Neutral Citation Numbers:
[2019] EWHC 1193 and 1194 (Ch)

CLAIM NOS: PT-2017-000220 and PT-2019-000028

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)
In the estate of Lloyd George Clarke deceased
In the matter of the Inheritance (Provision for Family and Dependants) Act 1975

BEFORE DEPUTY MASTER LINWOOD

BETWEEN:

23rd May 2019

MRS MATILDA CLARKE
(in her personal capacity and as executor of the estate of Mr Lloyd George Clarke deceased)
(a protected party by her litigation friend Mrs Elizabeth Shirley St Hill)
Claimant

-and-

(1) MS VINETTE DAWN ALLEN
(2) MS HEATHER MAY SMITH
Defendants

Mr Francis Ng (instructed by Romain Coleman) appeared on behalf of the Claimant.

The Defendants neither appeared nor were represented.

Hearing: 25th, 26th and 29th March 2019

JUDGMENT

I direct that pursuant to CPR PD39A para.6.1 no recording shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

1. This is my judgment following trial of two claims brought by the Claimant, who is the executor and widow of the late Mr Lloyd George Clarke, represented by her litigation friend Mrs St Hill. The Defendants are his daughters. In December 2017 the first claim (220) was brought seeking reasonable financial provision out of the estate pursuant to the Inheritance (Provision for Family and Dependants Act 1975 ("the Act") ("the inheritance claim") and rescission for mistake. Deputy Master Bowles ordered separate proceedings should be brought for the latter claim so in January 2019 the second claim was instituted (028) for an order rescinding the transfer of the family home, 18 Parkholme Road Dalston London E8 ("the Property") for mistake ("the mistake claim").

2. References to numbers in square brackets are to paragraph numbers in this judgment unless the context appears otherwise. As some 18 witness statements from 6 deponents have been served I will refer to them by the deponent's initials/number/para. number. I will refer to the members of the family by their first names, with no disrespect intended, and to Vinette and Heather together as "the Daughters".

3. Attached to this judgment as Annexe 1 is an extensive chronology prepared by Mr Ng which I have found most helpful in setting out the numerous strands of this quite complicated family dispute and in particular the rival claims to the properties involved and the health of Lloyd. The parties and lawyers – individuals and their firms - are referred to by their personal or party initials. The events are, where possible, cross referred to the file/section/page or witness evidence in the bundles. The narrative is neutral and the facts are correct from my assessment of the

evidence as I refer to below. The documentation I have before me is extensive and contained in 12 lever arch files.

Background

4. These claims arise from two transactions by Lloyd; on 13th April 2010 he transferred the Property from his sole name to himself and his daughters Vinette and Heather, as joint tenants. A few months later, on 6th July 2010 he executed a will ("the Will") leaving the Property to his Daughters, expressed a wish that Matilda should remain living there for the rest of her natural life and gave the residue of his estate to his daughters and Matilda in equal shares.

5. The Property was valued by Mr Costello of Strettons as Single Joint Expert in his report dated 4th September 2018 at £1,380,000. This valuation is not disputed and as of now there are no other capital assets. As to the Property, Mr Ng asks me to rescind the transfer or make an order under s.9 or s.10 of the Inheritance (Provision for Family and Dependants) Act 1975 ("the Act"). He submits that due to the conduct of Vinette and Heather I should award the entirety of Lloyd's estate to Matilda by way of reasonable financial provision, in effect setting aside the provisions of the Will.

6. The Daughters' response to the inheritance claim is opaque. At no stage have either denied that Matilda has a proper claim. They have not engaged with the mistake claim. Below I outline the parties, witnesses and lawyers, setting out their involvement in these claims and Lloyd's deteriorating mental health. I then set out the evidence as to the transfer of the Property and the drafting of the Will, the law relating to mistake, apply it to the facts as I find them and then give my decision.

7. I then turn to the inheritance claim and set out my findings of fact on matters directly related to that claim, plus my consideration of the law relating to adverse inferences. I then assess Matilda's claim by reference to the Act and set out my findings and my decision.

The Parties, Witnesses and Lawyers

Lloyd Clarke

8. Lloyd was born in Jamaica in 1932. He was a policeman until he emigrated to the UK in the 1950s, where he worked for Royal Mail and then as a ticket inspector for British Rail. ("BR"). He purchased the Property in his sole name in 1961. In the 1960s he married Clarice Brown. They had no children. She died in the late 1990s – 1998, according to Vinette at VA/3/12.
9. Shortly thereafter he met Matilda, who was born in April 1937 and is now 82. Matilda gave up her secure tenancy of some 32 years of a local authority property without exercising her right to buy to move in with Lloyd. They married in December 2006, when he was 74 and she was 69. In 2013, Lloyd's health had deteriorated so much that he had to move into a nursing home.
10. The matters I now describe below as to his health all appear in his medical records and correspondence from his local authority, the London Borough of Hackney ("LBH"). His medical records show Matilda complaining to his GP, Dr Bourne, of him having a poor memory - which Lloyd admitted – in February 2009. In May 2009 Dr Bourne recorded when he saw Lloyd with a daughter whom I presume to be Vinette (as she lives in the Midlands whereas Heather had moved some time before to New York) of worsening memory. He was seen in June and September 2009 in the memory clinic at

Guy's Hospital and there appears to have been a diagnosis of vascular dementia in September 2009.

11. On 17th September 2009 a daughter asked Dr Bourne for a letter to say Lloyd had Alzheimers; he refused to do so as there was no diagnosis. On 9th October 2009 Dr Bourne recorded that he spoke to a daughter who wanted a letter as "*...there have been problems regarding his memory with regards the splitting of his wealth".*

12. The same day, Dr Bourne provided a letter addressed to whom it may concern regarding Lloyd's memory. He said he was still able to do all activities of daily living but there was possible age-related memory loss and early dementia – but not confirmed.

13. Another approach was made by a daughter for a letter for solicitors on 8th December 2009 stating he could carry out every day functions. On 10th December 2009 Dr Bourne records that Lloyd "*...is able to manage his affairs, and when he recently received a letter saying his wife had applied for a housing rights - he called his daughter to say something was wrong – he seems able to understand and act on correspondance"(sic).*

14. Dr Bourne prepared a letter, on Vinette's request, to Lloyd's solicitors Spence & Horne ("S&H") dated 20th February 2010. It referred to his last letter of 9th October 2009 - [12] above. It states that "*At this moment in time I feel he is able to handle his own affairs competently".*

15. After obtaining Lloyd's consent, he sent it to S&H. Dr Bourne's note of 18th February 2010 when he saw Lloyd and Vinette records that Lloyd wanted a letter saying he had capacity but he did not want it sent to the Property as Matilda "*...may get upset".* This followed a consultation on 16th February when Lloyd told Dr Bourne that he didn't

want the letter sent to his solicitors for the moment as "*...he is getting on well with his wife".*

16. On 13th April 2010 Dr Bourne spoke to a daughter, no doubt Vinette, who said S&H wanted him to sign the Will in the presence of Lloyd. A double appointment was booked and on 6th July 2010 Lloyd came in with his daughter, asking him to sign the Will as a witness which Dr Bourne records he did, stating "*I feel he is competent to make this decision".* Lloyd's GP's notes show he was diagnosed with Multi-infarct Dementia on 24th May 2010.
17. On 1st September 2010 Lloyd attended Dr Bourne with Vinette, who wanted a Power of Attorney ("PoA") signed as household bills were not being paid. Then on 30th November Dr Bourne saw Vinette who explained there were family troubles with Matilda, and said she would organise the PoA. In July 2011 Dr Bourne recorded that as Lloyd was unable to understand the purpose of the PoA he would refer him to another doctor for assessment as to whether he could sign it.
18. A Dr Singh went to see Lloyd on 16th September 2011 with Barbara Smith, an LBH social worker, to assess capacity in financial matters. Dr Singh wrote to Dr Bourne that day setting out his findings. Matilda had told Dr Singh that about 10 years before Lloyd gave his daughter Heather £40,000, bought shares in joint names and opened a joint account. Matilda, Dr Singh records, wanted a share of that money and felt the government should get it back for her. Dr Singh said this was not a question of capacity (which Lloyd had 10 years before) but family dynamics, and that Lloyd was clear he did not want the police involved.
19. Dr Singh next saw Lloyd next on 23rd March 2012 with Colette O'Driscoll, another LBH social worker. He reported his findings in a letter dated 5th April. Matilda was by then very concerned as to Lloyd's capacity and wanted LBH social services to take

over his finances as she could not manage them. Dr Singh confirmed Lloyd had dementia and "*...could not grasp the need for us to have the information regarding his finances. He also is not aware of the extent of his finances and is unable to work this out for himself. Therefore he does not have capacity around being able to manage his finances".* Dr Singh concludes by stating that this is also a safeguarding issue.

20. Just 25 days later on 30th April 2012 Lloyd signed a Lasting Power of Attorney (the "LPA"). On the evidence before me I am satisfied that Lloyd did not have capacity then to understand what he was doing in signing it in view of Dr Singh's report of 5th April 2012.

21. On 18th August 2012 Lloyd was found wandering on the edge of the M1. Dr Bourne saw him on 22nd November 2012 – this time accompanied by a support worker. His note states that Matilda is his main carer, and how Lloyd goes out and gets lost but otherwise appears well. However his health did deteriorate leading to him entering a nursing home in May 2013 where he remained (except when he was in hospital) until he died in August 2015, the causes of death being pneumonia, dementia and hypertension.

Mrs Matilda Clarke

22. Matilda was born in rural St Lucia, and left school aged about 13 or 14. She has always struggled with literacy. She came to the UK in about 1960 and worked as a machinist, retiring in about 1997 when she was 60. Matilda says her relationship with Heather Smith was relatively good when she and Lloyd were first married but that it deteriorated as time went on. Vinette she says was hostile to her from the beginning. Arguments developed and Matilda suspected and accused Vinette of theft of various physical possessions. Matilda felt Vinette was seeking to control Lloyd and that she,

Vinette, had some hold over Lloyd which led to him transferring a third of the Property to each daughter.

23. Matilda also says as Lloyd's mental health declined Vinette would visit with increasing frequency and would accompany him to a branch of Barclays bank where he would withdraw large sums of cash which Matilda suspects went to Vinette. Matilda was unaware of Lloyd making his LPA in April 2012, at which time she considers his dementia was well advanced. She says that she did not obtain a copy until May 2015, and even then it was a partial copy.

24. Matilda's troubled relationship with Vinette and Heather manifested itself in them attempting to exercise control over her living in the Property and subsequently their attempts by way of court proceedings to remove her from the Property, as I set out below. Matilda has one daughter, Ms Leila Williams, and 4 grandchildren.

25. Matilda has made 3 statements in these proceedings, on 13th December 2017, 29th March 2018 and 19th December 2018. Almost immediately afterwards, on or about 31st December 2018 she suffered a stroke and was admitted to Homerton Hospital. The stroke meant she lost capacity for the purpose of these proceedings. She was transferred to the National Hospital for Neurology on 18th February 2019. Her treating consultant, Dr Sara Ajina, in a letter dated 28th February 2019, said Matilda has extremely high care needs for 24 hours a day, she was expected to remain an inpatient for several months, and likely to have "*...lifelong care needs".*

26. Matilda's friend Mrs Elizabeth Shirley St Hill, who had by that time already made a statement in these proceedings, agreed to be her litigation friend and was so appointed on 30th January 2019. Matilda still at the time of handing down of this judgment lacks capacity.

27. At the conclusion of the trial on Friday 29th March 2019 I requested a further prognosis which was obtained from Dr Ajina that day, by telephone as she was about to depart on annual leave. She said that the likely recovery period was unknown, the prospects of Matilda living independently were very, very low, the likelihood being she would require care for the rest of her life, her anticipated date of discharge was 7th May 2019 and the stroke had affected her life expectancy but the reduction could not be quantified.

28. I have approached the evidence of Matilda carefully bearing in mind that first it had to be read to her for her to understand it. I have no doubt that Ms Gulshan, Matilda's solicitor, who has acted for her throughout and took instructions for these statements has prepared the evidence with care and has complied with the requirements of CPR 22 PD para 3A, but there are certain matters in the statements which reinforce the need for caution in circumstances where no contemporaneous or other documentation has been produced and/or other supporting oral evidence and cross examination is not possible.

