represented in these proceedings but wholeheartedly supports Bill's case. Ria is unrepresented but she gave evidence on behalf of Bill and Ryan[2]. Mark, their father, gave evidence against them in support of the Claimant. One can see already the complicated relationships within this family.

4. It is accepted by all parties that there was a dramatic change between the 2012 will and the 2014 will, such that the deceased's son, Bill, and the deceased's grandchildren, Ryan and Ria, were almost completely left out of the 2014 will (Bill was only entitled to a third of the deceased's chattels) and the question is whether the deceased truly intended to do that.

5. It is trite that in this country testators have complete testamentary freedom and they can do as they please. They can act out of pure spite, irrationally, nastily and capriciously,

[1] I have used the first names of family members to avoid confusion. No disrespect is intended.
[2] When referring to Bill and Ryan collectively, for convenience I will refer to them as "**the Defendants**".

and they do not need to justify their dispositions by reference to any notions of fairness, reasonableness or morality. That means that those seeking to uphold a will do not need to prove that the dispositions can be explained or justified as fair, reasonable or coherent.

6. What is open to scrutiny however is whether the testator was able to exercise his own free will in making his will and whether the will truly reflects his testamentary wishes. This case is complicated by the allegation made by the Defendants that the deceased was illiterate. A lot of evidence on both sides was directed at this issue, which indicates its perceived importance. It is quite remarkable that there could be such a disparity between both sides' evidence: the Claimant's witnesses all saying that the deceased could read perfectly well, although admitting that he could barely write; whereas Bill's witnesses were saying that it was obvious and well known that the deceased could not read. I will have to decide whether this is correct and its impact on whether the deceased knew and approved the contents of the 2014 will.

7. I should mention at this stage the First Defendant, Clayton Drew (**Mr Drew**). He was the deceased's right-hand man for some 30 years, sharing a cramped office with him and having an in-depth knowledge of the deceased's business affairs. He qualified as a Chartered Accountant and is a fellow of the ICAEW. He was appointed as an executor in the 2014 will together with the Claimant. He was also an executor of the 2012 will. Against the opposition of the Defendants, Mr Drew was appointed by the court as the administrator pending suit of the estate for the purpose of gathering in and securing the estate's assets. He has offered to act as such without charge. He was separately represented before me and maintained that he has adopted a neutral position in these proceedings. That is challenged by the Defendants who said that he has aligned himself with the Claimant. He gave evidence and was cross-examined by all parties. In particular, he said that the deceased could read, including complicated legal documents.

8. Much of the evidence that was adduced by both sides was of peripheral if any relevance. This was largely directed at the case of undue influence and raised a number of side issues. I will not be able to deal with each of such issues and I do not think it is necessary to do so. These indicate, at best, the true personalities of the main parties and the deceased and the relationships between them and I have taken all such incidences into account in assessing the credibility of the evidence that has been given, even if I do not expressly refer to the particular incident in question.

9. I pay tribute to Counsel and their legal teams in ensuring that they stuck to their timetable, which was no mean feat given the number of witnesses involved and the loss of one afternoon due to a witness contracting Covid just before giving evidence. Thomas Dumont QC leading Paul Burton appeared on behalf of the Claimant; Constance McDonnell QC leading Maurice Holmes and Hamish Fraser appeared on behalf of Bill; and Clifford Darton QC leading Maurice Holmes appeared on behalf of Ryan. The Defendants had the same solicitors. Giles Richardson made a limited appearance on behalf of Mr Drew when he was giving evidence and put in short written submissions. Lisa and Ria were unrepresented.

10. There is no substantial dispute as to the law and this case turns on its facts. Even though there are quite a number of documents in the trial bundles, there are relatively few contemporaneous documents upon which I can safely rely in order to test the witnesses' recollections. Both wills were prepared by the same solicitor, a Mr Daniel Curnock (**Mr**

Curnock), then of Christopher Green McCarrahers Solicitors (**CGM**). He gave evidence before me and I will have to assess his evidence and the reliance that can be placed on his attendance notes which are crucial documents. But apart from the documents around the making of the 2014 will, the evidence is predominantly oral and dependent on whether I believe one side or the other. The remarkable thing about this case is the number of witnesses who are said to be lying on oath: the Claimant accused nearly all of Bill's witnesses of lying, particularly in what they said about her and what they said they had seen her do; and the Defendants mounted a full-scale attack on the honesty of the Claimant, Mr Drew and Mr Curnock, along with all the Claimant's evidence on the deceased's literacy.

11. I will therefore in this judgment attempt to work out the true position and as a result determine whether I should pronounce in favour of the 2012 will or the 2014 will in solemn form of law.

B. THE ISSUES

12. There are now only two broad issues for determination:

(1) Whether the deceased knew and approved the contents of the 2014 will; and

(2) Whether the deceased's execution of the 2014 will was the result of the exercise by the Claimant of undue influence.

13. On the pleadings, Bill also put the Claimant to proof of the due execution of the 2014 will. This has since been accepted by the Defendants and I heard from the two solicitors who witnessed the execution of the 2014 will, Ms Angela Scouller and Mr Mark Riley.

14. It was also a live issue at the start of the trial as to whether the 2014 will that the Claimant seeks to prove was the same as the one signed by the deceased. There was a single joint handwriting expert appointed by the Court, Ms Ellen Radley, and while she discovered that 2 of the pages in the 2014 will were different from the others, there was no evidence that pages in the will had been substituted after execution and this was not put to any of the Claimant's witnesses.

15. There is no issue as to the deceased's testamentary capacity.

16. The two live issues have different burdens of proof:

(1) The person seeking to propound a will has the burden of establishing that the deceased knew and approved its contents; while there is a strong presumption to such effect if the will has been properly prepared and executed by a solicitor, where there is evidence from those challenging the will that arouses the suspicion of the court, the presumption is weakened and may require positive proof from the propounder;

(2) The person asserting undue influence has the burden of proving it.

17. There is an inherent tension between the two challenges to the 2014 will. On the one hand, the Defendants are saying that the deceased did not know and approve the

contents of the will. On the other hand, they are saying that, if he did know and approve the contents, that was only because of the undue influence exercised by the Claimant on the deceased. This was a relatively simple will to understand. It is difficult to see that the Claimant could have both fooled her father into signing a will that he would otherwise not have signed if he knew what its contents were and at the same time exercised such undue influence over him such that he was persuaded to sign the will with those contents. The Defendants are entitled to run inconsistent alternative cases but it does seem to me to be problematic to run those alternative factual stories together.

C. THE DECEASED

18. Before commenting on the witness evidence, it is important to appreciate what a unique individual the deceased was. Inevitably in a probate case the most important witness cannot give evidence. That person's character, knowledge and intentions have to be discerned from the evidence of others and I have had no shortage of such evidence.

19. There was one thing upon which both sides' witnesses were agreed: the deceased was the toughest, hardest man in business that you were ever likely to meet. But it is his family life and relationships that really matter in this case, with the Defendants suggesting that he was different in a domestic context and susceptible, for various reasons, to being pressured and bullied. The Claimant said that this is simply nonsense and while she claimed to have had a loving relationship with her father, she said that he was his own man and could not be dominated or controlled by anyone, let alone her. He could be quite brutal to anyone, including family members, and he was not frightened of telling that to someone's face. His language was rough and, like the rest of the family, laden with expletives, particularly using the c-word incessantly and indiscriminately to describe any person, whether in or outside of the family. The texts and WhatsApp messages that I have seen from other members of the family, (the deceased did not send texts, presumably because of his literacy problems) constantly used that language the whole time. That was the way they conversed.

20. The deceased's rags to riches story is quite incredible. He was born on 29 October 1947 and was given up by his biological mother (Beatrice Frain) as an orphan to the local convent. He was then fostered to a large family with the surname Reeves and they had Irish traveller origins. The deceased's foster mother died when he was 10. It is believed that by the time he was 12, he had left school, although he probably did not attend much before that. It is said on behalf of the Defendants that, as a result, he never learned to read or write.

21. But he clearly possessed a sharp mind and tremendous business acumen. Everyone has attested to his skill with figures and there is little doubt that he used this and his ability to spot an opportunity and exploit it to his very great advantage. He was a tough no-nonsense negotiator and it brought him enormous success. His main business was property dealing, predominantly in the Southampton area where he lived, but he also dealt in cars, shares and currencies, making his own investment/trading decisions.

22. He worked hard and he valued that quality in other people, particularly in his children and grandchildren. But he lived a relatively frugal existence. Despite making many millions of pounds he did not lead a particularly lavish lifestyle, save perhaps in respect

of the cars he drove and the horses that he loved. He had a house in Spain and went there quite often but he did not go on expensive holidays generally. If he did, others tended to pay for them.

23. In the summer of 2011, the deceased and the Claimant moved into an annexe next door to Bill's house and he lived there, rent free, until he died. For a man of such wealth, this was a modest house to live in. The significance of living next door to Bill throughout that time when he made both wills will have to be considered by me in due course.

24. The deceased married Patricia Bradshaw in 1968 and they were together for 23 years. They had three children: Mark; Bill; and Louise. There was a 12 year gap between Bill and Louise. She was born in 1986.

25. The deceased was an inveterate womaniser, as all have accepted. The deceased had an affair with a friend's wife and Lisa was born in 1980, six years before Louise. Although the deceased knew that Lisa was his daughter, it was only finally revealed to Lisa when she was 22. She was totally shocked but seemed to have been more upset with her mother than with the deceased.

26. Unfortunately, violence was normalised within the family and it seemed to follow its members. There was a terrible incident in 2001 in Spain when Mark beat up Adeline McKinnon, his then partner and the mother of Ryan and Ria, that led to his arrest and her being in a coma for a week with a fractured skull. Mark claimed, in his evidence before me, not to remember anything about the incident but from that point on the relationship between Mark and the deceased deteriorated and when they fell out over a property transaction, Mark and the deceased never spoke again and he has since lived abroad, first in the Far East and latterly in Colombia. Mark has not featured in any of the deceased's wills.

27. Largely because the Claimant sided with Mark against her father, she and the deceased also fell out and did not speak for 4/5 years between 2004 and 2009, when the Claimant was 18 to 23 years old. The deceased disapproved of the people the Claimant was mixing and going out with in particular her relationship with a Mr Stephen McCarthy who was part of a well-known crime family in Southampton. The Claimant suffered an horrific injury during this period by being glassed in a pub by another woman in a random attack but the deceased responded to this by using the memorable but highly disturbing phrase "*lay with dogs and you get fleas*". To say that of your daughter shows how offensive the deceased could be. If you were really out of favour with him, he would completely cut you off and have nothing to do with you. He would have no qualms about removing such a person from his will. The Claimant even said in her witness statement that during that time the deceased told her she was getting "*f***ing nothing*" if she sided with Mark.

28. But they were reconciled in 2009 and the Claimant moved in with the deceased. She said that they thereafter had a very good, loving relationship and they went many times to Spain together. The Claimant said that the deceased wanted her to take over the business and he was training her up to do that. She had qualified as a hairdresser but from about 2011 onwards the deceased had wanted her to stop hairdressing and to work in and learn how to run his business. This, she said, is what was behind the 2014 will.

29. It does not explain why the deceased suddenly wanted to exclude his son, Bill whose house he lived in (next door to Bill), his grandchildren Ryan and Ria, and to reduce Lisa's share from 26.67% to 20%, which in itself could amount to a few million pounds. The relationships between the deceased and his children and grandchildren will be explored further below. Suffice it to say at this stage in talking about the deceased's character, it seems he was perfectly capable of acting out of spite and unreasonably but he would also not be afraid of letting those persons know that they were now out of his will. The Claimant made clear in her evidence that the deceased would let any person know whether they were "*in or out*".

30. A further important aspect to the deceased throughout the relevant time is his deteriorating health. Having smoked heavily, he suffered from severe COPD. He was also diabetic. In October 2005, when he was 57, he became indefinitely entitled to Disability Living Allowance. His breathlessness was very marked to the extent that a number of witnesses have described how he could not walk very far without having to stop to catch his breath. The Claimant pointed out that he walked up one flight of fairly steep stairs to get to his office every day. However, it is clear that this became a struggle for him. He was on a lot of medication and would sometimes use a wheelchair. He was also taking oxygen.

31. Dr Thomas Havelock, a consultant respiratory physician at University Hospital, Southampton was first consulted by the deceased in May 2016. Dr Havelock put in a witness statement on behalf of the Claimant but he was rightly not cross-examined. They were considering a lung volume reduction but because he had low blood oxygen levels there would be increased risks associated with such an operation. He did start to use supplemental oxygen to try to get into a position where he could have the operation. However he was admitted twice to hospital over his bad COPD: first in late December 2017; and then again in March 2018.

32. Despite his evident serious ill-health, his death at home on 3 February 2019 was unexpected and quite sudden.

D. THE WITNESSES

33. As I have said above, I heard live oral evidence from 49 witnesses. There is a total of 100 witness statements that I have read plus Ms Radley's expert report. Apart from the witnesses who deal with the making of the will, the majority of the other witnesses deal with two main themes in their witness statements: (a) the issue of the deceased's literacy, with predictable evidence depending on which side the witness was on; and (b) the character of the Claimant and her relationship with the deceased. As to the latter, innumerable matters are raised in the witness statements, most of which post-date the 2014 will, some of which are not true and some of which are clearly exaggerated. It is impossible and would be disproportionate to deal with all such matters and the bigger picture, namely the actual issue to which those matters relate, has to be kept very much in mind.

34. I propose to make some general comments on the parties and main witnesses on each side without going into their detailed evidence (which will be addressed as necessary in the factual narrative) and then deal with the more minor witnesses in a collective

fashion by reference to the particular issue that they have chosen to come to give evidence on. I will therefore deal with the evidence in the following order:

(1) the parties' evidence;

(2) the three solicitors' evidence;

(3) the Claimant's main witnesses;

(4) The Defendants' main witnesses; and

(5) The remaining witnesses' evidence.

(1) The parties' evidence

(a) The Claimant

35. The Claimant was in the witness box for over 2 days, spanning 4 sitting days. I have seen five witness statements made by her, although two were formal testamentary scripts statements. Her witness statements attempt to portray her as a loving daughter, devoted to her father from the time of their reconciliation in 2009 until his death. They refute all the examples given in Bill's evidence of her acting violently and ruthlessly and having a terrible temper, particularly in relation to the deceased, but also as to her alleged manipulative character in order to get her hands on the great wealth that the deceased would be leaving.

36. Her oral evidence began well, with her giving straightforward answers in a clear and confident way. She had clearly prepared thoroughly for her evidence and knew her case and the documents inside out. In that respect it was impressive. She became emotional at times but it was difficult to tell if that was just for show.

37. As her evidence continued however, I felt it became more ragged and began to unravel. She was highly dismissive of anything being put to her about her or her father's character or his literacy. She constantly referred to such suggestions as being lies and "*ridiculous*" and she had a tendency to look intently towards me with a knowing, sarcastic smile, as though to say it was perfectly obvious that everything that was being said by the Defendants' witnesses was untruthful. She went too far with this and thereby undermined her own evidence. She often argued her case by what seemed to be pre-prepared speeches rather than answering the question.

38. In my view she clearly exaggerated the deceased's literacy skills by suggesting that he would have no difficulty reading a thick dense legal contract or lease. While there is a legitimate debate to be had as to the deceased's ability to read, there should have been a recognition by the Claimant that he at least had difficulty in reading.

39. There are three particular matters that caused me to have serious concerns about the honesty of the Claimant's evidence:

(1) A crucial issue at the heart of this case is the nature and extent of the Claimant's dealings with Mr Curnock before the 2014 will was executed. Both Mr Curnock (in

a witness statement dated 2 December 2019) and the Claimant (in her replies to a Request for Further Information dated 12 August 2020 to which she signed a statement of truth) stated that they had not met prior to the 2014 will being executed. Since those statements were made, emails came to light that indicated communications between them in relation to the 2014 will and that they had met on 11 December 2013 when Mr Curnock attended the deceased's offices for a meeting. Both then claimed in further witness statements that they had not recalled this brief encounter, unsurprisingly, they said, because it was only fleeting and some 6 or 7 years earlier. Mr Mark Riley, another solicitor at CGM, then attended with Mr Curnock at another meeting with the deceased on 23 December 2013 and he gave clear evidence that the Claimant was there and there was a "*familiarity*" between her and Mr Curnock. The Claimant and Mr Curnock deny that she was at that meeting and the attendance note does not record her being there. (The Defendants have adduced evidence that they say shows they had actually met some months before in relation to a property transaction, but they both deny that.) Given the extent of communications between Mr Curnock and the Claimant (for example, there were 17 text messages sent by the Claimant to Mr Curnock on 23 December 2013) I do not accept that they had forgotten about these meetings before the 2014 will was executed and consider that they have deliberately sought to conceal the full extent of their interactions in relation to the preparation of the 2014 will.

(2) There was an incident in August 2020 at a petrol station in respect of which there is CCTV footage. One of Bill's witnesses, Mr Dave White, who was a very close friend of the deceased, the Claimant and Bill, drove into the petrol station with his family in the car. The Claimant and her husband and young baby were also in the petrol station. Mr White's evidence was that the Claimant berated him for giving evidence on behalf of Bill and for allegedly approaching one of the Claimant's witnesses in Spain, Mr Peter Bartlett, to try to persuade him not to give evidence for her. He said that she was shouting and screaming at him with threats as to what would happen if he gave evidence against her. The CCTV footage, without sound, was provided to me while the Claimant was giving her evidence. She said when she was asked about this incident that she had not seen the CCTV footage. Yet when she described the incident in great detail it exactly conformed to what the CCTV showed as to where the argument was taking place and between whom. I do not believe that she could have remembered such detail from over a year before unless she had actually watched the CCTV footage recently or been told about it by someone while she remained under oath.

(3) In support of her case that the deceased intended to cut his grandchildren, Ryan and Ria, out of the 2014 will, the Claimant maintained that the deceased actually hated his grandchildren. (I should add that their father, Mark, said that he also hated his children, as did their grandmother, Patricia Bradshaw, the Claimant's mother, who is supporting the Claimant by giving evidence for her.) At the time of the 2014 will however, the deceased set up a trust for Ryan and the property that Ryan, Ria and their mother Adeline McKinnon lived in, 2 Quantock Road, Milbrook, Southampton, was held in the trust. The trustees were the Claimant, Mr Drew and Mr Curnock. Ms McKinnon was paying rent to the trustees by using the housing benefits she was receiving but these were stopped and she thereafter ceased paying rent to the trust. In 2018, Ms McKinnon, Ryan and Ria were evicted from their home by the trustees. The trustees all claimed that this was what the deceased

> wanted to happen and he still controlled everything in the family. This was devastating for Ryan who, together with his sister and mother, were thrown out of their home which was in any event held on trust for his benefit. I believe that this was orchestrated by the Claimant, with the willing connivance of Mr Drew and Mr Curnock, and indicates how heartless and manipulative she could be.

40. There are many more examples of her propensity to bully and demean others. I accept that some of the examples may well be exaggerated and some may never have happened. But there are simply too many for them to be ignored. One particularly egregious case concerned a frail, poor and downtrodden man, Mr Mick Ward, who managed to give evidence despite being in a visibly terrified state. Mr Ward lived in a caravan on the deceased's land. After his death and through her enforcer, Mr James Hicks (another witness for the Claimant) she got him to leave the land. Mr Hicks sent Mr Ward some incredibly abusive texts. Mr Ward recalled the Claimant telling him to: "*Pack your shit and get off my f***ing land*". The Claimant arranged for the caravan to be burnt down without giving Mr Ward notice that she was doing so and when he had left some personal possessions in there. Those sorts of actions do not reflect well on the Claimant and show a side to her that she sought to deny in the witness box, but unsuccessfully, in my judgment.

41. In the end I was left with the feeling that she inherited from her father a similar ruthless, tough streak and that she would not stop at anything to get what she wanted. She would not be frightened of falling out with the deceased as she had done for 4/5 years from 2004 and she would be prepared to take risks if the reward was great enough. Accordingly, her evidence was carefully crafted around the known documents and the case she was putting forward, but because of that I must exercise great caution in accepting anything of what she said unless it was corroborated by known facts or independent evidence. All of what she said is tainted by her objective in this litigation.

(b) Bill

42. Bill's evidence is less relevant than the Claimant's, principally because he was not involved at all in the making of the 2014 will and knew nothing about it. He denied the evidence of the Claimant and Lisa that he had been told by the deceased that he was getting nothing in the will and I will have to decide if that is correct or not. It is not disputed by the Claimant and Lisa that Bill was shocked when he discovered the terms of the 2014 will shortly after the deceased's death and funeral. Such shock is consistent with his evidence that he had no prior knowledge of it.

43. Bill was very measured in his evidence, to the extent that on the first afternoon of giving evidence he came across as rather slow and ponderous. The next day he had perked up and gave full and seemingly credible explanations for some of the transactions that were put to him. I noticed that he became particularly animated and upset when being questioned about a conversation he had had with Lisa shortly after the deceased had died about an apparent burglary at Lisa's mother's house. For some reason Lisa had taped the call. A neighbour of Bill's mother had also been burgled at the same time and there seemed to be a few such incidents going on then in the aftermath of the deceased's death. I can well understand why Bill would have been very concerned that he and other members of the family would be targeted by criminal gangs, knowing that one of the most prominent and wealthy characters in Southampton had recently died.

44. Bill also admitted things apparently against his interest. He accepted that he did not agree with certain lines of cross examination that had been pursued by his counsel with the Claimant and he also said that he did not ever want to maintain a case that his father had dementia (a case that was not pursued in these proceedings but was mentioned in the caveat). He also admitted that he personally did not witness any pressure being exercised by the Claimant over the deceased. But he was pursuing a case of undue influence because of what he had learnt from others who had given evidence of what they saw had happened. The fact that Bill himself, living next door to the deceased and the Claimant, did not personally witness any undue pressure being applied by the Claimant on the deceased must undermine his case in such respect.

45. Bill was tremendously successful in his own right and was worth some £20 to £30 million by the time of the deceased's death. He was given a start by the deceased but there is no dispute that through his own efforts he had built an impressive business and property empire. He was in the same line of business as his father and in some respects they were competitors. Both factors, his wealth and competition with the deceased, have been turned against Bill and been used as a justification for Bill being excluded from the 2014 will. The deceased is said to have considered that Bill did not need to benefit from his estate because he was doing well enough for himself. The deceased is also said to have been extremely annoyed with Bill over certain transactions that took place before he made the 2014 will. Those are explored below.

46. There were uncomfortable parts of Bill's evidence. There were elements of racism and he, like most of the family, has engaged in drug use. He has not been immune from the family's use of violence but he nearly paid the ultimate price in 2002 as he was stabbed in the heart, had two strokes as a result and was left blind for some 3 months. He recovered thankfully but that must have impacted greatly on his life and the way he conducted himself.

47. I had a largely favourable impression of Bill and found it difficult to understand the basis for the deceased's removal of him from the 2014 will, even though the deceased was, of course, entitled to do that if he wanted.

(c) Lisa

48. The Claimant said that Lisa had nothing to gain from this action because she would actually lose a 6.67% share of the deceased's residuary estate if the Claimant succeeded in upholding the 2014 will. Accordingly the Claimant said that Lisa's evidence could be relied upon. However, nothing is as it seems in this case and both the past and current family dynamics are critical in shaping the evidence that was given. Lisa attended most of the trial, always sitting with the Claimant and they each seemed, somewhat ostentatiously, to be giving each other emotional support.

49. As noted above, Lisa did not know that the deceased was her father until it was revealed to her when she was 22 years old. The deceased had known that she was his daughter from when she was very young and they saw each other occasionally. The deceased was the owner of the property Lisa and her mother lived in. Lisa worked in the deceased's office for 6 months when his secretary was away on maternity leave but that did not really work out. Against the deceased's wishes, Lisa started working as a flight attendant for Virgin Airlines long haul out of Gatwick and Heathrow.

50. I got the impression that although Lisa saw her father fairly often, it was not a particularly close relationship. That may have been because of another falling out within the family. Until 2017, and apparently following a row about the purchase of a sofa, Lisa and the Claimant had no relationship at all, did not like each other and did not speak. Lisa would not go round to see her father if she knew that the Claimant would have been there. Significantly, at the time of both the 2012 and 2014 wills, they were not speaking. They were only reconciled in late 2017 when the deceased was admitted to hospital and Lisa rushed back from a working flight to St Lucia. Their reconciliation produced a total change in Lisa's apparent perception of the Claimant leading to her support for her in this case.

51. Lisa is a far quieter and less confident character than the Claimant. This was apparent from her performance in the witness box. She seemed content with her lot. She was probably frightened of the deceased as he could turn on people in a shot. She said in her witness statement that he could be "*vindictive and manipulative*". But that makes it curious that he did not tell Lisa that he was leaving her 20% of his residuary estate. She only found that out when the will was read after the deceased's funeral.

52. She was also frightened of the Claimant as she would not want to see her with her father in case an "*atmosphere*" was created. It is possible that that fear remains and that is the reason she is now supporting the Claimant. Her most important evidence for the Claimant is that she has claimed that Bill's partner, Louise Alford, had told her that the deceased had told Bill that he was out of his will but that Bill had just laughed this off. This is vehemently denied by both Bill and Ms Alford and it seems unlikely to me, particularly as Lisa admitted that Bill was shocked to find out the terms of the 2014 will. There is no corroboration of this evidence in any document or from any other person, and it is second-hand hearsay. Lisa has not convinced me that it is correct.

(d) Ryan

53. Ryan filed one witness statement. He has severe learning difficulties, dyslexia and type 1 diabetes. I was told before the start of the trial that because of his vulnerabilities, special arrangements would need to be made in terms of the appropriate style of questioning when he came to be cross-examined.

54. In the event, Ryan unfortunately did not last more than one question in cross examination which he did not seem to comprehend. After it had been asked twice, he said that he could not continue. He seemed to be in an agitated state, unable to concentrate on what was going on. I adjourned the sitting for a short while, during which time he left the court building and went home. Over the following few days, he was assessed by a Consultant Psychiatrist, Dr James Warner, who diagnosed him with generalised anxiety and panic disorder with associated secondary mild to moderate depression. Dr Warner concluded that he could not give evidence in court or remotely although he did have capacity to instruct solicitors in relation to the case.

55. It is accepted that, as Ryan was sworn in and had confirmed his witness statement, his witness statement had been admitted into evidence. His witness statement principally dealt with his relationship with the deceased, his grandfather, who he said he treated as his father, his actual father, Mark, being largely absent from his life. He also dealt with the difficulties he said he had with seeing the deceased because of the Claimant making

that hard to do. He was not involved, and knew nothing about, the 2014 will until after the deceased's death.

56. It certainly seems as though the deceased wanted to provide for Ryan. On 18 April 2012, the same day as the 2012 will was signed, the deceased had directed Bill to grant a 30 year lease of land on the North West Side of Woodlands Road, Netley Marsh (the **car boot sale land**) to the Claimant and Ryan, so that they could benefit from the rent and profits that were generated from the car boot sale that was held there every Sunday. In the 2012 will, the deceased left Ryan 10% of his residuary estate (not having left anything to Mark). And shortly after the 2014 will, the deceased set up the discretionary trust for Ryan's benefit that had been discussed with Mr Curnock along with the 2014 will. The Claimant said that Ryan was otherwise provided for, which may explain why the deceased removed him from the 2014 will. Ryan said it showed that the deceased had not fallen out with him at all and it was inexplicable that he would want suddenly to exclude his grandson from his will.

(e) Ria

57. Ria did give evidence and she turned out to be a confident young woman who had clear and fluent answers to the questions put to her. She has suffered trauma in her life – seeing her father beat up her mother in Spain when she was only 2½ years old was particularly horrific and there is evidence that the violence continued thereafter.

58. The deceased had originally built a house for Ryan and Ria to live in with their mother, Ms McKinnon. He called it Ria House. Ms McKinnon found it too big a house to cope with, so the deceased bought 2 Quantock Road for them to move into (and then put it into trust for Ryan). Between 2009 and 2011, the deceased and the Claimant lived at Ria House.

59. Like Ryan, Ria maintained that she saw the deceased a lot, nearly every day, and that he was very fond of her. She said that after the Claimant came back and started living with the deceased it became increasingly difficult to see the deceased. This is denied by the Claimant, but Ria felt real bitterness towards her aunt that she effectively "*robbed [her] of the last few years [she] could have had with [her] granddad.*" She claimed that the deceased had always told her that she and Ryan would be getting Mark's share of his estate and she could not believe that the deceased would have genuinely wanted to take her and Ryan out of his will, particularly as the 2012 will had them in and entitled to what might otherwise be considered to have been Mark's share.

60. In a sense, Ria's evidence about what the deceased intended to do is not particularly relevant to whether he actually knew the contents of the 2014 will. But it does highlight the fact that there appears to have been little that had changed between the 2012 will and the 2014 will to cause the deceased to remove his grandchildren from the will entirely.

(f) Mr Drew

61. Mr Drew shared a cramped office with the deceased for 30 years. Most of the deceased's telephone conversations were held on loudspeaker. One would have thought that Mr Drew's evidence about the deceased's literacy skills, his relationships with other family members, in particular the Claimant, and his financial dealings, both

personal and business, would be reliable. Furthermore he maintained that he was adopting a neutral stance, not favouring one side or the other.

62. There were however concerning parts of his evidence. He had insisted in his written evidence, repeated orally, that he was not involved in the deceased's personal financial affairs, including the preparation of his wills. It emerged during cross examination that he was so involved when the deceased was preparing an earlier will in 2005 through a firm of solicitors called Smith & Co. There is no copy of the 2005 will available but there is a will file that shows Mr Drew having attended various meetings with Smith & Co and during the course of which he had advised and dealt with correspondence. He was also partially involved in the preparation of the 2012 will, knowing that he had been appointed as an executor and the equal split of the deceased's residuary estate. Furthermore he attended a number of meetings with Mr Andrew Lines (the deceased's tax adviser) and the deceased, sometimes including the Claimant, at which there was detailed discussion about the deceased's tax mitigation and lifetime transactions to his children that would potentially save inheritance tax. Mr Drew was clearly much more involved than he was initially prepared to let on.

63. It is not disputed that Mr Drew was not involved in any of the December 2013 and January 2014 meetings concerning the 2014 will, although he was at the first meeting on 25 July 2013 when there was discussion about leaving the 2012 will the same in relation to the residuary estate. There may be an issue as to whether the later meetings were arranged on days when Mr Drew was not going to be in the office.

64. From the moment when it was clear that Bill was disputing the 2014 will, Mr Drew initially used the same solicitors as the Claimant, as they were the joint executors named in the 2014 will, and aligned himself with the Claimant in relation to asserting the validity of the 2014 will. Very early on, he met with Mr Lines and the Claimant in order to establish certain facts about the deceased and his testamentary intentions for the purpose of proving the validity of the 2014 will. He allowed his then solicitors to assert in correspondence on his behalf that he knew of no earlier will than the 2014 will, which he knew was incorrect and which he said, in unconvincing evidence, that he had immediately sought to correct. He also said that his then solicitors had mistakenly said that the deceased had asked him to be an executor in relation to both the 2012 and 2014 wills which was inconsistent with his evidence that he knew nothing of the 2014 will.

65. Mr Drew suggested for the first time in his oral evidence that 3 days before the deceased died he had held a board meeting to appoint the Claimant as a director of his main company, Rockstone Securities Limited. The appointment was filed at Companies House on 6 February 2019, 3 days after the deceased died. It is only a small incident relied upon by Bill to show what the Claimant was doing at that time, securing her position in the deceased's businesses. But Mr Drew never produced any board minute, despite having had plenty of opportunity to do so. That indicates that Mr Drew was prepared to say anything to support the Claimant's position. He also went along with the Claimant and Mr Curnock, as the trustees of the trust set up by the deceased for the benefit of Ryan, in evicting Ryan from his home that was held in the trust. Like the Claimant and Mr Curnock, Mr Drew blamed the deceased for that decision, but it does not reflect well on the sort of person Mr Drew is and was.

66. Mr Drew said that he had no financial interest in the deceased's estate and that he was looking to retire. He therefore did not intend to stay working with the Claimant.

67. Perhaps his most important evidence was in relation to the deceased's literacy skills, in respect of which he said that, although the deceased could not write or spell, he could still read complicated legal documents and would be able to pick out important clauses and discuss them. I find that difficult to accept. The only reason that I can see for the deceased to share a cramped office at such close quarters with Mr Drew for 30 years and holding all conversations on loudspeaker was so that Mr Drew could help him with reading and understanding documents. I make my findings below on the deceased's ability to read but I say at this stage that I am not prepared to accept Mr Drew's uncorroborated statement that the deceased was able to read legal documents, even ones of relative simplicity. I am afraid to say that I believe that Mr Drew has so aligned himself with the Claimant's case that he was prepared to overstate the deceased's ability to read.

(2) The Solicitors' evidence

(g) Mr Curnock

68. Mr Curnock's evidence was heard at the end of the trial after the Defendants' witnesses because he contracted Covid shortly before he was due to give evidence immediately after the Claimant. It was doubly unfortunate that he came to court on the morning of day 3 without having taken a Covid test, which led to the loss of the afternoon as the Court had to be deep cleaned. Fortunately he recovered in time to be able to give evidence on day 11.

69. I will deal below with the detailed chronology of events leading up to the 2014 will, in respect of which his evidence is crucial. The Claimant said that I should rely on his two attendance notes for the meeting on 11 December 2013 and his letter of 20 December 2013 as proof of the fact that the deceased specifically instructed Mr Curnock to prepare a will with the residuary estate split 80/20 between the Claimant and Lisa. The Defendants said that those documents could not be trusted as recording the deceased's wishes and instructions and Mr Curnock's evidence was "*so plainly dishonest, in so many respects*."

70. Mr Curnock had trained as a solicitor with a firm in Swansea, Wales. He joined CGM in 2010 and soon was promoted to head of the wills and probate department, taking over from Ms Scouller. He left CGM in 2015 to go to a firm in Essex, called Howard G Walker Solicitors. And he was a partner at Giles Wilson Solicitors in 2019 at the time the deceased died when questions were first being asked about the 2014 will. Surprisingly, a partial copy of the CGM will file had been forwarded to him after he left CGM in 2015, although the original of the 2014 will remained in CGM's safe. Mr Curnock's first witness statement is dated 2 December 2019 and it was prepared when he only had sight of the incomplete CGM will file. In particular, copies of emails passing between the Claimant and Mr Curnock were not in the version of the CGM will file he had and when they did emerge following applications for disclosure, Mr Curnock's witness statement was shown to be wrong in relation to when he first met the Claimant. I have referred above to the Claimant's evidence in respect of this. I consider that they have both sought to conceal the true extent of their relationship.

71. There is no dispute that following the making of the 2014 will, there were at least three property transactions by which the Claimant bought a property from executors who were using Mr Curnock as their solicitor. In other words, Mr Curnock was instructed to market and/or find a buyer for a property that was part of an estate and he arranged for the Claimant to purchase such property. There are issues around whether the purchases were thereby bought at an undervalue, with Mr Curnock favouring the Claimant over his client. When asked about this practice, Ms Scouller thought it most improper.

72. There was also a transaction prior to the 2014 will, in January/February 2013 in relation to 31 Rowan Close, Southampton (**Rowan Close**). This was a property that the deceased wanted the Claimant to buy, but in the event it was put into the Claimant's mother's name, Ms Bradshaw. Mr Curnock has denied any involvement in this transaction but the Defendants have adduced evidence from a Mr Anthony Hughes, who had introduced the vendor to the deceased and said that he attended a meeting at the deceased's house at which, as well as the deceased and the Claimant, there was present "*some ginger guy*" who looked "*official*" and was "*writing notes down*". Mr Hughes has since identified the "*ginger guy*" as Mr Curnock through an identification procedure carried out by an ex-police detective, Mr Gary Robson. Mr Curnock denied that he was there or that he had ever been to the deceased's house (in his oral evidence he bizarrely said that he would really liked to have visited the house because he "*was always curious as to the décor*"). He thought he had the perfect defence that he was in a full leg brace at the time as a result of an accident he sustained on 2 December 2012 and that this would have been both very obvious to anyone that saw him and that he could not have driven. However, his own photographs on facebook and his physiotherapist's letter of 18 February 2013 show that he was then wearing an off-the-shelf leg brace under his trousers. It also emerged that he had written in his notebook details of the purchase price for Rowan Close. He could not explain that in his evidence.

73. There is, in my view, far more to the relationship between the Claimant and Mr Curnock than either of them are letting on. The emails in December 2013, the number of text messages between them, and the evidence from Mr Riley that not only was the Claimant at the meeting on 23 December 2013 but also that there was a "*familiarity*" between the Claimant and Mr Curnock leads me to the conclusion that Mr Curnock has not been telling the truth about this. He accepted that it was inappropriate to be dealing with the primary beneficiary in relation to the making of a will to that effect; and it would certainly be inappropriate for such a person to attend a meeting in relation to such a will.

74. The manner by which Mr Curnock went about the preparation of the 2014 will was very strange. The deceased was probably the wealthiest client CGM had ever acted for, yet Mr Curnock insisted that because the deceased had negotiated a fixed fee of £140 plus VAT, he would not be able to provide a first class service. He compared the quality of service that he provided as akin to the quality of clothes at Primark. He also used that as his excuse for not attending the execution of the 2014 will on 7 January 2014, although this was flatly contradicted by Ms Scouller and Mr Riley who were both surprised that Mr Curnock had not bothered to turn up on that day.

75. But perhaps the most extraordinary thing that he did was to annotate with deletions and amendments the original signed and properly executed 2012 will while it was still the deceased's valid will. He said that he did this at the meeting on 25 July 2013 but I do

not think that can be correct because the amendments to the 2012 will were inconsistent with his own attendance note and also because that attendance note referred to Mr Drew making a copy of the 2012 will. If a copy was made of the 2012 will, there would be no reason to write on the original. Mr Curnock was at a loss to explain why he did that.

76. Mr Curnock had an annoying habit of buying time in the witness box by insisting on reading the whole of every document he was taken to. He also persistently tried to avoid answering the question by asking questions back either to counsel or the Court. He was a most unsatisfactory witness whose evidence cannot be tested by reference to his own attendance notes because those attendance notes are themselves under challenge. It is actually quite distressing to say that I cannot safely rely on the evidence from an officer of the court but I do not think he was giving truthful evidence about how he took instructions, prepared the 2014 will and the relationship between him and the Claimant.

(h) Ms Scouller

77. Ms Angela Scouller and Mr Mark Riley were both solicitors at CGM and on 7 January 2014 they were the two witnesses to the 2014 will.

78. The Claimant now puts Ms Scouller's evidence at the forefront of her case on knowledge and approval. Mr Dumont QC said that Ms Scouller was "*one of those witnesses who is obviously truthful and reliable.*" Ms Scouller is an experienced solicitor, a former senior partner of CGM and Mr Curnock's predecessor as head of the wills and probate department. In her time, as she said in her evidence, she had done thousands of wills.

79. Ms Scouller was very firm about the appropriate way for solicitors to conduct themselves in relation to the preparation and execution of wills. In particular she emphasised how important it was not to have beneficiaries, certainly primary beneficiaries, involved in the arrangements for the making of wills and for them not to be present at their execution. She would never have allowed this to happen, she said. In my view she was perhaps over dogmatic about this (Mr Dumont QC submitted that it was not unusual for beneficiaries to be involved in arranging meetings and even to be present at the signing of a will). As explained in more detail below, the attendance note for the meeting on 7 January 2014 which was drafted by Mr Riley indicated that the Claimant was present at the meeting, not only for the discussion of the trust, but also when the will was gone through and signed. Mr Riley said that the note was accurate and, if the Claimant had left the meeting, he would have recorded it.

80. Ms Scouller did not know anything about the 2014 will; she was asked at the last minute if she could accompany Mr Riley because Mr Curnock was suddenly not able to attend. Despite those circumstances and the fact that she has attended countless such meetings before and after this one, Ms Scouller claimed to have a clear recollection of that 20 minute meeting. She said that the Claimant was not there for the discussion and signing of the 2014 will and the attendance note should have recorded that. She also claimed to have remembered that Mr Riley read out "*the body of the will, the bit that we needed the client to understand*". Mr Riley had filed two witness statements, in one of which he said that he had read through the will and the other that Ms Scouller had read it through. The attendance note said: "*We discussed the Will and went through its contents*…" The evidence is therefore unclear as to whether the will was read; and if it

was, who read it and what was read of it. Both Ms Scouller and Mr Riley said that they did not know that the deceased had literacy issues.

81. I accept that Ms Scouller is an experienced, honest solicitor who was doing her best to assist the court. She was not happy to discover how Mr Curnock had gone about dealing with someone who could potentially have been a very lucrative client for CGM. I have no doubt that had she been preparing the 2014 will, she would have ensured that she got instructions only from the deceased and confirmed that he was very clear about what he was doing. But I find it hard to accept that Ms Scouller could have such a clear recollection of a short meeting with someone else's client over 5½ years later. She is certain as to what should have happened on the day and her insistence that she would never allow a beneficiary to be present for a will signing has I think influenced and shaped her recollection.

(i) Mr Riley

82. By contrast with Ms Scouller, Mr Riley was a very inexperienced lawyer, particularly in this area. He had previously practised in criminal law and had only joined CGM in December 2013, shortly before the events in question. He gave evidence remotely.

83. As noted above, he was in the uncomfortable position of having put in inconsistent witness statements as to who read the will on 7 January 2014. In his oral evidence he said he simply remembered there being a discussion about the will and suggested that he would only have been concerned with pointing out the changes that had been made to the will since the meeting on 23 December 2013. In re-examination, Mr Dumont QC tried to get out of Mr Riley that the most important part of the will was the gift of the residuary estate and that that would have been gone through. However, despite being led towards that, what Mr Riley significantly said was that: "*the important part was the residuary estate that we confirmed as still being the same*". So far as Mr Riley was concerned, he was unaware of the dramatic change from the 2012 will and presumably assumed that that provision had remained the same from any earlier will. There would have been no need to read it out.

84. As with Ms Scouller, I consider it safer to rely on the contemporaneous document, his attendance note of 7 January 2014, than the witnesses' apparent recollections. Again I think Mr Riley was genuinely and honestly trying to assist the court, but with limited actual recollection of the events. He had no idea that a beneficiary should not have been present at will discussions and execution, because no one had told him that this was inappropriate. The Claimant said that because of Mr Riley's inexperience, Ms Scouller's evidence should be preferred. But I think, inexperienced or not, neither could be expected to remember exactly what happened at the meeting and such recollection that they did have must be tested against the contemporaneous document.

85. Mr Riley also attended the 23 December 2013 meeting at which some changes to the draft will were made. This is another reason why the Claimant sought to diminish Mr Riley's evidence: he was clear in his evidence that the Claimant was there and there was a "*familiarity*" between her and Mr Curnock when they met at the meeting. I do not see why Mr Riley would be making that up.

(3) Other Main witnesses for the Claimant

(j) Patricia Bradshaw

86. Ms Bradshaw was the deceased's wife for 23 years. They split up because of his incessant womanising. Ms Bradshaw had little or no contact with the deceased thereafter but she did occasionally write him letters about a particular grievance of hers.

87. She is not an important witness, save perhaps in relation to literacy. She claimed the deceased could read perfectly well and that he read every day and she never had to read things out to him.

88. The only reason I refer to Ms Bradshaw is to indicate how this dispute has divided the family. Ms Bradshaw felt the need to say in her witness statement, repeated orally, that her grandchildren disgusted her because of the "*vile lies they have told about*" the Claimant "*who was nothing but a great auntie to them all*". The grandchildren she is referring to are: Ryan; Ria; and Felix; all of whom have given evidence against the Claimant. (Bill has two other children: Olivia from a previous relationship; and Max by Louise Alford. Neither of them have given evidence in these proceedings.)

89. Ms Bradshaw does not attack only her grandchildren. She has also laid into a number of Bill's witnesses including Ms Alford, Ms McKinnon, Ms McKinnon's partner, Mr Paul Osborne, Ms Aldridge and Ms Julie McCrory, who was the deceased's partner for many years. So firmly is she on her daughter's side in this litigation that anyone who has dared to give evidence for her son Bill, is telling grotesque untruths about the Claimant and the deceased. It is quite remarkable that she seemed incapable of criticising her son Mark for the way he had behaved in relation to Ms McKinnon and his children, Ryan and Ria. Ms Bradshaw exemplified the depressingly tribal approach to this dispute, without really advancing relevant evidence on the matters in issue. This was deeply unattractive evidence.

(k) Mark

90. Mark also is not an important witness in terms of relevance. He chose late on to support his sister, the Claimant, and he came over from Colombia to give evidence in person. That meant he was giving evidence against his own children, Ryan and Ria, and he made it perfectly clear that, like their grandmother, he hated them. He drafted his own witness statements and they give a fair reflection of how he seemed in the witness box: aggressive; unpleasant; and completely unremorseful about saying horrible things about his children and others.

91. When the violent assault on Ms McKinnon was put to him, he claimed that he could not remember anything that had happened because he had been on a 48 hour drink and drugs binge with Ms McKinnon and the first thing he knew was when he woke up in the Spanish police cell. I have seen the police reports of the incident. Mark was potentially going to be charged with attempted murder but the deceased persuaded Ms McKinnon not to press charges and Mark was able to leave Spain without going to trial. Even though Mark claimed not to remember what happened, he threw in an allegation that he had earlier found Ms McKinnon making out with one of the tour reps, as though that might justify what he did. He expressed no regrets at what he had done; nor that it happened in front of a 4 year old Ryan and 2½ year old Ria. He glibly said that he had

no convictions for violence. Furthermore he claimed that the real reason he left Ms McKinnon was because he had found the deceased in bed with her.

92. I have seen some attendance notes of a Ms Hannah Worricker, a solicitor at Irwin Mitchell, who was at one stage acting for Ryan. She had had some conversations with Mr Curnock in September 2019 concerning the operation of Ryan's trust. In those notes, she recorded Mr Curnock as saying that Mark lived in Colombia and was a drug lord. She went on to say that Mr Curnock told her that he was not someone who you would want to get on the wrong side of. Mr Curnock could only have got that information from the Claimant. Both denied saying any such thing and Mark denied that he was or is such a person. I have no doubt that Mr Curnock said these things to Ms Worricker and that this is the way Mark is perceived by his family.

93. The one potentially relevant piece of his evidence was his confirmation that around the time of both the 2012 and 2014 wills he had not been providing any maintenance monies to Ryan and Ria. He did not substantiate what his mother, Ms Bradshaw, had said about him leaving some money with her to be used when Ryan and Ria needed it. The fact that he was not maintaining his children at the time of the will would be a reason why the deceased would not have wanted to cut them out of his will. The Claimant had suggested that the deceased had found out in 2013 that Mark was providing for his children and so the deceased did not need to. But this must be untrue if Mark was not in fact providing for them.

(l) Andrew Lines

94. Mr Lines was a chartered tax advisor and he advised the deceased over the years, starting in the early 2000s when he was a tax partner at Smith and Williamson. The Claimant relied heavily on Mr Lines as a witness because of one line in an email of his dated 27 November 2015. That email recorded the main points discussed the previous day at a meeting attended by the deceased, Mr Drew and the Claimant. The sentence was this: "*Kevin has three children and two of his children are already financially catered for and Louise is going to be the primary beneficiary of Kevin's estate.*" This was said in the context of considering potentially exempt lifetime transfers to avoid inheritance tax. The Claimant says that this corroborates that the deceased knew and approved the contents of the 2014 will because he told Mr Lines and Mr Drew that the Claimant was the primary beneficiary under his will. Mr Lines said in his evidence that this is what he understood the deceased to have said at the meeting.

95. Mr Lines' first witness statement is dated 9 July 2019. It was the first one prepared for the Claimant, even before she had issued these proceedings. Mr Lines gave evidence that he had met the Claimant and Mr Drew in March 2019, shortly after the deceased's funeral, in a hotel in Southampton principally to discuss inheritance tax matters in relation to the estate. Mr Lines had been retained by the Claimant and Mr Drew to advise on such matters on behalf of the estate. It was at that meeting that Mr Lines claimed to have independently recollected his email of 27 November 2015 and what the deceased had told him at the meeting the day before. He said that he asked the Claimant and Mr Drew to find the email on the Rockstone server, as he did not have access to the BDO server. He had been a partner at BDO at the time but had since left to set up his own company. Having seen the email, Mr Lines then prepared his first witness statement, although oddly he did not refer to or exhibit the email.

96. Mr Lines said that his first witness statement was responding to certain questions put to him by the Claimant's solicitors. He therefore dealt with a potential allegation of undue influence by saying that nobody "*could pressurise Kevin to do anything he did not want to do*". He also dealt with the deceased's ability to read even though that allegation had not yet been made. He said the same as Mr Drew, that the deceased was a slow reader but could read, even though he then said in his oral evidence that he did not know if the deceased was actually reading any of the documents that he was looking at.

97. It is also relevant to point out that I heard evidence from Ms Karen Sennitt who was previously Mr Lines' professional colleague and personal partner and she said that Mr Lines had told her before attending a meeting with the deceased in the early 2000s that the deceased was illiterate. It stuck in her mind because this was the only illiterate client she had ever seen. (It is an incredible coincidence that Ms Sennitt ended up living next door to Ms McKinnon, which is how she came to give evidence.)

98. Despite apparently clearly remembering the meeting on 26 November 2015, Mr Lines said that this was the first time he had met the Claimant. However he had forgotten that he had earlier been in at least two meetings with the Claimant in 2013. He accepted that Mr Drew was present at every meeting he had with the deceased and that all communications were routed through Mr Drew.

99. I find it difficult to believe that Mr Lines, without any prompting from the Claimant or Mr Drew and without sight of the email, remembered a helpful reference to the Claimant being the "*primary beneficiary*". It seems as though, from a very early stage, when Mr Lines was consulted on behalf of the estate, he was really being taken on board to support the Claimant's case as to the validity of the 2014 will because they knew that there was likely to be an issue around whether the deceased knew its contents. It is odd that his first witness statement dealt with an undue influence and illiteracy case that had yet to be put. I will therefore interpret Mr Lines' email and his recollection of the meeting bearing in mind the above context for his evidence.

(4) Other Main Witnesses for the Defendants

(m) Adeline McKinnon

100. Ms McKinnon has been treated badly by the family. She endured the terrible violence of her partner, Mark, in Spain but was then persuaded not to press charges by the deceased, and actually got back together with Mark for a few more years, during which the physical abuse continued. She has had to read and listen to the attempted total character assassination by or on behalf of the Claimant, including by Mark and Ms Bradshaw. I felt that she dealt with all of that with remarkable fortitude and gave her evidence fluently and confidently.

101. Ms McKinnon had no real relationship with Bill or the deceased. Obviously she is keen to support her children, Ryan and Ria, in their challenge to the 2014 will. I take that into account in assessing the credibility of her evidence. She said that after she had gone along with the deceased's wishes in relation to pressing charges against Mark, he wanted to ensure that she and his grandchildren were well looked after. He was

obsessed with Ria and called the house that he built for them after her - Ria House. Until the Claimant returned to live with the deceased, he saw his grandchildren nearly every day. Because of Mark's absence, he was like a father to them. He felt sorry for Ryan with all his difficulties.

102. I can see that that makes sense and I see no reason not to accept Ms McKinnon's description of the relationship between the deceased and Ryan and Ria. He specifically provided for them in the 2012 will. On the Claimant's case, something changed between July and December 2013 such that the deceased then decided to cut them out of his will. But I cannot see that anything had actually changed as between the deceased and his grandchildren such as to cause him to remove them. Ryan had the trust, although this was used against him when they were evicted from their house, supposedly on the instructions of the deceased. But Ria was completely removed from the deceased's will, and that is inexplicable.

(n) Louise Alford

103. The Claimant has mounted a similarly nasty attack on Ms Alford, Bill's partner and the mother of his son, Max. Nevertheless when Ms Alford came to give evidence, she was hardly cross examined on her witness statements. While I accept that lots of trivial incidents are raised in the witness statements there was no challenge to Ms Alford's evidence that the relationship between Bill and the deceased never changed over time and that Bill had paid for the renovation of the annexe to the tune of £100,000 so that the deceased and the Claimant could move in there. She was not asked about the numerous examples she gave of the Claimant screaming at the deceased, Felix and her mother, Ms Bradshaw. Her evidence as to the deceased's illiteracy was also not challenged.

104. Ms Alford categorically denied that she had ever said to Lisa that the deceased had told Bill that he was out of the will and that Bill was not bothered and had laughed it off. Ms Alford was only asked about three other matters: whether she had refused to drive Felix to a party in the Claimant's car; whether she and the Claimant had had a polite disagreement about the employment of a carer for the deceased; and an issue about whether the boiler was working in the annexe when the deceased moved in. It was a feature of much of the cross examination of Bill's witnesses that the questions seemed more aimed at trying to establish that the Claimant was a kind, loving person against whom all the witnesses had unfairly turned.

105. In any event, I thought that Ms Alford dealt with the limited questioning confidently and directly. I believe her when she said that she was shocked to have heard the terms of the 2014 will and I accept her evidence that she did not say to Lisa what she is alleged to have said. That is because she was a credible witness in that respect and it fits with the facts that I do not believe that Bill would have just laughed something like that off and his and Ms Alford's shock on discovering the terms of the 2014 will. If the deceased had really said anything to Bill about his 2014 will, and I accept that it is perfectly possible, indeed likely, that the deceased would make clear his intentions in that respect and use it as leverage, that would have been a massive issue that Bill would have taken further and, in all likelihood, discussed with the Claimant as well as the deceased.

(o) Barry Malizia

106. Mr Barry Malizia first met the deceased in the late 1970s in relation to a potential property transaction. They became friends thereafter and for the next 40 years, met up very often, either in the office, at their homes or out at restaurants. I noticed that when the Claimant and Mr Drew were giving evidence and were asked something about Mr Malizia, they seemed very keen to emphasise that they did not see much of him and that they did not think he was as good a friend of the deceased as he was making out. I assume that this sensitivity was to try to minimise the importance of his evidence which they recognised could be damaging to the Claimant's case.

107. Having said that, Mr Malizia was not a particularly satisfactory witness. From very soon after he learned of the contents of the 2014 will, he has been on Bill's side, even attending the first meeting Bill had with his then solicitors, Wilsons, and filing three witness statements in wholehearted support of Bill's case. He clearly is as friendly with Bill as he was with the deceased. I think that has led to a certain amount of exaggeration in his evidence and he went too far in his attempt to portray the Claimant as nasty, greedy and controlling.

108. Mr Malizia was a chartered accountant and a partner at Deloittes in the 1970s and 1980s. He understandably took great exception to the Claimant's evidence that the deceased had described him as "*an old crook, an old has-been crook*". Mr Dumont QC sought to prove that Mr Malizia was indeed a crook by reference to a transaction with the deceased whereby he purchased a residential property from the deceased, which became Mr Malizia's home, and that the purchase price was misstated in order to effect a tax fraud. That coupled with the fact that Mr Malizia and his partner went into an individual voluntary arrangement in 2016, as a result of their inability to repay the loan they took out to purchase and refurbish the property, led the Claimant to submit that Mr Malizia was a "*crook*" and his evidence should not therefore be believed.

109. Mr Malizia was calm and measured in his evidence. But there was a lot of hearsay, supposition and opinion evidence in what he was saying, particularly about the sort of person the deceased was ("*lonely*" apparently), the lack of love in his life, whether he was a family man and whether he could have had a different personality in business to the domestic setting. There was far too much amateur psychology in this evidence, as I said during the closing submissions, and he should have confined his evidence to what he actually knew.

110. He insisted that the deceased always talked to him about looking after his "*blood*" and that he would never have disinherited his children and grandchildren, except for Mark, who knew that he had been completely disowned. In relation to the Claimant he alighted on one incident from before the 2014 will where the Claimant had allegedly prevented the deceased from going round to see Bill next door with him. He said it was shocking to him to see that the deceased could be so dominated by another person in his own home and that she could speak to him in such a demeaning way. This is one of the few incidents of alleged undue influence to precede the 2014 will and so relied on quite heavily by Bill. However, Mr Malizia's evidence does not really stand up to scrutiny, as he accepted that he did not discuss it with Bill afterwards; nor did he discuss it with the deceased on any of the many occasions when they met up, despite his alleged close relationship and the deceased's willingness to discuss things with Mr Malizia that he could not discuss with others, particularly family members.

111. Mr Malizia also gave evidence on the deceased's illiteracy, saying for instance that he had to read menus to him if they were out at a restaurant. But like all of Mr Malizia's evidence, I consider that he has somewhat overreached himself in terms of supporting Bill's case. I will be cautious about accepting certain parts of Mr Malizia's evidence if they cannot be corroborated by other known evidence.

(p) Dave White

112. Mr Dave White is in the unique position of having been a very close friend to both the Claimant, Bill and the deceased. He was almost part of the family and regarded them as sister, brother and father, respectively. The Claimant and Bill are godparents to his children. He went to prison for the incident in which Bill got stabbed; he said that he did that on the deceased's say so to avoid Bill going to prison.

113. There was a palpable sadness in his evidence. He did not want to get involved in the dispute; it was not even mentioned when Mr White and his wife Leona went on holiday with Bill and Ms Alford shortly after the deceased's funeral. I believe that Mr White was shocked by the 2014 will. But it was only during 2020 that he decided that he was going to support Bill and give evidence for him. The Claimant had certainly annoyed him by putting up his rent on his home which he had rented from the deceased at a reduced rate, but which was now in the control of the Claimant. But I do not think that that was what inspired him to come off the fence.

114. He frankly admitted that he was very close to Bill and that they have an ongoing business relationship too, with the vehicles that Mr White was selling coming largely from Bill's company, Vansco. He also explained the petrol station incident with the Claimant in a credible way, saying that he was not frightened of the Claimant at the time, but that he was frightened on behalf of his young family of what she and her husband Joe were capable of doing. Again he reasonably accepted that he had always got on well with Joe.

115. Various incidents involving the Claimant were gone through in his cross examination. He was visibly upset when it was put to him that if he had witnessed the abuse that he said the deceased was receiving from the Claimant he would surely have done something about it, if only to speak to Bill. I believe he was genuinely upset because he wished now in retrospect that he had done something but at the time he did not want to be the person who was telling on the Claimant and potentially causing division within the family. I think that is perfectly understandable from someone who was so friendly with the main protagonists in this case.

116. Mr White also gave evidence as to the deceased's poor literacy skills. That could well be slightly exaggerated to help Bill's case but my overall impression of Mr White's evidence is favourable and I feel I can largely rely on it, even though I must exercise some caution in relation to it, given his closeness to Bill.

(5) The remaining witnesses

117. The Claimant's other witnesses gave evidence as to the Claimant's character, her relationship with the deceased and/or about the deceased's alleged illiteracy. Most of

this evidence post-dated the 2014 will and was of tangential relevance. The incidents that they described cannot be proved one way or the other as there are no contemporaneous documents and the witnesses were not cross examined for long enough to assess their credibility. The witnesses included:

(1) The Claimant's two best friends: Ms Iman Prior; and Ms Amy Stone. Their evidence was largely irrelevant and tainted by their close friendship with the Claimant.

(2) Ms Melanie Sharma was the deceased's girlfriend between 2009 and 2011 and lived with the Claimant and the deceased at Ria House during that time. She gave evidence as to the deceased's literacy and, although she was not there, as to the auction where Bill allegedly bid against the deceased.

(3) Ms Anna Young was the deceased's secretary for 23 years. She agreed that the Claimant was now her "*boss*" but said she did not look at her that way. Her evidence was principally concerned with the deceased's literacy and she maintained that the deceased could read – she said she left him his post every day which he would read – and that he wrote notes the whole time. I found her evidence to be overly defensive and she was unable to explain certain documents put to her that suggested the deceased did need help with reading. She was in awe of the deceased because of the success he had.

(4) Mr James Hicks has a law degree, was the Company secretary of Rother Properties and seemed to be the deceased's and later the Claimant's fixer and enforcer. He was the person responsible for sending the nasty aggressive texts to Mr Ward in relation to his caravan on the deceased's land. In describing the deceased's literacy he was fond of using the phrase which he attributed to the deceased of "*two brains better than one*" and he used that to explain why the deceased wanted him to accompany him to the magistrates court. Mr Hicks gave tetchy and uncompromising answers when challenged in cross examination and was clearly proud to portray himself as willing to resort to violence if necessary.

(5) There were a few business associates of the deceased: Mr Peter Tourh; Mr Neil Morris; Mr Peter Ling; and Mr Russell Clarke. They knew how the deceased was in business; they did not know about his personal family life. A couple of them gave evidence on literacy, with Mr Tourh absurdly suggesting that the deceased used to do the crossword whenever they met in a café in Bournemouth. Even the Claimant accepted that the deceased, given his appalling spelling, could not do the crossword. Mr Clarke said that the deceased relied on Mr Drew to go through legal documents on his behalf.

(6) Mr Peter Bartlett gave evidence remotely from Spain. He was a personal friend of the deceased's but only in Spain. He was rather dismissive of the questions put to him but he gave evidence on what he saw of the deceased reading (as it turned out he had not seen the deceased reading a lease). He also gave evidence as to his meetings with Mr White in relation to giving evidence in these proceedings.

(7) There were two witness statements admitted into evidence without cross-examination: Dr Thomas Havelock (referred to above on the deceased's health);

and Mr William Buckler who gives immaterial evidence about his business dealings with the deceased.

118. Similarly the Defendant's other witnesses were a mix of family, friends and business associates:

(1) Ms Patricia Aldridge is one of the deceased's sisters (through his foster family); and Ms Jean McMahon was a friend of the deceased for 50 years. Both were confused about various things and both gave some evidence on literacy. For whatever reason they have sided with Bill and Ms Aldridge at least seemed to have taken against the Claimant.

(2) Ms Linda Lovett's husband, Malcolm, who died in March 2020, had been a friend of the deceased for over 50 years and she exhibited a letter from her husband dated 22 January 2020 about the deceased. Of course that is hearsay evidence and carries little weight. Mr Lovett said that the deceased could not read or write.

(3) Mr Felix Reeves gave evidence principally about his aunt's, the Claimant's, antics and character. They clearly had a close relationship until the deceased died but since then whatever each has said about the other have been dismissed as lies. Felix gave his evidence confidently and he was not put off by glaring from the Claimant. Nevertheless he was actually quite generous about her, admitting that she was there for him and they had fun together. But his contentious evidence concerned whether they went on frequent shoplifting trips (he was "*her partner in crime*"), a notorious weekend stay in London and whether he witnessed the Claimant throwing a glass at the deceased. I cannot determine whether these incidents happened or not. What I can say is that Felix was clearly very close to the deceased and it makes it unlikely, in my view, that the deceased would have wanted to cut Felix out of his will (by deleting the substitution clause).

(4) A number of business associates: Mr Ben Shiers (giving evidence remotely), an estate agent; Mr Michael Shaw (giving evidence remotely from Portugal) the managing director of a marble and granite company; Mr Sean Kerr, a self-employed vehicle trader; Mr Nathaniel Butt, a specialist car dealer; Mr Melvyn Utley, an auctioneer and Enforcement Agent; Mr Michael Lethbridge, an architect and surveying and planning consultant. They all gave evidence about the deceased's literacy and the sort of person he was. Mr Butt went further in particular in dealing with incidents involving the Claimant but I felt that he had exaggerated these and they were somewhat contrived. I do not place much reliance on his evidence.

(5) There were some old friends of the deceased: Mr Keith Spence; Mr Anthony Hughes; Mr Stephen Harbut; Mr Peter Bunting; and Mr Alexander Harfield. I deal with their evidence below in relation to the particular transactions or events that they might have been involved in. They also gave evidence on the deceased's literacy.

(6) Ms Penelope Gage was a friend of the deceased for over 30 years. They saw each other regularly and they shared a passion for horses, riding out together

many times. Towards the end of his life when he could no longer ride, the deceased would ride his quadbike instead. I found Ms Gage to be an engaging witness, quite firm and no nonsense. She clearly does not like the Claimant (the feeling is definitely mutual) and this may have influenced her evidence. But while I think there is truth in the way she described the Claimant and the control she exercised, I thought it revealing that she admitted that the deceased could not be bullied and was not frightened to say what he thought and felt.

(7) Ms Simone Saye was an old girlfriend of the deceased and a friend for 40 years. I thought she was a credible witness without any particular interest in the proceedings. She was clear that the deceased could not read or write.

(8) Mr James Alford is a beef farmer and agricultural contractor and his grandfather, from whom he inherited his business, was a good friend of the deceased. I found him a completely straightforward witness who only really gave evidence about what happened to the deceased's horses after he died and whether the Claimant was content for them to be sold for meat. This is of marginal relevance but shows the sort of person the Claimant is.

(9) Ms McKinnon's partner, Mr Paul Osborne and Mr White's wife, Ms Leona White gave evidence. This largely contained irrelevant incidents put forward to attack the Claimant's character.

(10) Ms Karen Sennitt is referred to above in the section dealing with Mr Lines. As a former business and personal partner of Mr Lines, she gives evidence on the deceased's literacy.

(11) Mr Michael Ward is referred to above in the section dealing with the Claimant's evidence. He lived in a caravan on the deceased's land that the Claimant arranged to burn.

119. Ms Julie McCrory knew the deceased for over 20 years and she worked with him and lived with him at various times. She put in a witness statement dated 27 April 2021 for Bill. Shortly before the trial I was informed of allegations of witness intimidation by or on behalf of the Claimant with the alleged intent of discouraging witnesses to give oral evidence. Ms McCrory said that she had had two windows in her house smashed at 11.20pm on 31 October 2021, having apparently received messages prior to then warning her to stay out of the case. She informed the Defendant's solicitors that she was not prepared to come to court to be cross examined.

120. The Claimant denied that this was anything to do with her and pointed to the fact that there were reports in the local newspaper of gangs rioting on Halloween in the Southampton area where Ms McCrory lived. Bill did not want to force Ms McCrory to attend if she was too frightened to do so but on behalf of Ryan his lawyers sought my permission to issue a witness summons (which was required as it was within 7 days of the trial – see CPR 34.3(2)(a)). On the first day of the trial, I gave that permission. However, Ms McCrory refused to attend and so the Defendants sought to put her witness statement in as hearsay.

121. There is no doubt that the witness statement is admissible but its weight has to be judged by reference to the factors set out in s.4 of the Civil Evidence Act 1995. Clearly Ms

McCrory has perceived there to be a threat if she were to attend to give evidence at the trial. That may well be an unfounded perception but she was even prepared to ignore the witness summons, which could have led to punishment. There have been a lot of disturbingly violent incidents in and around this case and I have little doubt that both sides are capable of using strongarm tactics should the need arise. But I cannot be satisfied that the Claimant was in fact responsible for any intimidation of Ms McCrory, even if she thought that it did come from the Claimant.

122. Accordingly, I have taken account of what Ms McCrory says in her witness statement but I can only properly accord it relatively little weight in the light of her decision not to attend and to defy the witness summons.

E. DETAILED FACTUAL NARRATIVE

123. With those general observations of the witness evidence I now turn to my findings on the facts. The narrative will focus on the background to and preparation of the 2014 will, as this is the most important factual area of dispute. As to the many incidents both pre- and post-2014 will that are said to be relevant to the undue influence issue, I will deal with some of the more important ones, bearing in mind that the alleged undue influence has to be shown to have been exercised in relation to the making of the 2014 will, and while continuing undue influence may have meant that the deceased did not make a new will, the later incidents can have only limited relevance to whether it was exercised before the will was made.