29. First, at MC/1/19 and 31 Matilda refers to Lloyd giving two properties in Jamaica to each of Vinette and Heather, plus a cash lump sum, which she believes happened before she and Lloyd were married in December 2006. However there is no other evidence of this. At trial I asked whether searches had been carried out of the appropriate land registry in Jamaica but was informed that the addresses were unknown. That appears incorrect as Vinette in VA/2/19 dated 7th May 2018 denied that Lloyd owned any property in Jamaica and provided the address of what she calls the family plot namely Fata Quarter, Lucea, Hanover Parish. In addition Vinette and Heather were wrongly interposed throughout this statement.

30. More importantly also in her statement at MC/1/19 Matilda alleges that the Jamaican properties were not disclosed on the IHT400 from prepared by S&H on behalf of Vinette and Heather as executors and submitted to HMRC. However in view of Matilda's literacy difficulties I have to query whether she of her own account can give that evidence of fact – and absent cross-examination that must remain unclear. It may well have been enthusiastic drafting.

31. Further, at MC/1/7 Matilda states she rented her local authority property for some 32 years and gave it up to move in with Lloyd, that she was entitled to a substantial discount "*...and could have bought it with a little help from* [Lloyd]." However she then explains how she has no savings and is dependent on benefits. That statement clearly conflicts with only needing a little help.

32. Another conflicting statement by Matilda is at MC/1/6 where she says she knew Lloyd "*...for several years prior to marrying him in 2006."* That would place their relationship as starting in about 2003/4 if several means 3 or 4. However just two paragraphs forward at MC/1/8 Matilda says she moved into the Property "*...in the late 1990s and I lived together with my late husband for <u>some</u> years before we got married" (*emphasis added). She then at MC/1/33 placed the commencement of co-habitation as 1999.

33. There is no other evidence of when they commenced co-habiting, and the lack of certainty is understandable in view of her age and the passage of time. The difference in Matilda's own accounts is only about 4 or so years. This date is however of relevance in terms of a) lifetime dispositions by Lloyd which I will come to and b) the length of the co-habitation when that is added to the marriage.

34. Notice to rely on her 3 statements was served properly, as soon as the capacity issue arose, pursuant to s.2 of the Civil Evidence Act 1995. Mr Allie, acting now for Vinette

and Heather, served what he calls a "counter notice" which is not a procedure known under the CEA, nor the CPR, stating an intent to challenge on the basis of lack of capacity. No application has been made on a proper basis to strike out these statements.

35. Further, there is no evidence before me that Matilda was not competent to make her statements on the dates they were made. Ms Gulshan has herself confirmed she considers Matilda had capacity and the medical evidence I have seen does not indicate otherwise.

36. In summary, whilst I have approached her evidence with the caution I consider appropriate in view of certain discrepancies, her illiteracy and the fact she could not give oral evidence combined with in a limited number of areas the lack of documentary corroboration, on balance I accept what she says. What I can rely upon and supports Matilda's claims is the substantial amount of independent third party documentation, such as obtained from solicitors, banks, doctors and the local authority.

Heather Smith

37. Heather was born in Jamaica in October 1953. She moved to the UK and later to New York, from where on 4th March 2007 she wrote a letter to Lloyd and Matilda, to say hello and wish her father a happy birthday. She also sent US$250, and wished them both to have a nice day. Heather then set out the contact details for a solicitor (not Mr Allie nor S&H) and said "*He does wills and advised on legal matter. If you want to do the right thing, Have a talk with him."*(sic).

38. At one stage Heather assisted her father with managing his money. This was confirmed by Lloyd to Dr Singh when Dr Singh saw Lloyd on 16th September 2011 – see [17] and [18] above. They also had a joint account with Barclays Bank, ("the Joint

Account") for which statements over the period January 1998 – September 2017 are in evidence. That Joint Account alone shows the attempts by Vinette to portray Lloyd as living the most simple life in financial terms, having no assets save the Property and a very limited income, are simply untrue as I refer to below.

39. Heather's involvement in the inheritance proceedings has been minimal, and in the mistake claim, non-existent. Following service of the inheritance claim Mr Allie acknowledged service on her behalf. Vinette in her first two witness statements of 2nd February 2018 and 7th May 2018 said they were made on her and Heather's behalf but the last three made on 2nd August and two on 3rd September 2018 do not.

40. In the inheritance claim Heather served a Notice of Change dated 23rd August 2018 stating that she would be acting in person and provided her email address. Shortly thereafter, Deputy Master Bartlett on 30th August 2018 made an order which recited that SH had ceased to act for Heather and she – like Vinette – was ordered to disclose bank statements and carry out searches for documents by 28th September 2018.

41. Heather failed to comply and Deputy Master Bowles by his order of 10th December 2018 ordered that she be debarred from defending unless she then complied – which she did not. In the mistake claim, she did not acknowledge service and played no part in those proceedings.

42. I am satisfied that these proceedings have come to her attention and further that Vinette copied Heather in to certain correspondence by email using the email address that Heather herself had provided in her Notice of Change dated 23rd August 2018.

Vinette Allen

43. Vinette was born in Jamaica, almost 2 years after Heather, but to a different mother, in September 1955. She subsequently moved to Wolverhampton in about 1996,

According to Leroy Scott, the son of Lloyd's sister Eva, Eva informed him that in 2006 Vinette appeared for the first time and said she was Lloyd's daughter.

44. There was no evidence before me as to how the relationship between Vinette and Lloyd developed, but according to Leroy her first contact with him was in 2008. Mr Allie acknowledged service of the inheritance claim on her behalf, and through him she made five witness statements in those proceedings as listed in [39] above.

45. On 14th March 2019 S&H sent to the court a Notice of Change of Legal Representative in Form N434. This Notice fails to comply with the CPR in that it is not signed by Vinette but by, it appears, S&H as a) the signature is not hers and b) the signatory describes themselves as a solicitor. She did however also email Matilda's solcitors, Romain Coleman ("RC"), copied to Heather, on 14th March 2019 to say she no longer had a solicitor.

46. Vinette has made 5 statements in these proceedings. I have also read the 2 statements she made in the Part 8 Claim brought by her in the Family Division of the High Court referred to at [96] below. I consider her statements generally to be lacking in specificity and unsupported by evidence or detail. They are "thin" and importantly do not, as would be expected, deal with the factors under s.3 of the Act that I must take in to account when assessing Matilda's claim. The statements in the main argue points as against Matilda, make various unsupported allegations against her and others, and set out conflicting accounts of key matters.

47. Vinette's evidence does not bear examination when checked against contemporaneous documentation, especially that of independent third parties. I find that, as I set out below in my findings of fact, that I cannot rely on the vast majority of what she says. Where her evidence conflicts with the other witnesses, I prefer their evidence.

48. Her failure to attend at trial and be cross-examined speaks for itself in the circumstances of her evidence which include substantial sums of money going through her accounts, her abuse of the Lasting Power of Attorney of her father both in terms of its creation and her use of it and her attempts to control the properties involved.

49. Vinette took no steps in the mistake claim, and did not appear at trial, her last appearance being on the directions hearing I fixed just before trial. She could have attended trial if she so wished.

50. The Order of Deputy Master Pickering of 6th April 2018 at paragraph 6 provided that all witnesses "*are required to attend trial to give oral evidence and for cross examination".* No sanction is set for non-attendance. I am however satisfied that in all the circumstances I describe below her position would not have been improved by attendance.

Mrs Elizabeth Shirley St Hill

51. Mrs St Hill is 71 years old. She met Matilda in 2007 at their local church and became friends. Mrs St Hill has been helping Matilda since 2016, in particular supporting her by explaining correspondence with lawyers and others and accompanying her to meetings and court hearings.

52. Vinette has made various allegations against Mrs St Hill and her husband. As a result, she made a statement in these proceedings dated 24th October 2018, stating, contrary to what Vinette alleged, that her husband and Lloyd had nothing to do with each other and she had no business relationship with Lloyd or Matilda.

53. Mrs St Hill was appointed as litigation friend for Matilda and a certificate of suitability was filed on 30th January 2019. S&H objected several times to her appointment, but

from my reading of that correspondence, there are no good grounds on which to do so, and no application to challenge was made.

Mr James B. Allie

54. Mr Allie is a solicitor at S&H and has acted for Lloyd, Heather and Vinette at various times in different matters since 2009. He became a partner in S&H at some point in 2017. As to acting for Lloyd, Mr Allie said in his *Larke v Negus* response dated 17th October 2016 that Lloyd came to their offices where they met for the first time on 16th September 2009, via their Yellow Pages advertisement. This conflicts with Mr Allie's own letter of 16th September 2009 wherein he refers to meeting Lloyd on the 14th as well as 16th September.
55. There are various other discrepancies and matters of concern as to Mr Allie's conduct of these and other proceedings. One relatively recent example is an email dated 9th November 2018 from Matilda's solicitor, Ms Gulshan in which she asks a) for confirmation that Mr Allie was present (as Mr Allie stated he was in his letter of 17th October 2016) when Lloyd executed his will at Dr Bourne's surgery as the latter's note makes no reference to his presence, b) whether Mr Allie would appear as a witness given that evidence from him was central as he received instructions from Lloyd as to the transfer of the Property and the Will and c) for Mr Allie to give evidence at trial.
56. Ms Gulshan concluded that by stating that she would not oppose an application to adduce his evidence late and warning that if he did not do so the court would be asked to draw adverse inferences.
57. I am told that Mr Allie has never replied to that email. Ms Gulshan's questions were reasonable and proportionate in the circumstances of these proceedings and answers to

them would have been of assistance to the court. Mr Allie's failure to respond to those proper questions from another solicitor and to assist the court are of concern.

58. A second example of conduct which I consider merits an explanation is Mr Allie's attendance at Matilda's hospital bedside on 19th January 2019. In his letter to RC dated 21st January 2019 Mr Allie states "*It is clear from the writer's personal inspection that your client lacks mental capacity to give instructions and to attend trial as a witness."*

59. Mr Allie concludes by stating that he has instructions "*to apply to the court for a mental capacity assessment"* if Ms Gulshan does not provide contrary medical evidence. She replied on 22nd January 2019 by email asking Mr Allie to a) set out why he had attended upon Matilda knowing she was represented by them, b) what he discussed with her and c) his qualifications to carry out the assessment as to capacity. Ms Gulshan referred to the SRA's code of conduct and asked for an immediate explanation.

60. Mr Allie in his 2nd response of that day failed to answer any of those three queries but merely restated that he required a reply to his letter of 21st January. Mr Allie appears to have assumed that letter was a threat to report him to the SRA (which it clearly was not) and responded "*please go ahead"* (emphasis as in original).

61. Again I find Mr Allie's failure to respond to those proper, reasonable and proportionate queries to be of substantial concern in the circumstances. There are other matters of conduct which I will set out in my findings of fact.

Leroy Scott

62. Leroy is from Cardiff and is Lloyd's nephew as I have mentioned. Besides his mother, Eva, Lloyd had another sister, Mrs Doris May Ashman, who died in August 2009. Both Lloyd and Eva (and other siblings/issue) were entitled to a share in Doris' estate.

Leroy says the siblings were very close. Leroy has had dealings with Vinette over Doris' property, 27 Glenthorne Rd London E7 ("27 GR") which Leroy says he was familiar with from family visits since early childhood.

63. Leroy says Vinette took control of 27 GR (which Lloyd had previously been renting out) by removing trespassers, carrying out renovations and then renting and receiving the rent herself. Vinette says this was by agreement with Leroy and Sally. Leroy and Sally deny this.

64. Leroy has obtained letters of administration over Doris' estate as she died intestate. Leroy was appointed by Eva pursuant to a Lasting Power of Attorney. He says her solicitors told him that in 2010 they could not get information from S&H, acting as Lloyd's solicitors – Mr Allie – as to what was happening with 27 GR.

65. The current position is that Leroy as administrator of the estate of Doris obtained a Freezing Injunction against Vinette on 17th January 2019 granted by HHJ Milwyn Jarman QC in the High Court in Cardiff. That injunction prohibited Vinette from dealing with her assets including her interest in her property in Bilston, the Property and 27 GR up to the value of £75,000.