The Early 2000s

124. By the early 2000s, the deceased had set up Mark and Bill in business. Bill started with a van business in a form of partnership with a friend of the deceased, Mr John Finnegan (who had put in a witness statement on behalf of the Claimant but was not in the end called). The deceased had put up £20,000 to get them going and they rented premises from the deceased. After a few years, and having taken on larger premises also rented from the deceased, Bill bought out Mr Finnegan. He has gone on to make a great success of that business and he also expanded into property dealing, like his father. It is common ground that any further monies provided by the deceased to Bill were by way of loan and have been repaid. The deceased had also transferred to Bill a substantial property at 375 Woodlands Road, which he had built, with the car boot sale land adjacent to it.

125. As for Mark, I have described above the horrific violence that he inflicted on Ms McKinnon in Spain in 2001. Prior to this, the deceased had already transferred half of the shares in Rother Properties Limited, which was a subsidiary of Rockstone Group Limited, and held certain of the deceased's investment properties. The relationship between the deceased and Mark had deteriorated rapidly following the attack on Ms McKinnon and the further abuse that she suffered when she remained with him for another few years. The deceased forced Mark to move out and took upon himself the responsibility for looking after Ms McKinnon and Ryan and Ria. Mark turned on him, first by spreading a rumour that he had slept with Ms McKinnon, and secondly by trying to realise his half share in Rother Properties. Mark started proceedings against the deceased and his companies in an effort to force a buy-out of his shares or alternatively for Rother Properties to be put into liquidation. These proceedings were eventually

settled on 14 October 2008 by the payment to Mark of a total of £2.7 million for his shares in Rother Properties.

126. The fallout between Mark and the deceased had a knock-on effect on the Claimant. As referred to above, from 2004/5 to 2009, when the Claimant was 18 to 23 years old, the deceased had completely broken off any relationship with her. This is principally blamed on the Claimant siding with Mark against the deceased. The Claimant said that she did not think it was fair that the deceased did not believe Mark. In her witness statement, she said the deceased told her that she "*was getting "f***ing nothing" if [she] was siding with Mark, it was just what he was like*."

127. It is telling that even now the Claimant, and her mother, are not even prepared to condemn Mark's violence, presumably because they think his evidence is of value to them. For many people, such a dramatic rift with a parent at a relatively young age, causing a huge divide in the family, would be traumatic, but the Claimant seemed totally unfazed by it and just got on with her life. The deceased was also apparently unhappy with the sort of people that the Claimant was mixing with. Sadly, violence seems attracted to this family and I have described above the glassing incident that the Claimant suffered at a time when she was out of favour with her father. He was totally unsympathetic towards her and did not even try and see her.

128. By contrast, when Bill suffered the knife attack in 2002, the deceased was extremely worried and supportive. It took a long time for Bill to recover. I did not detect that there had been any noticeable change in the relationship between Bill and the deceased. From 2004 to 2009, the deceased only had a relationship with two of his children: Bill and Lisa. It was in that situation that the 2005 will was prepared.

129. During this period there was an incident relied upon by the Claimant as showing that the deceased had fallen out with Bill in relation to property transactions. There was an auction in 2004/2005 held at a hotel in London and one of the properties for sale was a site at Alderholt. Both Bill and the deceased were keen on the site. According to the Claimant, the deceased was furious that he found Bill bidding against him. Melanie Sharma, who was the deceased's girlfriend between 2009 and 2011, gave evidence to similar effect. Bill says that this is completely made up by the Claimant as both he and the deceased spoke about it beforehand and the deceased agreed that Bill should bid up to his limit of £1.5 million and then the deceased would take over. Bill is supported in this version of events by Mr Sean Kerr who had driven him to the auction. Mr Drew was also there. The deceased bought the site for around £2 million.

130. Even if it did happen in the way described by the Claimant, I do not think the deceased would have reacted against Bill in the way suggested. But I do not find the Claimant's version of events credible and the deceased would have been well aware of everyone who was bidding at the auction for this site. I imagine he would have been quite proud of his son that he was able to compete at almost the same level in the property market and that he seemed to have learnt a thing or two from his father. In any event, this was in 2004/2005 and it clearly was not a festering sore for the deceased because Bill was included in the 2012 will.

The 2005 Will

131. On 19 June 2003, before they had fallen out, the deceased had declared a trust of land at the rear of 39-45 Shirley High Street, Shirley, Southampton for the Claimant absolutely. But there were no further gifts from the deceased until after the reconciliation in 2009. The Claimant did not feature in the 2005 will.

132. The deceased appears to have engaged Smith & Co solicitors in relation to a number of property transactions and the drafting of a will. The Solicitors Regulation Authority intervened in the practice of Smith & Co and they have provided an incomplete set of papers recovered from Smith & Co in relation to the deceased. Unfortunately these papers do not include a copy of the will. There are a few draft clauses within the bundle showing certain specific properties being left to Bill, Lisa and Ms McKinnon. He wanted to leave properties to Ms McKinnon for the benefit of his grandchildren, Ryan and Ria, as Mark was being specifically left out of the will.

133. Perhaps the most interesting document in the bundle is a list of properties owned by the deceased which had been annotated in the deceased's very shaky handwriting, as confirmed by Mr Drew. Alongside each property, the deceased wrote down the name of the person to whom he wanted to leave the property. There were 5 or 6 that he wanted to leave to Lisa but he spelt his own daughter's name in the following ways: "*Leeca*"; "*Lesa*"; and "*Leca*". He never spelt it correctly. He also seemed to want to leave properties to his "*kids*" but he wrote down "*Kedes*". There was also one property against which he wrote (the copy is very faint, so this may not be accurate) "*comone*". This, I assume, was intended to be a reference to an old girlfriend of his called Simone Saye, who gave evidence that she heard that the deceased wanted to leave a property in Woolston to her, which she was embarrassed about. In my view, the deceased's inability to recognise appropriate letters and to write his own daughter's short name correctly are a significant indicator as to his extremely poor literacy skills. Dyslexia may have contributed too. Smith & Co's invoice referred to them "*specifically reading the Will over to you*".

134. Mr Drew denied in his evidence ever meeting Smith & Co in relation to the drafting of a will of the deceased. From letters dated 21 October 2005, 1 and 14 November 2005, 29 January 2006 and 22 June 2006 and an attendance note of 28 October 2005, it is perfectly clear that Mr Drew attended with the deceased at various meetings with Smith & Co in relation to his testamentary affairs. Furthermore all the correspondence was routed through or copied to Mr Drew. I do not know why Mr Drew felt the need to be so categoric that he was not involved in the deceased's personal financial affairs or wills when he appears to have been very much involved, save in respect of the 2014 will.

The Reconciliation

135. In 2008 or 2009, when the deceased was living at Ria House, the Claimant says that she went over one night, the deceased told her to come in and make a cup of tea and somehow they were reconciled. She was living with her boyfriend at the time in Bournemouth but she had a chair in a hairdresser's near to the deceased's office, so she saw him now and again. As ever, the Claimant's boyfriend was violent with her and when the deceased saw her with a black eye, he insisted that she leave the boyfriend and move in with him and his then girlfriend, Ms Sharma. She lived with them both in Ria House between 2009 and 2011.

136. In 2011, the deceased decided to buy a Spanish villa. He and the Claimant were considering moving to Spain permanently and the deceased decided that he wanted to put the villa in the Claimant's name. The Claimant says that the deceased said to her that all his other kids had received houses from him but that the Claimant had not yet received one. That shows an intention to treat his children equally, certainly so far as houses were concerned.

137. Once they had found the villa that they wanted to buy, they went to see a Spanish lawyer to finalise the transaction. The deceased told the lawyer that he wanted to put it in the Claimant's name but the lawyer said that they did not do such things in Spain and there may be a suspicion of money laundering if they did. The advice was to purchase the villa in the deceased's name but for him to make a Spanish will leaving the villa to the Claimant. This is what they did although the deceased was not happy with the advice. It was bought for €450,000, and is now thought to be worth approximately €700,000. Even though they originally intended to move to Spain, after about two weeks of living there, the deceased realised it was not for him, and they moved back to England. The Claimant thereafter rented the villa out and they would use it whenever there were spare weeks available.

138. Also in 2011, the deceased saw an opportunity of purchasing seven plots of land, covering some 33 acres, at Calmore which he thought had significant development potential. The deceased wanted the Claimant to buy the land and a price was agreed of £450,000. The deceased gave the Claimant the £450,000 to buy the land at Calmore but also wanted to take 10% of the land for himself, which is what happened. The Claimant has asserted that Bill was also interested in purchasing this land and tried to drive a wedge between the Claimant and the deceased which the deceased was allegedly not happy about. Whether that was so or not, it was well before the 2012 will and so clearly did not impact the deceased's thinking in relation to Bill. I should add that the deceased's instincts in relation to the Calmore land were realised when he received an offer of £8 million from Bovis Homes to purchase it.

139. The Claimant relies on another potential transaction in 2011 between the deceased and Bill in relation to the site where Bill operated his Redbridge van hire business. Bill had been renting the site from the deceased at a favourable rate of £500pm and the deceased wanted to sell the site to him for £500,000. However, the Claimant says that the deceased asked for an extra £50,000 and Bill was not prepared to pay it. Instead Bill decided to move to another site at Cadnam. Even the Claimant does not say that the deceased was annoyed at this, just that he thought that Bill was stupid not to acquire the site from him. In the event the deceased soon found a new tenant who was prepared to pay a very good rent of £50,000pa and the deceased was happy with that. I do not see that this episode has any relevance to the deceased's attitude to Bill and it was again well before the 2012 will.

140. Bill lived with his family in a substantial house at Rossiters Copse, Rossiters Lane, Woodlands, Southampton (**Rossiters Copse**). In around 2007 and 2008, he carried out substantial refurbishment works, including converting the garage into a three bedroom house. This was called the "**annexe**" but it is actually a separate house connected by an archway to the main house. The two houses are therefore extremely close together, although not physically attached, save by the archway. The deceased had apparently wanted to live there, next door to Bill, and Bill had carried out the refurbishment in accordance with what the deceased had wanted. Bill paid for it all.

141. The deceased and the Claimant then moved into the annexe in 2011 and lived there rent free. Bill paid all the utility bills and expenses and never asked the deceased or the Claimant to contribute. He said that he would not have disrespected his father by doing so. The deceased lived there until he died. The Claimant lived there until around 2016/2017, when she started staying at her mother's house more and more or with her boyfriend in London. She still kept her room in the annexe and never actually moved out, although when she got pregnant in around April 2018, she moved in with her then boyfriend, later husband, Joe in a house in Reading. They moved to Fareham in December 2018.

142. There were two other people living on and off in the annexe: Julie McCrory, the deceased's erstwhile girlfriend; and a friend called Chalkie. Chalkie has since died and Ms McCrory was too frightened to come to give evidence in court and did not respond to the witness summons that was issued against her.

The 2012 Will

143. The deceased had previously used CGM solicitors for property transactions. At the end of January 2012, Mr Curnock says that the deceased walked off the street, unannounced, into CGM's office in Hythe and asked how much they would charge for preparing a will. Mr Curnock came down and, following some haggling from the deceased, agreed a fixed fee of £125 plus VAT for doing a will. They arranged that he would come round to the deceased's office on 9 February 2012, to take instructions for the will.

144. The meeting took place on 9 February 2012 at the deceased's office. I have seen an undated handwritten attendance note of Mr Curnock and he confirmed that this was his note of the meeting. It has "*125*" written in the top right corner, which Mr Curnock said was his record of the agreed fee. The note does not state who attended the meeting but Mr Curnock referred to Mr Drew being there for a discussion about whether he would be happy to be the deceased's executor in the will. Mr Curnock thought that Mr Drew might have left after that discussion but he could not be sure. Mr Drew said in oral evidence that he could not remember being at the meeting or being asked whether he was happy to be an executor.

145. The attendance note does not refer to any earlier will and I assume the 2005 will was not mentioned by the deceased or Mr Drew. It does refer to a list of properties which Mr Curnock thought Mr Drew had passed to him. Mr Curnock could not remember whether the values were discussed. I assume that Mr Curnock had some idea about the size of the estate. He said in his evidence that he knew that the deceased was a multi-millionaire and he was possibly the wealthiest person he had ever met. He said he did not know that the deceased was illiterate.

146. There seems to have been a discussion at the meeting about Mark and the reasons why he was not being included by the deceased in his will. The deceased told Mr Curnock that Mark had already had his inheritance of a few million pounds. However the deceased was concerned about Mark's children, Ryan and Ria. The note records the deceased's instructions as follows:

> "Mark's children to be accounted for separately as Kevin feels that Mark may not leave any money, or if he does leave money, may not to his children. Mark has received lump sum in advance of any money he would otherwise inherit."

The note went on to record that 10% each of the residue would be held on trust for Ryan and Ria until they attained the age of 30. As to the 80% of residue, the note said:

> "80% to be divided equally between 3 named children; should any pred [presumably meaning predecease] leaving child/ren such child/ren inherit parent's share upon attaining age of 30 years."

147. On 22 February 2012, Mr Curnock wrote to the deceased enclosing a draft will for "*your perusal and consideration*". It is common ground that the draft will, had "*DRAFT*" in big letters as a watermark diagonally across all 3 pages of the will. It was this version that was eventually signed and witnessed on 18 April 2012.

148. As Mr Curnock did not know about the 2005 will, he did not know that the Claimant had been excluded from that will but was now back in the fold and being treated equally with Bill and Lisa. There were no specific property dispositions in the draft will and it appears that the deceased was leaving open the possibility of doing that in the future. Mr Curnock said in the letter:

- You want to consider whether you would like to put any specific gifts in your Will. You explained to me that you have very little by way of personal items as the majority of your personal items have been gifted to your children or grandchildren already.

- With regard to any personal items that you have not gifted prior to your death such as motor vehicles, any jewellery and items of personal adornment or any furniture for example, you leave entirely to your Trustees for them to dispose of as they see fit.

Then at the end of the letter, Mr Curnock said:

> "Please read through your Will carefully; if you wish to make any additions or alterations, then please do not hesitate to contact me at this office. However if you are happy with the content of the draft, please contact either myself or my secretary to arrange a mutually convenient appointment to execute your Will."

He also enclosed CGM's terms of business which he asked the deceased to sign and date and the bill for £150 incl. VAT.

149. The deceased did not come back to Mr Curnock with any additions or specific gifts that he wished to make, even though that appeared to be his intention when they met on 9 February 2012. Instead on 18 April 2012, he signed and executed the 2012 will in exactly the form sent to him on 22 February 2012, including with the "*DRAFT*" watermark on each page of the will. The 2012 will was witnessed by Anna Young, the deceased's secretary, and Ms McCrory, his then girlfriend who was also doing some work for him. Mr Drew thought he was present when the will was executed. He said that the deceased asked him to take a copy of the will and then return the original to Mr Curnock.

150. Mr Drew copied the will and admitted that he knew its contents. In the covering letter written by Mr Drew but sent on behalf of the deceased, it said in capitals:

> "I ENCLOSE THE DRAFT WILL SIGNED AN [sic] WITNESSED FOR YOU TO HOLD SO THAT THERE IS SOMETHING IN PLACE.
>
> I ALSO ENCLOSE A CHEQUE FOR YOUR FEES"

151. Mr Curnock responded by letter dated 20 April 2012 under the heading "**Your Will**":

> "Thank you for your letter dated 18th April 2012 with cheque attached. Please find enclosed this firm's receipted invoice for your records. I will hold the signed draft Will on my file in the case of an emergency but I do look forward to meeting you once again in order to make some additions and discuss the content generally.
>
> I look forward to hearing from you in due course."

152. There was however no follow up between Mr Curnock and the deceased until over a year later. Both clearly regarded the 2012 will as a holding will while the deceased worked out some more specific gifts that he wanted to make. Mr Curnock, despite recognising that the 2012 will was a valid will, even with "*DRAFT*" written all over it and it not having been engrossed, retained it on his file and did not put it in CGM's safe. He must have been expecting the discussion and amendments to happen soon but even though the 2012 will was in respect of CGM's wealthiest client, he did nothing to tidy up the will or to secure it.

153. In any event, the 2012 will was in straightforward terms, providing for an 80/20 split of the residue. Bill, Lisa and the Claimant together with Mr Drew were appointed as executors and the four of them were gifted the deceased's chattels. The gift of residue was in the following terms:

> "**3. Residue**
>
> I give all my estate both real and personal whatsoever and wheresoever situate including any property over which I may have a general power of appointment or disposition by Will to my Trustee ON TRUST to sell call in and convert the same into money with power to postpone such sale calling in and conversion thereof for so long as they shall in their absolute discretion think fit without being liable for loss TO HOLD the proceeds of such sale calling in and conversion and my ready monies (hereinafter called "my Residuary Estate") upon the following trusts:-
>
> 3.1 UPON TRUST to pay thereout my debts, funeral and testamentary expenses and subject thereto as to:
>
> 3.1.1 Ten per cent (10%) of my Residuary Estate to my grandson **MARK RYAN MCKINNON** upon trust until he attains the age of 30 years
>
> 3.1.2 Ten per cent (10%) of my Residuary Estate to my granddaughter **CHERIE ADELINE MCKINNON** upon trust until she attains the age of 30 years
>
> 3.1.3 the remaining eighty per cent (80%) of my Residuary Estate to be divided equally between my son **SIMON**, my daughter **LISA** and my daughter **LOUISE** absolutely.

> 3.2 If any of my son **SIMON**, my daughter **LISA** and or my daughter **LOUISE** shall die before me leaving a child or children (who shall attain the age of 30 years) such child or children shall take and if more than one in equal shares absolutely the share in my Residuary Estate which his, her or their parent would have taken had such parent survived me."

154. There followed some specific administrative powers that were granted to the Trustees. I do not believe that the deceased would have been bothered with trying to understand the legalese involved in clause 3 dealing with the residue and in clause 4 setting out the administrative powers. Knowing that he was very good with figures and that that was the way he looked at matters, I think he would have regarded the 2012 will as being simply a division of his estate in the proportions 80/20, with 80% being divided equally between his three children, Bill, Lisa and the Claimant and 20% to the children of his other son, his grandchildren, Ryan and Ria. He knew that he had not gifted any particular property to any of them. It was suggested by Mr Curnock in his evidence that the reason the deceased did not split the estate four ways, with 25% going to each of Bill, Lisa, the Claimant and Mark's children was because Mark had already had so much money that he decided to leave his children with slightly less than the other three.

155. In fact on the same day that the deceased executed the 2012 will, he had managed to persuade Bill to enter into a lease of the car boot sale land to the Claimant and Ryan. This obviously provided Ryan with a little bit more than his sister and shows a desire on the deceased's part to make sure that he was looked after financially. It also shows an intent to benefit the Claimant, but from the terms of the 2012 will, it is fairly clear that the deceased wished to treat his children equally both in relation to being executors and as to the residuary estate. The deceased still had the intention to make gifts of specific properties but he only seemed to get round to that in July 2013.

Period between the 2012 will and 25 July 2013 meeting

156. On 1 November 2012, for no apparent reason, the deceased transferred £850,000 to the Claimant. The Claimant could offer no explanation for that except that the deceased was very generous and had given her siblings money and property. It was also around this time that the Claimant says the deceased had told her to "*get serious now*" and give up her hairdressing and start working with him in the business. He allegedly told her that she would be dealing with Rother Properties from then on and that at some point he would be giving her the company.

157. On 26 February 2013, Rowan Close was transferred to Ms Bradshaw by Mr Lee Hutchison, as personal representative for his mother Mrs Mary Hutchison who died on 11 December 2012. The only relevance of this transaction is whether Mr Curnock was involved or not. This is the "*ginger guy*" transaction involving Mr Hughes that I have referred to in paragraph [72] above. The Claimant was certainly involved, as the deceased had suggested that she should buy it. In the event, the property was put into her mother's name. The stated purchase price was £70,000; it was too small for the deceased to take on which is why he offered it to the Claimant.

158. There is no dispute that Mr Hughes, who was a friend of both Mr Hutchison and the deceased, introduced them to each other for the purposes of discussing a potential deal in relation to Rowan Close. Another Southampton firm, Hannides & Co, were acting for Mr Hutchison on the probate and administration of his mother's estate. But the

deceased decided to use CGM for the purchase. In the "*Instructions to Act on Purchase*" form, the person completing it put at the top that this was referred to CGM by "*old client Kevin Reeves.*" The purchaser was put as Ms Bradshaw but the contact person, number and email was that of the Claimant. The Claimant and Mr Curnock have insisted that he was not involved and the purchase was handled by a conveyancing solicitor called Simon Hawkins.

159. Mr Hughes said he took Mr Hutchison to the deceased's house at Rossiters Copse to negotiate the deal and the Claimant and "*some ginger guy*" were also present. He said that the "*ginger guy was wearing a [sic] trousers and shirt and looked official and he was writing notes down*". He went on to say that the deal that was reached was for £35,000 in cash and £70,000 "*on the books*". Mr Hutchison was given £10,000 cash there and then. That sort of deal looks like one of the deceased's and his evidence in such respect has the ring of truth about it. For the purpose of completing the deal, Mr Hutchison told Mr Hughes that they had arranged for some solicitors in Swansea, called Dezrez Legal, to act for him on the sale. Mr Hutchison never met those solicitors. Mr Curnock had gone to university and trained in Swansea. When Mr Hutchison went back to get the rest of the cash, he was only given £15,000 and the Claimant had refused to pay any more because of the poor state of the drains.

160. The £70,000 official purchase price was paid through CGM's client account. I referred above to the note in Mr Curnock's notebook which said: *"£70,000 + rent H1 send to [redacted] Account*". This was against a date in the notebook of 1 February 2013. Mr Curnock could not explain why the exact purchase price for Rowan Close would feature in his notebook if he had no involvement in the transaction. I have also referred above to his misleading evidence as to whether he would have been able to travel to the deceased's house in February 2013 and whether his leg brace would have been visible.

161. I have to say that I have my doubts about the reliability of the identification evidence organised by Mr Robson, because I do not think it guaranteed that Mr Hughes had not previously seen a picture, whether on social media, or shown by Bill or his associates, prior to the identification process being carried out. Nor am I naïve enough not to suspect that Mr Hughes would have known that Bill was seeking to prove an earlier relationship between Mr Curnock and the Claimant.

162. Mr Dumont QC submitted that I can dismiss Mr Hughes' evidence because he has drug smuggling convictions and is generally unreliable. But, as I have said above, there are parts of Mr Hughes' evidence that the Claimant has accepted, such as the fact that he introduced the deal, and there are other parts that have credibility, such as the nature of the deal that was agreed. As will become apparent, the episode fits with the tone and nature of the communications between the Claimant and Mr Curnock preceding the preparation of the 2014 will which indicate both that the Claimant and Mr Curnock had previously met and knew each other quite well by then, as well as the suggestion that Mr Curnock had already been to the deceased's house. Furthermore, the Claimant and Mr Curnock have, in my judgment, attempted to conceal the full extent of their relationship and I think that this is a further example of that.

163. I therefore find that, on the balance of probabilities, Mr Curnock was involved in the Rowan Close transaction in terms of setting it up and he was at the deceased's house for the meeting between Mr Hutchison and the deceased and the Claimant so as to reach the deal.

164. On 12 March 2013 there was a meeting between the deceased and Mr Lines. Also present were Mr Drew, the Claimant and Mr Lines' assistant Mr Andy Nash. The meeting seems to have been about the Claimant moving permanently to Spain and how she could become non-resident in the UK for tax purposes. The note of this meeting recorded that the Claimant "*is a self-employed hairdresser and is planning to move to Spain before the end of the 2012/13 tax year*." Her move did not happen but that statement does not sit comfortably with the Claimant's evidence that she was, at that time, being groomed to take over Rother Properties and her father's businesses.

165. In or around April 2013, the deceased opened an account for the Claimant with Redmayne Bentley, stockbrokers, and he transferred certain investments to the account. By December 2013, those investments were worth some £310,000. Taking into account all the other gifts from the deceased as explained above, the Claimant accepted that by the time of the 2014 will, she had received approximately £2 million from the deceased, considerably more than Bill or Lisa had ever received. That, in my view, is important context for considering the respective justifications for the dramatic change in the deceased's alleged testamentary intentions.

166. Another of the property transactions that the Claimant says the deceased was annoyed with Bill about concerned the paddock adjoining Rossiters Copse, which was owned by Bill. This really is a storm in a tea cup, whipped up by the Claimant being upset that she received a gift of £45,000 from Bill, rather than the £50,000 she thought she was getting. I think it says more about the sort of person the Claimant is than about the relationship between Bill and the deceased. Furthermore, it is fairly clear that the Claimant has got the figures completely wrong where she describes this in her witness statement.

167. What happened was that Bill had agreed to sell the paddock to his neighbours for £175,000. The deceased said he knew someone else, a Mr Robbie Williams, who was willing to pay £225,000 for the paddock. The deceased asked if Bill could give the Claimant the extra £50,000 that he had negotiated on the deal. Bill said that he went to see Mr Drew to sort out the paperwork and he was told that for tax purposes it was necessary for the Claimant to have a percentage of the land and Mr Drew suggested 20%. 20% of £225,000 is £45,000 so Bill instructed his solicitors to send her "*20 percent £45,000*" and they did this on 10 July 2013. The Claimant was upset that she got £5,000 less than she was expecting but Bill's evidence was that the deceased was entirely happy with the outcome and the deceased said that she should be "*happy with the £45K for doing f*** all*".

168. The Claimant's evidence is that the deceased was very annoyed with Bill, apparently telling him "*that £5K has cost you big time*" and "*paddle your own f***ing canoe, me and you are done. You would rip her off £5k*". That strikes me as wholly contrived and convenient but bearing no relation to reality. This was a gift to the Claimant which she was not otherwise entitled to. In her desperation to find some evidence upon which to found a disagreement serious enough to lead to the deceased cutting Bill out of his will entirely, she has come up with this trivial example, which therefore undermines her case. In any event, this took place before the meeting on 25 July 2013 when the deceased made it clear that he did not want to cut Bill out of his will.

25 July 2013 meeting

169. On 24 July 2013, there was another meeting between Mr Lines, the deceased, Mr Drew, the Claimant and Mr Nash. The attendance note for this meeting is dated 25 July 2013 but there is an email from the Claimant to Mr Lines dated 24 July 2013 in which she says: "*Following are [sic] meeting today I attach the email the Solicator [sic] in Spain has sent*." That email was headed "*Inheritance & company*" and concerned whether the Spanish villa should be moved into a company and whether there would be tax consequences of doing so. This was something that concerned the Claimant and with which she was very much involved.

170. The main purpose of the meeting was to discuss the most tax efficient way of applying the deceased's offshore funds, including considering the implications of the Claimant and/or the deceased becoming non-resident in the UK. There was also a substantial discussion on inheritance tax and the advantage of making potentially exempt lifetime transfers to the deceased's children. It was explained to the deceased, with the Claimant and Mr Drew present, that given he had an estimated net worth at that time of £40 million, his estate could be facing an inheritance tax bill on death of around £16 million. There did not seem to be any distinction being made in relation to the deceased's children but it must have been obvious that, given the state of the deceased's health, there was a certain urgency in effecting some lifetime transfers in order to try to benefit from the 7 year rule.

171. That is what I believe the meeting on 25 July 2013 with Mr Curnock was principally about. Mr Curnock said that the deceased got back in touch with him to make the appointment, although I think it is unlikely that the deceased did so personally. From the signing of the "*emergency*" 2012 will with "*DRAFT*" watermark all over it, there was still outstanding the question of specific gifts of property to the deceased's children. I believe that the meeting with Mr Lines had hastened the question of whether the deceased ought to be making lifetime gifts as well, so as to avoid inheritance tax.

172. The meeting was attended by the deceased, Mr Curnock and Mr Drew. The Claimant was not there. This is the only meeting with the deceased where Mr Curnock actually typed up an attendance note. Both he and Mr Drew confirmed in their evidence that it is an accurate note of the meeting. It is important to set it out in full, with my underlining added:

> "I met with Kevin Reeves in his office with Clayton Drew also present
>
> We collectively discussed the amount of properties held by Kevin and I told him that last time when we made the Will he provided me with a list. Clayton photocopied the list and we discussed the fact that Kevin wanted to gift a number of the properties to his children and grandchildren and had even considered gifting them the properties during their lifetime. The problem is that the grandchildren are under the age of 18 so it would be needed to be held for them in trust until they attain 18.
>
> The big problem would be that any transfers to the grandchildren during his lifetime would attract Capital Gains Tax liability and then obviously if he died within the 7 years then he would be double taxed on it essentially. We discussed a number of avenues that he could go down with trust instruments and making transfers up to the PET rate of £325,000 during his lifetime.

> He seemed to be a bit disappointed that he had not thought about doing this 1 ½ years ago when I was first with him as I reminded him that I had advised him the sooner he does it the better it will be because the clock will be ticking with the 7 years.
>
> Clayton then photocopied the current Will that was signed despite being marked as a draft and said that they would both discuss it with the children and come up with a list of properties to be gifted to individual children and then any remaining properties would be left by residue and the residuary estate would be divided probably the same way."

173. The first three paragraphs are all about lifetime transfers to save inheritance tax. The deceased was thinking about such transfers to his children and grandchildren. No one was specifically mentioned or singled out as the intended recipient of a greater share than anyone else. There was no sign of any discontent on the part of the deceased in relation to Bill, Ryan, Ria or indeed Lisa. As the last line makes clear, his testamentary intentions in relation to his residuary estate remained at that stage the same as in the 2012 will, namely the 80/20 split, with the 80% being shared equally between Bill, Lisa and the Claimant. Nothing had changed as at 25 July 2013 in relation to the deceased's testamentary intentions and there is no sign whatsoever of the dramatic shift that was said to come just over 4 months later. Mr Curnock agreed in cross examination that he was not taking will instructions at the meeting.

174. Significantly, the note referred to Mr Drew taking a copy of the 2012 will. It beggars belief that he would do so and then Mr Curnock would write all over the original and still valid 2012 will at that meeting. Yet that is what Mr Curnock said he did. Furthermore, if he did actually do that at this meeting, it would have been recorded in the attendance note (which has been accepted to be accurate) and he would, contrary to his oral evidence, have been taking will instructions.

175. The annotations to the original 2012 will made by Mr Curnock, which he said were made at the meeting, were as follows:

(1) He deleted Bill and Lisa as named executors and wrote in manuscript on the side "*Remove Land Appointment Act (duty consult)*";

(2) At cl. 3.1.1, the gift of 10% of the residue to Ryan, he wrote at the side "*keep in*";

(3) At cl. 3.1.2, the gift of 10% of the residue to Ria, this had a line through it;

(4) Cl.3.2, the grandchildren substitution provision in the event that their parent died before the deceased, this had a line through it; by the side, Mr Curnock wrote – "*take all grandchildren out*."

176. Quite apart from these annotations being totally inconsistent with the terms of the attendance note, they make no sense whatsoever and do not disclose a coherent testamentary intention on the part of the deceased, if they truly came from the deceased. Ryan was staying in, as were Bill and Lisa, although they were being removed as executors. Only Ria was being singled out to be removed but for no apparent reason. And the removal of the substitution provision does not remove all the grandchildren, as

Mr Curnock's manuscript note suggests, because Ryan remained in. The logic is confused in relation to the substitution provision because it does not take the grandchildren out as such, it would only penalise the children of a parent who had died, which is probably the opposite of what a grandparent such as the deceased would have intended to do. It does not fit with the deceased's alleged rationale of making his children provide for their own children.

177. Mr Curnock attempted to explain the annotations in his witness statement thus:

> "I brought with me the signed 'DRAFT' will to the meeting and I wrote on it the amendments directly on to it as we discussed Kevin's wishes. I had not given much thought to it being a valid Will, just an emergency document I had kept on the file, and as I didn't have a spare copy to hand, I just wrote on the document in front of me. This was instead of my usual handwritten attendance note, but I then dictated an attendance note, which can be seen on the Will file dated 25 July 2013. The Deceased instructed me to remove all grandchildren as beneficiaries which is why Ryan and Ria were removed from the will, and you can see those instructions from the 25 July 2013 meeting where I have handwritten on the will marked 'DRAFT'. The Deceased never mentioned Simon's children to me. He did not provide any reason for altering Lisa's share of the residue. During this meeting we also discussed trusts and estate planning as reflected in the attendance note."

178. Quite apart from the extraordinary approach of the then head of CGM's probate department that this discloses – writing on an original valid will and not recording such annotations in the attendance note typed after the event - even Mr Curnock realised that this explanation did not really stack up. He attempted a correction in his evidence in chief as follows, referring to this paragraph in his witness statement:

> "I say that Ryan and Ria were removed from the will. Whilst they were removed, they were removed as beneficiaries, crossed out at the bottom of the residuary clause, removed as beneficiaries if any of the children had predeceased Mr Reeves. I did not make that clear there, and then I also refer in that meeting to Ryan and Ria being removed and, in fact, Ryan was not removed in that meeting, he was only removed in the December meeting, on 11th December. I recall that from papers that I had seen since I have drafted this statement. The 11th December was when Kevin had decided to set up a trust, so Ryan was taken out at that point."

179. However this makes no sense either. Ryan and Ria did not come within the substitution clause at all because their father, Mark, is not part of the will and not part of clause 3.2. So "*taking all the grandchildren out*" by removing the substitution clause did not actually take them out because Ryan and Ria were never within that clause. Furthermore, and as recognised by Mr Curnock, there is no credible explanation for removing Ria but not Ryan. Mr Curnock could not explain why the deceased would have decided this on 25 July 2013.

180. I am most concerned about Mr Curnock's evidence in relation to this. There is no way that these annotations to the 2012 will were made at the meeting on 25 July 2013 for the reasons set out above and in particular the lack of any reference in the attendance note to any will instructions being given by the deceased and no indication from the terms of the note that the deceased was contemplating, let alone giving instructions for, the removal of Bill and Lisa as executors and the removal of Ria and all the

grandchildren, except Ryan. If he truly did annotate the original 2012 will at the meeting, Mr Curnock would have been bound to follow up very quickly to ensure that a new will was drafted and executed. He could not safely have left a defaced original will with a "*DRAFT*" watermark for any period of time and certainly not in respect of such a valuable estate. The fact that he did not make any such follow-up indicates that the instructions and annotations were not made at that meeting.