66. On the return date, the 5th February 2019, the injunction was extended to include Vinette's assets up to £625,000. Further, the court found that Vinette had attempted to avoid service. In these proceedings, Leroy has made two witness statements, on 22nd August and 24th October 2018.

Sally Scott

67. Sally's evidence concerns Vinette and 27 GR. In particular, she says Vinette was intimidating and aggressive towards her both in person and on the telephone. Her statements are dated 22nd August and 24th October 2018.

Evidence at trial

68. At trial I heard oral evidence from Mrs St Hill, Ms Gulshan, Leroy and Sally. Mr Ng did submit that in the absence of attendance by Vinette and Heather I could dispense with oral evidence. I disagreed as a) I had questions for the witnesses, b) it is preferable to have witnesses prove their statements orally and c) it is not unknown for opposing parties to make a late appearance in a hearing.

69. Having heard their evidence, I have no doubt that what they say is true and that I can rely upon their statements. I should for completeness state that as to documents there has been no challenge to authenticity pursuant to CPR 32.19 by any party. Further, Deputy Master Bowles' Order of 10th December 2018 at paragraphs 2 and 3 provides that Matilda may rely on all documents and correspondence disclosed up to the date of trial.

Adjournments and Procedural Matters

70. Vinette has attempted to derail these proceedings by delay or adjournment from the outset. On 6th April 2018 at the first directions hearing before Deputy Master Pickering, appearing in person, she applied for an adjournment which was dismissed. Then on 30th August 2018 Vinette and Heather were removed on Matilda's application as executors of Lloyd's estate by order of Deputy Master Bartlett.

71. On 24th January 2019 Vinette appealed the order of Deputy Master Bowle. That was struck out as a legal nullity pursuant to CPR 21.3(4) by Mr Justice Arnold on 18th February 2019. The recitals to his order state there were no proper grounds for an appeal, nor an extension of time and no application to validate the appeal, in circumstances where Mr Allie knew Matilda lacked capacity.

72. Having received an undated letter from Mr Allie in February 2019, inviting the court to vacate the trial date, and concerned as to other procedural difficulties with a rapidly approaching trial I fixed a directions hearing for 26th February 2019. Vinette attended and orally applied to adjourn the directions hearing which I refused.

73. Ms Leila Williams, Matilda's daughter, wrote to the court on 25th February 2019 requesting an adjournment of the directions hearing, which I also refused. Further, I found Mr Allie's undated letter did not set out proper or sufficient grounds on which to vacate the trial.

74. On Thursday 21st March 2019, just before the start date of this trial listed for Monday 25th March, Vinette emailed the court. She referred to the Freezing Injunction of February, that she intended to defend this claim but had to have both a solicitor and barrister which she did not. On the first day of trial, at 02.32 Vinette sent the court an email stating she was unwell and attaching a photograph of a piece of paper showing she had attended hospital local to her in the early hours of that morning – but nothing more.

75. Whilst neither email requested an adjournment, that was implied. I therefore treated the emails as two separate applications for adjournments and gave a short *extempore* judgment refusing each.

76. To summarise, there have been 4 separate attempts by Vinette to adjourn these proceedings, one attempt by her solicitors plus an appeal which should never have been brought. There are other instances of obstruction and attempted delay which I refer to below.

The Transfer of the Property and the Will

77. Some two and a half years after Heather suggested Lloyd should make a will Lloyd visited Mr Allie at his office in Hackney on 16th September 2009. Mr Allie's attendance note records Lloyd's instructions as "*transfer of equity of 6 bedroom house...to client, wife and 2 Daughters. Reason: it is the most direct way of transferring title to the children. I am aware that I can do so by will but I am advised it would amount to an expression of wish only"* (sic).

78. Lloyd's intentions were confirmed by Mr Allie in his letter to him of 16th September 2009 in which he says "*...the reason you were transferring the equity of the property was to ensure that Matilda Clarke could remain living in the property for the remainder of her natural life and at her death Heather and Vinette were to inherit the property."*

79. Mr Allie also in his letter confirmed that first Lloyd agreed to this course of action and secondly his oral advice that Lloyd could not achieve his wish that Matilda transferred the Property to his Daughters as he could not prescribe how she dealt with it. Therefore, the letter continued, Lloyd should transfer the Property to himself, Matilda, Heather and Vinette as joint tenants and all three of them should seek independent legal advice.

80. It appears – but the documentary trail is incomplete – that Matilda sought legal advice and as a result Frank Brazell, solicitors in Islington, registered a Notice of Home Rights ("the Notice") under the Family Law Act 1996 ("the FLA"). However there is no evidence before me as to the basis on which they were instructed and the advice they gave Matilda, and she does not mention the Notice or anything connected with it in her first statement.

81. The Notice was certainly known to Lloyd and no doubt Vinette as Mr Allie in his next meeting with Lloyd and a daughter on 9th December 2009 records Matilda's

registration of the Notice. As a result Mr Allie in his attendance note of that meeting advised Lloyd that the matter was unlikely to be resolved soon and that it is best for him to make "*...a will expressing his wish about the house".*

82. On 4th January 2010 Mr Allie wrote to Lloyd c/o Vinette enclosing a draft will. He urged Lloyd to take tax advice over the bequests in it and the possibility of a life interest in the Property in favour of Matilda, before executing the Will.

83. Twice Mr Allie in his letter records that Lloyd wished for Matilda to live in the Property "*...for the remainder of her natural life",* but not that this wish was not binding on Vinette and Heather to whom the Property was to be transferred.

84. Mr Allie also recorded that Lloyd said "*...the reason for the bequest was that 18 Parkholme Road had been the family home for over 30 years. Further you had only been married to Matilda for 3 years."* There is then reference to bequeathing the remainder of the estate to Matilda and the Daughters in equal shares.

85. The next day, 5th January 2010, Frank Brazell replied to Mr Allie's letter to them of the previous day saying they were without instructions but their "*...last instructions were that our client could see no advantage in her signing the proposed Declaration of Trust. If our instructions change we will let you know"* - that deed not being in evidence.

86. On 7th January 2010 Mr Allie wrote to Lloyd c/o Vinette enclosing a copy of that letter. He said '*... To progress this matter you have the option of instructing me to amend the Declaration of Trust/Transfer to remove Matilda. You would be transferring the property to Heather and Vinette only. Matilda's right to occupy the property during her life time is protected by the Matrimonial Homes Right that SHe has registered at the Land Registry. This means that Heather and Vinette would not be able to evict her from the property. Further when the Land Registry register the*

transfer of the property to Heather and Vinette they would record on the register Matilda's Matrimonial Home Right. That is Heather and Vinette would take the property subject to Matilda's right to occupy the property.' [sic]

87. Lloyd replied in manuscript on 14th January 2010 in the only written communication from him that is in evidence. He said "... *Dear Spencer and Horne. Solictors (James) My name is Lloyd George Clarke. And I am writing this letter to you to instruction* [sic] *to amend declaration of trust/transfer to remove my wife Matilda Clarke. And to transferring the property to my two Daughters Heather Smith and Vinette Allen only. And that my wife Matilda right to occupy the property during her life time*

Yours sincerely

L G Clarke" [sic]

88. Almost one week later on 20th January 2010 Dr Bourne wrote to Mr Allie confirming that Lloyd could "*...handle his own affairs competently".* Some 3 months later Lloyd executed a transfer of the Property ("the Transfer") to himself, Vinette and Heather which was registered on 16th April 2010.

89. Then on 6th July 2010 Lloyd executed his one page will ("the Will"). By clause 1 Heather and Vinette were appointed executors. Clause 2 provided that the Property was given to the Daughters in equal shares. Clause 3 which said "*I express a wish that my wife, MATILDA CLARKE of 18 Parkholme Road, Dalston, E8 3AG remains living at 18 Parkholme Road, Dalston, E8 3AG for the rest of her natural life."*

90. By clause 4, Lloyd gave the residue of his estate to all of Matilda, Vinette and Heather, in equal shares. The Will was witnessed by Dr Bourne whose signature and printed name appears somewhat unusually above that of Lloyd, with his office stamp below. Mr Allie's signature appears to the left, together with his office stamp.

91. Mr Allie says in his *Larke v Nugus* reply to RC of 17th October 2016 at paragraph 10 that he witnessed the Will with Dr Bourne at the latter's practice. Dr Bourne's file note makes no reference to Mr Allie being present. On 9th November 2018 RC wrote to Mr Allie asking him to confirm whether he was present with Dr Bourne when the Will was executed. No reply has been received.

92. Mr Ng in opening submitted I should determine whether the Will had been validly executed in accordance with s.9 of the Wills Act 1837. I asked whether Dr Bourne was to give evidence and/or if he had been served with a witness summons. I was told he was not, but despite being written to twice, he had not replied. I indicated that as the Claim Forms did not include a claim disputing the validity of the Will I would not hear further unless a successful application to amend was made. On instructions, Mr Ng did not pursue the point.

93. Again I must express concern at Mr Allie's lack of response which is especially unhelpful in these circumstances.

The attempts by Vinette and Heather to take over the Property

94. A detailed narrative is set out in the Chronology starting with S&H's letter of 11th July 2013, written some 3 or 4 months after Lloyd had moved from the Property to hospital and then a care home, continuing for almost 4 years until 13th July 2017 when HHJ Baucher granted permission to appeal the possession order which had been granted on 15th June 2016.

95. As that narrative is based on documents adduced in evidence it is not necessary for the purpose of these claims to set out the detail, but there are certain points I consider should be emphasised.

96. First, there were two claims made against Matilda – the first a Part 8 Claim in the Family Division of the High Court brought by both Daughters for rights of entry and a declaration as to Matilda's right to occupy and determination of home rights under the FLA, issued on 20th March 2015 ("the FLA Proceedings").

97. Secondly, in the County Court, brought by Vinette and Heather (albeit the Claim From and Particulars are signed only by Vinette) issued on 29th April 2016, for possession on the ground that Matilda had no consent or licence to occupy the Property ("the Possession Proceedings").

98. S&H acted for the Daughters in both claims. Their letter before action of 11th July 2013 is written on behalf of both Daughters and Vinette as attorney for Lloyd ie as the three owners. Whilst that letter acknowledges Matilda's right to occupy the Property "*for the duration of the marriage"* it threatens an injunction and a costs of £5,000 as they allege Matilda had been letting rooms. Following a response denying the claims S&H in their letter of 16th August 2013 demanded access for an inspection and occupation of 2 rooms whilst the Daughters were in London and repeated threats of an injunction.

99. Walter Jennings solicitors ("WJ") were then instructed in August 2013 by Matilda. The correspondence continued with S&H continually making threats of applying for injunctive relief. WJ said the threat to occupy a room was a breach of quiet enjoyment and harassment of an elderly lady. On the 7th and 10th October 2014 Mr Allie wrote directly to Matilda enclosing draft plans to divide up the Property. On 10th November 2014 he wrote directly to Matilda and said Vinette would be attending with her architect, Des Johnson, on 21st November.

100. Ms Williams responded on her mother's behalf on 16th November 2014 saying that due to the ongoing harassment and pressure upon Matilda she was facing serious

health concerns and was unable to sleep or eat properly, that she was 77 years old and unable to take such stress and that all further correspondence should be sent to WJ.

101. Following Lloyd's death on 31st August 2015, the Daughters were registered as sole owners of the Property on 23rd December 2015. On 1st April 2016 Mr Allie served a Notice to Quit directly upon Matilda and then the Possession Proceedings were issued. Following several separate decisions before 4 District Judges and 2 Circuit Judges, to include a possession order, a suspended warrant and an appeal, the possession order was set aside and Possession Proceedings stayed pending this claim.