181. I believe that Mr Curnock has invented this evidence to try to make it look as though the deceased was thinking about fundamentally altering his will at an earlier stage. In an effort to justify the removal of Ryan and Ria from the 2012 will, Mr Curnock (or the Claimant) must have thought that it would look better if the deceased took out all his grandchildren as though this was part of some change of approach as to who should inherit from his will. But Mr Curnock's typed attendance note cannot sit with the annotations having been made at the meeting; nor can the lack of follow-up. I disbelieve his evidence about this and this is one of the main reasons why I cannot rely on either his oral evidence or his written contemporaneous documents that are so important to the Claimant's case.

182. In my view, there were no instructions given by the deceased in relation to changes to the 2012 will at the meeting on 25 July 2013. The annotations to the original 2012 will were placed on it at a later time, probably at some point in December 2013.

183. What was agreed at the meeting, as referred to in the last paragraph of Mr Curnock's note, was to consider reasonably urgently making lifetime gifts of properties to save inheritance tax. The note recorded that the deceased and Mr Drew would "*both discuss it with the children and come up with a list of properties to be gifted to individual children*". Mr Drew denied that he would have been involved in such discussions but he had already accepted that the note was accurate. It certainly shows that Mr Drew was involved in the deceased's personal financial affairs. It also shows that they were focused on specific gifts of properties to Bill, Lisa and the Claimant and I believe that that remained the deceased's focus when he came to consider amendments to his will in December 2013.

Land near Rossiters Copse

184. There was another property transaction that the Claimant says the deceased was "*furious*" with Bill about. This concerned five acres of land at the end of Bill's road, opposite Mr Alexander Harfield's land. The land was up for sale in September 2013 and Bill and the deceased decided that they would like to buy it. As with the other land near Rossiters Copse, the deceased wanted his share to go to the Claimant. However, this land was owned by a radio station and any purchase of it would be subject to VAT. The guide price for the land was £65,000 but the deceased agreed to pay £110,000 but inclusive of VAT. The deceased was always looking to save tax and because Bill was registered for VAT, whereas he and the Claimant were not, he decided that it would be best to put the land in Bill's sole name, in order to claim back the VAT.

185. Mr Harfield gave evidence about this transaction and he was transparently honest. Mr Harfield was interested in renting the land to graze his horses as he could no longer use another field for that purpose. He knew that the land had to go to Bill to reclaim the VAT as the deceased wanted to save the "*rent*" on it; he explained that when the deceased used the word "*rent*" he meant VAT. The deceased offered to let the land to

Mr Harfield for £160pm which he agreed to and the rent was paid to Bill, even though sometimes the deceased would collect it.

186. Like the other land, this seems to me more about the Claimant being upset that she did not get something from the deceased or Bill, than about the deceased being annoyed with Bill. Ms Penelope Gage also gave evidence about a conversation she heard on the loudspeaker in the deceased's office in which the Claimant was screaming and shouting at the deceased about Bill doing her out of £50,000 as part of the land near Bill's house. The deceased rang Bill and seemed happy with the situation and was not cross with him. In fact the deal was arranged in this way by the deceased so there would be no reason for him to be unhappy about it.

187. The Claimant also tried to suggest that this was effectively a VAT fraud as Bill was taking advantage of his VAT registration to claim it back when it was bought for his personal use. I do not think that takes the Claimant anywhere, not only because the deceased organised the deal but also the fact that Bill rented the land out to Mr Harfield indicates that it was bought for business purposes. In any event, I do not think this could have had any impact on the deceased's decisions about his will or caused him to change his mind about whether Bill should inherit from him.

Arranging the 11 December 2013 meeting

188. When Mr Curnock prepared his first witness statement he had only seen the incomplete will file that had been forwarded to him after he left CGM. He had the practice of printing hard copies of emails sent and received in relation to a client and placing them on the file. When the fuller CGM will file was later obtained, this contained some of such emails and they showed how the Claimant and Mr Curnock interacted before the meeting on 11 December 2013. It was Mr Curnock's position in his first witness statement that he had not met the Claimant until after the 2014 will was executed. That was shown to be incorrect because one of those emails showed that they had indeed met briefly on 11 December 2013. But the emails indicated quite a bit more than that too. Unfortunately, it appears that all the emails between the Claimant and Mr Curnock are still unavailable; the parties have not been able to find them on either CGM's or the Claimant's internet server and so I am left with an incomplete set.

189. In explaining the long gap between the meetings Mr Curnock said in his witness statement as follows:

> "Once again, a long period of months elapsed until I met with the Deceased at his office once again (which was likely arranged via Jayne), on 11 December 2013; I had with me the amended draft and made a handwritten note; appended. The long period between meetings lapsed because the Deceased was a busy man and I did not think it was necessary to chase him. I cannot recall whether Clayton attended this meeting, but Louise certainly did not. Kevin just wanted to discuss the Will amendments at this meeting, which is why some of the points from our previous meetings were not discussed…"

So Mr Curnock is suggesting that the annotations marked up on the original 2012 will were with him at the meeting. However, later in the same paragraph he said this:

> "I made notes of the changes, specifically that he only wanted Clayton and Louise as executors, with the choice to freely appoint any other executors without consultation…he did not mention grandchildren in this meeting. He had previously instructed to take them out of the Will (25 July 2013 meeting). He also confirmed that he wanted to set up a discretionary settlement, but agreed we could discuss this in another meeting and I would send him a precedent to look at."

190. On Mr Curnock's story, however, the instruction in relation to the executors had already been given on 25 July 2013 as reflected in the annotations on the 2012 will. Also, it cannot be right that the grandchildren had not been mentioned as the annotations only took Ria out, not Ryan, and Mr Curnock's evidence in chief said that this happened at the 11 December 2013 meeting when the deceased decided to set up the trust for Ryan's benefit. All of this confirms that the annotations could not have been made on 25 July 2013; nor, on the terms of the attendance note, if it is to be believed, could the annotations have been made on 11 December 2013. It is quite frankly a mystery as to when and why they were made and particularly why he did so on the original of the 2012 will.

191. Mr Curnock's and the Claimant's problems in relation to their version of events are compounded by the emails between them that have since come to light. There was a thread of emails between them in the period 28 November 2013 and 9 December 2013 in relation to setting up the meeting on 11 December 2013. The earliest email in the thread is at the bottom of the two page print out and it is clearly not the complete email. Furthermore, I believe that there may well have been earlier emails or communications between them which, for whatever reason, are unfortunately not now available. Mr Curnock thought there were other emails that have not been disclosed.

192. The 28 November 2013 email was sent at 9:52 by the Claimant from her personal email address, not the Rockstone address used by Mr Drew and the deceased. This was named after the Spanish villa and was "villaloubella@outlook.com". Under the subject line "*Patrick reeves (Kevin)*", she wrote:

> "Hello dan
>
> Good morning
>
> How are you fixed next week for an app with my dad? What day is good for you if your [sic] available?"

That was where the copy email abruptly ends. The Claimant normally signs off with her name, which is why it looks incomplete. But the tone is friendly and suggests familiarity – "*dan*". She does not mention what the meeting is about. That is presumably because she had already told Mr Curnock that it was about amendments to the deceased's will.

193. However, Mr Curnock significantly admitted in cross examination that he had not spoken to the deceased on the telephone nor communicated with him by any other means since the meeting on 25 July 2013. (The Claimant had speculated in her oral evidence that she might have been introduced to Mr Curnock by the deceased over the telephone, but Mr Curnock did not confirm this.) Therefore, Mr Curnock did not have express authority from the deceased to communicate with someone who he knew was

a major beneficiary under the deceased's existing will. On his and the Claimant's evidence, they had not met by this time and presumably they would say that there had been no other communication until she had tried to set up a meeting concerning her father's will. The unlikelihood of this provides further confirmation, in my view, that Mr Curnock and the Claimant had met at the deceased's house in relation to the Rowan Close purchase and that there had been communication between them before the 28 November 2013 email.

194. The Claimant said she was acting merely as a "*scribe*" for the deceased and that all communications with Mr Curnock in this respect were on behalf of him. Mr Curnock said that it was like he was dealing with a secretary. In answer to a question from Mr Darton QC as to why he had not sought authority direct from the deceased, by telephone at least, Mr Curnock responded as follows:

> "I would, if I could recall why I did not take those steps, but I assume it is because I had an e-mail and responded to the e-mail. The e-mail says, "How are you fixed for an appointment with my dad?" You know, it would be like receiving be like receiving an e-mail from your secretary, Mr. Darton, about setting up a meeting. I would simply respond to that e-mail. I would not then assume that she did not have your authority to write that e-mail and contact you directly particularly as no doubt you are very busy. I would just respond to your secretary and say, "These are the dates that I would be available."

195. Apart from the sarcastic nature of this response, Mr Curnock ignores the point that the Claimant is a substantial beneficiary of the deceased's current will, so hardly akin to a secretary making an appointment. If there had truly been no prior contact between them, Mr Curnock was assuming that such a beneficiary had authority to communicate with him and that she was telling the truth. He agreed that a beneficiary or potential beneficiary should not be involved in a will-making process. The fact that he did not take the basic and obvious step of checking with the deceased as to whether the Claimant did have such authority indicates that, for some reason, he was comfortable dealing with the Claimant about her father's will from which she stood to receive many millions of pounds. When he found out that the deceased apparently wanted to increase her share of residue and that was the purpose of the meeting, his suspicions should have been aroused, but were not.

196. At 10:50 on the same day, Mr Curnock replied by email sent only to the Claimant's villaloubella address as follows:

> "Morning
>
> I can do most days next week. Maybe it would be easier to send me over a few dates and times that are convenient for dad and I will check it against my diary. Ideally, around the 4.00 mark would suit me best.
>
> Kind regards,
>
> Dan"

197. This is a friendly conversation between individuals who seem to know each other. They refer to "*Dan*" and "*dad*". There is again no reference in the email as to what the

meeting is about but Mr Curnock must have known and he could only have known this from the Claimant. It may be that he thought it was to complete what they had started to discuss on 25 July 2013 in relation to gifts of specific properties. There certainly seems to be no suggestion that the deceased wanted radically to change the terms of his will.

198. It looked like they were trying to set up the meeting for the week of 2 December 2013. However this did not happen. There is no evidence of any communication between the Claimant and Mr Curnock during that week. The next email in the thread that is available was sent by the Claimant on Saturday 7 December 2013 at 16:13. She wrote:

> "hi dan
>
> dad was wondering can we make an app for Wednesday afternoon?
>
> and if he wants to put something in trust will a solicitor also have to be present or can you do that for him?
>
> have a good weekend speak next week
>
> regards
>
> louise"

199. In the second paragraph, the Claimant wrote "*and if*…" as though Mr Curnock knew full well what the main purpose of the meeting was to be. I assume that the reason that she was asking about whether another solicitor would have to be present was in anticipation of being able to execute the new trust at the meeting. And the way she signed off looked as though she was expecting actually to speak to Mr Curnock the following week. There was no indication that she would not be staying for the meeting and there was no warning from Mr Curnock as to her attendance at the meeting.

200. This was the first that Mr Curnock had heard of a trust and he seems to have thought that the trust may already have been in existence and it was simply a matter of transferring an asset into the trust. He responded to the email on Monday 9 December 2013 at 9:56 as follows:

> "I can set up a trust fund. Has he already got the trust drawn up?"

To which the Claimant responded at 11:57:

> "hi dan
>
> No he hasn't got the trust drawn up yet I don't think is [sic] that what he will need to do before Wednesday or can you do that?

To which, Mr Curnock responded instantaneously:

> "I can, but will need a lot of detail as to what trust and what he wants to achieve…"

201. At 12:18 on 9 December 2013, the Claimant responded and for the first time referred to the deceased's will. The email read as follows (underlining added):

> It seems pretty straightforward! I'm sat here with him now he just said he wants to put a property in trust for his grandson (my nephew) with me to be trustee and him to receive property when he's 30! so that's its [sic] basically with regards to trust.
> obviously the main reason for app on Wednesday is that my dad wants to get this all tied up and make a more detailed will I think to the last one.
> also one more quick question he has a Spanish will and we have been told by solicitors over there that this must be written in his new will as if it is not it will make the Spanish will void??
> is this correct?
>
> louise"

Mr Curnock responded 3 minutes later, at 12:21, with this:

> "Yes that is correct. I will make sure I do that…
>
> What is the address of the property to put in trust? who is to have the income? what is your full name and address? what is your nephew's full name?
>
> Just a few starter questions."

202. There are no other emails available or evidence of other communications between Mr Curnock and the Claimant before the meeting on 11 December 2013. There are likely to have been some. For instance, in the emails Mr Curnock did not confirm the appointment for 4pm on 11 December 2013. Nor is there any evidence as to how the details that Mr Curnock was seeking for the trust were provided. In his oral evidence Mr Curnock could not confirm how he obtained that information.

203. But there is reference to "*a more detailed will*", which the Claimant admitted in cross examination must have been a reference to the 2012 will, as the Spanish will was separately referred to. It is unclear whether getting "*this all tied up*" is a reference to the will or the trust. The Claimant said under cross examination that the deceased was telling her what to say in the email and she had no input. She continually denied that she knew anything about the 2012 will, something which is inherently unlikely if she and the deceased were actually sitting down and discussing what was the subject matter of the upcoming meeting with Mr Curnock. It is the Claimant's case that the deceased wanted to set up the trust for Ryan, with the Claimant as a trustee, because he intended to cut Ryan and Ria out of his will. If she knew that was the purpose of the trust, she must also have known that Ryan and Ria were beneficiaries under the 2012 will and their grandfather intended to disinherit them.

204. The notion of a "*more detailed will*" suggests the deceased wanting to be more specific about certain items in the 2012 will, perhaps in relation to properties that he wished to leave to a particular child or grandchild. It does not indicate, in my view, a complete overhaul of the 2012 will because the deceased had now decided to leave most of his estate to the Claimant. At least I would not read it that way. But it depends, I suppose,

on whether Mr Curnock knew otherwise from undisclosed communications with the Claimant.

205. As to the reference to the Spanish will, this was the one that left the Spanish villa to the Claimant. She obviously knew that and would not have wanted the Spanish will inadvertently revoked. That aspect was clearly for the Claimant's sole benefit and Mr Curnock should have obtained specific confirmation from the deceased about it.

The 11 December 2013 meeting

206. The Claimant's case is critically dependent on the instructions allegedly given by the deceased to Mr Curnock on 11 December 2013. That in turn is dependent on the reliability of Mr Curnock's attendance notes for the meeting and his evidence. It is not in dispute that the Claimant did not stay for this meeting and that the deceased was alone with Mr Curnock for it. Mr Drew was not in the office that day.

207. The Claimant met Mr Curnock at the office before the meeting started but this brief meeting had been allegedly forgotten by both Mr Curnock and the Claimant until the email of 12 December 2013 from Mr Curnock to the Claimant came to light. That started by saying:

> "Morning Louise
>
> Nice meeting you yesterday. Hope the horses didn't cause too much trouble…
>
> After you left we just discussed the will…"

The Claimant said that that wording is consistent with them having never met before. Otherwise it would be odd to say "*Nice meeting you…*". However those words do not necessarily signify that they had not met before and it could have been just a pleasantry at the start of the email acknowledging that they had met and that she had made him a cup of tea – he said later in the email "*The tea was perfect, glad I had one now!*". As I have made clear above, I do not believe their evidence that they had forgotten that they had met before the 2014 will was signed and they have sought to conceal the full extent of their interactions at that time.

208. There are two purported handwritten attendance notes of the meeting on 11 December 2013. Mr Curnock was unable to explain why he would have done that. The first was within the CGM will file that Mr Curnock had with him when he prepared his first witness statement. The second was within his notebook that was only disclosed on 16 September 2021. The latter appears between entries for 13 December and 23 December 2013. Mr Curnock suggested that this was not an attendance note of the meeting; rather they were some notes as to how to draft the will. However he accepted that the first note was sufficient for that purpose and there was no need to write it up again in his notebook.

209. The first attendance note stated as follows (underlining added):

> "Patrick Kevin Reeves (KEVIN REEVES) 11 December 2013
>
> Will amendments.

Discussed content of engrossment draft that was signed 18 April . Kevin has given it a lot more thought. Son Mark to remain out of the will as has already had his inheritance. Does not really hear much from him.

Simon (Bill?) is also doing very well in his own right. Does not feel he needs to benefit from the estate. Fallen out about land & deals; but Simon (Bill) does not 'lift a finger' for Kevin and the only one who ever does anything for him is Louise.

wants will redrafted with Clayton & Louise as ex's and give them the authority to instruct another (take out s.11)

Chattels – SIMON, LISA & LOUISE – distribute amongst other family members as they see fit.

Specific Gift – LISA (daughter, but did not know her until in her 20's) 199 Portswood Road (but if he has already gifted it to her, gift fails

Residue; 20% LISA
80% LOUISE

wide admin powers."

210. The second attendance note in the notebook stated as follows (underlining added)

"Kevin Reeves

Discretionary trust for property to grandson who is 17 tomorrow. Discretion to Louise (and other trustee being me) for advancement of capital and income. Letter of wishes: that Kevin would like his grandson to receive the capital; being the property at 30, and then income. freedom to advance capital & income for benefit, maintenance & education. freedom to invest as if absolute beneficial owner £125k.

Executors
Clayton and Louise; with removal of Land Appointment Act (duty to consult) to allow Louise to appoint another ex & trustee without

Chattels
Simon, Louise, Lisa to distribute/dispose of as they see fit; with clayton to make final decision.

Residue
Debts, funeral, test exps, taxes, thereafter to my daughters
80% to Louise
20% to Lisa

Kevin wants to remove any gifts to grandchildren and leave it to his children. It is then up to them to look after them. They should grow up having to earn as he has.

Specific gifts.
My share of 199 Portswood Road, Southampton to my daughter Lisa."

211. The first thing that struck me about both of these notes is that the massive change to the 2012 will of 80% of the residuary estate to the Claimant and 20% to Lisa comes at the end of them and without comment or fanfare. If this was the purpose of the meeting and the deceased had come to this big idea of changing the 80/20 split in this way, it would surely have been the first thing he said to Mr Curnock. I imagine that the deceased was not the sort of person to beat around the bush and he would have said right at the beginning words to the effect that: "*I have had a complete re-think about my will and I want to leave 80% to Louise and 20% to Lisa. I want to cut Bill and my grandchildren out entirely*." I accept that the deceased was not someone who could be challenged, particularly when he had come to a clear decision on something. So I understand if Mr Curnock would not have felt able to question the deceased about a firm decision that he had made when he was not seeking advice on it. But that is not the point that troubles me. What does is that neither alleged attendance note looks like a contemporaneous record of the meeting, because the meeting would have started with the deceased saying I want to leave 80% to the Claimant and 20% to Lisa, yet that only appears at the end of each note.

212. The first note starts with two paragraphs of alleged justification for excluding Mark and Bill, but that assumes the 80/20 split. If Mr Curnock had truly been recording what the deceased was saying at the meeting, those two paragraphs would have been preceded by the deceased saying that he wanted to make a new 80/20 split that cut out Bill, Ryan and Ria.

213. The second note from Mr Curnock's notebook starts with something completely different – a discussion about the trust. This is not even mentioned in the first note. According to the email from the Claimant of 9 December 2013, the trust was going to be discussed at the meeting and it clearly was. But if the first note is said to be a contemporaneous record it is most odd that there is no reference to the trust. There are further inconsistencies between the two notes:

    (1) The chattels provision: in the first note the children were to decide what to do; in the second, Mr Drew was given power to make a final decision;

    (2) The specific gift of 199 Portswood Road to Lisa comes before the new split of residue in the first note but right at the end of the second note;

    (3) The first note has the justification for excluding Mark and Bill; whereas the second note does not;

    (4) The second note has a justification for the removal of all the deceased's grandchildren whereas the first note does not refer to that; the first note does not refer to the deletion of the substitution clause; it is unclear how Mr Curnock would have known to do that if it did not appear in the first note.

214. There are some examples in the limited extracts of Mr Curnock's notebooks of Mr Curnock getting the testator to sign his notes and for two witnesses to the signature to sign also. Mr Curnock said that he only did that when there was an emergency and a

fear that the testator may die soon before a proper will could be prepared. Ms Scouller said that it was good practice anyway to get a testator to sign off on attendance notes recording their will instructions. Neither note was signed by the deceased.

215. The Defendants' main attack on the first note is as to the factually inaccurate statements about Mark, Bill and Lisa that they say could not have come from the deceased. They say that these statements have been taken from what the Claimant told Mr Curnock and were put down on paper after the event as a form of documentary record of the deceased's purported reasons for omitting Mark and Bill from the 2014 will. Mr Curnock said that he did not recall the deceased giving any reasons for omitting Ryan and Ria or for his reduction in Lisa's share by 6.67%, which he admitted would translate into a sizeable sum.

216. The statements that the Defendants take issue with are as follows:

(1) In relation to Mark, that he "*Does not really hear much from him*" – actually everyone agreed and Mark confirmed in his evidence, that he did not speak at all to his father from the time he left in 2008; accordingly the deceased would not have described their relationship in that way;

(2) In relation to Bill, the note said that they had "*Fallen out about land & deals*"; Bill disputes that and I have gone through the examples that the Claimant has provided of this happening and I do not think that this would have been something that would have led the deceased to exclude Bill from the will entirely; all but one of the alleged land deals that they had fallen out over were before 25 July 2013 when the deceased had decided to stick with his 2012 will and to leave Bill 26.67% of his residuary estate; the other one in September 2013 in relation to the land near Rossiters Copse I have concluded the deceased was fine with and it was only the Claimant who was upset not to receive a further gift from Bill or the deceased;

(3) In relation to Bill the note also suggested that the deceased actually used the words "*lift a finger*" when describing what Bill did not do for him as compared with the Claimant; this is challenged as a matter of fact by Bill and as to whether the deceased would use such words; when it was pointed out to the Claimant that in her Amended Reply and Defence to Counterclaim she had asserted that she may have said "*from time to time, that [Bill] was doing nothing for the deceased*" she panicked and asked if she could stop her evidence for that day; the next day she sought to explain this statement but it is fairly clear that that may have been what she thought but it is unlikely to be what the deceased thought about Bill at the time;

(4) In relation to Lisa, the note recorded the deceased apparently telling Mr Curnock that he "*did not know her until in her 20's* [sic]"; that is factually inaccurate because the deceased knew Lisa all her life and that she was likely to be his daughter; Lisa herself did not know that she was his daughter; nor did the Claimant; Mr Curnock said that he may have recorded this slightly inaccurately but that it definitely came from the deceased.

217. There is another curiosity about the first attendance note. The first sentence stated that they "*discussed content of engrossment draft that was signed 18 April*". The 2012 will

was not engrossed and Mr Curnock was unable to explain why he referred to an "*engrossment draft*" or even what that meant. But perhaps more importantly, Mr Curnock, on his evidence, had already written all over the original 2012 will, yet there was no reference to the annotations allegedly made to it and which were presumably before them at the meeting on 11 December 2013.

218. It was suggested by Mr Darton QC that the annotations to the 2012 will could have been made at the meeting. That would be impossible to square with either attendance note but that, in itself, may provide evidence that the attendance notes were not written on the day, at the meeting. The annotations look like they were done at a meeting. For the reasons set out above, they could not have been done at the meeting on 25 July 2013. There were only two other meetings that have been disclosed as having taken place between the deceased and Mr Curnock: the 11 and 23 December 2013. They could not have been made at the 23 December 2013 meeting because by then the new will had been drawn up that was totally inconsistent with the old split of the residue. So that leaves only the 11 December 2013 meeting and, if that were so, it would be consistent with the deceased not having made a huge change to his testamentary intentions.

219. The one oddity about that however is the deletion of Ria but the retention of Ryan – "*keep in*" – but this may have become confused with the setting up of the trust for Ryan's benefit. The deletion of the substitution clause makes little sense in that it punishes the children of a parent who has died young when that parent would not have had a chance to "*look after them*" through his or her inheritance. The removal of the substitution clause looks more like a clumsy attempt to provide justification for cutting Ryan and Ria out of the will, namely "*take all the grandchildren out*" as was said in the annotation to the 2012 will. But that is to misunderstand the purpose of a substitution clause.

220. I do not need to decide if the annotations to the 2012 will were made at the 11 December 2013 meeting. I only need to decide if the attendance notes accurately record instructions given by the deceased at that meeting. Neither of those notes were typed up; there is accordingly no metadata around when they were drafted. It is clear that the second note comes between Mr Curnock's notes of 13 and 23 December 2013 in his notebook. He tried to make it look as though it was done on the day as the first line reads: "*Discretionary trust for property to grandson who is 17 tomorrow*" and Ryan's birthday is on 12 December. But Mr Curnock said that these were drafting notes, not contemporaneous notes and so they cannot be relied upon as recording the deceased's instruction radically to change the split of his residuary estate in favour of the Claimant.

221. The first note does not have the feel of being written at the meeting. For the reasons set out above, there are too many inconsistencies with known facts and with the other documents, in particular the second note and the annotations on the 2012 will. If the deceased truly did give express instructions to depart so dramatically from his instructions of only four months earlier, then even if Mr Curnock did not feel able to quiz the deceased as to why he was doing that, it would be front and centre of the attendance notes and I believe that Mr Curnock would have sought specific confirmation, possibly by a signature on the attendance note, that these were the deceased's settled instructions. He would have needed to do that to protect himself because of the involvement of the Claimant in making the arrangements for the meeting.

222. However what Mr Curnock then did the next day was quite extraordinary. He did not write to the deceased with a summary of the instructions given at the meeting and what the new will would contain. He did not seek to get confirmation from the deceased as to the radical change to the 2012 will. He did not write to the deceased until 20 December 2013. Instead he sent an email to the Claimant at 11:09 on 12 December 2013, the first bit of which I have quoted above but which says in full (underlining added):

> "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 (taking out the statutory legal requirement for consultation with the beneficiaries to make it easier for you).
>
> 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. Do you know what the value is? Your dad said about £125,000…Only I will need to complete a transfer of equity once the trust is set up and the value will reflect the fee. Unfortunately I will also need the value it was purchased for as there may well be a capital gains tax liability.
>
> The tea was perfect, glad I had one now!
>
> Dan"

223. There was a copy of this email that was found by Mr Drew amongst the deceased's papers. That copy had been printed off from Ms Bradshaw's email server as it has her name at the top and beneath it shows that the Claimant forwarded Mr Curnock's email to her at 12:31 on 13 December 2013. The Claimant said that she did that because she was seeing her mother for lunch that day and so wanted to use her mother's printer to provide a hard copy to the deceased. That does not make sense. If she wanted to print off a copy to give to her father she could have done that at the office. More fundamentally however it was an email directed at the Claimant, not the deceased, as it talked about her needing to be there at the next meeting and her role. There was no reason to provide a copy to the deceased; still less would there be any reason for the deceased to want to keep a copy amongst his papers.

224. The email itself said nothing about the huge change of the deceased's mind in favour of the Claimant. I do not believe the deceased would have had a problem with the Claimant knowing that. In fact, on the Claimant's case he told her immediately after he signed the 2014 will. If he was making such a gift, the deceased would have wanted to use it as leverage. It is significant that Mr Curnock was specifically asking for the Claimant to be at the meeting the following week when the will would be signed and the trust gone through. Mr Curnock did not consider that there was any problem with the principal beneficiary being present for the execution of the will.

225. The fact that the email did not refer to the big change from the 2012 will and only that the executors were being changed to the Claimant and Mr Drew may be consistent with

the annotations to the original 2012 will having been made at the 11 December 2013 meeting. I can see that that is a possibility.

226. Ms McDonnell QC suggested that the Claimant sent this email to her mother because she wanted to show her mother that she was making progress in getting the deceased to execute a new will in her favour. I have difficulty seeing any other reason why the Claimant would send a confidential email from the deceased's solicitor to the deceased's ex-wife. I do not accept the Claimant's explanation that this was something she did quite often if she was not at the office and wanted to print something off for the deceased. This email was not directed at the deceased.

Communications prior to 23 December 2013 meeting

227. The next communication between the Claimant and Mr Curnock of which there is documentary evidence was an email timed at 14:52 on 18 December 2013. The text of the email is not available as the thread of which this is part is incomplete. The subject line "*RE: Patrick reeves (kevin)*" is the same as the thread before the 11 December 2013 meeting except that "*kevin*" has a lower case first letter. It is possible that there were earlier emails than this one on this thread.

228. The next email is from Mr Curnock to the Claimant at 9:42 on Thursday 19 December 2013 and I assume it is a response to an email from the Claimant chasing the drafts of the deceased's new will and trust. She also presumably mentioned something about Christmas shopping in a very chatty and friendly way. The email said as follows:

> "Hi Louise,
>
> Drafts will be on their way out tonight…sorry for the delay it has been pretty manic!
>
> Yeah I have got most things, but I have still to buy for my nan who is the fussiest old woman you could meet! Done all yours yet? I hated walking round shops with so many people pushing and generally getting in the way! So stressful!
>
> See you soon
>
> Dan"

Mr Curnock had no express authority from the deceased to send drafts of the will to the principal beneficiary's private email address, yet he seems to have thought that it was appropriate to do that.

229. The Claimant responded at 12:50 on 19 December 2013, as follows:

> "Hello Daniel
>
> ok lovely will keep an eye out for the documents
>
> ahh love nans I had a nan like that she was hilarious but also very hard to buy for.
>
> yes I done all mine now just have to wrap everything up which I do enjoy.

> have a nice day and ill [sic] mail you once iv [sic] received drafts.
>
> see you soon
>
> lou"

The Claimant did not suggest that she would simply be forwarding the draft documents on to the deceased. It appears that they were deliberately being sent to her. Both said in signing off their emails "*see you soon*", implying that they expected to meet at the meeting to sign the documents. Also the Claimant had moved to calling herself "*Lou*", which is what her family and friends called her.

230. I assume it was later that day that Mr Curnock did email the draft documents. The email at the top of this thread by which he did that has no date or time on it. It is a feature of some of the emails that were printed off and put on the CGM will file, that the date and time have been redacted. The email had attached to it these documents: "*Discretionary settlement Reeves.docx*"; and "*KEVIN PATRICK REEVES will.docx*". The email itself said as follows:

> "Lou
>
> Please find the two documents attached. You will see from the discretionary trust what has taken so long..! it is not easy reading but I will go through it all with you and summarise.
>
> Dan"

231. So Mr Curnock sent the draft will together with the draft trust document to the Claimant. He did not send it together with an explanatory letter. That letter was sent later on 20 December 2013 by post to the deceased's office. It is frankly inexplicable that he would send a draft will to the principal beneficiary, not the testator, and without any instructions as to what to do with it. It was not apparently because he thought that the deceased was illiterate or had difficulty reading because Mr Curnock said he did not know that. In answer to questioning of mine, Mr Curnock admitted that he had acted inappropriately. He said this:

> "I do not think that that is appropriate now, my Lord, but at the time this was e-mailed correspondence where it was on the direction of Kevin Reeves, and I was treating Louise more like a secretary or an assistant, other than a beneficiary."

Yet that is not how the emails read. If he was treating the Claimant as a secretary, he would have said to her please print out the will and give it to the deceased and to ask the deceased to confirm that he was happy with the will. He should not have accepted anything from the principal beneficiary and should have insisted on hearing it from the deceased himself.

232. The next thread of emails compound Mr Curnock's recklessness in this respect. The copy of the next thread starts with an incomplete email from the Claimant to Mr Curnock at 12:13 on Friday 20 December 2013. There has clearly been a prior communication because the Claimant is responding to Mr Curnock telling her that he had had a heavy night out the evening before. The thread has the same subject line as

the last one, so it may have been one continuous thread but with an email or emails missing in the middle. The Claimant's email said as follows:

> "hahaha I've been there myself wine head the next day is always the worse, 4 and a half bottle's [sic] is going some Dan I must say."

233. Mr Curnock responded 2 minutes later, continuing the same theme but more seriously asking the Claimant to let him know if her father was happy with the will. He said (underlining added):

> "I know. Terrible isn't it. That is what happens when I start too early! Ha.
>
> I am sending a covering letter today with the documents enclosed. Just let me know if your dad is happy with the content of the will and I will bring an engrossed copy for signature on Monday.
>
> Look forward to seeing you after the weekend…
>
> Dan"

234. Not only was Mr Curnock entrusting the principal beneficiary with informing him whether her father was happy with the will but also he was saying that he was only sending out the letter and documents that day, Friday 20 December 2013, in respect of a meeting to be held on Monday 23 December 2013. I again asked Mr Curnock if he thought that was an appropriate way of going about things and he said: "*With hindsight, my Lord, no*".

235. The meeting had clearly already been arranged, although there is no documentary evidence as to how it had been arranged. The email anticipated the Claimant showing the deceased the draft will that had been sent to her electronically the day before and if confirmation was forthcoming then Mr Curnock expected the deceased to be executing an "*engrossed copy*" at the meeting on Monday 23 December 2013. That would necessarily be without the explanation in the letter to be sent by post that day. Furthermore, the Claimant was expecting to be at the meeting and Mr Curnock was looking forward to seeing her again - I do not know what the ellipsis was meant to signify.

236. Nearly two hours later, the Claimant provided the confirmation that Mr Curnock was looking for. Her email to Mr Curnock at 14:08 on 20 December 2013 said as follows (underlining added):

> Hi Dan
>
> Dad has browsed over drafts and they seem fine. He would like to get it wrapped up this side of year so Monday would be fine for you to bring the engrossed copies to sign.
>
> He will take home tonight and have a good look I'm sure, if he decides he needs to add anything else will it be a problem for you to change and still get engrossed copy to him Monday at 10.30?
>
> Look forward to seeing you to [sic].