MISTAKE

102. Although not cited to me I think a useful starting point is Snell's Equity 33rd Edition at paragraph 15-006: "*Gifts, gratuitous settlements and other gratuitous dispositions are more vulnerable to rescission and can be rescinded where there was a causative unilateral mistake which was so grave that it would be unconscionable to refuse relief. This test will normally only be satisfied where there was a mistake either as to the legal character or nature of the transaction or as to some matter of fact or law which was basic to the transaction. A mistake as to the tax consequences may, in an appropriate case, be sufficiently grave to warrant rescission."*

103. The decision of the House of Lords in *Pitt v Holt* [2013] 2 AC 108 is referred to in a footnote to the above quotation and is summarised in *Van der Merwe v Goldman* [2016] 4 WLR 71. At paragraph 26 Mr Justice Morgan set out 11 principles: (references in square brackets are to the paragraphs in *Pitt v Holt*)

"(1) a donor can rescind a gift by showing that he acted under some mistake of so serious a character as to render it unjust on the part of the donee to retain the gift: [101], quoting Ogilvie v Littleboy (1897) 13 TLR 399 at 400;

(2) a mistake is to be distinguished from mere inadvertence or misprediction: [104];

(3) forgetfulness, inadvertence or ignorance are not, as such, a mistake but can lead to a false belief or assumption which the law will recognise as a mistake: [105];

(4) it does not matter that the mistake was due to carelessness on the part of the person making the voluntary disposition unless the circumstances are such as to show that he deliberately ran the risk, or must be taken to have run the risk, of being wrong: [114];

(5) equity requires the gravity of the mistake to be assessed in terms of injustice or unconscionability: [124];

(6) the evaluation of unconscionability is objective: [125];

(7) the gravity of the mistake must be assessed by a close examination of the facts which include the circumstances of the mistake and its consequences for the party making the mistaken disposition: [126];

(8) the court needs to focus intensely on the facts of the particular case: [126];

(9) a mistake about the tax consequences of a transaction can be a relevant mistake: [129]-[132];

(10) where the relevant mistake is a mistake about the tax consequences of a transaction, then:

"[i]n some cases of artificial tax avoidance, the court might think it right to refuse relief, either on the ground that such claimants, acting on supposedly expert advice, must be taken to have accepted the risk that the scheme would prove ineffective,

or on the ground that discretionary relief should be refused on grounds of public policy." [135];

(11) it is not pointless, nor is it acting in vain, to set aside a transaction and to remove a liability to pay tax, even where that is the principal, or the only, effect of the setting aside: [136]-[141]."

104. Applying those principles to the facts here I find that the Transfer of the Property was directly caused by a sufficiently serious mistake so as to mean it would be unconscionable for the Daughters to remain the owners of the Property. It is clear and obvious from the contemporaneous unchallenged documents that surround the Transfer and the Will that Lloyd's intention at all time was that Matilda should be able to live for the rest of her life in the Property – see [70 - 89].

105. Matilda herself is clear in her evidence that Lloyd would not have left her with no rights to occupy the Property. I have no doubt that Lloyd believed on the basis of the advice of Mr Allie that Matilda's right to occupy was protected by the Notice of Home Rights registered at the Land Registry and that the Transfer to the Daughters was specifically subject to that – Mr Allie's letter to Lloyd of 7th January 2010 quoted in [86] above.

106. That was wrong as her protection under the FLA ended on his death by operation of s.30(8) of the FLA. Mr Allie did not advise Lloyd of this and on the balance of probabilities I consider that was because he was not aware of the correct position in law. That advice was accepted by Lloyd in his reply of 14th January 2010 in [87] above, as he clearly agreed to remove Matilda from the Transfer on his understanding that her right to occupy was protected for her life by the Notice.

107. Further Lloyd was specifically advised by Mr Allie in his above letter that his Daughters would not be able to evict Matilda when he died whereas they did do so and obtained an order for possession. That clearly was never Lloyd's intention.

108. Another mistake was that Mr Allie advised Lloyd in his letter of 16th September 2009 and Lloyd accepted his advice that it was not possible for Lloyd's wish for Matilda to transfer the Property to the Daughters as I set out at [79]. That advice was again wrong as a matter of law as Lloyd's intention could have been achieved by an inter vivos or testamentary trust to Matilda for life and then to the Daughters in remainder.

109. These errors impugned the very essence of the Transfer in that had Lloyd been aware of the true effect he would not have executed the Transfer.

110. They are of such a serious a character so as to mean it would be unjust to permit the Daughters to retain the Property; they provided no value for the Transfer and there is no evidence that either of them changed their position as a result. In addition, the Daughters have not adduced any evidence that, should it be found that the Transfer was made by mistake, that they should retain the Property – indeed the opposite as they both ignored the mistake claim when it was served on them.

111. Finally, as I have set out at [94-101] and in the Chronology, the Daughters set about a campaign via correspondence from Mr Allie and then through the High and County courts against Matilda lasting almost 4 years so as to remove her from her home and thereby security, being the only home she had or could have (as she had no income nor assets to move elsewhere) which understandably affected her health, especially in view of her illiteracy. The Daughters used the rights available to them under the Transfer unconscionably and it is probable they will continue to do so if the mistake is not remedied.

112. It is, as I have indicated, a matter of regret that Mr Allie has not given evidence as that could have assisted me as to my findings. Having said that, the contemporaneous documentation found in the attendance note and the three letters I have mentioned above plus the surrounding documentary evidence namely Lloyd's instructions for and the Will itself may well be of more probative value than any oral evidence in view of the passage of almost 10 years. In other words, the lack of oral testimony does not cause me to doubt the correctness of my above findings.

113. I therefore find that Lloyd executed the Transfer due to a serious mistake. The requirements as summarised by Morgan J at [26] in *Van der Merwe* are met. The Transfer will be rescinded for mistake so the Property will be held on constructive trust for Lloyd's estate.

The Inheritance Act Claim

114. Mr Ng submitted that if I did not rescind the Transfer, the Property should be subject to an order under s.10 of the Act namely that it was a disposition to defeat and application for financial provision, or s.9 - whereby to facilitate the making of an order for financial provision the deceased's severable share of a joint tenancy may be treated as part of the net estate.

115. I need not decide those matters in view of my above decision. Further, Mr Allie in his letter of 8th November 2016 to RC appears to concede that such provision should be made as he said "*Pursuant to TOLATA and the* [Act] *...your client is entitled to one third interest in the estate of the late Lloyd...",* although subsequent correspondence is unclear as to whether this was a concession intended to be relied upon.

116. Before I turn to the application under the Act there are certain matters of evidence and law I set out by way of background.

Adverse Inferences

117. Mr Ng submits that in the circumstances of these claims I should draw adverse inferences from the conduct of the Daughters and Mr Allie. First, that Vinette especially received large transfers of cash from Lloyd and secondly that Mr Allie knew of matters going to the questions as to whether the Transfer was impugnable for mistake and thirdly that Vinette committed serious financial abuse of her father.

118. I was referred to *Wisniewski v Central Manchester Health Authority* [1998] PIQR p 324 where Brooke LJ at p340 summarised the principles:

"(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

119. Applying those principles to the factual position here, I have no doubt that I can in certain circumstances draw adverse inferences from a) the absence of the Daughters at trial and b) the silence of Heather in that she has, with the sole exception of the 2 witness statements that Vinette states she made on her and Heather's behalf, been

wholly silent and has given no disclosure at all notwithstanding an express order of the court for her to do so – see [41] above.

120. There are certainly numerous matters to answer here where there is evidence which, with a couple of limited exceptions, calls for an explanation given the serious nature of the allegations. As I have indicated above, there is no satisfactory or credible reason for the absence of the Daughters. Heather was specifically warned by RC in their email to her of 5th December 2018 that they would ask the court to draw adverse inferences in view of her lack of evidence and the fact she was a crucial witness. No reply was ever received.

121. As I have recounted at [55-57] above, Mr Allie was written to in similar terms as to adverse inferences but also has never replied.

The Lasting Power of Attorney

122. As I found in [20] Lloyd did not have capacity when on 30th April 2012 he signed the LPA. The LPA was arranged by Vinette, in her favour, for her purposes. Dr Bourne in his letter of 26th July 2011 regarding Lloyd and referring to Vinette as his daughter to a body entitled Mental Health Care for Older People states "*I have been asked to sign a power of attorney for property and financial affairs. There have been some problems within the family...When I went through the purpose of the power of attorney and what this may entail, the patient was unable to understand the reasons behind this."*

123. The circumstances of the preparation of the LPA are questionable in that as Dr Bourne appears to have refused to sign it Vinette had to look elsewhere. Eventually, the person who certified that Lloyd knew what he was signing was one Audrey Aldridge. According to Matilda, at MC/1/21, she (Matilda) was not involved in it in any way, and says that Audrey was a friend of Vinette's and not of her husband.

124. Further, Matilda was not identified as the person to be told; that was Desmond Johnson, being the architect referred to in Mr Allie's letter of 10th November 2014 that I refer to in [99] above, and is the husband of Audrey Aldridge. There appears to have been no connection between those persons and Lloyd save that all of them knew Vinette.

125. LBH had been involved in assessments of Lloyd since 2011 as their social workers accompanied Dr Singh on his visits to Lloyd, and a safeguarding meeting was held in August 2011 which decided that it was in Lloyd's best interests that an independent person should manage his affairs. LBH recorded in an internal email that "*Mr Clarke stated he did not want Vinette to manage his finances any longer as he no longer trusts her."* There are also frequent references to long-standing conflict between Matilda and the Daughters.

126. LBH then notified the Office of the Public Guardian of their concerns by email dated 24th September 2012 and said " *We do not believe his daughters are acting in his best interests and there have been a number of concerns raised about financial exploitation in relation to his daughters in particular who control his financial affairs and his assets... Our client Mr Clarke has capacity to decide who he wishes to manage his monies and he has been consistent in his response that he does not want his Daughters to control his affaires".*[sic]

127. On 17th May 2013, LBH took control of Lloyd's benefits and private pension which they used to pay his care fees and an allowance until he died. Vinette at VA/3/7 alleged that a person, believed to be the husband of Mrs St Hill, arranged for Lloyd's pension to be paid into Matilda's bank account and as a result Lloyd had no money, so to prevent this abuse LBH were made Appointee. There is no documentary or other evidence in support of this allegation. I dismiss Vinette's allegation as it is

unevidenced and flies in the face of what LBH record as having happened and the reasons for their actions as I have set out above.

128. At VA/3/8 Vinette says "*In 2013, the deceased also had an account with Santander in which there was a balance of about £27,000. My father (the deceased) gave me access to the account and I spent the money gradually and at his direction. His funeral costs of approximately £12,000 were paid from this account. I used the money ...on personal items for him...it had been agreed I should also pay my fares from Wolverhampton for my frequent visits to him."*

129. Mr Ng has been extremely assiduous in preparing summaries of the various bank accounts in evidence in these proceedings. I have found these most helpful. The account Vinnete refers to appears to be Santander account number 5601. From 16th December 2013 to 5th June 2015, a period of 19 months, a total of £36,470.00 was withdrawn in 27 cash withdrawals of which 5 were near to Lloyd's home, 21 in Wolverhampton and 1 in Birmingham. Withdrawals from 2 other accounts in cash when added total £38,106.88.

130. As at this time Lloyd was in a care home with his needs met, I consider it almost impossible for Vinette to have as she alleges spent £2,000 per month on him and/or at his direction even allowing for travel expenses, in circumstances where there is no evidence as to the frequency of such visits and Vinette has failed to set out when those visits took place nor appeared at trial to explain.

131. The above withdrawals also included some £27,000 which had been transferred from Lloyd's investment holdings which were sold off in the period 30th September 2014 – 6th May 2015, which I consider can only have been done by Vinette using the LPA. Eleven transfers, all but one being for precise amounts ie they included pounds and pence were made to account 2007 and then rounded figure transfers in all but one

instance were made to the Santander account 5601. For example, on 15th December 2014 an investment was sold realising £2,014.53 which was transferred to account 2007. The next day £2,000 was transferred to account number 5601.

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132. I have outlined at [63] above that 27 GR had been rented out by Lloyd. It belonged to his late sister Doris who died in August 2009 and is part of her estate. It has been the subject of much conflict between Leroy and Vinette and her use of it is the basis of the Freezing Injunction against her.

133. What on the documents before me appears to have happened is that according to Doris's will Lloyd was appointed executor of her estate. Vinette says at VA/2/4-5 she became aware of her father's interest in 27 GR – as executor and beneficiary – in 2012 when solicitors Rubin Lewis O'Brien LLP ("RLO") who acted for Eva, her aunt and Leroy's mother, wrote to Mr Allie asking about the whereabouts of Doris's will. No reason is given as to why they would write to S&H. Mr Damian Lines of RLO was granted letters of administration *ad colligenda bona* with power to sell 27 GR on 22nd October 2010.