Lou"

237. The Claimant was basically telling Mr Curnock that the will had been approved by her father and that he could therefore bring engrossed copies (of the trust also) to the meeting on Monday, so it could be executed. The Claimant seemed keen to have it all tied up that side of Christmas. So far as Mr Curnock was concerned, he was being told that the deceased, who he assumed was literate, had read through the will and approved its contents. But he did not know that the deceased had actually done that and he was taking the Claimant's word for it. His mindset going into the meeting on 23 December 2013 would have been that the deceased was happy with a straightforward will. Furthermore, the Claimant confirmed effectively that she would be at that meeting.

238. The final email in the thread is undated and untimed but it must have followed shortly after the Claimant's one of 14:08. Mr Curnock took on board the Claimant's confirmation of the deceased's approval by saying as follows:

"Hi Lou

I will bring an engrossed copy will, but the trust will need a few amendments depending on remaindermen etc.. I will need to explain in a bit more detail Monday. I can always make the amendments Monday and come out to see you Tuesday either at home or at the office…

Dan"

239. Mr Curnock was therefore saying that he would bring an engrossed copy of the will which he expected the deceased to execute at the meeting on Monday. There was no suggestion that the Claimant could not be at the meeting as the principal beneficiary of the will. He suggested that the trust required a bit more work which he would explain at the meeting, presumably with the Claimant there as she was one of the proposed trustees. If there were any amendments to make to either document, then Mr Curnock was offering to come back on the Tuesday, which was Christmas Eve, either to the office or to the deceased's and the Claimant's house. Mr Darton QC put to Mr Curnock that he would only have made that suggestion of going round to the deceased's house on Christmas Eve if he was very familiar with the client and had been to the house before. I am not sure that the latter point really follows but Mr Curnock's response to it was very strange (and I have referred to this above) that he had never been to the deceased's house but that: "*I would have liked to have gone there, because Mr Reeves, he dressed not as you would expect a multi-millionaire to dress, but his watch and jewellery was very expensive, so I was always curious as to the décor*."

240. As indicated in the emails, Mr Curnock sent a letter dated 20 December 2013 enclosing the draft will and the draft trust deed. He sent it addressed to the deceased at his office. There was no explanation from Mr Curnock as to why he did not send it by email in advance that would have ensured that the deceased had the letter prior to the meeting on 23 December 2013. Mr Curnock accepted that the letter could well not have arrived in the Christmas post by the time of the meeting at 10.30am. Even if the deceased could read, he would probably not have been able to do so before the meeting because of the timing and there is no evidence that a copy of the letter was brought to the meeting and gone through with him there. The letter was found amongst the deceased's papers by Mr Drew.

241. The letter was over a page long. It did not refer at the beginning to the radical change to the disposition of the residuary estate from the 2012 will that one might have expected. Instead, the new 80/20 split was tucked away at the bottom of the first page in the most bland of terms. There is no evidence that the deceased read this letter or that it was read to him; and if he could not read or had difficulty reading, it is very unlikely that he would have picked up on this paragraph. The letter began as follows:

> " Further to our meeting on 11th December, please now find enclosed the **draft** Will and **draft** Discretionary Trust Settlement for your consideration.
>
> As we are meeting on Monday to go through both of the documents, I will wait until after that meeting before writing to you with a summary of each of the documents. This will give us an opportunity to discuss the content and make amendments before preparing a final draft. That said, your Will is relatively straight forward and if you are happy with the draft enclosed, then please could you contact this firm's Southampton Office who will engross a top copy for your signature on Monday prior to our meeting."

242. The letter therefore appeared to contemplate the deceased receiving it in good time before the meeting at 10.30 on Monday 23 December 2013 and being able to inform the Southampton office to bring an engrossed copy for execution. However Mr Curnock would have known that the letter would not have been received prior to the meeting. Furthermore, he had sent the drafts to the Claimant by email and she had confirmed that the deceased was happy, so Mr Curnock had already agreed to bring an engrossed copy to the meeting. In any event, and as I have indicated above, it is unlikely that the deceased would have read the letter because it was overtaken by the meeting and would not have arrived by the time of the meeting. The paragraph quoted above also informed the deceased that Mr Curnock would be writing another letter with a "*summary of each of the documents*". In fact, that never happened.

243. The letter then had five paragraphs explaining: that the Spanish will was not revoked; the appointment of the Claimant and Mr Drew as executors; confirmation of the deceased's domicile; the provision in relation to chattels; and the gift of 199 Portswood Road to Lisa. At the bottom of the page, he said this:

> "With the remainder of your estate you direct that subject to payment of debts, funeral and testamentary expenses, 80% of your estate shall be left to your daughter Louise and the remaining 20% shall be left to your daughter Lisa."

There is no reference to the 2012 will and the changes from that. The last paragraph of the letter stated:

> "If you have any questions or queries with regard to the remaining content, then please feel free to ask me about it on Monday. I will then write more conclusively once we have had an opportunity to discuss the content of the Discretionary Trust and your Will."

<u>The 23 December 2013 meeting</u>

244. On 23 December 2013, the Claimant sent 17 texts to Mr Curnock. This is known because the Claimant's itemised Vodafone bills have been disclosed but these only show outgoing texts and calls made by the Claimant. The contents of the texts are unavailable, despite the Defendants' intensive efforts to obtain them. Neither the Claimant nor Mr Curnock were able to remember what they were texting about. Mr Curnock's mobile phone records are unavailable. There must have been some responses by Mr Curnock to the 17 texts to him. I take the Claimant's point that some of the texts may have been very short but it is on any view a large number of texts in a day from one person to another. The Claimant could not explain why they had moved to sending texts from emails. (The Claimant may have used a different phone and there could have been other texts or messages before 23 December 2013.) The degree of contact also undermines both of their evidence that they had forgotten about meeting each other before the 2014 will was signed.

245. Not only were there texts between them on that day, there were also 3 calls made by the Claimant to Mr Curnock: at 11:53 for 2 seconds; at 12:04 for 2 seconds; and at 12:40 for 1 minute 31 seconds. The first two look like they were failed attempts to speak but the third was in all likelihood a conversation between them. These calls were after the meeting, which took place at 10:30. It is unclear whether the texts were before or after the meeting, but it is likely that most of them were after. I think it is fair to assume that the texts and conversation had something to do with the meeting.

246. The meeting took place at 10.30 on 23 December 2013. Mr Curnock took his new assistant Mr Riley with him. Mr Riley knew nothing about the client, his family, the will or that Mr Curnock had been in communication with the Claimant over the will. He had no idea that the deceased may have literacy problems. He also did not know, including when he attended the execution meeting on 7 January 2014, that best practice demanded that a beneficiary of the will should not be present at meetings concerning the will or at its execution. Mr Curnock had not told him. He had only just started doing wills and probate work.

247. Mr Curnock prepared a handwritten attendance note of the meeting. I do not know why he did not have it typed up but again it means that there is no metadata that would indicate when the document was prepared. There is also an annotated copy of the draft will which both Mr Curnock and Mr Riley said was done at the meeting. As Mr Curnock was leading the meeting, it is unlikely that his attendance note was written at the meeting; it is also far too neat for that, with no crossings out at all. The annotations to the draft will were made partly by Mr Curnock and partly by Mr Riley. Mr Riley recalled that at the meeting, Mr Curnock passed him the draft will and said "*this could be something for you" and he carried on talking and told me what notes to put down.*" In other words, Mr Curnock was giving Mr Riley something to do and it is most unlikely that Mr Curnock would himself have been keeping a note of the meeting. It was probably drawn up later and at least in part based on the annotations to the draft will.

248. Mr Curnock's attendance note said that only he, Mr Riley and the deceased were present at the meeting. He confirmed that in his witness statement and in his oral evidence. The Claimant also said she was not there. They both said that the Claimant may have been there to let them into the office but that she definitely did not stay for the meeting. What is incredible about this evidence, is that all the communications in the week before assumed that the Claimant would be at the meeting and that there would be discussion about the trust as well as the will. In Mr Curnock's mind, he thought that she would be

there, so it is hard to believe that he changed his mind and told her not to stay or that she just decided not to stay.

249. Mr Riley's evidence flatly contradicts Mr Curnock's and the Claimant's. There is no reason for Mr Riley to lie about this and this would have been the only time that he had seen the Claimant and Mr Curnock together. In his cross examination by Mr Darton QC, Mr Riley said as follows (underlining added):

> "Q. Did he, for instance, suggest that Louise Reeves would be present at the meeting?
> A. I do not remember him discussing or saying she would be there. I remember her being there, but I do not remember him discussing it before we got there.
> Q. This is on the 23rd?
> A. That is correct, yes.
> …
>
> Q. … do you recall whether you understood that Mr. Curnock already knew Louise Reeves?
> A. I could not say from there being any car journey that he knew Louise. I do not remember there being any conversation. I just remember when I initially -- once I got into the meeting, there was familiarity between Daniel, Mr. Reeves and Louise."

When Mr Riley was being asked a little later in relation to the 7 January 2014 meeting, he confirmed that he had met the Claimant at the meeting on 23 December 2013:

> "Q. You had, of course, met Louise Reeves before, had you not?
> A. That is correct, yes. I met her on the December meeting."

250. Mr Riley's evidence lends strong support to Mr Curnock and the Claimant taking steps to conceal the Claimant's involvement in the will-making process and the extent of their relationship. The "*familiarity*" between them could not just derive from the brief encounter on 11 December 2013 but surely dates back to something more substantial, namely the Rowan Close transaction earlier in the year. The exclusion therefore of reference to the Claimant in Mr Curnock's attendance note looks deliberate.

251. In his first witness statement, Mr Curnock said that he was expecting simply to execute the will (which is presumably why he took Mr Riley along to be a witness) but that he was frustrated that the deceased wanted further changes to be made. The frustration stemmed from the fact that he had agreed a fixed fee for the will, like he had done for the 2012 will, and yet it was requiring a lot of work. He said (underlining added):

> "However, the Deceased still had some changes to make as we were reading through it. I can recall being frustrated as I had driven from my office in Hythe, (approximately a 30 minute drive) and two of us were out of [sic] office. My frustrations were borne out of his meticulous amendments, particularly given that I had quoted £125; but it was clear to me that he was fully aware of the mechanics of his Will and the implications of his amendments. It was also clear to me that he had given the content of his Will a lot of thought. The handwritten amendments on the will are Mark's manuscript amendments. I was writing the note appended."

252. As I have said above, some of the amendments to the draft will were written on it by Mr Curnock. It is surprising that he did not recognise his own handwriting when preparing his witness statement. He got that wrong but he felt it was necessary to state that because he wanted to make the point that he was busy writing his attendance note at the meeting. I do not accept that evidence for the reasons set out above. Also there is an inconsistency between his witness statement and the attendance note which refers to "*a few minor amendments*" whereas the statement seems to imply they were extensive. The amendments seem to me to be only concerned with specific properties and one chattel (the Rolls Royce) and indicate that the deceased was still focused on individual gifts, as he was on 11 December 2013, not on a wholesale revision to his 2012 will. It was completing the outstanding business of the signed "*DRAFT*" 2012 will and the 25 July 2013 meeting in relation to gifting specific properties, albeit that there would not be any inheritance tax saving if done through his will.

253. The annotations on the draft will were as follows:

> A new clause 4.2: "*I give free of tax to my daughter LOUISE my share of land at Paulett's Lane, Cooks Lane and Salisbury Rd, Calmore, Totton, Southampton*" – this was in Mr Curnock's writing.
>
> A new clause 4.3: "*I give free of tax my car which is a "Phantom……" to my daughter LOUISE*" – This was in Mr Riley's handwriting.
>
> A new clause 4.4 which had two lines through it: "*I give free of tax to my son, Simon, my share of land at Rosters [sic] Copse, Rosters Lane…Hampshire*" – this was in Mr Riley's handwriting.

254. Mr Curnock's attendance note recorded those changes. It was in the following terms:

> "KEVIN REEVES 23rd December 2013
>
> In att. DC, MR, KRs
>
> Mark had engrossment will but Kevin has a few minor amendments.
>
> - All land at Pauletts Lane, Cookes Lane, Salisbury Road to LOUISE
> - Has a RR Phantom! to LOUISE free of tax
>
> Discussed land at Rosters [sic] Copse to Son Simon, but decided to leave all property to Louise/Lisa to sort out amongst themselves.
>
> Mark made amendments, but will redraft
>
> Touched on IHT. Moving onto the trust. Discussed reducing IHT and Kevin is getting F.A.
>
> Dis. Trust.
> Trustees – happy for Louise and Clayton, as well as me.
> grandson Ryan lives in property with mother & sister.
> Discretion for Trustees to pay/appoint capital and income to Ryan at complete discretion.

Default beneficiary – LOUISE.
Trustees can advance all capital before 30 if for maintenance & education etc.
Ability to transfer assets in.
Will draft & go through during next meeting.

Will not sign today & explained in Hythe tomorrow so will need to be in New Year.

1hr. 12"

255. The most important thing to point out is that the note does not say that the will was read out or gone through. The discussion simply went straight to the additions that the deceased wanted to make, namely the two gifts to the Claimant. One might speculate as to why the deceased would need to make these specific gifts if he was leaving the bulk of his estate to her anyway. There was also clearly an intention on the part of the deceased to leave the land near Bill's house at Rossiters Copse to Bill. If the deceased had come to a firm conclusion that he was going to cut Bill out of his will completely, it is odd that he should be contemplating leaving some land to him. He was leaving one property to Lisa and another to the Claimant and it would be logical therefore to leave a property to Bill if he was thinking that 80% of his residuary estate was being split three ways as under the 2012 will. That illogicality would have been apparent to the Claimant and it may explain why that potential gift to Bill was deleted. The justification, however, in Mr Curnock's attendance note is bizarre – "*decided to leave all property to Louise/Lisa to sort out amongst themselves*". At that stage, the Claimant and Lisa were not speaking. The suggestion that they would cooperate in terms of deciding whether Bill should get a particular property or how the properties should be split between them is non-sensical, as the deceased would have known. No such term went into the final will and Bill was left no specific property in the 2014 will. Furthermore, if the properties were to be split by agreement between the Claimant and Lisa, there would be no need to leave specific properties to either of them. But that is what the deceased wanted to do, so that had to be reflected in the will.

256. Before coming to the meeting, Mr Curnock had been told by the Claimant that her father was happy with the draft will that had been sent to her on 19 December 2013. So far as Mr Curnock was concerned, he and Mr Riley were going along with an engrossed copy to witness the deceased's signature on his will. He apparently thought that a literate man had read the draft will and approved it prior to the meeting. In particular there was no issue about the 80/20 split of the residuary estate between the Claimant and Lisa. In cross examination there was the following exchange between Mr Darton QC and Mr Curnock:

"Q. I will rephrase, Mr. Curnock. When you attended the meeting on 23rd December, did you think that Kevin Reeves had read the will?
A. Yes.
Q. Did you think Kevin Reeves was happy with the will?
A. When we went through it, he had put those ----
Q. When you attended the meeting, let us get to the minute before your hand turns the knob on the door to the upstairs flat that is Kevin Reeves's office?
A. Yes.

> Q. You thought, did you not, that Mr. Reeves had read the will and was happy with the will?
> A. Yes, that is why we engrossed it."

257. Approaching the meeting with that understanding, there would have been no reason to go through the will, line by line. It was not a complicated will and Mr Curnock may have assumed that the deceased had read it and, in particular, was entirely comfortable with the new 80/20 split. I cannot imagine that the deceased was the sort of person who would want to sit around with professionals having documents that he thought he had already approved read out to him. As Mr Curnock said, he would certainly not take kindly to being challenged about any decisions that he had actually taken. Furthermore, if the Claimant was there, as I find she was, she would not have wanted to take the risk of the 80/20 split being brought out into the open. Even though Mr Curnock suggested in his witness statement that the will was read through on 23 December 2013, I do not accept that. The attendance note, for what it is worth, does not say that the will was read. The Claimant cannot prove that the draft will was read out to or read by the deceased at the 23 December 2013 meeting.

258. Mr Curnock had indicated the week before that he might have been able to make amendments to the will immediately and then to return on Christmas Eve to execute the will. However, at the meeting on 23 December 2013, he told the deceased and the Claimant that this was no longer possible and it could only be executed in the New Year. Maybe that was what the frantic texts and phone calls between the Claimant and Mr Curnock were about, with the Claimant concerned about the delay to execution. I do not know. The Defendants have suggested, by reference to some other notes in Mr Curnock's notebook, that there may have been another meeting but those notes are themselves impossible to date and going by the terms of the 2014 will that was executed on 7 January 2014, it looks unlikely that there was any other meeting.

259. I should add that one of these notes read as follows:

> "REEVES – appt for signing
>
> - Trust letter & amendts; att note
> - will amendments & engross"

This came after an entry in Mr Curnock's notebook dated 23 December 2013 so it is reasonable to infer that it was made after the meeting on that day. Mr Curnock was going to make the amendments and arrange for a signing meeting. He also had to draw up an attendance note. This is further evidence that he did not write the attendance note at the meeting.

<u>Execution of the 2014 will on 7 January 2014</u>

260. On Thursday 2 January 2014, the Claimant sent 3 text messages to Mr Curnock. Again the contents of those text messages and whether Mr Curnock responded by text is not known. The next day, the Claimant sent a further 4 text messages to Mr Curnock.

261. On the same day, Friday 3 January 2014, Mr Curnock sent a letter to the deceased. This principally dealt with the Discretionary Trust for Ryan's benefit but there were also a

couple of paragraphs at the beginning on the will. It will be recalled that Mr Curnock had said in his letter of 20 December 2013 that he would be writing with a summary of the will and the trust, but the 3 January 2014 letter did not contain such a summary. In particular it did not refer at all to the 80/20 split of residue or the fact that this was a major change from the 2012 will. Instead Mr Curnock wrote as follows:

> "**Your Will**
>
> Further to my letter dated 20th December 2013 you have made a few amendments to the draft Will. You have asked me to include the gift of the land situate at Pauletts Lane, Cooks Lane and Salisbury Road, Calmore, Southampton to your daughter Louise together with your Rolls Royce Phantom. You will also see that I have added a clause 4.3 to state that if at the date of your death you have contracted to sell either the land or the property that you leave to Lisa the gift shall take effect as if it were the net proceeds of sale.
>
> All other aspects of your Will are the same as per the previous draft sent to you."

262. The letter did not refer to the 2012 will at all (nor did the 20 December 2013 letter). It did not deal with the cutting out of Bill, Ryan and Ria from the will. It only dealt with changes that were made at the 23 December 2013 meeting to the draft 2014 will. Interestingly, there is no mention of the discussion that they had about leaving the land by Rossiters Copse to Bill and the decision allegedly made at the meeting to leave it to the Claimant and Lisa "*to sort out amongst themselves*". Surely Mr Curnock would have sought confirmation from the deceased that that was his actual intention in relation to that land and possibly other properties.

263. Mr Riley thought it likely that he used the 3 January 2014 letter as a form of script for explaining the changes made to the will and the drafting of the discretionary trust which was discussed at the 7 January 2014 meeting. As there is no reference to the change in the 80/20 split from the 2012 will and as Mr Riley probably had no idea about the 2012 will and that there had been a highly significant change in that respect, he would have been unlikely to draw it to the attention of the deceased.

264. Mr Curnock enclosed the bill for his work on the will and the trust, even though neither had yet been executed. The fixed fee for the 2014 will was £140 plus VAT, which obviously annoyed Mr Curnock as the will had required a few amendments.

265. On Saturday 4 January 2014, the Claimant sent a text message to Mr Curnock. And on Monday 6 January 2014, the Claimant sent 2 more text messages to Mr Curnock. She also tried to call Mr Curnock at 11:19 but he did not answer. If he called her back, this would not show on her itemised Vodafone bills. Somehow or other, the meeting was arranged for 7 January 2014.

266. On 7 January 2014, there were 11 text messages sent by the Claimant to Mr Curnock. Unexpectedly, Mr Curnock decided that he was not going to go to the meeting. Ms Scouller, a senior partner at CGM, had to hurriedly step in on the morning of 7 January 2014 to go with Mr Riley to witness the signing of the 2014 will. The Defendants submitted that Mr Curnock deliberately decided to avoid the meeting so as to create some distance between him and the 2014 will and/or to give it legitimacy. They speculate that he had found out something, maybe the deceased's illiteracy, that meant

he did not want to be there in case he had some explaining to do. Ms Scouller said that had she known about the amount of contact there had been between Mr Curnock and the Claimant she would have been "*extremely concerned*".

267. There is a strong divergence between what Mr Curnock says happened on the morning of 7 January 2014 and Mr Riley's and Ms Scouller's evidence in such respect. Ms Scouller was clear that she found out that morning that she would have to go because Mr Curnock had simply not turned up at the office. In her oral evidence she said this:

> "My understanding was that the appointment had been made for Mr. Curnock and Mark Riley to go to see the testator, to sign his will, and I was told that Dan had not turned up at the office that morning and would I go instead… We just thought he was ill or there was some reason he could not come."

Mr Riley agreed:

> "Q. We have heard from Ms. Scouller this morning, and I am going to do my best to paraphrase what she said in relation to one point. She said that on 7th January 2014, when she got into work in the morning, she was not expecting to be going to see Mr. Kevin Reeves at all. Would that accord with your recollections? Would that be about right?
>
> A. That would be about right. I believe we were both told on the morning that we would need to go.
>
> Q. By whom?
>
> A. Mr. Curnock I believe told Jane, his secretary, that we would need to go and witness a document, and we were made aware, I believe it was by Jane, his secretary -- again, I am not 100% sure, but I believe that was the timeline.
>
> Q. I think Ms. Scouller suggested that she was asked by you to attend
>
> A. That is probably right, yes. I would have got the message at the Hythe office and I would have asked her at the Southampton office. That is probably correct."

268. Mr Curnock said in his witness statement that this was pre-arranged by him and it was all because it was not worth his while attending when on a low fixed fee. He said:

> "As I had been to previous meetings with him where he decided not to sign the Will, and I was working on a fixed fee, I decided it would be more efficient and would save my time driving to and from Southampton, to have two solicitors from the Southampton office attend the signing meeting instead."

This can be contrasted with his offer in the email of 20 December 2013 to go to the meeting on Monday 23 December 2013 and then to go to another meeting the next day, Christmas Eve, to the deceased's office or home to execute the will. I do not believe his explanation for not attending the execution of the will of CGM's wealthiest client. Furthermore there was a lot to discuss about the trust and only he would have been in a position to do so. Mr Curnock went so far as to say that Mr Riley's and Ms Scouller's evidence that he had failed to turn up to work that day was untrue. Mr Riley and Ms

Scouller have independently given evidence to the same effect. There is no reason for them not to tell the truth about this, and it fits with the surrounding evidence.

269. It means that Ms Scouller and Mr Riley were totally unprepared for the meeting. I do not criticise them for that. It is the position that Mr Curnock left them in. Ms Scouller had no knowledge of the contents of the will or the trust. She certainly did not know about the 2012 will. She thought she was going along to be the second witness to the signing of a will and she did not know anything of the background. She "*just jumped in the car and was driven there".*

270. Mr Riley had also thought that he was simply the second witness to the will and that Mr Curnock would be doing all the running at the meeting. He was not prepared to advise the deceased on the will or the trust. He had not been involved in drafting either document. He had only attended the meeting on 23 December 2013 and took a note of a couple of small changes to the draft will. He thought it would all be very straightforward. In cross examination he said this:

> "Q. Let us be clear on this. As of 7th January 2014, you had not been instructed to prepare a will for Mr. Kevin Reeves, you had not been instructed to draft a will for Mr. Reeves ----
> A. I had not, no.
> Q. ---- and you had not, when you got up in the morning, thought that you were going to have to attend a meeting and explain a will or a trust deed to Mr. Reeves. That is correct, is it not?
> A. That is correct, yes.
> Q. When you got to work in the morning, you understood the position was going to be that your job was to turn up there and confirm that he had signed the document?
> A. Correct, yes.
> *Q.* So you had not done any homework in relation to that meeting? There was no reason for you to do so?
> A. That is correct, yes.
> Q. It is also right, though, is it not, that as you and Ms. Scouller drove to Mr. Kevin Reeves's office, your understanding would have been that this will was just there to be executed, and because you had attended the previous meeting, you knew a few changes had been made to it, had they not?
> A. That is correct, yes.
> Q. So you were not expecting it to be a difficult meeting, were you?
> A. I was not, no.
> Q. You were not expecting to have to give any real advice?
> A. That is correct, yes.
> Q. So far as you were concerned, the only things really that needed to be updated with Mr. Reeves were the changes that had been made?
> A. That is correct, yes."

271. Mr Riley prepared a typed up attendance shortly after the meeting. It said as follows (underlining added):

> "Date 07/01/14

File – Reeves - Will and Discretionary Trust

Fee earner: Mark Riley

Engaged in attending offices of Mr Reeve [sic] at 82A Bedford Place.

Attended with AS to act as a witness in signing his will and trust document. Upon arrival Mr Reeves was present with his daughter Louise.

We discussed the Will and went through its contents of which Mr Reeves was happy to sign with myself and AS as witnesses.

Mr Reeves stated he wanted further time to consider the Trust document, Louise confirmed they were unsure as to whether they wanted to proceed at this time and wanted to leave it for now and that they may revisit the matter in the future. I asked if they would like to discuss its contents, they advised they were happy with the document as drafted but were unsure at this stage if they wanted the beneficiary to have this Trust.

Louise and Mr Reeves advised they would pay our fees to date and if required to continue with the Trust instrument they would contact us further.

Will signed, Trust document remained on file. Mr Reeve [sic] asked me to write out his cheque for £888.00 which he duly signed.

Attendance: - 4 units."

272. The meeting was no longer than 24 minutes (4 units of 6 minutes). Mr Riley said that his note recorded events in chronological order. It is clear from the face of the note, that the Claimant was there. She was present at the beginning; and she participated in the discussion about the Trust and payment of CGM's fees. The will was signed at the end of the meeting, according to the note's chronology, after the discussion about the trust. There is no record of the Claimant leaving the meeting when the will was being discussed or signed. Mr Riley was clear that if she had left the meeting in such a deliberate way, he would have recorded that. In answer to some questions of mine, he said as follows:

"Q. If someone had left the meeting, you would have recorded that, presumably, in your attendance note?
A. I would have hoped to, yes.
Q. You do not have any recollection of Ms. Reeves, Louise Reeves, leaving the meeting?
A. I do not have any recollection of that, no.
Q. So far as you are concerned, she was probably there the whole time, including when the will was signed?
A. It would appear so. By looking at my attendance note, I make no reference to her leaving the room."

Mr Riley had not been told at that time that the beneficiary of a will should not be present at its execution. He did not recall Ms Scouller saying anything about the Claimant not being present:

> "Q. You do not recall Ms. Scouller saying anything about a beneficiary should not be present when the will is being explained and executed?
>
> A. There was no comment. I do not recall any conversation as such, no."

273. Ms Scouller did recall the Claimant leaving and said she realised that Mr Riley's attendance note was inaccurate when she came to make her first witness statement. In that, she said that the Claimant was there "*just to show us in at the start. We certainly did not have Louise at the meeting when we were going through the Will or at its signing, she was a beneficiary so it would not have been appropriate.*" There are two problems with this. First the Claimant was definitely at the meeting in the middle for the discussion about the trust, so she was not just showing them in. Second, Ms Scouller did not know that the Claimant was a beneficiary, let alone the primary beneficiary, because she had not seen or read the will.

274. Ms Scouller was so absolute about beneficiaries not being present that she has convinced herself that she would have ensured that the Claimant was not present. However I do not think that, at the time, she would have been in a position to object to the Claimant's presence; nor that she would have done so. She said in her witness statement that Mr Riley led the meeting and he had at least met the deceased and the Claimant before. Ms Scouller would have assumed that Mr Curnock was comfortable meeting with both the Claimant and the deceased about the will and the trust and she would have been unlikely to undermine her colleague by insisting that the Claimant leave the room while the will was sorted out. Furthermore, she thought that it was all straightforward, had already been approved and it was just a question of signing and witnessing. Mr Darton QC put to her that she did not have a clear recollection of the meeting:

> "Q. Come, come now, Ms. Scouller. You knew full well that there would be a problem with her being present in the meeting when it was executed when you came to sign your statement. You did know that, Ms. Scouller, did you not?
> A. Well, I have always thought that, and that is why I am convinced in my own mind that she was not there when we read the will, signed it and witnessed it.
> Q. I am sure you are convinced, but you do not recall. That is the truth, is it not?
> *A.* Well, I remember the visit."

275. I am afraid that I think that Ms Scouller was giving evidence as to what she now realises ought to have happened. There seems to be no dispute that the attendance note was drawn up soon after the meeting and I would prefer to rely on it as a record of what happened than Ms Scouller's recollection of a short meeting some 7 years ago.

276. The Claimant's presence does not itself invalidate the 2014 will. Nor does it really affect the case on knowledge and approval, although it may have meant that the Claimant could have exercised a certain degree of control over how the meeting was conducted and what was discussed. It could however have an impact on the case of undue influence if the Claimant's presence was a form of pressure on the deceased. But nothing was noticed at the time by either Ms Scouller or Mr Riley in that respect. The only thing that is suspicious is the Claimant's insistence that she was not present.

277. The 2014 will is 5 pages long. The pages were held together in the top left hand corner by a dark blue CGM solicitors' triangular corner which was bound by a metal eyelet. As recorded above, Ms Radley discovered that pages 3 and 4 used different paper to pages 1, 2 and 5. It also appeared that the metal eyelet may have been interfered with. But the suggestion that pages 3 and 4 (page 3 contained the gift of residue) may have been substituted later was scotched by the faint imprint of the number 7 on page 3, indicating that when the date, 7 January 2014, was written on the front page, it went through to page 3 at least. Therefore page 3 was in all likelihood in the will that was signed on 7 January 2014. Mr Riley confirmed that he wrote the date on the front and back pages.

278. Page 2 of the 2014 will contained the opening statement – "*THIS IS THE LAST WILL AND TESTAMENT of…*" Clause 1 was the appointment of executors, being the Claimant and Mr Drew. Clause 2 contained a declaration of the deceased's domicile. Then clause 3 was in the following form:

> "**3. Gift of chattels**
>
> I give to my son **SIMON KEVIN FRAIN (also known as SIMON KEVIN REEVES)** my daughter **LISA MURRAY** my daughter **LOUISE** for their own absolute use and benefit free of tax or duty arising in respect of my death all my personal chattels as defined in the Administration of Estates Act 1925 Section 55 (1)(x) not otherwise specifically disposed of by this my Will or any codicil to it."

279. According to the second attendance note of the 11 December 2013 meeting, Mr Drew was to be given power to decide which of the children should get any particular chattel if there was a dispute about that. But this did not find its way into the final version. If the deceased could have and had read just this page of the 2014 will, he would have seen his son Bill's name there in bold and capitals and may have assumed that his three children who were in the 2012 will were receiving the same equal split of assets and the purpose of the will was to gift specific properties to them. I do not know if only that page was read or seen by him but if the document was merely being scanned or flicked through, at least Bill's name was there somewhere, along with the Claimant's and Lisa's.

280. Page 2 of the 2014 will continued with clause 4, ending at the bottom of the page with subclause 4.3. This read as follows:

> "**4. Specific Gifts**
>
> **4.1** I give free of tax to my daughter **LISA MURRAY** all my share of **199 Portswood Road, Southampton** whether in possession reversion remainder or expectancy or over which I may have a general power of disposition

> **4.2** I give free of tax to my daughter **LOUISE** my share of land situate at **Pauletts Lane, Cooks Lane and Salisbury Road, Calmore, Totton, Southampton** absolutely and I direct that all sums secured on the said land by way of mortgage together with all interest due at my death shall be paid out of the residue of my estate
>
> **4.3** If at the date of my death I have contracted to sell any of the land or property in clauses 4.1 and or 4.2 the gift shall take effect as a gift of the net proceeds of sale"

That is where page 2 of the 2014 will ended. The relevant parts of the clauses are in bold, that is the address of the property and the relevant daughter's name. For someone with difficulty reading, the clauses themselves would not be easy to read or understand.

281. The next page of the 2014 will is the highly relevant one. It started with clause 4.4 as follows:

> "**4.4** I give free of tax to my daughter **LOUISE** my Rolls Royce Phantom motor vehicle for her own use absolutely."

The deceased's residuary estate is dealt with in clause 5 in the following terms:

> "**5. Residue**
>
> I give all my estate both real and personal whatsoever and wheresoever situate including any property over which I may have a general power of appointment or disposition by Will to my Trustees ON TRUST to sell call in and convert the same into money with power to postpone such sale calling in and conversion thereof for so long as they shall in their absolute discretion think fit without being liable for loss TO HOLD the proceeds of such sale calling in and conversion and my ready monies (hereinafter called "my Residuary Estate") upon the following trusts: -
>
> **5.1** UPON TRUST to pay thereout my debts, funeral and testamentary expenses and subject thereto as to:
>
> **5.1.1** Eighty per cent (80%) of my Residuary Estate to my daughter **LOUISE** absolutely.
>
> **5.1.2** the remaining twenty per cent (20%) of my Residuary Estate to my daughter **LISA MURRAY** absolutely."

282. The rest of page 3 and all of page 4 of the 2014 will was taken up with detailed administrative powers for the trustees. Then page 5 of the 2014 will only contained the signatures. There was no substantive text of the 2014 will on the same page as the signatures. Unlike an affidavit, there is no requirement for there to be, but I would have thought best practice would be that there should be some text as well on the signature page. I should add that the attestation clause was the normal one for a testator who can read. There is a different attestation clause that is used for an illiterate testator which confirms that the will had been read to the testator. Mr Curnock claimed not to know that the deceased was illiterate (if he was) and Mr Riley and Ms Scouller had no idea either.

283. There was confusion in Mr Riley's and Ms Scouller's evidence as to whether the 2014 will, and in particular the residuary estate bequest, was read out or discussed on 7 January 2014. Mr Riley's attendance note said that "*We discussed the Will and went through its contents*…". It did not state that it was read out and it plainly would not have been read out in full including the 1½ pages of legalese in relation to the administrative powers. I have no doubt that the deceased would not have allowed that to happen. Nor do I think it likely that the residue clause would have been read in full as its preliminary paragraph would be irrelevant for the deceased and it is complicated legal verbiage. I have little doubt that if it was referred to it would have been in general terms such as "*you are leaving 80% of your estate to Louise and the other 20% to Lisa*". There would be no need to say anything else.

284. Ms Scouller said in her witness statement that Mr Riley "*read through the key provisions of the Will, explaining them to the Deceased. He summarised the Will to make sure the Deceased was happy with it. It was not a long Will, apart from some standard supplementary provisions, so it did not take long to go through. I do not remember if the Deceased read the Will himself. I confirm the accuracy of the attendance note prepared by Mark*." She said in her oral evidence that she was "*positive*" that Mr Riley read the will and she did not. She said that Mr Riley "*definitely read the body of the will, the bit that we needed the client to understand*." That bit could well have been the changes that had been made to the previous draft.

285. In his first witness statement, Mr Riley said: "*I cannot recall the meeting in any depth, but I approve my attendance note dated 7 January 2014, including that I read through the Will with Kevin.*" (The note did not actually say that.) In his second witness statement however he said that Ms Scouller had read it out to the deceased. Mr Riley sought to explain this in his evidence in chief, having realised the inconsistency:

> "There is an ambiguity as to whether the will was read by me or Angela Scouller. It has been very hard to recollect exactly what occurred at the time. Due to looking at my notes, my first statement was prepared looking at my attendance notes, in which I stated the will was read through, and I had made an assumption that it was by me, that it had been read through. I do recall there being discussion at the meeting in which Angela Scouller was there, and when I wrote my second witness statement it was from memory, and I did state that Angela Scouller had read through the will. The difficulty being is there was discussion between both myself, Angela Scouller and Mr. Reeves, so actually, the whole will was not read through by one of us in particular, it was passed and read by both of us as and when questions were raised, as Ms. Scouller was there as a senior solicitor, so she was there to answer any questions that I did not feel confident on doing, as I was a junior solicitor at the time."

286. The context is that there were two solicitors at the meeting, neither of whom knew anything really about the will or the trust. They were having to deal with something for which they were totally unprepared and would have wanted to avoid giving any sort of advice that risked contradicting or undermining Mr Curnock. Conversely, the Claimant and the deceased, so far as Mr Riley and Ms Scouller were concerned, knew about the will and the trust; they had discussed it at two previous meetings with Mr Curnock and were now happy to sign the will at least. Mr Riley had attended the meeting on 23 December 2013 when there was no discussion at all about the residuary estate. There was only discussion about specific gifts that had now been included in the final draft of

the 2014 will. He was entitled to assume that the 80/20 split of the residuary estate was a well-settled intention of the deceased, and it possibly had always been. He was certainly in no position to question that with the deceased. Critically, neither he nor Ms Scouller knew that there was an earlier will or that the 2014 will radically differed from an earlier will in relation to the residuary estate.

287. Mr Riley agreed that because of the circumstances around their attendance on that day, he would have been likely to have relied heavily on the letter of 3 January 2014 that simply explained the changes to the 2014 will that had been discussed on 23 December 2013. That letter set out the changes from the last draft being the addition of the land at Pauletts Lane and the Rolls Royce to go to the Claimant, and ended by saying "*All other aspects of your Will are the same as per the previous draft sent to you*." Mr Darton QC asked Mr Riley about this:

> "Q. That, I suggest to you, is pretty much a summary of what you would have told Mr. Reeves on 7th January 2014?
> A. Yes, I believe it would have been, yes.
> Q. Because so far as you were concerned, he did not need to know any more than that really, did he, because he knew it all already?
> A. Apologies, I ----
> Q. So far as you were concerned, on 7th January, the only things to update Mr. Reeves about were the changes; yes?
> A. Yes.
> Q. And this meeting was just to get the document executed?
> A. Yes."

In re-examination, Mr Dumont QC tried to get out of Mr Riley that the residuary estate clause was the most important part of the will and that he would therefore have gone through it. The evidence came out as follows:

> "Q. What is the most important part of the will which Mr Reeves signed on 7th January?
>
> A. The most important part I would be saying would be as a testator he is signing it at the end of the will.
>
> Q. But most of all about the will itself, rather than his signature of that will, what is the most important part of the will?
>
> A. The most important part of the will is that he confirmed its contents. From my attendance, the important part was the residuary estate that we confirmed as still being the same.
>
> Q. So the residuary estate was the most important part of the will when we look at the will, was it not?
>
> A. Yes.
>
> Q. So when you went through the will with him, you would have gone through the most important part of the will, would you not?

A. Yes."

288. While the last question was a leading one, it followed the underlined answer which is crucial. When Mr Riley says he confirmed that the residuary estate provision was "*the same*", he clearly meant that, as stated in the 3 January 2014 letter, there had been no change made to that provision at the 23 December 2013 meeting. He had no idea how massive a change it was from the 2012 will because he did not know about the 2012 will. So far as he was aware, the 80/20 Claimant/Lisa split had always been the deceased's intention and it would not therefore need to be flagged up. If there was no change to that part of the will, there would be no reason to draw it specifically to the attention of the deceased.

289. In my view, and as with my finding on whether the Claimant was present throughout the meeting, it is safest to rely on the contemporaneous attendance note than the distant recollections of the witnesses to a short, and fairly straightforward, will signing meeting, particularly where their recollections do not coincide or corroborate each other. The attendance note does not say that the will was read out; nor does it say that the deceased read the will (Mr Riley did not recollect him reading it at the time). It does not refer to the residuary estate clause or the 80/20 split. On a balance of probabilities, I am not satisfied that the 2014 will was read at the meeting on 7 January 2014. Even though this was not in dispute, I am satisfied that the 2014 will was properly signed and witnessed by the deceased, Mr Riley and Ms Scouller.

290. There is one further point of interest from the attendance note. Mr Riley records the fact that the deceased asked him to write out the cheque for CGM's fees which the deceased then signed. Mr Riley credibly said in his evidence that this was unusual and he wanted it recorded because his handwriting was on someone else's cheque. Ms Scouller suggested that clients often had difficulty with spelling CGM's full name but it is known in this case that the deceased could not write. This is perhaps a small piece of further evidence as to the deceased's illiteracy. It also shows the care taken by Mr Riley in recording what was actually happening at the meeting and therefore the reliability of his attendance note.

291. The 11 text messages sent by the Claimant to Mr Curnock are likely to have been her reporting to him that her father had signed the 2014 will.

Events immediately after the execution of the 2014 will

292. On 9 January 2014, Mr Curnock wrote to the deceased enclosing a copy of the 2014 will and confirming that the original would be stored at CGM's Southampton office. He apologised for not having attended the meeting. The copy of the 2014 will was found after the deceased's death amongst his papers in the office. Mr Drew and Ms Young, the deceased's secretary, both said they never knew about or read the will. It is not known whether the deceased ever looked at his copy of the 2014 will, and if so whether he could actually read it.

293. The Claimant said in her witness statement that the deceased told her immediately after the meeting on 7 January 2014, after she had shown Mr Riley and Ms Scouller out, that he was leaving her "*everything*". She then admitted in cross examination that she knew that he was leaving her 80% and that the other 20% was going to Lisa. She said that she thought it was a "*big call*" to leave Bill out of the will but that her father had said to her

that Bill had had so much and had not been getting on that well with him. I do not accept her evidence on this. She knew full well what was in her father's will and she likely engineered it so that she would get the bulk of his estate. She had a good relationship with Bill at the time and indeed throughout until this dispute arose, and if this was a decision made by her father on his own, which she found out about shortly after the will was executed, she would have been likely to discuss it with Bill, particularly if she believed, as she said she did, that the deceased had told Bill. But there was no such discussion and that lends weight to the view that the Claimant knew that it had to be kept quiet.

294. In February 2014, a month or so after the 2014 will was executed, the deceased went on a big trip to Los Angeles and Las Vegas with Lisa and her partner, Bill and Mr White. That combination of people had come about because Lisa had arranged the holiday for her and her partner to go with the deceased and his partner at the time, Ms McCrory. However because of a problem with Ms McCrory's passport she could not go and so the deceased invited Bill and Mr White to come along instead. Lisa had organised the flights as she then worked for Virgin Atlantic but all the other expenses on the holiday were paid for by Bill. Mr White said "*it was one of the best times I ever had*". He, Bill and the deceased shared a room. I have seen some photographs and they all looked very happy and were having a great time.

295. There are two significant points about this trip. First it was soon after the deceased had apparently made the big decision to cut Bill out of his will, because he had "*fallen out*" with him and he did not "*lift a finger*" for the deceased. That simply does not fit with them going on holiday together and Bill paying for nearly everything. It also does not fit with what is known of the deceased's personality and the fact that if he had made such a decision about his will he would tell the person affected and use it to his advantage. The second point is that, as the photographs show, they hired a wheelchair for the deceased, and while they may also have joked around with it, it shows the serious health problems that the deceased was then experiencing.

296. There is a further point about this trip that can be made: the Claimant was not on it. I was told that that was because at that time she could not go away with Lisa who she was not talking to. That means that she was content to allow the deceased to go away with other members of his family and therefore he had freedom from her in that respect and could have complained about her or even disclosed the contents of the 2014 will that he had just signed. It is therefore evidence as to the lack of undue influence. In fact, shortly after this holiday, in March 2014, the deceased and the Claimant went to the villa in Spain for a holiday together, and they went riding on horses, something that the deceased loved to do.

297. On 7 April 2014, the discretionary trust in favour of Ryan was signed by the deceased. The trustees were the Claimant, Mr Drew and Mr Curnock. It has always struck me as surprising that Mr Curnock was made a trustee of this relatively small trust, on the basis that he was involved in preparing the trust document as well as the deceased's two wills. It indicates a level of trust reposed in him by both the deceased and the Claimant. The property where Ryan was living together with his mother, Ms McKinnon and his sister Ria – 2 Quantock Road – was transferred to the trustees as an asset of the trust by the deceased. On the same date a tenancy agreement was entered into by the trustees with Ms McKinnon providing for a rent of £173.08 pw.

The purchase of 64 Belmont Road

298. The second property transaction, after Rowan Close, that the Claimant conducted was also with Mr Curnock and it was in respect of 64 Belmont Road, Southampton, SO17. In these proceedings the Defendants had accused Mr Curnock of acting improperly in relation to property transactions involving estates for whom Mr Curnock was acting and said to be in collusion with the Claimant. Some details had been provided in relation to 64 Belmont Road which was purchased by the Claimant for £175,000 on 18 November 2014 from the executors of Ms Barbara Turner. Probate was granted on 8 October 2014 and two partners of CGM, together with two other friends of Ms Turner, were appointed as the executors.

299. In his second witness statement dated 20 September 2021, Mr Curnock said he "*did not have any role in seeking probate valuations*" and that the sale was conducted through CGM's conveyancing partner, Simon Hawkins. Mr Curnock went on to say that he knew that the Claimant was a cash buyer and liked to "*take a punt*" on run down properties and to renovate them. However he was effectively denying that he had anything to do with this transaction.

300. During the course of the trial and after Mr Curnock's notebook had revealed a perhaps greater involvement in this transaction and the possibility that it had been a sale at an undervalue, the Claimant applied to have CGM's file in relation to this property disclosed. I ordered its disclosure. From the file it was apparent that Mr Curnock was involved in obtaining probate valuations for this estate and he accepted that in cross examination. It was also apparent that, while the property was sold for £175,000, it was insured on a rebuild basis for twice that - £350,000. There were a number of different valuations on the file ranging from £150,000 to £250,000, and it appears that Mr Curnock steered the executors towards the lower valuation. Mr Curnock admitted that he had probably tipped the Claimant off about this property, a practice that Ms Scouller seemed to deplore.

301. This may not seem very important but it does establish that Mr Curnock has sought to downplay his involvement in another transaction involving the Claimant. That can only be in order to conceal the true extent of their relationship. It also makes it more likely that he was involved in the Rowan Close transaction as otherwise he would not have known that the Claimant was prepared to "*take a punt*" on run down properties. It perhaps also explains why the Claimant and the deceased wanted him as a trustee of Ryan's discretionary trust.

302. In 2017, when Mr Curnock was at Harold G Walker solicitors in Essex, there were two more property transactions involving the Claimant purchasing from an estate for which Mr Curnock was acting. Both properties were in Weston-super-Mare and they were run down. The Claimant bought 15 Devonshire Road for £100,000 on 23 February 2017. She sold it for £165,000 on 23 November 2017. The other property was 7 Cromer Road and again the Claimant bought it for £100,000 on 27 February 2017. She sold it on 21 March 2018 for £160,000. She said she had to spend a lot of money doing the properties up. I cannot determine if the purchases were at an undervalue. There were also issues around Felix going with her to clear out the properties and the Claimant having taken the deceased all that way to look at them (she said they popped in on the way from seeing a consultant in Wales, so it was not much of a diversion). Neither issue is relevant and I do not need to decide the truth about those trips.

303. The only relevance of these later transactions is the fact that the Claimant seems to have maintained a good and fruitful relationship with Mr Curnock. Perhaps that was to make sure that Mr Curnock would remain onside in relation to their case as to how the 2014 will was signed. Mr Curnock had unusually had the deceased's will file forwarded to him from CGM in 2015 when he left to go to Harold G Walker. The original 2014 will was left in the CGM safe, so it is difficult to understand why the will file was taken. Mr Curnock said that he had authority from both the deceased and CGM to take the file.

Mr Lines' email of 27 November 2015

304. The only other piece of evidence relied upon by the Claimant that directly relates to the deceased's alleged knowledge and approval of the 2014 will is Mr Lines' email of 27 November 2015 that sets out what was discussed at a meeting the day before.

305. The meeting with Mr Lines on 26 November 2015 was attended by the deceased, Mr Drew and the Claimant and it was to discuss principally ways of saving inheritance tax and possibly also capital gains tax. (Mr Lines suggested a meeting on "*further Inheritance Tax planning*" by an email dated 2 October 2015.) They covered a number of different areas. The crucial sentence comes within the first main paragraph of the email in which Mr Lines sets out the background facts. He said as follows (underlining added):

> "**Facts**
>
> Kevin is 68 years old and has an estate of circa £50m. Of this, £34.5m is Rockstone Group Ltd, an investment company, primarily property. With the exception of some cash and quoted shares Kevin's estate is mainly investment property based. Kevin has three children and two of his children are already financially catered for and Louise is going to be the primary beneficiary of Kevin's estate. We discussed Potentially Exempt Transfers (PET) and the need for Kevin to survive seven years from the date of any gift for that gift to become fully exempt. Presently, the potential IHT liability is circa £20m. It is noted that Kevin has already made a substantial gift of cash to Louise earlier this year and she has acquired an interest in Rother Properties Ltd paying Rockstone Group for the shares."

306. The context is very clearly lifetime transfers that were PETs and which might therefore save inheritance tax. (The deceased had previously consulted Mr Lines on 27 March 2015 about transferring wealth to the Claimant.) There is no mention of the deceased's will and the provisions of the will would not be relevant in considering lifetime transfers, save that the deceased might want to take it into account in deciding who to transfer money to. When Mr Lines was asked whether the deceased would have used language such as "*primary beneficiary*", Mr Lines explained why he wrote that sentence:

> Q. So, instead of "primary beneficiary of Kevin's estate", Kevin could have used words like "she is going to get most of my money"?
>
> A. That is actually pretty much what he did say. I then said to him, at that meeting, "Oh Louise is the main beneficiary of the estate?" I will go back a stage, because the reason I asked the question, the question I asked Kevin at that meeting was, "Is your will up-to-date?" That is all I wanted to know, is that he

had a will. Now, I do not get involved in preparing wills. All I wanted to know is if he had a will and it was up-to-date, just to make sure he had thought about it and make sure he did not die intestate, because I had never actually talked to him about wills before. Rather than just say, "Yes, my will is up-to-date", he then basically said, "Louise is going to get most of what I own when I die". I then talked about his elder son, who was Mark, "He is not getting anything, he stole a load of money off me", but I already knew that because he told me previously, and he then went on to say, as I put in my statement, that his second son, Simon, he had given him quite a lot of property, set him up in business. We then moved on. That was the end of the conversation."

307. I have commented above in general terms about Mr Lines' evidence. He has very much aligned himself with the Claimant and Mr Drew from the outset and he was the first witness that they got on board with their case. I do not believe that he independently recollected one sentence in an email four years later and the significance to a case that had yet to be brought. In fact, I think it shows an extreme sensitivity on the Claimant's part to this issue of knowledge and approval that they had already alighted on this email as a key plank of their case in relation to the deceased's knowledge of the contents of the 2014 will. I think it has led to an overinterpretation of the email.

308. If, as Mr Lines said, he was keen to establish merely whether the deceased had an up-to-date will (as most financial advisors do) then he would have recorded that fact in his email. I asked him about this:

"A. No I did not record the fact that Kevin had actually prepared a will.

Q. Would you normally?

A. I think, actually, with hindsight, yes, I probably would you know, make a note ---

Q. You did not have to record what it contained, just the fact that he has made a will.

A. Exactly, yes. I do not know why I did not do it.

Q. You do not actually refer to a will at all?

A. No."

309. Mr Drew fairly accepted in his cross examination that the reference in the email to the Claimant being the "*primary beneficiary*" could have been to the fact that the Claimant had already received substantial lifetime gifts and was in line to receive more. That was the context in which this discussion was taking place. Mr Lines did also say that the deceased had told him that the Claimant was being brought into his business and was becoming increasingly involved so as to be able to take over the business in due course. But that is perhaps more consistent with the Claimant receiving more during the deceased's life than through his will. If she received substantial lifetime transfers, it did not matter that the will left his estate equally to his three children because the lifetime transfers would supersede that.

310. That is the other oddity about the sentence in the email. It refers to the deceased's three children and two of them being already financially catered for. Mr Lines and Mr Drew were clear that the three children were Mark, Bill and the Claimant. They said that Lisa was not mentioned. Mr Lines said that he did not know about Lisa until after the deceased died. I do not understand why the deceased would not have mentioned Lisa. The fact that she was his daughter was no secret by that time and if he was talking so openly about his will, he would surely have mentioned that Lisa was the other beneficiary under the will. I also think that if the deceased was thinking in terms of his three children, he would include Lisa rather than Mark who he had completely disowned.

311. The end result is that I do not accept that there was such a discussion about the deceased's will at the meeting with Mr Lines. The Claimant and Mr Lines have latched onto that one sentence in the email to try to establish that it was mentioned at the meeting but in my view it is more likely that the discussion was all around lifetime transfers that the deceased could usefully make so as potentially to avoid some inheritance tax. The provisions of his will were not relevant to that discussion, as Mr Lines accepted, and I do not believe that the deceased would have proffered that information when it was unnecessary and not particularly advantageous for him to do so. He had not mentioned this will to anyone, including Mr Drew, Bill and Lisa and there seems no reason why he would do so to Mr Lines at this meeting.

Other Relevant Events post 2014 will

312. As I have explained above there are many events after the 2014 will was executed that are put forward in the evidence. They can only be relevant to the case of undue influence but it can only be of limited relevance to whether undue influence was exercised prior to the execution of the 2014 will.

313. As was clear from Mr Lines' email of 27 November 2015, the deceased had already transferred substantial amounts of cash to the Claimant by then and had enabled her to purchase half of Rother Properties from Rockstone Group for £1.6 million. On 8 October 2015, at the request of the deceased, the Claimant transferred back to the deceased a sum of £2.95 million. The Claimant said that this proved that she did what she was told and was generous. However the records show that a week earlier, on 1 October 2015, the deceased had transferred £4.495 million to the Claimant. Ms McDonnell QC submitted that this was all to do with the tax efficient scheme devised by Mr Lines for transferring the shares in Rother Properties to the Claimant and that would make some sense. Whatever it was, I do not think it shows anything about the Claimant's generosity; but it does rather support her case that she was being favoured by the deceased and he intended to transfer substantial cash and assets to her.

314. During 2016, the deceased asked Bill if Ryan could help out selling cars, so as to train him and get him into the workplace. The deceased said that he would take £15,000 out of Ryan's trust and transfer it to Bill so that it could be used to buy cars which Ryan could then learn how to fix up and sell. When cars were sold, the money would be returned to the trust. The money was paid to Bill. Bill's evidence was that the Claimant was unhappy about the money going out of the trust and that she demanded the balance, which was £12,000, be returned to her personal account. The Claimant denied this and said that what actually happened was that both Bill and the deceased were unhappy with Ryan's attitude and they decided that Bill should return the £12,000. She admitted that

the £12,000 was paid to her personal account but said that this was directed by the deceased for tax reasons and she was thereafter holding the sum on behalf of Ryan while the deceased decided what to do with the money. She said that it was ridiculous to suggest that she was concerned to retain £12,000 for herself when she had already by then received many millions of pounds from the deceased.

315. The £12,000 seems to have remained in the Claimant's personal bank account. On 26 September 2019, well after the deceased had died, Mr Curnock spoke on the phone to Ms Hannah Worricker of Irwin Mitchell who was acting for Ryan. Mr Curnock told Ms Worricker that he had advised his "*client*", meaning the Claimant that she should pay the £12,000 back to Ryan. Mr Curnock is a co-trustee of Ryan's trust, together with the Claimant and Mr Drew. However that does not seem to have happened and I do not understand why. The Claimant cannot now hide behind the deceased and say that this was his decision. There appears to be no doubt that the money was either the trust's or Ryan's and the failure to pay it to or for the benefit of Ryan is heartless, petty and probably in breach of her duties as a trustee. It is a relatively small sum of money but that in itself does not reflect well on the sort of person the Claimant is, although I imagine that she has not wanted to concede anything during the course of this litigation.

316. But her attitude towards Ryan and the trust was further tested in her quest to have the only substantial asset of the trust, Ryan's home at 2 Quantock Road, repossessed from him and his mother and sister. (I have dealt with this briefly in paragraph [39(3)] above.) Ms McKinnon rented the property from the trust and it was set up in that way so that the housing benefit that she was entitled to was effectively paid to the trustees by way of rent. During 2017, her housing benefit was cut and she stopped paying rent. Her partner, Mr Osborne paid £500 in September 2017. He said in his evidence that on 8 January 2018 he spoke to the deceased about the situation including the fact that he was building a new house that he hoped to be able to move the family into but that they needed some more time in 2 Quantock Road. At the time there was some £4000 of arrears of rent due. According to Mr Osborne, the Claimant rang back shortly thereafter and told him not to deal with the deceased about this (the deceased was in hospital at the time), because she was dealing with it and she made it clear that she wanted them to move out. He said that he made a proposal to pay £500 the next day and then every month until they moved out. The Claimant accepted that offer and the £500 was paid the next day.

317. However on 23 January 2018, the trustees caused to be issued a notice under s.8 Housing Act 1988 seeking possession of 2 Quantock Road based on the rent arrears. On 4 May 2018 possession proceedings were issued by the Claimant, Mr Curnock and Mr Drew as trustees of Ryan's discretionary trust against Ms McKinnon. They were then evicted in June 2018 and had to move suddenly which was very disturbing for Ryan in his fragile state. The Claimant, Mr Curnock and Mr Drew all said that this was what the deceased wanted to happen and that he had directed them to take proceedings. But one has to just stand back and see the implications of that: Ryan, for whose benefit 2 Quantock Road was held by the trustees was being evicted from his home of many years for non-payment of rent that was also ultimately for his benefit. It is too easy to blame the deceased, although I do accept that he would be capable of doing such a thing. I believe that this was driven by the Claimant and again shows her ruthless and callous streak. Mr Curnock and Mr Drew were content meekly to do whatever they were told.

318. From 2016, the Claimant started to spend less time in the annexe. She stayed with her mother more often or with her then boyfriend in London. At around the same time, the deceased's friend Chalkie began living in the annexe. Ms McCrory was there also.

319. The deceased was becoming more unwell and in late 2017 he was admitted to hospital with carbon dioxide poisoning. This admission to hospital led to the reconciliation between the Claimant and Lisa who had flown back from one of her long haul work trips to the Caribbean to be with her father. The deceased was discharged just before Christmas 2017 but he was back in hospital in March 2018. Even though he again recovered, he was clearly very ill and needed full time assistance at home. Nevertheless the Claimant said that he seemed healthy over the summer of 2018.

320. In May 2018 the Claimant found out that she was pregnant. She moved with her then partner Joe to his house in Reading. They apparently married in around August or September 2018 although no one from the Claimant's family was invited or attended the wedding. Later in the year, they decided to move closer to Southampton, to Fareham. On 20 January 2019, just two weeks before the deceased died, the Claimant's son was born.

321. According to the Claimant, on 28 January 2019, a few days before the deceased died, she was appointed as a director of Rockstone Securities Limited, a subsidiary of Rockstone Group that held the majority of the deceased's property assets. The appointment was registered at Companies House on 6 February 2019, 3 days after the deceased died. Bill submitted that the appointment was backdated so as to make it appear that this was what the deceased wanted to do, whereas the reality was that the Claimant, in unseemly haste after the deceased had died, with the help of Mr Drew was positioning herself in control of the largest asset of the estate. The Claimant denied that this was what she was doing and insisted that the deceased had done this as part of the process of transferring Rockstone Group to her.

322. As I said in paragraph [65] above, I found it odd that Mr Drew for the first time in his oral evidence referred to an alleged board meeting of Rockstone Securities on 28 January 2019 appointing the Claimant as a director. No board minute has ever been produced. It appears that the deceased was in hospital that day but Mr Dumont QC suggested in his cross examination of Bill that the board meeting could have taken place by telephone. Everyone seems to accept that the Claimant did not think he was dying or going to die soon in January 2019. In my view it does not seem likely that he would suddenly have made the Claimant a director of his most important company. I think that it is perfectly possible that the appointment was backdated by the Claimant to make it look as though this was what the deceased intended to do. It shows that she was prepared to do whatever it took to get control of the deceased's estate.

323. As I have said above, Felix confidently regaled the court with the colourful details of his time spent with the Claimant, both alone and with the deceased, including their notorious weekend in London (which only on the last day of the trial I was told consisted of one night in the Churchill Hotel and another night in another hotel). He gave evidence as to a glass throwing incident that he said he witnessed in 2016 or 2017 when the deceased had questioned the amount the Claimant had spent on some trainers and a belt for the deceased. Felix said that the Claimant threw a glass at the deceased that narrowly missed him. Mr White said that he witnessed a similar glass throwing attack when he was in the annexe and the deceased had made a disparaging comment

about the Claimant having bought an expensive blue Range Rover with his money (Felix and Ms Gage also refer to the Range Rover as a source of discontent by the deceased in the Claimant). The Claimant has responded to these allegations by saying that not only were they untrue but also that they were particularly offensive – she described them as feeling like "*some sick joke*" – given that she was a victim of a glassing attack and had led a campaign to stop glass being used in drinking establishments. I believe that the Claimant is prone to losing her temper in a big way and could be incredibly aggressive in her use of offensive and demeaning language. I also think that she is capable of using physical violence. I do not think it is necessary for me to decide whether she did actually throw a glass at the deceased on those particular occasions.

Post-death events

324. A number of unpleasant allegations have been made on both sides as to the behaviour of both the Claimant and Bill as to what they did on the day the deceased died and at his funeral which took place on 22 February 2019. I will not dignify those allegations by repeating them in this judgment.

325. Even though the Claimant knew what was in the 2014 will, she maintained that she did not know whether the deceased had made a new will subsequent to the 2014 will. She did not tell Bill about the 2014 will. He only found out about its contents when he was sent a copy by Mr Curnock by email dated 25 February 2019. Mr Curnock had actually attended the funeral and there was a possibility that he would have read out the will at a meeting with the beneficiaries after the funeral. But that did not happen and Bill asked the Claimant to get Mr Curnock to send him a copy.

326. Mr Drew and the Claimant, as the named executors of the deceased's estate instructed solicitors Giles Wilson LLP to act on behalf of the estate. Mr Curnock was then a partner at Giles Wilson. Mr Malizia said that he had warned Mr Drew that he would be better off having his own independent legal representation given that there was likely to be a challenge to the 2014 will. Mr Malizia then went on to say that although Mr Drew did not agree to do so, he had a call from the police a few days later suggesting that they had had a complaint that he had been harassing Mr Drew and the Claimant. Both Mr Drew and the Claimant denied any responsibility for this having happened.

327. On 19 March 2019, Mr Curnock wrote to Bill seeking disclosure of any assets of the deceased that he had in his possession or which had been gifted to him within the last 7 years. In an unnecessarily aggressive last paragraph Mr Curnock said as follows:

> "If you remain in possession of any said items, personal effects, jewellery and/or vehicles that belonged to your father within the last seven years up to the date of his death your actions could amount to tax fraud and therefore we stress the importance of disclosing full details to this firm as soon as possible."

328. On 29 March 2019, Wilsons solicitors who were then acting for Bill, wrote to Giles Wilson asking for details as to "*any other Wills of which your clients are aware, including earlier or later UK Wills and any foreign Wills*." They had earlier said that they had:

> "seen CGM's will files, such as they are. They confirm that your Mr Curnock prepared the 2014 document. The file he assembled at CGM is wholly inadequate and it is evident that a great deal is missing. We will need to ask Mr Curnock to explain this and, if possible, to fill in the gaps using his knowledge."

Bill's earlier solicitors, Knight Polson, had received the CGM will file and had passed it on to Wilsons. The Claimant relied on the fact that that CGM will file included the 2012 will with Mr Curnock's handwritten amendments on it. Nevertheless, Wilsons were clearly asking for details of any wills other than the 2014 will.

329. On 11 April 2019, Giles Wilson responded to Wilsons, stating as follows:

> "Mr Curnock understands his duty under ***Larke v Nugus***,[3] but whilst your client has not come up with a legitimate reason (or indeed any reason) why the Will might be invalid, he has no reason to indulge your request for a statement. Further, your client is not entitled to the information he seeks. Our clients do confirm, however, that as far as they are aware, there are no earlier or later UK Wills."

Mr Drew said in evidence that he had not given instructions for the letter to be written in those terms. He said that when he saw a copy of the letter after it had been sent he contacted Giles Wilson to say he was not happy and that it was not correct. He did not insist on a correction because he said that he was told that Wilsons were already aware of the 2012 will from the will file. It was not only the 2012 will that was not referred to; the 2005 will was also not disclosed.

330. On 15 April 2019, Mr Curnock emailed Mr Aspden of Wilsons concerning an issue about the deceased's horses. In the course of that email Mr Curnock stated:

> "If you claim that the will is in some way invalid (and note there is currently no serious dispute as to validity), and suggest intestacy, then surely your client should also consider whether his brother Mark would like any of the horses?"

Mr Curnock was thereby suggesting that if the 2014 will was invalid then there would be an intestacy. He somewhat sarcastically then referred to Mark who would benefit from an intestacy. Mr Curnock gave an absurd explanation for his email in his oral evidence. He said that it was purely a debate on the status of the horses as an asset of the deceased and whether there may have been a partial intestacy. That is clearly not what Mr Curnock was saying; if the horses were not chattels, they would fall into residue; if they were not assets of the estate, they would not be in any sort of intestacy. This is an attempt by Mr Curnock to conceal the existence of the 2012 will.

331. On 13 May 2019, Wilsons complained to Giles Wilson about being misled as to the existence of the 2012 will. On 19 June 2019, they complained again that they had received no explanation for the lack of reference to the 2012 will. In a further letter dated 22 July 2019, Wilsons wrote to the Claimant's current solicitors, Womble Bond Dickinson (**WBD**), who were then acting for the Claimant and Mr Drew, referring to the fact that "*CGM's will file is one of the most inadequate we have ever seen*". Mr

[3] This is the duty on a solicitor who was involved in the preparation of a will to provide a statement of their evidence regarding the execution of the will and the circumstances surrounding it to anyone concerned in the proving or challenging of the will. The letter requesting such a statement are referred to as a *Larke v Nugus* letter, after the Court of Appeal case approving the existence of that duty – [2000] WTLR 1033.

Dumont QC relied on the table that followed that comment in which the contents of the will file were analysed and there was a reference to the "*executed 2012 will with handwritten amendments made to it*." But even if the annotated 2012 will, which had the "DRAFT" watermark on each page, was in the will file that Wilsons had when they wrote their first letter of 29 March 2019, this was no excuse for not answering their straightforward question about any earlier wills truthfully. Mr Drew realised that it was not a correct answer to the question. Wilsons could well have assumed that the annotated copy of the 2012 will was not a valid will.

332. It was a line that was never going to hold, but I believe that the Claimant, Mr Drew and Mr Curnock were trying to avoid scrutiny of the dramatic change between the two wills. That reflects poorly upon their credibility as witnesses that they were willing to mislead Bill's solicitors about the 2012 will.

333. In relation to the deceased's horses, which he loved, I heard evidence from Mr Alford, a local beef farmer and agricultural contractor who knew the deceased through his grandfather, about what the Claimant wanted to do with them. He said that shortly after the deceased died he was asked to look after the horses and to remove them from the car boot sale land. He had a conversation with the Claimant and he told her that only two of the eight horses had passports which meant that the others were not worth the cost of maintaining them or getting them registered. He was shocked to hear the Claimant say he could just keep them and "*sell them for meat*". As it turned out that fate was avoided by Bill taking some of them, Mr Alford retaining two and the others going to other friends of the deceased. The Claimant denied ever saying that and maintained that she, rather than Bill, was much more concerned about the horses' welfare, particularly as the deceased had been so fond of them. It is only a small matter and only goes to character of the Claimant, but I believe Mr Alford on this and am prepared to accept that the Claimant was capable of saying such a thing.