134. Doris's original will could not be found. A copy shows it was made on 3rd June 1998. After certain specific gifts the residue, which included 27 GR, was to be divided into 18 shares. One share was to go to Heather, two to Lloyd, one to Leroy and the others to other family members – but not Vinette. Under the intestacy rules, I am told that Lloyd's estate is expected to benefit but by a reduced proportion namely 1/15th.

135. Vinette says she then visited 27 GR and found a Romanian family occupying it who had been there since 2009/10. Subsequently (she does not say how) she found they were occupying unlawfully and so commenced proceedings in October 2014 in the

Bow County Court seeking possession against persons unknown as *"Attorney on behalf of Lloyd George Clarke Executor in the Estate of Doris May (deceased)".*

136. Mr Allie acted for Vinette and signed the statements of truth on the Claim Form and the Particulars of Claim. DJ Vokes, according to his order, heard the solicitor for the Claimant – who I presume must have been Mr Allie – on 18th November 2014 when an order for possession forthwith was obtained. Leroy subsequently obtained a Grant of Representation to the estate on 26th October 2017.

137. Matilda was unaware of 27 GR. Vinette said in her first statement dated 2nd February 2018 in these proceedings at VA/1/15 as to Lloyd's financial position "*He had retired from work with the railways in 1997 and we do not believe he had had the income to build up more than modest savings. The £40,000 just about cleaned him out. When he died, he had nothing."*

138. I find Vinette's statement that Lloyd did not build up more than modest savings to be untrue.

139. Ms Gulshan discovered the existence of 27 GR and Vinette's management/benefit from it as she describes in her first witness statement dated 1st March 2018 at SG/1/13 and 15-24. Accordingly, she proposed to Mr Allie draft directions to include disclosure of bank statements and documents regarding 27 GR.

140. In reply, by an email dated 2nd April 2018, Mr Allie asked her to explain how the estate of Doris related to that of Lloyd. Ms Gulshan replied stating that "*When an individual dies, their estate includes any interests in the estate of any other person who has died",* referred to her first witness statement and suggested paragraph 6 of the draft directions should "*...include all documents relating to* [27 GR] *and your clients interest in the property which should form part of standard disclosure."*

141. Mr Allie in his reply email that same day, 2nd April, said this "*Dear Madam, As we are not aware (and have not received instructs on this matter) of the link between Lloyd George Clarke and 27 GR our assistance on this issue is at and end and we will put you to proof to show the link thereof. Yours faithfully, James B. Allie"*[sic]

142. I find Mr Allie's above response to be highly questionable in circumstances where he had acted for Lloyd by way of instructions from his attorney under the LPA, Vinette, in the possession proceedings. Further, he had personally prepared the Claim Form and Particulars of Claim naming Vinette as "*Attorney on behalf of Lloyd George Clarke Executor in the Estate of Doris May (deceased)".* In addition, he had personally signed statements of truth and (it seems) appeared at court before DJ Vokes to obtain the possession order for that very property.

143. Whilst there was a gap of some 3 or so years between those proceedings (allowing for the obtaining of physical possession) and Ms Gulshan's witness statement I cannot understand how Mr Allie made the denial he did in his letter of 2nd April 2018 and in these proceedings prepared Vinette's witness statement knowing of Lloyd's interest in the estate.

144. I say that particularly as certainly from 9th November 2017 Mr Allie had extensive correspondence with Leroy's solcitors over the estate of Doris Ashman and 27 GR , as is apparent from the 24 items listed in the Chronology between then until 2nd January 2018. Mr Allie's extensive participation in that contentious correspondence meant that 27 GR must have been in his mind. His refusal to acknowlege the same is accordingly even more of concern.

145. Another matter of concern as to Mr Allie's conduct over 27 GR is that he knew of the 2010 grant in favour of Mr Lines, but issued proceedings for Vinette by way of her LPA for Lloyd, and prepared Vinette's exhibit which included a copy of the will – but

he knew that Lloyd was not entitled to administer the estate as executor. Notwithstanding this knowledge, it appears he issued those proceedings when he knew there was no right nor capacity for Vinette to do so.

146. In the event, Deputy Master Pickering also in his Order of 6th April 2018 made an order permitting Vinette to serve a further witness statement dealing with 27 GR and disclosure of related documents. That led to Vinette making her second statement dated 7th May 2018 where over some 19 paragraphs she set out her involvement with 27 GR.

147. At VA/2/8 she said she "*...spent £60,000 carrying out substantial works of repair and improvements to the property. I mostly paid workmen and contractors cash. I attach some of the receipts I can find...".* She described the works to include cleaning, removing rubbish, replacing floors, tiles, boiler, new kitchen and bathroom and repairing the roof, new internal doors and re-carpeting. The documents she has produced total £3,757.43 by way of receipts with £2,667.96 due or quoted – for example there is a quote from Benchmarx Kitchens for £1,533.96.

148. Mr Costello of Strettons valued the Property as I have referred to at [5] above. He also as SJE prepared a valuation of 27 GR dated 4th September 2018 following his inspection on 7th August 2018, with the consent of the tenant. His report states that this is a turn of century terraced property with 2 reception rooms, bathroom and toilet all on the ground floor and 3 bedrooms on the first floor, totalling about 1,000 sq ft.

149. He says as to condition that it is in "*...basic but serviceable order that is consistent with tenanted accommodation in the area".* He notes that the rent is £19,000 per annum and that the current tenant has been there approximately 3 years. He values 27 GR at £560,000 with vacant possession and £505,000 with the tenant in occupation.

150. Vinette says she commenced letting in June 2015 upon conclusion of the works which accords with what the tenant told Mr Costello last August. There is evidence of money transfers to Vinette from Countrywide, letting agents, over the period 08.09.15 to 20.08.18 of £53,796.54. It appears that all of that money went to Vinette.

151. However I do not accept her account that she spent £60,000. It seems to me that from Mr Costello's report including the photographs that the condition is relatively basic, and it is inherently implausible that such a large sum would be expended for this rental return.

152. Further, Vinette has not allocated the difference between what she actually can prove she spent - £3,757.53 - and the £60,000 on an item by item basis. This is, in my judgment, another instance of Vinette failing to tell the truth.

153. In VA/3/18 Vinette changed her account of the funding of the alleged £60,000. Instead of it being funded entirely by her, without any apology for that incorrect and misleading version, she said it ...*was funded partly by the deceased* [Lloyd] *and partly by me...and I let out this property to recoup the money I had laid out".* No documentation has been produced to evidence Lloyd's alleged funding although, with the substantial withdrawals Vinette made under the LPA from Lloyd's accounts it is possible some funding came from him, but not with his knowledge and approval.

154. Vinette changed her story again as to the source of the £60,000 in VA/4/5 dated 3rd September 2018. She says that Sally Scott was correct in her statement at SS/1/8 made on 22nd August 2018 stating that Vinette had told her she had taken out a loan for £60,000 to refurbish 27 GR. Again there is no documentary evidence of such a loan for any amount and I find it to be another untruth by Vinette.

Lifetime transfers or gifts by Lloyd

155. There are certain lifetime transfers or gifts that are relevant to my consideration of this claim. The first is that as I have mentioned above at [29-30] Matilda says Lloyd gave a property in Jamaica to each daughter before they were married, which is denied by Vinette. Mr Ng submits that I should take those alleged gifts into account so as to result in a larger award to Matilda.

156. Vinette says this is a family plot occupied by a member of the family. RC have had the address for some considerable time but no effort has been made to ascertain who the owner is. Mr Ng criticises Vinette for not giving disclosure but that is akin to proving a negative. I find that on the balance of probabilities that no such gifts were made as Matilda's evidence is inadequate on this point.

157. If I am wrong as to that and Matilda is correct, and these properties did belong to Lloyd and were so gifted, they were assets he acquired no doubt some time before marriage and were given away by him when he had capacity. He was then about 74 years old. Passing property to his only adult children before his marriage and possibly before he met Matilda at that late stage in life was a perfectly normal gift by a loving father to his only children.

158. Next there have been extensive allegations and witness statement evidence over a payment of £40,000 which Vinette says (VA/3/11) was made by Lloyd to Matilda's grand-daughter Jina in about 2008 or 2009 who, Vinette alleges, blackmailed him into making this payment. This is the £40,000 I refer to in the quote at [137] above. Dr Singh in his letter of 16th September 2011 refers to Matilda saying a daughter had been given £30,000 or £40,000 about 10 years back ie around 2001 and that Mr Clarke told him he did not want the police involved - and as Dr Singh records he had capacity then.

159. Matilda denies that the money was paid to her grand-daughter. This amount does not appear as a debit in Lloyd's accounts but Vinette's accounts show receipt of £40,849.76 on 8th June 2007. She has been asked to explain this but has not done so. In summary, the evidence is contradictory and inconclusive. I would add that Matilda alleges (MC/2/28) that her recollection is that the payment of the £40,000 did not "clean out" Lloyd as he had "*...around £100,000 in that account",* referring to his account with Santander.

Other relevant bank transfers and accounts

160. Lloyd had a joint account with Heather at Barclays, no. 5181. Statements are in evidence from January 1998 to September 2017. On 11th November 1999 the sum of £160,250.75 was transferred in from the account of "Strachan St Geor*" who I think are solicitors. Vinette says (VA/3/12) that she believes Lloyd owned a property in Powercroft Road with his first wife, Clarice, who died in 1998, which he sold in 2004 or thereabouts. That would not fit date wise but it may be the explanation for the transfer of that large sum in 1999. However there has been no investigation into that property and so the origin of the funds remain unknown.

161. Just 6 days later on 17th November 1999 a cheque for £100,000 was debited. Within another week, a further £21,000 was debited in 4 cheques and £10,000 transferred to Heather on 24th November 1999. There is no evidence as to whom these transfers were made nor the reasons for them, save Vinette says her father told her he had transferred £100,000 to Matilda to finance the purchase of her council flat, whereupon Matilda moved out and her grandson moved in to the flat but the council stopped the sale when they realised that she was no longer resident there. I do not accept that in the absence of any documentary or other evidence.

162. There were further transfers of £10,000 to Heather on 28th August 2001 and £1,000 on 13th May 2013, when Lloyd lacked capacity. However, this is a joint account and in the absence of the mandate or any other document or evidence regulating the use of this account, notwithstanding the absence of evidence from Heather, there is little more to say, save that Lloyd was far more financially active than Vinette tries to portray – this account shows regular payments to various insurance companies and other transfers in – for example £30,000 was transferred in in 3 equal payments in August 2001 and two in December 2003, and the transfers out of other than minor amounts total £185,014.74 in just under 14 years.

163. Vinette failed to give full disclosure of all her accounts but did disclose an account with Halifax number 8335 and another with Lloyds number 9060 into which she received payments of just over £135,000 from Andreas Rizzi, her partner, over the period September 2011 – August 2018. These payments are unexplained.

164. Also unexplained are receipts (other than minor amounts) into 3 of her personal bank accounts totalling £391,126 from 2004 – 2018. There may be a perfectly proper explanation for the transfer of these sums but Vinette has not wanted to provide it. Having said that, there is no evidence before me that these sums are connected with Lloyd.

The IHT account

165. Mr Allie appears to have completed this as the person dealing with the estate. In two respects his answers are clearly wrong. First, to Question 30, namely did the deceased make any lifetime gifts or transfers after 18th March 1986 is answered in the negative. Mr Allie knew that to be wrong in view of the Transfer he advised upon, prepared and, I would assume, registered at the Land Registry.

166. However, Question 49 as to whether there were any jointly owned assets was answered positively, and correctly disclosure made on From IHT404 that Lloyd jointly owned the Property with his daughters from 16th April 2010, and so a value of £400,000 was attributed to it. For some unexplained reason the full value of £1,200,000 was stated on the main IHT 400 form which was the basis for the calculations.