334. One final matter in relation to the Claimant. She and Ryan were the tenants of the car boot sale land from Bill. In April 2019, a dispute had arisen in relation to the lease and the Claimant wanted to instruct WBD to act on her and Ryan's behalf in order to write to Bill concerning alleged trespasses and the right to collect rent from subtenants. In order to instruct WBD, the Claimant needed to provide identification documents for both her and Ryan. It was Ryan's case that the Claimant tricked him into providing his passport and driving licence and that he never wanted to be party to instructing WBD. WBD accepted the copies of the identification documents in relation to Ryan provided by the Claimant and then wrote a letter dated 4 June 2019 on their joint behalf to Bill. In August 2019 Ryan and Ms McKinnon complained to WBD that he had not authorised them to act on his behalf and that the Claimant had not properly explained what she was proposing to do. They also complained to the Legal Ombudsman and on 18 August 2021, their complaint was upheld with a finding that WBD's failure to get a signed authority from Ryan meant that they did not have authority to act on his behalf.

335. The Claimant insisted that she had explained what she was doing to Ryan and that there were text messages between them to prove that. However those text messages were before the Legal Ombudsman and they still concluded that WBD had acted wrongly without Ryan's knowledge or authority. This shows the Claimant's willingness to act in her own interests, taking advantage of Ryan's difficulties and pretending to her own solicitors in this action that she had proper authority from Ryan to include him in their instructions.

F. KNOWLEDGE AND APPROVAL

(1) Legal Principles

336. The legal principles in relation to knowledge and approval are not seriously in dispute. The propounder of a will, in this case the Claimant, must prove that the testator knew and approved its contents at the time of execution. That burden is normally discharged relatively easily by proof of testamentary capacity and of due execution. If both are proved, there is a presumption of knowledge and approval. In this case, testamentary capacity and due execution are admitted by the Defendants. However if there are suspicious circumstances around the making of the will or as to its contents, the vigilance of the court may be aroused and affirmative proof from the Claimant may be required.

337. That may be thought to involve a two stage test of first establishing whether there are facts to "*excite the suspicion of the court*" as to whether the testator knew and approved the contents of the will and second whether those suspicions are allayed by the propounder of the will. However the Court of Appeal in *Gill v Woodall* [2011] Ch 380 said that the court should approach these cases holistically and adopt a one stage approach. Lord Neuberger MR (as he then was) approved the approach of Sachs J in *In Re Crerar* (unreported) that the court should

> "consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the burden of establishing that the testatrix knew and approved the contents of the document which is put forward as a valid testamentary disposition. The fact that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption."

338. In my view, it is not helpful to consider this question by reference to shifting burdens of proof. The burden remains on the Claimant throughout to prove on a balance of probabilities that the 2014 will truly represented the deceased's testamentary intentions. She is greatly helped in that process by the fact that the deceased had testamentary capacity and the 2014 will was executed properly in accordance with s. 9 of the Wills Act 1837. But all the circumstances must be looked at in order to determine objectively (see *Sherrington v Sherrington* [2005] EWCA Civ 326 at [70] – [71]) whether the deceased did actually know what was written in his will when he signed it. As Lord Neuberger MR explained in *Gill v Woodall*:

> "14 Knowing and approving of the contents of one's will is traditional language for saying that the will represented [one's] testamentary intentions: see per Chadwick LJ in *Fuller v Strum* [2002] 1 WLR 1097, para 59. The proposition that Mrs Gill knew and approved of the contents of the will appears, at first sight, very hard indeed to resist. As a matter of common sense and authority, the fact that a will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it represents the testatrix's intentions

at the relevant time, namely the moment she executes the will.

15 In *Fulton v Andrew* (1875) LR 7HL 448, 469, Lord Hatherley said that

> "when you are once satisfied that a testator of a competent mind has had his will read over to him, and has thereupon executed it . . . those circumstances afford very grave and strong presumption that the will has been duly and properly executed by the testator . . ."

This view was effectively repeated and followed by Hill J in *Gregson v Taylor* [1917] P 256, 261, whose approach was referred to with approval by Latey J in *In re Morris, decd* [1971] P 62, 77F—78B. Hill J said that when it is proved that a will has been read over to or by a capable testator, and he then executes it, the grave and strong presumption of knowledge and approval can be rebutted only by the clearest evidence. This approach was adopted in this court in *Fuller v Strum* [2002] 1WLR 1097, para 33 and in *Perrins v Holland* [2011] Ch 270, para 28.

16 There is also a policy argument, rightly mentioned by Mrs Talbot Rice, which reinforces the proposition that a court should be very cautious about accepting a contention that a will executed in such circumstances is open to challenge. Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.

17 Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second hand way, and where much of the useful potential second hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in *In the Estate of Fuld, decd (No 3)* [1968] P 675, 714E: "When all is dark, it is dangerous for a court to claim that it can see the light." That observation applies with almost equal force when all is murky and uncertain."

339. These are certainly cautionary words, applicable to the present case. Nevertheless in that case, the Court of Appeal disagreed with the trial judge on the approach taken and the factual findings in respect of the testatrix's knowledge and approval of the will. Despite that it was a professionally drawn will (there were mutual wills for the testatrix and her husband who predeceased her) that had been read out to the testatrix by the solicitor before execution, her severe anxiety disorder meant that she could not absorb

information when with strangers away from her home and so it could not be proved that she did know what was in her will and it represented her true testamentary intentions. Accordingly the will was set aside.

340. Recently, in *Mundil-Williams v Williams* [2021] EWHC 586 (Ch), HHJ Keyser QC, sitting as a deputy High Court Judge, set aside a will prepared by a solicitor and properly executed on the grounds that the testator did not know and approve its contents. The Judge considered that even though the testator had read the will carefully, it did not accord with instructions that the testator had given to his solicitor a few weeks earlier and that the way the clauses of the will operated represented a "*a very significant alteration*" from the benefit that certain beneficiaries should have received.

341. There have been further recent decisions where wills have been set aside for want of knowledge and approval despite the involvement of a solicitor – *Chin v Chin* EWHC 523 (Ch); or a will-writing company – *Middleton v Boorman* [2020] EWHC 1481 (Ch).

342. Mr Dumont QC rightly emphasised testamentary freedom and said that that core principle of the laws of succession of England and Wales has the corollary that beneficiaries do not have to justify their inheritance. As he graphically put it: "*it is not a popularity contest*" and they do not have to explain why the deceased did what he did. I think that Mr Dumont QC went too far in suggesting that the Defendants were trying "*to silence*" the deceased whose voice can be heard through the 2014 will. But I bear in mind the limited scope of my inquiry in relation to knowledge and approval, where testamentary capacity has been conceded, as lucidly expressed by Lewison LJ in *Simon v Byford* [2014] EWCA Civ 280:

> "it is knowledge and approval of the actual will that count: not knowledge and approval of other dispositions. Testamentary capacity includes the ability to make choices, whereas knowledge and approval requires no more than the ability to understand and approve choices that have already been made."

343. The focus of knowledge and approval is on the preparation of the 2014 will and the roles of and relationship between the Claimant and Mr Curnock. In relation to Mr Curnock, his attendance notes are crucial documents in that they purport to record the deceased giving specific instructions, in particular, as to the 80/20 split of his residuary estate. No allegation of fraud or conspiracy between the Claimant and Mr Curnock was alleged by the Defendants in their pleadings; nor was such a fraud or conspiracy directly put to either the Claimant or Mr Curnock. Mr Dumont QC submitted that such a case was not therefore open to them. That must be right insofar as they might seek to run a positive case that such a fraud or conspiracy existed.

344. A point that troubled me however and which I raised during the closing submissions was whether the Defendants, in saying for instance that Mr Curnock's attendance notes were not written contemporaneously and included details that could only have come from the Claimant rather than the deceased, were effectively relying on an allegation of fraud or dishonesty and that this should have been pleaded. However Ms McDonnell QC and Mr Darton QC said that they were not relying on or seeking to prove fraud; rather they raised doubts and suspicions about the attendance notes and they said that Mr Curnock was not an honest or credible witness. But the main point is that they put the Claimant to proof, as they are entitled to, as to whether the deceased knew and

approved the contents of the 2014 will and they did not need to go further and allege that this was a fraud, even if this may be an inevitable conclusion on the facts.

345. Mr Darton QC referred me to the glorious case of *Wintle v Nye* [1959] 1 WLR 285 HL, for the proposition that a party alleging want of knowledge and approval can cross examine on matters that may result in a finding of fraud even though fraud had not been pleaded. The case was tried at first instance by a judge and jury, but the House of Lords overturned the findings of fact on the grounds that the judge had not properly and adequately summed up the evidence by reference to the exceptionally heavy burden of proof on the solicitor who was seeking to propound the will. As Mr Dumont QC pointed out, that case can be distinguished from this one because the will was a complicated one drawn up by the solicitor who substantially benefited from it, despite having not been a friend of the testatrix. Nevertheless at p.294, Viscount Simonds said:

> "The appellant made no charge of fraud. If he had done so, he would have had to prove his case affirmatively. He put the respondent to the proof that the testatrix knew and approved the contents of the will and, if that could only be established by the evidence of the respondent himself, he was entitled to subject him to the severest cross-examination, and at every point to challenge his veracity even though the result might be that the jury would not believe him."

346. Mr Darton QC called Mr Curnock's attendance notes "*file straighteners*" by which he implied that he was leaving a paper trail that could be used later to justify the terms of the 2014 will. If those notes did not truly reflect what they purport to record happened, then not only can they not be relied upon, but also there is a strong inference that could be drawn that this was dishonest conduct. Mr Darton QC has not held back from alleging that Mr Curnock has lied throughout his evidence and that in particular his two attendance notes of the meeting of 11 December 2013 are not reliable evidence of what happened at the meeting or as to the actual instructions given by the deceased.

347. I do not think that the Defendants were bound to plead fraud or dishonesty in these circumstances. It is not a necessary part of their case and they do not need to set the bar that high. They do not allege any financial arrangement or incentive between the Claimant and Mr Curnock. They simply say that the Claimant has not discharged the evidential and legal burden of proving that the 2014 will represented the true intentions of the deceased and part of the reason for that is that Mr Curnock's evidence was untruthful and his attendance notes unreliable. It is not necessary to explain why Mr Curnock acted as he did. I too will not speculate as to that.

348. As for the Claimant, it was obviously in her interests for the 2014 will to be executed in the terms that it was and it may necessarily follow that a finding that the deceased did not know and approve the contents carries with it the strong implication that she engineered an extraordinary fraud on her father by getting him to execute the 2014 will without knowing its terms or thinking they were something else. However again it is not necessary for the Defendants to prove that this was what happened and that it was fraudulent or dishonest. They cannot know exactly what happened and can fairly say that the court is only concerned with examining whether the deceased knew and approved the contents of the 2014 will.

349. Accordingly my task is to assess by reference to the totality of the relevant evidence before me whether the Claimant has proved on the balance of probabilities that the deceased knew and approved the contents of the 2014 will.

(2) The deceased's literacy

350. The question of the deceased's literacy has loomed large in these proceedings and nearly all of the witnesses had an opinion on this issue, a predictable one depending on which side that witness was on. I use the word "*opinion*" deliberately because they are not experts and it is not actual evidence that is of any real probative value. Furthermore, it is just what the witness is saying they observed and cannot be tested against useful contemporaneous documentation. I feel I can place little reliance therefore on most of such evidence.

351. It is also important to keep in mind the issue to which this is said to be relevant. It is whether the draft and/or final 2014 will was read by the deceased so that he knew and approved its contents, in particular the gift of the residuary estate. On the Claimant's case, the 2014 will was read out at the 7 January 2014 meeting; if this is correct then it is probably irrelevant that the deceased could not read it himself. But if that cannot be proved, the only other opportunities for the deceased to have read the 2014 will before signing it would have been the draft sent by email to the Claimant on 19 December 2013 (which the Claimant said he had "*browsed over*") or the letter of 20 December 2013 which attached the draft 2014 will. The letter of 3 January 2014 does not appear to have enclosed a copy of the final draft of the 2014 will. And the attendance note of the 23 December 2013 meeting does not record that the draft will was read out.

352. In his closing submissions, Mr Dumont QC elevated the literacy issue too far by saying that if the deceased could read "*then knowledge and approval is clearly a non-starter*". He referred to the fact that the deceased had the draft of the 2014 will and he kept a copy of the 2014 will as executed in his office, so he could have read it at any time. However, this assumes that he did actually read it and there is little proof of that. If he did not read the 2014 will, his literacy is not particularly relevant. And if the 80/20 split of the residuary estate between the Claimant and Lisa respectively was what he instructed Mr Curnock to write into his will at the meeting on 11 December 2013, or that it was openly discussed by and in the presence of the deceased, then his literacy skills are not important because the 2014 will would in those circumstances have reflected his instructions.

353. In my view, the deceased's literacy is more relevant to how he was perceived by the Claimant and her and Mr Drew's credibility as witnesses. If the Claimant orchestrated the preparation and execution of the 2014 will in her favour, she must have calculated that the risk of the deceased actually being able to read the 2014 will for himself to be very small. She would have known that the deceased would have relied on her and Mr Curnock faithfully to record his testamentary instructions in the 2014 will. That is why it was so important for her to have stated in her email of 20 December 2013 to Mr Curnock that "*Dad has browsed over drafts and they seem fine*". That is the only record of the deceased having read the draft 2014 will and it would indicate to Mr Curnock both that the deceased could read and that he was happy with the draft will. Mr Curnock should obviously not have accepted the Claimant's word on that. That he did is demonstrated by him taking an engrossed copy of the draft 2014 will for signature at the 23 December 2013 meeting. If it is the case that the deceased could not have read

the 2014 will for himself, then the Claimant's email was deliberately false and may have misled Mr Curnock into thinking that the deceased was able to and did read the draft will.

354. It is common ground that the deceased's handwriting was very poor and his spelling even worse. I referred above to the fact that on one sheet of paper listing assets for the purposes of the 2005 will, the deceased tried to write Lisa's name three times, each time wrongly in a different respect ("*Leeca*"; "*Lesa*"; and "*Leca*"). He also could not write other simple words such as "*kids*" which he wrote as "*kedes*". He could not write his own address – I have seen a page where he wrote it as "ROSITORS COPPS". Many witnesses for the Claimant were shown a typed document upon which the deceased had scrawled various telephone numbers. The word "IMPORTANT" was in the document in capitals, large font and in red. The deceased was clearly trying to copy the word which he wrote twice, above and below the typed word. In very messy writing, he wrote "INPORTANT" both times. He could not distinguish between an "M" and an "N". He also could not therefore translate what he must have known was an "M" sound into an "M". I have seen his address book, written strangely in a 1995 filofax diary, and that contains a lot of the deceased's scrawl but also other peoples' handwriting. It is a mystery how this was used by the deceased but he did seem to keep it with him.

355. The Claimant said that his poor handwriting and the fact that he needed others to write cheques or fill in forms for him, does not indicate that the deceased could not read. She said that he could read, even long complicated documents, albeit slowly and he might have asked for some clarification as to what some words meant. She also said that the deceased would often like people to underestimate him in business which he thought might give him an advantage. She dismissed the Defendants' case on this by saying that it could not just have been a charade that the deceased read the newspaper and Estates Gazette every day; he was not just looking at the pictures; and he did not pile his desk high with documents purely for show.

356. However, in my view, the Claimant grossly exaggerated the deceased's ability to read in her evidence. As did her mother, Ms Bradshaw, who has completely aligned herself with the Claimant (and disturbingly with Mark as well). The Claimant maintained that he "*could read a contract that thick*", demonstrating a very large document with her fingers. Mr Drew also went that far. In his third witness statement, he said:

> "Kevin could read, albeit he was a slower reader than most and in the office would ask me to explain longer, more complicated words. Kevin would often read newspapers in the office. Kevin had an uncanny ability when reading through contracts or legal documents to pick out the most important clauses. He would question those clauses in some detail indicating he had read the contract and fully understood the more detailed provisions."

As I have said above, I am not prepared to accept Mr Drew's uncorroborated statement as to the deceased's reading skills. The fact that they shared a small office indicates to me the deceased's dependence on Mr Drew for reading and discussing business and legal documents. The fact that the deceased had up on the television, the Ceefax share and currency prices says nothing really about his ability to read long complex legal documents.

357. Ms Young's evidence that the deceased always opened his own post and read it himself, together with printed off emails and google searches, is undermined by two letters in the bundles:

(1) A letter dated 11 September 2013 from Test Valley Borough Council to Ms Young referring to a form that needed to be completed by the deceased. It then says:

> "I understand that Mr Reeves has literary difficulties and may need help in completing the document. He is happy for you to help him complete that document and I would be very grateful if you would do so."

(2) A letter from the deceased to the Clerk to the Justices, Southampton Courthouse, concerning a hearing to take place on 30 September 2015. This is likely to have been typed by Ms Young although she would not confirm. The letter asked that the deceased be permitted to use Mr Hicks as his McKenzie friend "*to assist me with the court process and understanding of the literacy.*"

358. Mr Hicks said that the latter letter was another example of the deceased thinking that "*two brains are always better than one*". The Claimant's other witnesses, such as Ms Sharma, Mr Clarke, Mr Ling, Mr Bartlett and Mr Tourh all purported to give evidence as to the deceased's ability to read but when it came down to it, they did not actually know whether he could read legal documents rather than be able to discuss particular terms of leases or loan documents. I am sure that the deceased would know whether to accept or negotiate an unusual term in a lease because of his experience and success in the property market. But his knowledge in that respect does not prove that he actually read or could read the clause for himself, still less that he picked it out of a long complicated document. I repeat that the Claimant's evidence on this was undermined by the absurd suggestion of Mr Tourh that whenever he met the deceased in Bournemouth, he would be doing the crossword.

359. It is significant, to my mind, that Mr Lines, who prepared the first witness statement for the Claimant on 9 July 2019, felt the need to comment on the deceased's literacy. The point had not been raised by then and proceedings had not yet begun. The Claimant's sensitivity on this front meant that she was preparing for the point to be taken by Bill. That can only be because she knew that this was and would be an issue, and possibly that she had used the deceased's illiteracy to her advantage.

360. It is also significant that everyone knew that the deceased did not personally communicate by text or email. He always spoke to people on the phone. That is an indication that he could not read incoming texts and everyone knew that. I was shown a text sent by the Claimant to the deceased one new year's eve but there was no response to this by the deceased. There are no documents in the bundles that show the deceased communicating to anyone that he personally had read a letter, email or other document.

361. Ms McDonnell QC referred to what Ms Radley had said in her expert report about the deceased's signatures, which were highly variable. She said:

> "It may be appreciated that when an individual has limited literacy, an illegible signature style may be expected and this is also likely to be highly variable in its execution if the signature style is long. This is due to the fact that the writer has no clear picture in their mind of what they are writing as they are not reproducing

> letterforms, and such an individual will lack the penmanship ability to habitually and consistently write a signature following a complex master pattern. Consequently there is a degree of muscle memory required in the execution of the signature."

362. I have not had the benefit of expert evidence on illiteracy and I understand that that would have been difficult as the underlying facts as to the deceased's ability to read were so hotly disputed. But what I think Ms Radley is saying, and this makes sense to me, is that someone who is illiterate is not really writing letterforms when they sign documents because they cannot picture such letterforms. If they cannot picture letterforms, I do not see how they can read words, let alone sentences or paragraphs with complicated sentences and structures. The deceased's severe difficulties in writing, or even copying letters, must mean, in my view, that he had serious difficulties in reading. He may have been able to pick out familiar words and he would certainly recognise figures, but I do not see that he could have read a complex legal document and picked out troublesome clauses. I think Mr Drew's evidence was untruthful in such respect and shows that, for whatever reason, he was willing to say that to support the Claimant's case.

363. There is early evidence of the deceased's illiteracy: Smith & Co's invoice of 8 August 2005 referred to them "*specifically reading the Will over to you*…". There was also the evidence from Ms Sennitt from when she worked together with Mr Lines at Smith & Williamson in the early 2000s that Mr Lines warned her prior to a meeting with the deceased and Mr Drew that the deceased was illiterate. The Claimant latched on to what Mr Harbutt, himself an illiterate, had said in answer to some questions of mine that he felt that the deceased had got better at reading over the years. I do not understand how Mr Harbutt could have been in a position to assess that. It is true to say that some of Bill's witnesses seem to have made assumptions about the deceased's inability to read but I would say that I found Ms Saye's and Ms Gage's evidence the most credible in this respect, together with Mr Malizia.

364. But rather than rely on whether a particular witness is correct that they saw the deceased reading the Daily Mail or the Estates Gazette, I prefer to decide the literacy question by reference to the contemporaneous documents such as they are and the examples of the deceased's handwriting. There must be a spectrum of illiteracy and I believe that the deceased was quite far along that spectrum towards total illiteracy. I believe, on the balance of probabilities, that he may have been able to pick out familiar or simple words but I do not think that he was able to read long or complicated sentences. Those would have appeared as a jumble to him and I wonder whether he would have had the patience to try to work them out, rather than asking someone, particularly Mr Drew, to help him out. I think his and the Claimant's insistence that the deceased could read a complex legal document to be highly damaging to their credibility as witnesses.

365. I therefore think that the deceased would not have been able to read the draft 2014 will. He might have recognised his children's names written in bold and capitals and he would have recognised figures. On the first substantive page of the 2014 will he would have seen Bill's name together with the Claimant's and Lisa's names in the chattels clause but I do not think he would have recognised that this was in relation to chattels only. I do not believe that he would have struggled through the document and read through the gift of residue on the next page. If he looked or scanned through the 2014

will, he would have just seen the names in bold and capitals and would not have bothered with any of the other legal language.

366. But as I have said above there is no evidence that the deceased did actually read the 2014 will by himself. I do not think he would have even tried. He relied on others to do that for him. The Claimant would have known that the deceased would not have been able to read the 2014 will by himself and she probably hoped that he would not try. If he did, she knew that he would probably have recognised his children's names and that they were all in there (other than Mark). I think she was relying on his illiteracy and the involvement of Mr Curnock to make it very unlikely that he would try to read the draft 2014 will himself.

(3) The Dramatic Change to testamentary intentions

367. No one disputes that there was a dramatic change between the 2012 will and the 2014 will. Furthermore, that change must have happened within the four months between the meeting on 25 July 2013 when it was said that the 2012 will would probably stay the same in respect of the residuary estate and the meeting on 11 December 2013 when the deceased allegedly gave instructions not only to remove Bill from the gift of the residuary estate but also to cut out his grandchildren. The reasons for the deceased's change of mind are purportedly set out in Mr Curnock's two attendance notes for the meeting on 11 December 2013. Mr Curnock did not set these out in any communication with the deceased, such as in either of his two letters of 20 December 2013 and 3 January 2014. Nor did he seek the deceased's specific confirmation that these were his instructions by for example getting him to sign one or other attendance note, as Mr Curnock had done in relation to other clients.

368. Where there is a "*substantial shift*" in the dispositions by a testator and there is no "*apparent good reason*" for such a shift, those who are seeking to propound the later will have the "*onus of satisfying the court that they were truly representative of the testamentary intentions*" of the testator – see Sir Andrew Morritt C's judgment in *Cairns v Flannery and anor* [2008] EWHC 3449 (Ch) [32] and [33]. Even though this claim was not defended, I consider the principle to be sound.

369. Until December 2013, the deceased seems to have had a settled intention to split his estate roughly equally between his non-estranged children and Ryan and Ria. From what it is possible to gather in relation to the 2005 will, the deceased appeared to have intended to benefit his then non-estranged children, Bill and Lisa, together with Ryan and Ria, through their mother Ms McKinnon. After the reconciliation with the Claimant, the deceased wanted to gift her the Spanish villa, as his other children had already received properties from him. That shows an intention to treat his children equally. He then took that forward into his 2012 will by treating the Claimant, Bill and Lisa equally and providing for the children of his estranged son Mark. What happened for the deceased to completely change that apparently settled intention during the latter part of 2013?

370. I have seen nothing in the evidence that may support such a shift in the way the deceased thought about his will. When the deceased fell out with one of his children, he completely cut them off and did not speak to them. That is what happened with Mark and the Claimant but not with Bill. He remained living next door to Bill in a house provided for him by Bill and for which Bill paid all the expenses. They went on holiday

together to Las Vegas and Los Angeles almost immediately after the 2014 will was executed and seemed to have a great time, sharing a room with each other. They continued dealing with each other, both on a business level and personally in the same way as they had always done until the deceased died. As I have found above, the deceased never mentioned to Bill that he had cut him out of his will.

371. I do not believe that the deceased would have acted this way if he had decided to cut Bill out of his will. If there had been such a falling out that had led him to this decision, it would have been made clear to Bill that this was what he was doing, as he had done with the Claimant when she sided with Mark rather than her father. The relationship would have terminated and I do not see that the deceased would have wanted to continue living where he was and would certainly not have been planning to move to Ower with Bill's family to continue to be neighbours, as they were at the time of his death. It just does not fit with the deceased's personality and the family dynamics.

372. The Claimant has pointed to a number of property transactions over which the deceased and Bill had allegedly fallen out, to support the statement in Mr Curnock's first note of the 11 December 2013 meeting that they had "*fallen out about land and deals*". I have dealt with all of those above and they show that all bar one preceded the 25 July 2013 meeting where it is clear that the deceased had maintained his intention to split his estate equally between his children. The only one between then and the 2014 will was the land near Rossiters Copse, but as I said in paragraph [186] above, this was more about the Claimant being disgruntled about not being included in the deal. The deceased would have fully understood and supported the desire to avoid paying VAT which was why it had to go solely into Bill's name. There is no way it would have brought about such a fundamental move away from the deceased's settled intention to treat his non-estranged children equally. Quite the reverse, in my view; it would have made the deceased proud to see Bill following successfully in his footsteps. Furthermore, there is no substance to the suggestion that the deceased said that Bill did not "*lift a finger*".

373. But it was not just Bill who the Claimant alleged the deceased was "*furious*" with in late 2013; apparently the deceased also felt that way about his grandchildren, Ryan and Ria. There was nothing in Mr Curnock's first note about the reason for the deceased's change of mind about his grandchildren. The second note purported to provide some sort of explanation that he wanted to remove all "*gifts to grandchildren and leave it to his children*" and it would then be "*up to them to look after them*", meaning their own children. However, that goes against the way that the deceased had looked on the plight of Ryan and Ria whom he had taken on responsibility for looking after because of Mark's absence and seeming lack of parental responsibility. The deceased knew that Mark was not providing for them and it is inexplicable that the deceased had changed his mind about Ryan and Ria in late 2013. Mark admitted in his evidence that he was not providing financial maintenance for his children at the time of both the 2012 and 2014 wills.

374. The reasons set out in the second note assume that the children, meaning in the circumstances pertaining in 2013, Bill and Mark (as the only children with children) were and would be able to provide for their children. It sits somewhat uneasily with the removal of Bill from the will but I suppose it would be said by the Claimant that Bill had enough money anyway to provide for his children. The removal of all grandchildren, not just Ryan and Ria, was purportedly achieved by the deletion of the substitution clause but that does not really do that and as I said above is not consistent

with the alleged aim of getting the children to provide for their children. I consider that this was an attempt to justify the removal of Ryan and Ria by making it look as though all the grandchildren were being dealt with in the same way. However, it does not do that.

375. At the same time as apparently wanting to remove his grandchildren from his will, the deceased also decided to set up the discretionary trust in Ryan's favour. The property that was put into the trust was Ryan's home where he lived with Ria and their mother. While principally benefiting Ryan in the long term, it also shows a desire on the part of the deceased to continue to look after Ria and Ms McKinnon as well, presumably because of the way they had been treated by Mark. I do not see how the deceased could have both had that desire and also wanted to cut Ryan and Ria out of his will. Nothing had changed in 2013, save that the Claimant was making it more difficult for Ryan and Ria to spend time with their grandfather. There would be no basis for the deceased thinking that Mark had or was about to change and become a benevolent and supportive parent.

376. Mr Curnock suggested that the deceased had thought that "*Mark had had his inheritance already*" and "*it would be up to him to look after his own children*". The flaw in that theory is that whatever inheritance Mark had received (it may that this is the £2.7 million paid to him under the consent order of 14 October 2008) he had had it well before the 2012 will and the 25 July 2013 meeting. Indeed Mr Curnock recorded in his attendance note of 9 February 2012 that this was so and that the deceased was nevertheless worried that Mark may not leave his children any money.

377. There is therefore no evidence that the deceased had changed his mind about Ryan and Ria and whether they should benefit from his estate. Even on the annotations to the 2012 will, whenever they were made, Mr Curnock had written next to Ryan's bequest "*keep in*". No credible explanation has been offered as to why Ria's bequest was deleted on the same document. As I deal with below, the 2014 will maintains the same proportionate 80/20 split of the residuary estate as in the 2012 will, with the 20% that originally was going to Ryan and Ria (10% each) transferred to Lisa. If the 80% was being transferred to the Claimant alone, either the 20% could be left with Ryan and Ria, but an explanation for excluding Lisa would have to have been provided or the 20% could be transferred to Lisa but then both Ryan and Ria would be excluded, and this would have to be explained. It would be even more impossible to explain 10% staying with Ryan but Ria's 10% going to Lisa. It looks to me that the annotations to the 2012 will were a work in progress towards an explicable split of the residuary estate.

378. In any event, I am not satisfied that the Claimant has established that the deceased did so radically change his mind about Bill, Ryan and Ria, so as to lead him to cut them out of his will. Nor was there any explanation for why he would want to reduce Lisa's share from 26.67% to 20%.

379. Furthermore, I believe that if there had been such a dramatic change of mind by the deceased, that it would have appeared quite differently in a contemporaneous attendance note. I also think that Mr Curnock was duty bound, even if the deceased was a fearsome client who could not be challenged and despite doing it on a cheap fixed fee, to confirm that the deceased's instructions were correct and that he did want to make such a radical departure from the 2012 will. The fact that all the arrangements for and dealings with the deceased were through the Claimant, except for the 11 December

2013 meeting, should have meant that Mr Curnock got specific confirmation from the deceased that those were his true instructions.

(4) The 80/20 Split

380. The curiosity of the 80/20 split has struck me throughout this case. I asked the Claimant whether she could explain the 80/20 split in the 2014 will and her answer was interesting. She said initially:

> "All I can think is that before, like you said in the 2012 will, which Mr Darton brought to my attention yesterday when I was getting confused about the 80/20 and the 2012 will, he had already done that 80/20 thing, had he not?...
>
> …it seemed like he kept them kind of figures still, did he not…He was still working off that sort of thing."

This confirms my suspicion that the broad 80/20 split in the 2012 will was being replicated in the 2014 will, but with a change in the beneficiaries. The deceased would have thought of his will in terms of an 80/20 split. He was comfortable with figures. He might have assumed that the same 80/20 split to the same beneficiaries had been maintained in the 2014 will.

381. The Claimant struggled to justify the 80/20 split in her favour. She suggested that the deceased may have considered that he did not want his main company Rockstone Group broken up and, as he intended the Claimant to take over the business, this was his way of ensuring that Rockstone Group could be transferred to her intact. She said that the business would be "*probably very hard to split up*". She also said that Lisa did not work in the business and that was why he left her just 20%. This does not stand up to scrutiny. If the deceased specifically wished to leave Rockstone Group to the Claimant he could have said so in his will. He was content to have it split up under the 2012 will when, in some way, the residuary estate would have had to be split five ways. Furthermore there is no evidence that the deceased was particularly attached to Rockstone Group or the particular properties that he owned through it.

382. In 2013 the Claimant was still a novice in the deceased's business. While the deceased did want her to become more involved, they had both contemplated her moving to Spain in March 2013 and she was still doing some hairdressing. She had made one purchase of a property on her own account – Rowan Close – and she has confirmed that the next purchase she made was 64 Belmont Road in late 2014, both of which were with Mr Curnock. She was effectively gifted half of Rother Properties, a subsidiary of Rockstone Group, in 2015 (she paid £1.6 million for the shares but that money had been earlier gifted to her by the deceased). If the intention of the deceased by leaving her 80% of his residuary estate was to leave her Rockstone Group, this was a very odd way of doing it.

383. The 80/20 split is not explained in any of Mr Curnock's attendance notes and he could offer no reason why the deceased had allegedly instructed him to put this in the 2014 will.

384. As indicated above, in my view, the 80/20 split in the 2014 will is evidence that the deceased did not know and approve its contents. The Claimant knew that that was how

the deceased viewed the 2012 will and that he was much more comfortable with figures than words. This meant that if the 80/20 split was preserved in the 2014 will, it could mask the substantive alterations that were really being made. The deceased could be assured that the 80/20 split was being maintained without disclosing that the beneficiaries had changed. The difficulty was coming up with a credible explanation for the inclusion or exclusion of family members when the 2014 will came to be scrutinised. There was no justifiable basis for excluding Lisa; she had not fallen out with the deceased and she had received considerably less than both the Claimant and Bill. In order to keep the 80/20 split that required Lisa to be left the 20%, which was 6.67% less than under the 2012 will but at least she was still in the 2014 will. Her inclusion for the 20% necessitated the removal of Ryan and Ria and the explanation that was come up with for that was that the deceased decided to remove all his grandchildren from the will and leave it to his children, including presumably Mark, to look after them.

385. I know that the above is speculation. But to my mind, it is the only way that the 80/20 split is comprehensible. I do not believe that this was something that the deceased could rationally have decided to do. The deceased does not have to behave rationally and could do as he pleased. But I do not accept that someone who was as good with figures as he was would have come to the conclusion that he wanted to maintain the 80/20 split in the 2012 will and change the beneficiaries to the Claimant and Lisa respectively. If he had wanted to increase the Claimant's share he would have been more likely just to have done that and adjusted everyone else's downwards. He would not have been wedded to the original 80/20 split as though those percentages could not be changed. Far more likely, in my view, is that it was surmised that keeping the 80/20 split would be easier to get past the deceased.