167. Secondly, he also answered Question 42, namely was the deceased entitled to receive any legacy or assets from the estate of someone who died before them and they had not received before they died, in the negative. He also knew that to be wrong as he had acted for Vinette as attorney for Lloyd as executor of Doris's estate (the fact that no provable will existed and his entitlement was by intestacy makes no difference to the substance of the answer). Thirdly, the answer to Question 36 namely were there any pensions other than the state one, was answered in the negative, when Lloyd had and Vinette knew – via her use of his bank accounts - of his BR pension.

168. The Property was valued at £1,200,000 by a search on Zoopla, an internet property sale website. Vinette signed the declaration to the account, certifying it to be true and correct, on 30th December 2015. She knew of her withdrawals from Lloyd's accounts but did not mention them. As to the Property the account states it will be sold to pay inheritance tax and funeral expenses. Four bank accounts are disclosed which contained just £13.05.

169. HMRC also stamped a probate summary in form IHT421 which stated the net estate was £1,187,863, based on the figures in the IHT400 form, and that the tax to pay was zero. They also produced a calculation showing the tax was £345,145.20 plus interest but that nothing was immediately payable as the tax was payable by instalments. These documents conflict with Vinette at VA/3/10 stating that a draft Inland Revenue list of

assets was prepared but it was only a draft as there was nothing to administer. I can only conclude Vinette again was deliberately misleading.

Matilda's Application under the Inheritance Act

170. I now turn to my assessment of Matilda's claim under the Act. As the law is well known I will not cite extensively from the authorities. Matilda has standing under s.1(1) as Lloyd's widow to "*...apply to the court for an order under s.2 of this Act on the ground that the disposition of the deceased's estate effected by his will ...is not such as to make reasonable financial provision for the applicant."*

171. "...reasonable financial provision" is defined in s.1(2)(a) as "*...such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance."*

172. S. 2 provides that "*...the court may, if it is satisfied that the disposition of the deceased's estate by his will...is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders..."* followed by a wide list of potential orders.

173. There are therefore two hurdles in s.1(1) and (2) and then s.2. Thereafter the s.3 factors must be applied. In *Ilott v The Blue Cross and Others* [2017] UKSC 17 Lord Hughes at [24] said "*The 1975 Act plainly requires a broad-brush approach from the judge to very variable personal and family circumstances. There can be nothing wrong, in such cases, with the judge simply setting out the facts as he finds them and then addressing both questions arising under the 1975 Act without repeating them."*

174. I will adopt this single determination approach relying on the facts as I find them to decide the engagement of the gateways and the application of the s.3 factors due to the substantial overlap.

175. As to reasonable financial provision, the Daughters do not appear to dispute that the Will fails to make reasonable provision for Matilda as, absent this claim and my decision as to the mistake above, she is homeless, with no assets save some state benefits and Lloyd's workplace pension, where the estate – the Property – is worth £1,380,000. Her share of residue is of no meaningful value. In my judgment, it is clear and obvious that under the Act Matilda has a *prima facie* claim. The question I must determine is quantum.

176. I first address the factors listed under s.3(1):

"a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant."

177. In my assessment of the s.3(1) factors I will raise certain sub-issues which arose during submissions as questions.

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future

178. Matilda currently receives weekly state pension of £82.88, pension credit of £76.47, attendance allowance of £83.10 and Lloyd's BR pension of £63.00, a total of £305.45 per week or £1323.61 per month or £15,883.40 gross per annum. Those amounts except pension credit are notionally subject to tax. I assume that roughly this tax year (2019/20) Matilda will not pay tax as she will receive £15,883.40 less pension credit of £3976.44. That amounts to £11,906.96 and so is below the personal allowance of £12,500. She also receives council tax benefit and no doubt age related benefits such as fuel allowance and TV licence. She has no capital nor expectation of same and cannot work.

179. Pension credit and council tax benefit are means tested but the net income she can expect has not been put to me. In her current circumstances I do not consider that relevant. As of December 2017 (MC/1/31) she estimated her regular outgoings as £500 per month. At that time she was uncertain as to whether she would be entitled to a pension from BR which has now turned out to be the case. In any event, if she was still living independently at the Property, her income of £1323.61 comfortably exceeded her stated outgoings.

180. Sadly Matilda's health means independent living is not possible. I have set out at [25-27] above how Dr Ajina, her treating consultant, considers Matilda will have lifelong care needs and the prospects of her living independently are very, very low. Ms Gulshan in her 7th statement dated 18th March 2019 describes various care options and

the costs. It appears a residential care home would not suit her needs for substantial nursing care. Full time ie 24 hour nursing care would cost £150,000 per annum but would mean provision of a property. A local nursing home is, Ms Gulshan says, £1,375 per week or £71,500 per annum.

181. Further, sheltered housing to purchase would cost around £550,000 and care within it approximately £121,160 per annum. Mr Ng submits that lifetime costs of the care necessary are between £755,040 and £1,700,000 and that the care option which most closely approximates Matilda's marital standard of living is sheltered housing plus external carers, which is likely to exceed the entire estate – but he urges me to award Matilda the entirety of the estate in any event.

182. I disagree. First, I do not think there is a direct comparison between the types of accommodation/care as the question I have to determine is what are her needs; those I find to be lifelong care, as there is no prognosis of likely short-term recovery. Secondly, as I will turn to in more detail below, once full and proper care has been allocated and costed for Matilda I must have regard to the terms of the Will, subject to the other factors I must consider under the Act, and the position of the Daughters.

183. I therefore find Matilda's needs to be nursing home care at £71,500 per annum. On the basis an award of over £50,000.00 is made then Mr Ng submits Matilda will lose a) the guarantee element of pension credit of £63.00 per week and b) council tax benefit. I agree as to a) but not b) as, as I understand it, council tax is not payable when in such care.

Duxbury or Ogden tables?

184. I must capitalise the care and other needs Matilda has to provide for her future. The standard approach in inheritance claims is to capitalise using the Duxbury tables when

maintenance is calculated. In *Ilott* at [15] Lord Hughes said that "*It will very often be more appropriate , as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years, for example on the* Duxbury *model familiar to family lawyers...*"

185. In the notes on p16 of the Family Law Bar Association well known and widely relied upon publication "At a Glance" reference is made to *Simon v Helmot* [2012] UKPC where Lady Hale said, commenting on the Ogden tables reflecting the much higher than general rate of inflation applicable to medical and care costs components, that the position of a patient in need of enduring medical care and an ex-spouse seeking financial security are not the same. The latter is, I consider, in the same position as some-one seeking long term maintenance in an inheritance claim.

186. Further the Duxbury calculations are based on assumptions such as 3.75% pa capital growth in the fund, income growth and inflation of 3% pa and others which include average life expectancy. They are intended for medium/long term investment. In addition, the notes state that "...*the usefulness of Duxbury calculations for recipients with a life expectancy of less than about 15 years (women over 74…)... is dubious.*"

187. Mr Ng submits that these costed needs should be capitalised on the basis of a multiplier of 10.56 (now 9.78 as Matilda is 82) from Table 2 of the Ogden tables as this factors in inflation in care costs which the Duxbury tables do not. The difference is substantial. At age 80 the Duxbury table capitalises £75,000 pa at £559,000 (only by extrapolation is the precise figure possible to calculate) and the Ogden calculation is £699,270 for £71,500 pa.

188. In other circumstances under the Act where there is expected life expectancy of more than 15 years I would apply the Duxbury tables. Where the prognosis is a mixture of

need for medium term care but recovery and independent living was likely I would have used each table for the appropriate periods as the longer-term investment return calculation under Duxbury would provide the necessary yearly payment.

189. However here I will apply the Ogden tables due to the particular facts, namely lifelong or enduring nursing care, the cost of which is anticipated to increase ahead of general inflation, for a claimant who is over 74 and where longer-term investment would be unlikely to provide the financial security or certainty necessary.

190. Mr Ng submits that I should calculate the loss of the guarantee element of pension credit by reference to the Ogden tables. In principle I disagree as that is not an amount which meets the risks as to increases in care costs. However, the Duxbury table cannot be easily used to perform that calculation so I will use the Ogden tables.

191. I therefore calculate Matilda's capitalised needs for nursing care for the remainder of her life at £699,270. As to the loss of guarantee credit at £3,276 pa I capitalise that at £32,039.

Should Matilda's needs include her lawyers' success fees?

192. Matilda and now Mrs St Hill as her litigation friend are represented by both solicitors and counsel on Conditional Fee Arrangements, by which their basic fees ("the Basic Charges") can be recovered subject to my order from the Daughters. The success fee elements of the CFAs in the event of successful claims ("the Success Fees") have been calculated at 100% by RC are to be met by Matilda/Mrs St Hill personally. RC's fees are approximately £100,000 and those of counsel £60,000, plus VAT, a total of £192,000. The Success Fees are claimed at 100% namely a further £192,000.

193. Further, Success Fees can be no more than 100% of the Basic Charges and RC's CFA provides that liability for them and those of counsel is limited to 25% of monies recovered.

194. Mr Ng referred me to s.58A(6) of the Courts and Legal Services Act 1990 which provides that "*A costs order made in proceedings may not include provision requiring the payment by one party of all or part of a success fee payable by another party under a conditional fee agreement.*"

195. He submits that s.3(1)(a) should not be read as incorporating the above as a) the requirement to consider the financial needs of a claimant is unqualified and b) that sub-section pre-dated the current version of s.58A(6) by almost 40 years. Further, s.58(A)6 should not extend beyond costs orders in themselves as c) the wording is expressly confined to costs orders and d) clear wording would be necessary to impliedly amend the Act.

196. Mr Ng's submissions are ingenious but I do not accept them. In my judgment the responsibility for the Success Fees must remain with the party who entered in to the CFA for these reasons:

(1) The calculation of damages is a matter of procedure carried out before costs are concerned. It has never included an element of or for costs;

(2) To permit the interpretation Mr Ng suggests would be contrary to the deliberate policy of the legislature that the losing party should not be responsible for the Success Fee, that policy having been changed from that prior to 19th January 2013 when such fees could be so claimed from the losing party;

(3) It would amount to an increase in damages by way of costs;

(4) It may put a CFA funded litigant in a better position in terms of negotiations due to the risk of a substantial costs burden. Likewise absent negotiations it could lead to grossly disproportionate costs if a contested claim got to trial and the defending party lost;

(5) There is no reason why a claimant seeking reasonable financial provision under the Act should be in a better position than one seeking, for example, damages for personal injury.

Is provision for Matilda's child and grandchildren a need that must be assessed?

197. Mr Ng submits that Matilda, when she had capacity, wished to make provision for her child and grandchildren. He relies on the decision of HHJ Behrens in *Adams & Adams v Lewis* [2001] WTLR 493 at pp 508-9. At B on p509 HHJ Behrens quoted from Lord Nicholls' speech in *White v White* [2001] 1 AER 1 when considering s.3(2)(b) namely provision if the marriage had been terminated by divorce and not death.

198. Addressing the wife's wish to make provision for her children and whilst accepting that it would not normally be within s.25(2)(b) of the Matrimonial Causes Act 1973 ("the MCA") Lord Nicholls said that natural wish was irrelevant to the s.25 MCA exercise but "*In principle a wife's wish to have money so that she can pass some on to her children is every bit as weighty as a similar wish by a husband."*

199. Here I do not see that as a need to be accommodated or satisfied under s.3(1)(a), as I should consider it under s.3(2)(b). Secondly I must have regard to the Will and testamentary freedom where here the parties each have an adult child or children; subject to the outcome of my assessment overall it would be wrong in my judgment for Matilda to be awarded a lump sum as a need purely for her to pass on as that would appear to be preference of her wishes for her descendants over Lloyd's.

200. That, from the perspective of equal sharing upon divorce, cannot be correct.

(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

201. There are no such other applicants.

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

202. There is no evidence from either daughter of their needs and resources so these cannot be taken into account. I regard this as a deliberate decision by the Daughters in view of the lack of evidence when Vinette was an active party and the wholesale failure by Heather to submit any evidence whatsoever. Finally, as I have found above, Vinette has had substantial sums of money flowing through her own and her joint bank accounts over the recent period.

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;

203. Lloyd's obligations and responsibilities towards Matilda were extensive in view of their long, traditional marriage and her reliance upon him to provide housing for her as she gave up her council tenancy to live with him.