(5) <u>The will-making process</u>

386. I have dealt with this extensively in my narrative above including making factual findings as necessary. There is incomplete documentation showing all the communications between the Claimant and Mr Curnock and there are only details from Vodafone as to the number of outgoing calls and texts, not their content and there are no records of incoming calls and texts from Mr Curnock. Nor are there any records of any landline calls to or from the deceased's office and CGM.

387. The Claimant and Mr Curnock have sought to conceal the extent of their dealings together and the involvement of the Claimant in the will-making process. In particular, I have found that Mr Curnock was involved in the Rowan Close transaction and that he met the Claimant at her and the deceased's house for the purpose of discussing it. I do not know if there were communications between then and the end of November 2013 but I suspect there would have been. The reason for concealing their relationship is obvious; but it involved them untruthfully stating that they had not met at all until after the 2014 will was executed. They also sought to conceal that the Claimant attended the 23 December 2013 meeting, with Mr Curnock even deciding not to put her initials amongst the attendees on his attendance note. Mr Riley's evidence as to their "*familiarity*" at the meeting was quite devastating for their version of events.

388. So one has to ask why they have done this? It can only be so as to cover up what really happened in relation to the preparation of the 2014 will. Mr Curnock went about that in an extraordinarily unprofessional way and seemingly contrary to his normal practice.

There was a typed attendance note of the 25 July 2013 meeting and both Mr Curnock and Mr Drew accepted that it was accurate. By contrast, the meetings on 11 and 23 December 2013 had only manuscript attendance notes that were never typed up, leaving no metadata or any other basis for determining when they were actually written. Nevertheless it is clear that the second note of the meeting of 11 December 2013 in Mr Curnock's notebook must have been written after 13 December 2013 but could have been done as late as 23 December 2013.

389. The content of the attendance notes makes them even more suspicious. There are inconsistencies between the two notes for the 11 December 2013 meeting as explained in paragraph [213] above. The first note reads as though the writer wanted to get down first what he thought would be a credible explanation for removing Bill from the will. There would never have been any question about Mark not being included in the will so that explanation was unnecessary but it makes it look as though the deceased was justifying his overall approach towards his children.

390. However I do not believe that this is the way it would have happened or that the explanation actually came from the deceased. If he had come to this monumental decision, or "*big call*" as the Claimant put it, to cut Bill, Ryan and Ria out, he would have come straight out with it and then perhaps explained why he wanted to do that. Neither note suggests any discussion about the 80/20 split, so it does not appear that this was something that was discussed. The 80/20 split is simply put down at the end of the note as though Mr Curnock and the deceased were going through the 2012 will and they got to clause 5 and the gift of residue, and the deceased just said that he wished to adjust the previous 80/20 split so that it would now go to the Claimant and Lisa instead. I do not believe that it could have happened in that way. Critically, there is no explanation in the first note as to why the deceased would want to cut Ryan and Ria out. There is also no mention of the trust for Ryan, yet that was clearly discussed.

391. I accept, of course, that the deceased did not have to provide any sort of explanation. He could perfectly properly have just told Mr Curnock that that was what he wanted to do. But according to the first note, that is not what he did because he did purport to offer an explanation as to why he was removing Bill. This would have come completely out of the blue for Mr Curnock yet he did not get the deceased to sign his attendance note; nor did he write to him immediately setting out the important changes to his 2012 will and seeking specific confirmation from the deceased as to this, particularly bearing in mind the involvement of the person who was the main beneficiary of the changes. Instead, the next day, 12 December 2013, Mr Curnock emailed the Claimant, not the deceased, to tell her that the deceased had decided to change the executors to the Claimant and Mr Drew and to remove the need for them to consult with beneficiaries. He did not mention that the deceased had decided to change his will radically by leaving 80% of his residuary estate to her. But he did make it clear that he expected the Claimant to attend the next meeting when the will and trust would be signed.

392. The absence of reference to the big change to the 2012 will could have been because he had not then received instructions to that effect. Alternatively it could have been because they both already knew about that or that that would be in the will. In the further alternative, it could have been because Mr Curnock did not think it appropriate to disclose that to her. The latter explanation is unlikely given that Mr Curnock had no problem with emailing the draft 2014 will to her on 19 December 2013 and asking her to confirm if the deceased was happy with the drafts. More likely, it seems to me, is

that the email was carefully drafted to indicate that as a result of the meeting, the 2012 will was being amended. That was understood by the Claimant which is why she forwarded it to her mother.

393. For the above reasons and those set out in paragraphs [206] to [226] above, I do not accept that Mr Curnock's attendance notes of 11 December 2013 accurately record the deceased's instructions given on 11 December 2013. I do not believe that either note was drafted at the meeting. It is possible that some or all of the annotations made to the original 2012 will were made at that meeting (I reject Mr Curnock's evidence that they were made at the 25 July 2013 meeting as wholly inconsistent with the typed attendance note of that meeting). If they were, they show that the deceased had not then made any decision to cut out Bill and Ryan from his will.

394. Following the meeting on 11 December 2013 there were the series of emails, with some missing, during which Mr Curnock, inappropriately as he accepted, forwarded the draft 2014 will to the Claimant, asked her to confirm if the deceased was happy and then accepted the Claimant's confirmation on 20 December 2013 that he had "*browsed over drafts and they seem fine*." As a result they arranged to meet on 23 December 2013 to sign the 2014 will, with Mr Curnock bringing along an engrossed copy for that purpose. Mr Curnock also kept open the possibility of meeting on Christmas Eve to sign the documents if amendments needed to be made following the meeting on 23 December 2013.

395. The Claimant relied heavily on Mr Curnock's 20 December 2013 letter which was sent by post and which enclosed drafts of the 2014 will and the discretionary trust. It was accepted that this would not have arrived by the time of the meeting at 10:30 on 23 December 2013. Accordingly, the Claimant cannot prove that the deceased read the letter before the meeting. He is very unlikely to have done so after the meeting. And in any event I do not think he would have read such a letter himself and therefore he would not have read the passing reference at the bottom of the first page to the 80/20 split of the residue between the Claimant and Lisa.

396. As I do not accept the Claimant's evidence that her email of 20 December 2013 was correct and that the deceased had indeed read the draft will and was happy with it, there is no proof that the deceased read the draft 2014 will; nor is there any evidence that it was read to him. The Claimant does not say that she read it to him. On her evidence he was perfectly able to read it for himself. Mr Curnock's attendance note of the 23 December 2013 meeting does not state that anyone read out the draft 2014 will; nor was there any confirmation recorded that the deceased had done so. All that was discussed at that meeting in relation to the 2014 will was specific property dispositions. There was no mention of the 80/20 split. The deceased's focus at both meetings seems to have been on specific property dispositions, which was something that he had left outstanding from the 2012 will and the 25 July 2013 meeting.

397. There were numerous texts and calls between Mr Curnock and the Claimant between that meeting and the 7 January 2014 signing meeting. Mr Curnock's 3 January 2014 letter referred to the specific property dispositions discussed at the 23 December 2013 meeting but otherwise stated that "*All other aspects of your Will are the same as per the previous draft sent to you*" and there was no mention of the 80/20 split.

398. I have dealt with and made findings in respect of the 7 January 2014 execution meeting in paragraphs [260] to [291] above. I have concluded that the Claimant remained at the meeting throughout its maximum duration of 24 minutes and that she was there for the discussion and execution of the 2014 will. I have also found that the 2014 will was not read out at the meeting; nor was it read there by the deceased.

399. I did not believe Mr Curnock's explanation for not attending the meeting on 7 January 2014 or that he had arranged for Mr Riley and Ms Scouller to attend. I preferred their evidence that he simply failed to turn up on the morning and Mr Riley had to hurriedly ask Ms Scouller if she could come along and be the second witness. I have wondered why Mr Curnock did this and why he would not have wanted to be there. On reflection it is probably best if I do not speculate about that. He was not there, although the Claimant was, and the 2014 will was duly executed in his absence.

Relevant Events following the execution of the 2014 will

400. There are events post-dating the execution of the 2014 will that are relied upon by both sides. I have already found that the deceased did not tell Bill, or anyone, about what he had apparently done in the 2014 will. On the contrary he went on holiday with Bill and others almost immediately thereafter and continued living next door to him without ever mentioning that he had decided to cut Bill out of his will. I do not believe he would have acted this way if he knew what was in the 2014 will and he had actually decided to cut Bill out entirely.

401. The Claimant obviously relies on Mr Lines' email of 27 November 2015 but I have found above that it does not prove that the deceased disclosed the contents of the 2014 will. I think that it has been overinterpreted and there would not have been a discussion about the will at that meeting.

402. Bill relies on an initial suppression of the existence of the 2012 will when questions were asked of Mr Curnock, the Claimant and Mr Drew after the deceased had died. There was, it seems to me, a rather strange attempt to avoid focus on the 2012 will, presumably so as to deflect comparison with the 2014 will. But that was never going to hold and while it demonstrates a concerted and combined approach by the Claimant, Mr Drew and Mr Curnock to establish early on the validity of the 2014 will and to a certain extent confirms my conclusions in relation to their behaviour, in itself it does not really prove anything.

(6) Conclusion on knowledge and approval

403. As must be clear from the above, I have come to the conclusion that the Claimant has not proved that the deceased knew and approved the contents of the 2014 will, despite being of sound mind and the will having been duly executed.

404. Mr Dumont QC submitted that the presumption in the Claimant's favour flowing from capacity and due execution is a strong one not easily displaced. I agree. He also submitted that the test of knowledge and approval is a simple one as explained by the Court of Appeal in cases such as *Fuller v Strum* [2001] EWCA Civ 1879 and *Gill v Woodall* (supra), namely whether, on the balance of probabilities, the 2014 will represents the deceased's testamentary wishes. Again I agree.

405. Where we part company is in his analysis of the evidence. He said that if there were deficiencies in the will making process, they did not affect the core issue that the deceased had decided to change his will in a significant way and gave instructions to such effect. Mr Dumont QC accepted that this was a very substantial change to the 2012 will but said that the importance of it had been overstated by the Defendants. There were good reasons, if reasons were needed, for the change in the deceased's testamentary intentions as set out in Mr Curnock's attendance notes of the 11 December 2013 meeting. He also pointed out that there appeared to have been a substantial change between the 2005 will and the 2012 will, with the Claimant being brought back in, although the reason for that is fairly obvious given the Claimant was then living with the deceased.

406. However that alleged dramatic change to the deceased's testamentary intentions, together with the deep involvement of the Claimant with the solicitor tasked with implementing that change in the Claimant's favour are circumstances that do very much excite the "*vigilance and suspicion of the court*" (see *Williams, Mortimer & Sunnucks* on *Executors, Administrators and Probate*, 21st ed at 10-034). I do not accept that the deceased's purported reasons for his change of mind were as set out in Mr Curnock's attendance notes and I am not satisfied that I can rely on those attendance notes as an accurate record of the deceased's instructions.

407. One might have thought that the involvement of a solicitor would strengthen the presumption of validity. In this case it is quite the reverse. The way that Mr Curnock went about the preparation of the 2014 will was not merely incompetent; it was reckless and quite possibly dishonest. It could be said that if this was a fraud on the deceased, then those involved would likely have done a better job of it. But it should not be forgotten that Mr Curnock must have thought that the incomplete will file that he had with him when he prepared his first witness statement contained all the necessary documents for proving the 2014 will, including: the first attendance note of the 11 December 2013 meeting; the attendance note of the 23 December 2013 meeting; the letters of 20 December 2013 and 3 January 2014; and Mr Riley's attendance note of the 7 January 2014 meeting. He prepared his first witness statement on the basis of those documents alone and said that he had only met the Claimant after the 2014 will had been signed. Then the emails and his notebook came to light together with the records of telephone calls and texts which wholly undermined his carefully put together story that there was no prior relationship with the Claimant, that she had no involvement in the will making process and that his attendance notes were accurate.

408. I have paused to consider why Mr Curnock would have done this and why he has continued to support the Claimant by giving untruthful evidence before this court. There could be serious consequences for him as a result of my findings. But it would not be right for me to speculate on this, particularly as the Defendants do not allege and do not seek to prove that there was a fraud or conspiracy between the Claimant and Mr Curnock. It is a truly remarkable story that an incredibly sharp, tough and successful businessman with the unique character of the deceased has executed a will without knowing that the will splits his residuary estate 80/20 between his two daughters and leaves nothing of value to his son Bill and his grandchildren Ryan and Ria. But I only need to decide whether the Claimant has discharged the burden of proving that the deceased knew and approved the contents of the 2014 will. In my judgment she has not proved that the deceased gave the instructions recorded in the attendance notes for the

11 December 2013 meeting; nor has she proved that the deceased read or had read to him either the 2014 will or the 20 December 2013 letter. Accordingly I am not satisfied that the 80/20 split in favour of the Claimant and Lisa represented his true testamentary intention.

409. I believe that the Claimant is a risk taker and she can be manipulative. She knows what she wants and she knows how to get it. While Felix may have exaggerated his escapades with the Claimant, they do show that she lives on the edge. She had already fallen out in a big way with the deceased for a period of 4 to 5 years. I believe that she was prepared to take the risk, because the prize was so great, of being found out by the deceased in relation to the 2014 will and she would have taken the consequences. It could well have happened at the 7 January 2014 meeting with two new solicitors there that one or other of them could have checked that the deceased was sure about the 80/20 split of residue. But the Claimant being there at the meeting meant that she could control and avert that possibility and the two solicitors did not even know that the 2014 will represented such a dramatic change from an earlier will. So far as they were concerned, there were only small changes to an earlier draft as set out in the 3 January 2014 letter.

410. Mr Curnock too was taking a risk in not attending the 7 January 2014 meeting. But I suppose that the worst that could have happened for him at the time was that the deceased realised what had happened and CGM lost a client.

411. But the deceased did not realise and his behaviour following the execution of the 2014 will is consistent with his not knowing that he had so radically changed the beneficiaries of his estate. He told no one what the 2014 will contained, including Mr Lines, who has since sided with the Claimant.

412. As Mr Dumont QC regularly pointed out, the deceased could have changed his will at any time before his death. That was another risk that the Claimant was taking. As it turned out, it nearly paid off because the deceased does not appear to have considered revisiting the 2014 will at any time. Presumably he was happy with what he thought he had done.

413. In all the circumstances and for all the reasons set out above, I am not satisfied that the deceased knew and approved the 2014 will; it is not therefore a valid testamentary document and I will pronounce against the force and validity of the 2014 will.

G. UNDUE INFLUENCE

(1) Introduction

414. Having concluded that the 2014 will is invalid for want of knowledge and approval, the Defendants do not have to prove undue influence to succeed on their case. After a contested application, it was only on 16 August 2021 that Master Teverson gave permission to amend their statements of case to plead undue influence. The burden is on them. The issue has generated a lot of evidence and, as I have said at the beginning of this judgment, I cannot deal with all such evidence and it would certainly now not be proportionate to do so. I will deal with this more shortly than I would otherwise have done.

415. I have come to the clear conclusion that relevant undue influence has not been established. I do not accept that the deceased had such a different private to public persona that he could have been coerced into signing the 2014 will.

416. I have said above that it seemed to me that there were problems evidentially with running undue influence as an alternative to want of knowledge and approval and my conclusions on both issues have confirmed that. I have found that the 2014 will does not reflect the deceased's actual testamentary wishes. Logically, it should not be possible to prove that the deceased was pressured into signing the will in those terms. Either he knew what the 2014 will contained or he did not. Ms McDonnell QC did submit that a third way was possible; that is that the deceased was wrongly pressured into signing a will whose contents he did not know or understand. In a simple will such as this, that assumes that the deceased did not understand an 80/20 split of his residuary estate in favour of the Claimant and Lisa respectively. I do not accept that the deceased would not have understood this if he had been told it.

417. Accordingly, my findings on knowledge and approval really preclude any finding that the 2014 will was procured by the exercise of undue influence by the Claimant. This is not a case like *Chin v Chin* [2019] EWHC 523 (Ch) where the testatrix could not speak English and where there were clearly such serious language problems that there could be co-existing findings, as there were, that there was a lack of knowledge and approval and that undue influence had been exercised. While the deceased had his own literacy problems, he could not have failed to understand an 80/20 split of his estate between his daughters, if he had known of it.

(2) <u>The legal test for undue influence</u>

418. The principles of a plea of undue influence in the making of a will are not in dispute. Those principles are different in probate than the general equity jurisdiction to set aside transactions on the grounds of undue influence. There are no presumptions that apply in the probate form of undue influence and the person alleging undue influence essentially has to show that the will in question was not procured by the exercise of the testator's own free will which has been overborne by external forces.

419. From the authorities there are two types of undue influence: coercion; and fraud or fraudulent calumny. The latter is not pursued in this case. It is concerned with poisoning the testator's mind with falsities normally about a potential beneficiary. Coercion is relied upon and it is more general and pervasive. There is a useful summary of the principles of undue influence in the judgment of Lewison J, as he then was, in *Edwards v Edwards* [2007] EWHC 1119 (Ch), which has been repeated in many authorities and in *Williams, Mortimer & Sunnucks, Executors, Administrators and Probate* (21 Ed.) at 10-56. Relevant to coercion, he said as follows:

> "47. There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:
>
> i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;
>
> ii) Whether undue influence has procured the execution of a will is therefore a question of fact;
>
> iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of

undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;

iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.

v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;

vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;

…

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

420. There is no doubt that undue influence is difficult to prove and it is rarely successful. As Mann J said in *Schrader v Schrader* [2013] EWHC 3250 (Ch) (where undue influence was proved):

> "96. It will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no-one is looking. That does not stop its being proved. The proof has to come, if at all, from more circumstantial evidence. The present case has those characteristics. The allegation is a serious one, so the evidence necessary to make out the case has to be commensurately stronger, on normal principles."

421. The character of the principal parties involved is relevant. I have had plenty of evidence as to the Claimant's character and whether she is the sort of person who could and did pressurise her father into making the 2014 will in her favour.

422. But the character of the deceased is in my view much more important. Most of the authorities, as one would expect, concern old and vulnerable testators who might have been found to have testamentary capacity but were still in a weak position and highly susceptible to being pressured by strong beneficiaries. The deceased could be said to

be the antithesis of that sort of person but Ms McDonnell QC has emphasised that the evidence shows that the deceased's home-life in 2013/14 was very different to what one might have expected for such a tough and assertive man outside of the home and in his business dealings. Ms McDonnell QC said that judges have been astute to distinguish between an individual's public personality and the effect of aggression and dependency by a close relative behind closed doors. She referred to two lifetime transfer cases in support of this proposition: *Korab-Karpinski v Lucas-Gardiner* [2007] WTLR 1655, a decision of HH Judge Norris QC, as he then was; and *Walker v Walker* [2010] WTLR 1617, a decision of HH Judge Kaye QC in relation to a practising barrister who had been coerced by her father into signing some deeds. She also referred to *Chin v Chin* (supra) in this respect where the learned Judge found that the testatrix probably succumbed to the pressure "*for the sake of a quiet life*".

423. However these cases are heavily fact-specific and there is a danger in trying to extract any sort of principle that can be applied in this case. There is no doubt what the deceased's public persona was: tough, no-nonsense, straight talking, dominant, controlling, intelligent and incredibly successful. It is not beyond the realms of possibility that such qualities became absent in his private life and he was so scared of or dependent on the Claimant or simply just wanted a quiet life that he was prepared to go along with what she wanted even though it was not what he wanted. But I think the chances of that being the case must be very slim. I do not think that Bill was convinced by his own case in this respect but this is what he has set out to prove.

(3) <u>The circumstantial evidence relied upon</u>

424. Ms McDonnell QC's case on undue influence was based on the gradual effect of the Claimant's alleged controlling behaviour on the deceased behind the closed doors of their home. That sometimes violent behaviour was not visible to the outside world save for the odd glimpse that was identified in the evidence. I can well imagine a case where over time a person, however strong they are normally, can become overwhelmed by a daily pattern of abuse and manipulation, that they just give in and do as they are told. That might particularly be so where the person is unwell and deteriorating such that they become completely dependent on the other person and cannot risk losing that necessary support. But I do not accept that that is this case. It is actually very far from this case and the fact that Bill himself, living next door to the home in which this was allegedly happening, had no idea that the deceased had been subjected to his sister's controlling behaviour is a significant dent to his case.

425. Ms McDonnell QC submitted that this was the reason undue influence was pleaded very late. It was only when witnesses were sought by Bill's solicitors that the evidence in relation to undue influence eventually emerged and they were able to put forward and plead such a case. That evidence substantially post-dated the 2014 will and is principally about the Claimant's character. Insofar as that evidence indicates what was going on in 2013 before the 2014 will was signed, then it may be relevant. However the evidence as to undue influence before the 2014 will was signed is decidedly thin on the ground.

426. Mr Dumont QC said that there was only one such piece of evidence. As referred to above, Mr Malizia said in his witness statement that he noticed that the deceased was being controlled by the Claimant both by her use of abusive and insulting language, which the deceased would not have tolerated from anyone else and in the way she talked

down to him and appeared to make him subservient to her. Mr Malizia provided one example of such controlling behaviour which he said took place "*in or around 2013*" when he was with the deceased and the Claimant in the annexe. He said that the deceased wanted to go round with him to discuss some business with Bill but that the Claimant became angered and told the deceased that she did not want him going round to see Bill with him and the deceased "*capitulated*". Mr Malizia said that he was shocked by that and it seemed totally out of character for the deceased. However, Mr Malizia said that he went over to see Bill alone but despite his shock and his closeness to Bill as well as the deceased, he did not mention anything to Bill about the incident. I do not believe that if Mr Malizia had witnessed such an incident and had been shocked by it, he would not have mentioned it to Bill or sought to address what appeared to be a major developing situation for his good friend, the deceased. In any event I cannot be sure that this did actually take place in 2013. It is wholly insufficient on which to base a finding of undue influence.

427. In her closing submissions, Ms McDonnell QC referred to a number of other alleged incidents that took place at that time which she said provided further evidence of the Claimant's controlling behaviour:

(1) Felix, Mr White and Ms Alford gave evidence about the Claimant pretending that she was not left keys to Rossiters Copse over Christmas 2013 when Bill and his family were away. According to them, the Claimant had three sets of keys for the house but she actually broke in to make it look as though Bill and Ms Alford had been difficult in relation to giving the deceased and the Claimant access to their house. Even though this took place while the 2014 will was in the course of preparation, and even if it is true, it really is extremely trivial.

(2) Felix gave evidence that when he was around 11 or 12 years old, that is in 2012 or 2013, Ms Alford had had an epileptic attack and he had called an ambulance. He was round at the deceased's house later that day and explaining to his grandfather what had happened. He was referring to Ms Alford as "*my mum*". When the Claimant heard this, she came over and, pointing her finger at Felix, said words to the effect that: "*she is not your mum, don't call her your mum. She is just trying to steal your dad's money. She is a drug addict, Felix*…" and continued to bad-mouth Ms Alford, someone who Felix regarded as his mum, and to turn Felix against her. He said that the Claimant also asked him to play "*detective*" and look for drugs and money in Ms Alford's cupboards. Felix described another incident around this time when he had run round crying to the deceased's house after Ms Alford had told him off for picking on Max. Again, he said that the Claimant had told him that Bill and Ms Alford should not be treating him like that and she said to the deceased: "*can you see how they are treating him the evil c****s*." This incident, if true, may be more relevant to a fraudulent calumny claim than one of coercion; it provides very little evidence of pressure being applied on the deceased.

(3) The Claimant's suggestion that Ms Alford was trying to steal from Bill was allegedly repeated in relation to the payment for the Claimant's horse riding lessons. The Claimant has always hated Ms Alford and she has maintained in her evidence that the deceased similarly did not like her. This was put forward by her as a reason for the deceased not leaving anything for Bill. She described in her written evidence about an occasion when the deceased and Ms Alford

had allegedly had a big row during which the deceased had said to Ms Alford: "*you came in a Peugeot 301 and you will f***ing leave in one*". Again, the incident about the horse riding lessons, if true, would be more about poisoning the deceased's mind against Ms Alford and Bill than the sort of coercive conduct that Bill actually relies on. Ms McCrory in her written evidence also gives some examples of the Claimant making allegations to the deceased against Ms Alford.

(4) Ms McKinnon described in her evidence how in or around 2012, some six months after the Claimant had moved in with the deceased, she noticed that the deceased had changed in the way he treated her and Ryan and Ria. The Claimant would ring Ms McKinnon and ask for Ria not to come round because the deceased did not want to see her. While that may be an example of controlling behaviour by the Claimant, it gets nowhere near establishing the requisite coercion over the deceased in relation to his will.

428. Ms McDonnell QC also referred to the Claimant's control of the will-making process, alleging that she deliberately timed the meetings in the deceased's office for when she knew that Mr Drew would not be there. The Claimant therefore "*grasped the opportunity*" of arranging for the 2014 will to be executed containing provisions that Mr Drew would not have allowed if he had been present. I accept that it was probably deliberate not to have Mr Drew present at the meetings and that this was suspicious. But to my mind this further adds to the want of knowledge and approval plea rather than undue influence. If the deceased was in any way concerned about what he had done he could have told Mr Drew and asked him to look at the 2014 will. Mr Drew's absence might have facilitated the making of a will while subject to undue influence; as might Mr Curnock's failure to have considered whether such a huge change to the earlier will in the Claimant's favour could have come about through the exercise of undue influence by the Claimant. But I do not think that this is evidence of undue influence itself.

(4) The Claimant's character

429. I have already said quite a lot about the Claimant's character. My findings in relation to want of knowledge and approval show the Claimant to be someone who is prepared to go to considerable lengths in order to get what she wants. She is capable of being ruthless and manipulative, using her intelligence and willingness to take risks to act deviously for her own personal interests. That is not to say that she was not also capable of kindness and generosity but I believe she easily lost her temper and could become nasty and abusive if someone turned on her. She was not frightened of standing up to people, such as Mr White, who were far bigger and stronger than her physically. She has seen a lot of violence in her life, sadly being on the receiving end of a horrific random glassing attack. It has made her unafraid of the consequences of her actions.

430. I believe that she is also very materialistic, whether in the form of flashy cars with personalised number plates, shopping sprees to Harrods or expensive holidays. Mr White tells a story about the Claimant showing him a screenshot of her bank balance with some £6.4 million in it which she had just received from the deceased. She did not mind flaunting her wealth, all derived from the deceased, but this was a source of irritation, frustration and possibly disgust on the part of the deceased.

431. Ms McDonnell QC pointed out that the Claimant had moved back in with the deceased and had had over three years living with him by late 2013 when the 2014 will was being prepared. She further submitted that the Claimant had calculated that it was in her best interests to get back in with the deceased, to work on him so as to be best placed to benefit from his great wealth and be able to lead a luxurious and very comfortable lifestyle. In that time she had already started to prevent Ryan and Ria from coming round to see the deceased and had been steadily bad-mouthing Ms McKinnon and Ms Alford so as to turn the deceased off them. She denied ever saying anything disparaging to the deceased about Bill but she forgot that she had actually admitted in her Amended Reply that she had pleaded: "*the Claimant may have said from time to time that [Bill] was doing nothing for the Deceased*."

432. Some of the deceased's friends, giving evidence on behalf of Bill, claimed to have witnessed the Claimant controlling the deceased and he just accepting that in an uncharacteristically subservient manner. There was evidence to such effect from Mr Malizia, Mr Spence, Mr Butt and Mr White but I am troubled that none of them spoke to the deceased or Bill about this, which is something they would surely have done if they were that concerned about the deceased's welfare. I have said above that I understood why Mr White would have been reluctant to stir things up but he was friendly with the Claimant as well at the time, whereas the others had no such conflict.

433. Mr White graphically described how the Claimant was capable of dramatic mood swings. He said:

> "I would be next door with her and she would be slagging [Ms Alford] off real bad. Next thing I am round next door she has come round like Dolly Parton, like no one has ever like, and I'm thinking to myself, "You have just been next door speaking about her real bad and now you are in here"".

434. Ms McDonnell QC referred to an offensive handwritten note that was amongst some papers described as "*Various schedules of Kevin's properties and investments*" which had been disclosed by Mr Drew. The note was written in capitals and said as follows:

> "WILL YOU
>
> WITHDRAW STATEMENT
>
> YOU SNIDE C***
>
> YOU SHOULD NOT OF [sic] MADE
>
> STATEMENT FULL STOP"

The Claimant agreed that this looked like an attempt to intimidate a witness but she denied it was her note or in her handwriting. Ms McDonnell QC sought to persuade me to become a handwriting expert and compare the particularly distinctive boot-shaped L and diagonal line between the top and middle stems of E with similar letters written into the deceased's address book/diary. I can see that there are similarities. It is also likely that the Claimant would have used "OF" instead of "HAVE". But I am not able to say that the entries in the address book/diary were the Claimant's. They could well

have been but the only evidence in support is that, of the few people who could have written in the address book/diary, the Claimant is the most likely candidate.

435. In any event this does not provide any evidence of undue influence exercised in 2013.

(5) Conclusion on undue influence

436. Even if I accept all that the Defendants say about the Claimant's character, and I do largely, it is nowhere near enough to establish that she exercised undue influence over the deceased in 2013 that led to him signing the 2014 will. That case was actually hardly put to the Claimant. Furthermore it is not enough to show that the Claimant tried to persuade the deceased to favour her in his will; as Lewison J said in *Edwards v Edwards* (supra) there must be: "*Coercion that overpowers the volition without convincing the testator's judgment*." In other words, it has to be shown that the deceased was pressured into doing something that he did not want to do.

437. In this case, the Defendants have to prove not only that the control was so great that the deceased was effectively forced into making the 2014 will but also that the domination continued and was so pervasive that the deceased was unable to change his will thereafter. The evidence that I have heard points the other way. The deceased was not shackled to the Claimant. He was entirely free to meet with whoever he wanted, including solicitors, friends and business associates. He could drive, including by quadbike, wherever and whenever he wanted. He went away on holiday with others and without the Claimant. He went out riding.

438. In short, if the deceased had any concerns that he had been persuaded to sign a will that was contrary to his wishes, he could have gone to one of the other firms of solicitors that he used and instructed them to write a new will for him. If he was frightened to confront the Claimant with this, he could easily have done that secretly and never told anyone, leaving everyone to find out what he had done after he died.

439. But the main reason that I do not accept the case of undue influence is because I do not consider the theory of the deceased having such radically different personalities inside and outside his home to be correct.

440. Ms McDonnell QC submitted that the deceased was a very sick man from the time the Claimant moved back in with him and that he became increasingly dependent on her for his care, medication and hospital visits. While this may have been true to some extent, it is also clear that there were many others in his wide circle of friends who could have, and on occasions did, step in to help with picking up prescriptions or going on hospital visits, such as Mr White, Ms McCrory, Ms Gage and Bill himself. And the Claimant in any event was much less around the deceased from 2017 onwards as she had effectively moved out and then became pregnant. So I do not accept that he was so dependent on the Claimant and pre-2014 there was little dependency anyway.

441. The evidence, such as it is, may show that on occasion the deceased may have just accepted the Claimant's demands in order to avoid further confrontation and for a quiet life but there were also some examples of where the deceased was not cowering down to the Claimant and was taking her on, arguing with her and criticising her to her face. Mr White and Ms Gage gave evidence that the deceased was not frightened of anyone or anything, even if he was somewhat subdued generally in the Claimant's company. I

do not believe that the deceased could be bullied by anyone including the Claimant in their home, particularly over something as important as his will.

442. There is no real evidence of undue influence being exercised in relation to the 2014 will. The deceased attended without the Claimant the meetings on 25 July 2013 and the 11 December 2013. I understand that the Defendants' case is that they do not have to pinpoint an actual occasion when it can be said that the deceased wrongly pressured the deceased to make the 2014 will but what they do say is that this was a gradual process from the day the Claimant moved in with the deceased, seeing him on a daily basis and poisoning his mind about other parties and generally chipping away at the deceased's ability to withstand the pressure. That process culminated in the signing of the 2014 will and I agree that the Defendants do not need to prove that pressure was visibly applied at the meeting on the 7 January 2014 or at another particular meeting.

443. The trouble is that there is no evidence that the deceased's free will was so overborne by the Claimant's pressure by the end of 2013. On the contrary, the evidence shows that the deceased was still very much in control of both his life and his business, despite his ill-health. I cannot believe that the deceased would have gone on holiday with Bill, Lisa and Mr White so soon after being pressured to sign the 2014 will cutting Bill and his grandchildren out of the will and him not disclosing that that had happened. Furthermore, if the Claimant was so dominant, she would not have allowed him to go for fear that the deceased may have spilt the beans. And there were plenty of other occasions when he could have done so and as Mr Dumont QC repeated a number of times, he could easily have secretly changed his will back.

444. The Claimant knew that she could not force the deceased to do something against his will which is why she had to resort to another method to get him to sign the 2014 will. As Ms McDonnell QC recognised in her closing submissions when she asked whether there is a reasonable hypothesis as to why the 2014 will was made by the deceased other than the Claimant's undue influence, the explanation is that he did not actually know and approve the contents of the 2014 will. Instead of applying pressure on the deceased to make a will in her favour, the Claimant pulled the wool over his eyes so that he did not know that his will had so radically changed from his earlier one.

445. In all the circumstances I reject the Defendants' case on undue influence.

H. CONCLUSION AND DISPOSITION

446. As a result of my finding that the Claimant has not proved that the deceased knew and approved the contents of the 2014 will, I must pronounce against the force and validity of the 2014 will. There is no dispute that the 2012 will was a validly executed will and I therefore pronounce for the 2012 will in solemn form of law.

447. I dismiss the Defendants' claim that the 2014 will was procured as a result of undue influence exercised on the deceased by the Claimant.

448. If an order cannot be agreed between the parties or if there are other consequential matters, then a hearing can be arranged through the usual channels for such purpose.

449. Finally, I repeat my thanks to counsel and their legal teams for managing this case efficiently and proportionately with such a large number of witnesses and for the high quality of their advocacy, both oral and written.