204. He had no such obligations or responsibilities to the other beneficiaries namely his Daughters in that no such evidence was put before me. They were not dependent upon him and are adults. I accept Mr Ng's submission (*re Jennings* [1994] Ch 286) that historic obligations in the sense of maintaining them in the past are irrelevant as the court must have regard only to obligations in existence at the time of death.

205. However, I must consider Lloyd's wishes that his Daughters inherit the Property and each should have one third share of residue. I specifically do not accept as I explain below Matilda's evidence that each daughter received large gifts that I should take into

account, nor that their traditional marriage where Matilda was financially wholly dependent on Lloyd should result in a higher award in these financial circumstances.

(e) the size and nature of the net estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

206. I have combined my consideration of factors (e) and (g) as in these circumstances there is considerable overlap. As I have set out above in view of my determination that the Transfer should be set aside the estate consists of the Property, estimated at £1,380,000 and a few pounds in bank accounts – a maximum of £50. There are, I find, certain other assets. First there is a credit balance with the London Borough of Hackney of £2,705.46 but that may have been paid away to Vinette.

207. Secondly, as I have outlined above Lloyd appears entitled to a share of his sister's estate, which consists of 27 GR valued at between £505,000 - £550,000 depending whether or not vacant possession can be given, plus the rental income which was received by Vinette for several years. His interest is apparently 1/15th but there will no doubt be substantial costs of the proceedings against Vinette should they not be recovered from her, plus the administration costs.

208. Thirdly there are assets that Vinette has misappropriated for herself. In that respect I must look at conduct and what I can ascertain as to the extent of the assets concerned. I set out my findings below.

209. I find Vinette:

a) failed to reply to requests to transfer assets after she was replaced as executor,

b) failed to provide proof of the funeral expenses,

c) failed to set out how she dealt with her father's monies,

d) failed to explain her use of the LPA in terms of his assets,

e) tried to avoid other parties being aware of her management of 27 GR,

f) failed to answer proper and proportionate requests to explain transactions on her bank accounts,

g) failed to give full disclosure of her bank accounts and those of Lloyd,

h) failed to account for the rent she received for 27 GR,

i) attempted to mislead the court as to her entitlement to 27 GR and that she did not access Lloyd's accounts after his death,

j) consistently told untruths as to the funding and extent of the renovations of 27 GR and that Sally and Leroy Scott were aware of and did not object to her management and benefit from it,

k) attempted to mislead HMRC by filing an IHT400 which she knew to be incorrect,

l) failed to comply with her disclosure obligations,

m) failed to comply with orders of this court as to payment of costs orders totalling £30,898.52,

n) procured her father to enter into the LPA when she knew he did not have capacity, and named persons unknown to Matilda to keep the existence of it from her,

o) transferred or withdrew at least £38,106.88 of Lloyd's money including a withdrawal on 4th April 2016 some 8 months after he died,

p) attempted to mislead the court by saying Lloyd died with no assets except his share of the Property and that she had spent the amounts Lloyd held in a Santander account as and when he wished and at his direction for him.

Should adverse inferences be drawn and if so against whom?

210. My above findings are based on contemporaneous documents or witness evidence that I accept. As a result, as to the other assets of the estate I find Vinette financially abused her father to an extent that I cannot calculate them. My task is even harder due to her non-appearance at trial and failure to co-operate in answering questions. It is only right that I draw adverse inferences – *Wisniewski* at page 340.

211. I now refer to the position of Heather, which is substantially different to that of Vinette. Heather has:

a) failed to pay costs orders,

b) failed to comply with orders for disclosure,

c) in effect ignored these proceedings for no reason so failed to give evidence as to lifetime transfers by her father – although there appears to be only one transfer to her following Lloyd's loss of capacity - of £1,000 on 13th May 2013 and as I set out at [162] above that was from their joint account.

212. Mr Ng submits that I should also take in to account transfers to Heather of £10,000 in each of November 1999 and August 2001. I will not do so for these reasons. First, both were long ago, 20 and 18 years respectively, when Lloyd had capacity. Secondly, the first transfer was about when Lloyd and Matilda first met and the second probably about when they started co-habiting.

213. Both were made more than 5 years before they married and so do not require in my judgment an explanation or reason in that it was a father transferring cash to one of his daughters that he undoubtedly acquired before marriage and almost certainly before co-habitation with Matilda and was not in any way attributable to her nor acquired during their relationship. Thirdly, and in any event, the transfers are from their joint account - Heather on the face of it and absent any other evidence has an entitlement to these monies.

214. Post Mr Ng's closing submissions, on 30th April 2019, Mr John Kimbell QC sitting as a High Court Judge handed down judgment in *Taylor v Chesterfield Royal Hospital NHS Trust* [2019] EWHC 1048 (QB). I have not referred it to Mr Ng as the principles are uncontroversial. Mr John Kimbell QC said at paragraph 112 *"It is not appropriate to treat the four principles set out by Brooke LJ in* Wisniewski *as if they were a statute or* Welds *as establishing a rule that no adverse inference will ever be drawn where the witness who is not called says he or she has no recollection of events. Whether or not it is appropriate in any case to draw an adverse inference from the absence of a witness will be a highly fact sensitive matter which will depend on all the circumstances of the case, both procedural and evidential."*

215. Whilst it is always helpful to the court to hear relevant oral or written evidence from the parties, in the circumstances here, both in terms of procedure and evidence, I will not draw an adverse inference as to Heather's conduct for the simple reason there is no evidence before me of a case to answer on her part.

216. If I am wrong as to the adverse inference against Vinette I draw on the above authorities, I turn to the treatment of non-disclosure in the matrimonial authorities below.

Should the principal of adverse inferences from non-disclosure of assets in matrimonial financial relief proceedings be applied in Inheritance Act claims?

217. Mr Ng submits that the principal of adverse inferences from non-disclosure in matrimonial financial relief proceedings should be applied here. He referred me to the decision of Nicholas Cusworth QC in *Al-Baker v Al-Baker* [2016] EWHC 2510 (Fam) at [17-19]. That cites Mostyn J in *NG v SG* [2011] EWHC 3270 (Fam) at [16]:

"Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:

i) The Court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.

ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the Court is satisfied he has not got.

iii) If the Court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.

iv) In making its judgment as to quantification the Court will first look to direct evidence such as documentation and observations made by the other party.

v) The Court will then look to the scale of business activities and at lifestyle.

vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.

vii) The Al-Khatib v Masry *technique of concluding that the non-discloser must have assets of at least twice what the Claimant is seeking should not be used as the sole metric of quantification.*

viii) The Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were

told. If the result is an order that is unfair to the non-discloser it is better that than that the Court should be drawn into making an order that is unfair to the Claimant."

218. I was also referred to the explanation for the approach in *Al-Baker* as set out by Lord Sumption in *Petrodel v Prest* [2013] 2 FLR 732 at [45], Mr Ng submitting that the key factors referred to in that paragraph being applicable in claims under the Act. In particular, Lord Sumption said "*The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation."*

219. I consider that the like principles of adverse inferences from non-disclosure in the matrimonial authorities should apply in Inheritance Act claims by a spouse in considering the assets and liabilities of the estate under s.3(1)(e) and conduct under s.3(1)(g) for these reasons:

1) the statutory requirement of the notional divorce cross-check in s.3(2)(b) of the Act indicates the similarity of the position of a spouse in these and matrimonial proceedings;

2) a spouse should not be treated differently when non-disclosure in terms of it as an act and effect amounts to the same, and the remedy to avoid such inferences being drawn is in the hands of the same namely the paying party;

3) it is in the interests of justice to do so, but caution is necessary.

220. Mr Ng also relies upon what he terms the common-sense inference that if a party is able to provide evidence but is reticent to do so then that evidence probably tends to harm their case, or improve the case against them – see *Sarpd Oil International Ltd v Addax Energy SA* [2016] 2 Costs LO 227 at [19-21].

221. Here, Mr Ng submits, as the donee of Lloyd's LPA, and having abused his trust by misappropriating his assets, only Vinette has the knowledge to evidence exactly what she took and when, and where those assets currently are. I agree that on the facts as I have found them I can draw this common-sense inference.

222. During closing submissions I mentioned to Mr Ng the decision of the Court of Appeal in *Roger Bullivant Ltd v Ellis* [1987] ICR 464, and questioned whether it could apply by analogy. That was a claim for injunctions and damages for breach of confidential information in that in part the defendants had removed a card index the property of the claimant which contained numerous names and contact details of customers.

223. The injunction – known as a springboard injunction – prohibited the defendants from contracting with any person on the index even if they had not used the index to contact that potential customer in the first place, due to the difficulty the court faced in determining which, if any, customers could have been legitimately contacted.

224. In refusing to set aside that part of the injunction Lord Justice Nourse said: " *Having made deliberate and unlawful use of the plaintiffs' property, he cannot complain if he finds that the eye of the law is unable to distinguish between those whom, had he so chosen, he could have contacted lawfully and those whom he could not. In my judgment it is of the highest importance that the principle of Robb v. Green [1895] 2 Q.B. 315 which, let it be said, is one of no more than fair and honourable dealing, should be steadfastly maintained."*

225. Likewise, by analogy with the commercial position, where I consider I cannot distinguish between what Vinette obtained legitimately (for example her travelling expenses to London from Wolverhampton which she says Lloyd agreed to pay) and what she obtained wrongly, I will treat it all as wrongly obtained.

Testamentary freedom

226. In terms of conduct under s.3(1)(g) I must consider the weight I should attach to testamentary freedom. Mr Ng submits that that is limited as this is a claim by a spouse and Parliament requires the divorce cross-check to ensure that a surviving spouse should not be in a worse position than if the marriage had ended by divorce rather than by death – *Ilott* at [13].

227. This, Mr Ng submits, is supported by the factual position that Lloyd's will did not provide what he wished, he executed it in the belief that his Daughters would not attempt to evict Matilda and that he could not due to lack of capacity execute a new will to correct the position when the financial abuse of him and oppression of Matilda was clear. That was the approach of Master Shuman in *Ubbi v Ubbi* [2018] EWHC 1391 (Ch) at [58-60].

228. I agree but would add that approach also has to be considered in terms of a notional cross check on what Matilda's claim under the Act may have been had she remained in good health and the spirit of the will been followed by the Daughters – so that she would be living in the Property and would have a share of residue of say not less than £20,000.

229. In circumstances where Matilda's income exceeded her outgoings, she had a home for life, with a lump sum for contingencies, and most importantly the valuable asset, the Property, was acquired by Lloyd many years before he met Matilda, who made no monetary contribution I consider that all may well have amounted to reasonable financial provision, and satisfied the notional divorce cross-check.

230. I therefore do not accept Mr Ng's submission that the conduct of the Daughters is such that their interests in receiving capital from the estate should be wholly disregarded in determining reasonable financial provision for Matilda. I will consider what I would have awarded Matilda, then as it seems inevitable the Property must be

sold, how I would distribute the residue of the estate to the possible beneficiaries and then adjust those shares.

231. Mr Ng submits that if I fail to award Matilda the entirety of the estate then there is a risk that I significantly underestimate the amounts of money taken by the Daughters. He adds the risk that I may over-estimate the amount taken and therefore awarded to Matilda is a risk that has been created entirely by the Daughters and therefore they should bear the risk.

232. However here whilst anxious to avoid any "*non-disclosers' dividend*" (*NG v SG)* there is a clear separation between Vinette and Heather in terms of their actions and it would be unjust to take the blanket approach Mr Ng urges.

Conduct of Matilda

233. Vinette has made various allegations against Matilda, none of which are supported by evidence and so I dismiss them. Likewise, some are made jointly against Matilda and Mrs St Hill, but again are unsupported and I dismiss them. There is no evidence before me that either of them or Matilda's granddaughter received any significant gifts during Lloyd's life.

Transfers by Lloyd during his life

234. I do not accept on the evidence before me that Lloyd made substantial gifts whilst he had capacity that should be taken into account and therefore a higher award to Matilda is justified. In my judgment, as I have explained, there is insufficient evidence to establish that he ever owned property or properties in Jamaica or that he gave one to each daughter.

235. It may well have been that Vinette did receive the sum of £40,000 from him as there is no doubt that that amount was received by her, albeit at a slightly different, later,

point in time. It could have come from another source but Vinette has declined to evidence it. I therefore will draw an adverse inference as to that sum, but I note it was received by her when he had capacity.

Does the conduct of the Daughters in these circumstances necessitate a clean break?

236. Mr Ng submits that unless Matilda is awarded the entire estate she will have to continue in a legal relationship with the Daughters, which would be wrong given the difficulties in administering the estate and their conduct. Putting to one side Matilda's lack of capacity, I disagree. First, Heather's conduct is limited to non-participation. I also do have some concerns as to how involved she really was in matters such as the two sets of proceedings against Matilda. I cannot see how, based on her non-involvement to date, how that would be problematical for the person administering the estate. In addition, and most importantly, it would be unjust to do so in all these circumstances.

237. Further, as far as both Daughters are concerned, it will not have to be an ongoing relationship in that any sums due can be paid out and there is no reason to engage with them beyond that.

Liabilities of the estate

238. The first is inheritance tax. In view of the calculation I make below I do not expect that to be so substantial as to affect division of the estate, and as I have rescinded the Transfer I presume it will not be a failed potentially exempt transfer. Secondly I am told that there could be a potential liability to Doris's estate over the letting by Lloyd of 27 GR. As no letter of claim has been received and in the absence of any evidence I disregard it.

239. In summary, there is substantial evidence to justify drawing adverse inferences on all the above three bases against Vinette. That does not apply to Heather.

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;

240. Matilda's severe disability necessitates lifetime nursing care. There are no such issues affecting any other beneficiary of the estate.

S.3(2)(a) - age of the applicant and duration of marriage

241. Matilda was 81 years old as at the trial date. Her marriage to Lloyd was for 9 years but in addition I should take into account their co-habitation which was about 4-7 years, so a total of 13-16 years. Mr Ng submits that this long marriage should mean a higher award for Matilda. I disagree if that is a reference to higher than the divorce cross-check in s.3(2).

S.3(2)(b) - the applicant's contribution to the welfare of the family including looking after the home or caring for the family

242. Matilda brought no assets nor income into the marriage; all was provided by Lloyd, from his own resources and acquired before he knew Matilda. Mr Ng submits that she helped maintain and improve the Property, but this seems to have been limited to Matilda getting *"...things fixed to make the place look better."*

243. Matilda cared for Lloyd as was expected by a couple marrying each other in their 70s. Again I do not see how that should as Mr Ng submits support a higher award.

S.3(2) - the notional divorce

244. Mr Ng submits that this cross-check is, relying on *Lilleyman v Lilleyman* [2013] Ch 225 at [60], not a floor or a ceiling. The fundamental principle is that marriage is an equal partnership and property is to be divided fairly and without discrimination but that equality of treatment does not necessarily lead to equality of outcome ([46]).

245. At [47] those concepts are summarised as giving rise to 3 requirements; financial needs, compensation and sharing. The parties' financial needs are the first call on the matrimonial property. Pre-owned property is usually not matrimonial property unless committed to long term family use.

246. Here, in my judgment, the position is borderline in that nothing was acquired after marriage and none by joint efforts; but Matilda gave up her valuable secure tenancy of her council flat. Having said that, she could not pass it on unless a qualifying relative lived with her for a certain period before her death, so giving it up was not a financial loss. The only way it would have been was for Lloyd to have financed its purchase.

247. Whilst not mentioned in submissions I consider I must take into account that Matilda also has the spouse's entitlement under Lloyd's BR pension.

248. Mr Ng submits that the correct award on a notional divorce would be all or almost all of the estate, and due to the adverse inferences found, any assets not required for Matilda's requirements under the needs and compensation principles should be awarded to her under the sharing principle. Therefore the proper award to her is all the estate.

249. Again, I must disagree. Allocating to Matilda the entirety of the estate ignores 1) testamentary freedom, 2) equal sharing of the matrimonial assets, in a situation where it is possible to do so and provide for Matilda for the remainder of her life, 3) the wish to leave property to children as acknowledged in *White v White*, 4) actual needs and 5) the early acquisition of assets and the late and not especially long marriage.

250. I also take into consideration what I consider would have been reasonable financial provision as in [228-229] above by way of a notional cross-check. In my judgment, that is a necessary and relevant yardstick. Again, an award of the entire estate to Matilda is neither just nor appropriate.

Conclusion as to reasonable financial provision

251. I have no doubt even taking into account my decision as to the Property that the Will did not make reasonable financial provision for Matilda pursuant to s.1(1) and (2) of the Act and that I should therefore exercise my powers under s.2 to make appropriate orders.

Decision under s.2 of the Act

252. Taking into account all of the above facts and circumstances and in the light of the authorities I award Matilda her proposed nursing home charges for her life which I quantify at £699,270 plus the guarantee element of pension loss capitalised at £32,039. That totals £731,309.

253. The Property is valued at £1,380,000. Mr Costello notes in his report that overall house prices in Hackney have decreased over the year to July 2018 by 7.5%. I anticipate the Property may be unoccupied and accordingly deteriorating in what appears to be a falling market. After deduction of the costs of sale and the above payments to Matilda I estimate that very approximately a sum of about £530,000-580,000 will be left.

254. In ordinary circumstances, absent my findings against Vinette, so as to respect Lloyd's wishes as to residue, I would using my powers under s.2(4)(b) divide the residue equally between Matilda, Vinette and Heather.

255. Vinette's abhorrent conduct includes financial abuse of her father, oppression via the court proceedings of Matilda, and attempting to mislead all of the London Borough of Hackney, those responsible for the estate of Mrs Ashman, Matilda herself, HMRC and this court. In addition she has flouted court orders. She has dissipated Lloyd's savings and investments, failed to account for her doings in her capacity as executor, donee of his Lasting Power of Attorney and as the recipient of rent from 27 GR. As indicated above it is only just that I draw adverse inferences against her.

256. I have found that Vinette took at least £38,106.88 from Lloyd's accounts. She also sold off his investment portfolio raising about £20,000 but that appears to have been included in the former sum. Lloyd did have various non-property assets and it is impossible in the absence of evidence from Vinette to know what has happened to them.

257. In these extreme circumstances and doing the best I can I determine that Vinette should forfeit £80,000 of her share of residue to Matilda. That approximates to approximately double of what it appears she received on the evidence of the bank accounts before me. Having said that, I am satisfied Vinette has not made full disclosure which reinforces my view that adverse inferences should be drawn to increase the amount she should cede. To do otherwise would amount to a non-discloser's dividend. The sums are not so large that my decision could, if I was wrong, amount to a major error. In any event, it was Vinette's decision not to engage in these proceedings.

258. As I have explained I do not draw the same adverse inferences against Heather. She did however receive £1,000 from one of Lloyd's accounts when he did not have capacity. That amount should be paid over out of her share of residue to Matilda.

259. By way of example as to how the above distribution should work, if the net estate is £555,000 after sale of the Property and Matilda's capitalised needs of approximately £731,000 are deducted then each residue share is £185,000. Vinette's share is reduced by £80,000 leaving her with £105,000 and that of Heather by £1,000 leaving her with £184,000. Matilda will have an increased share of residue of £266,000 in addition to her capitalised needs; a total of £997,000 or about 77% of the net estate. In principle, Vinette and Heather will pay Matilda's costs, but I will hear counsel as to costs and consequential matters.

Deputy Master Linwood **23rd May 2019**

Annexe 1 to judgment of Deputy Master Linwood

CLAIM NOS: PT-2017-000220 and PT-2019-000028

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (ChD)

In the estate of Lloyd George Clarke deceased

In the matter of the Inheritance (Provision for Family and Dependants) Act 1975

BEFORE DEPUTY MASTER LINWOOD **23rd May 2019**

BETWEEN:

MRS MATILDA CLARKE

(in her personal capacity and as executor of the estate of Mr Lloyd George Clarke deceased)

(a protected party by her litigation friend Mrs Elizabeth Shirley St Hill)

Claimant

-and-

(1) MS VINETTE DAWN ALLEN

(2) MS HEATHER MAY SMITH

Defendants

CHRONOLOGY

DATE	EVENT	REF
10.03.1932	LC born in Jamaica	
28.04.1937	MC born in St Lucia	
04.09.1955	Vinette Allen born in Jamaica	

.10.1953	Heather Smith born in Jamaica	
26.03.1961	LC acquires the Property	G1/2/35
14.10.1963	Mrs Ashman acquires her interest in 27 GR	B/93-95
03.06.1988	Will of Mrs Ashman (presumed revoked)	B/104-106
Late 1990s	LC and MC begin their relationship, and MC moves into the Property with LC	C/1/3-4 (paras 6-8)
16.12.2006	LC and MC are married	B/38
04.03.2007	HS writes to LC with details of a solicitor saying 'If you want to do the right thing, have a talk with him.'	G1/1/ MC5
28.08.2009	Mrs Ashman dies	B/103
14.09.2009	Meeting between LC and JA (no note)	B/166
16.09.2009	Meeting between LC and JA	B/165
16.09.2009	Letter from JA to LC advising him to transfer the Property to LC, MC, VA, and HS as joint tenants	B/166-167
09.10.2009	Open letter from Dr Bourne recording that there had been concerns about LC's short-term memory. He stated that he had been seen by a consultant and it was initially felt that LC had age-related memory loss with possible early dementia	B/168
01.12.2009	MC registers home rights	B/54-55
09.12.2009	Meeting between JA, LC and 'daughter' in which JA advised LC to make a will	B/165
10.12.2009	Meeting between JA and LC (no note)	B/169
04.01.2010	Letter from JA to LC with draft will	B/169-170
05.01.2010	Frank Brazell write to S&H indicating that they do not have instructions, but their last instructions were that MC could see no advantage in signing the deed of trust	B/171
07.01.2010	Letter from JA to LC suggesting that she simply be removed from the deed of trust, telling him that MC's home rights gave her a right to occupy the property and that the daughters would not be able to evict her.	B/172-173
14.01.2010	LC writes to JA instructing him to remove MC from the trust deed, but that she should have a right to occupy the property for life	B/174

20.01.2010	Dr Bourne writes to JA telling him that LC is likely to have a form of dementia, but was able to handle his own affairs 'at this moment in time'	B/175
13.04.2010	'Declaration of transfer' of the Property to LC, VA, and HS as joint tenants	B/39
16.04.2010	The Transfer is registered	B/42
May/June 2010	Incident in which MC says that VA stole belongings	G1/2/68-69 (para 14)
22.06.2010	LC is referred to Hackney's access team after VA raises a POVA alert with Hackney Social Services alleging financial abuse.	G2/3/9
06.07.2010	LC's will is executed	B/40
06.07.2010	[Same day as will] LC is assessed by Hackney Social Services. He reported that his brain gets clouded and had VA advocate on his behalf.	G2/3/9
22.10.2010	Damian Lines is granted limited letters of administration for Mrs Ashman's estate	B/107
26.07.2011	Dr Bourne writes to East London NHS Foundation Trust's 'Mental Health for Older People' team noting that LC was unable to understand the reasons for his PoA and asking their opinion on whether he could consent to it	H/130 and H/78
16.09.2011	Dr Singh (registrar) wrote to Dr Bourne reporting a visit to LC that day. LC had told him that HS managed his affairs, and it was clear that LC did not understand his finances, and that MC had told him that LC had gifted his daughter £30K or £40K which she wanted to recover.	B/155-156
? 2011	Hackney assess LC as lacking capacity	B/161
Early 2012	LC and MC ask Hackney to manage his finances	B/160
05.04.2012	Dr Singh writes to Dr Bourne reporting a meeting with LC and Colette O'Driscoll of Hackney. Reported that MC wanted Hackney to take over his finances, and that LC did not have capacity to manage his finances.	B/157-158
30.04.2012	The LPA is executed	B/45-53
18.06.2012	Letter from consultant psychiatrist to Dr Bourne noting LC had a degree receptive aphasia, suggesting LC	H/131-132

	attend a day centre, that MC hide the knives, and recommending Memantine.	
17.08.2012	LC goes missing and is found on the M1	H/86
20.08.2012	The LPA is registered	B/44
24.09.2012	Hackney e-mail the OPG with concerns about VA's registration of the LPA	B/160
01.10.2012	OPG writes to Hackney stating that they will not pursue their concerns because they relate to periods pre-dating the registration of the LPA	B/159
12.02.2013	NHS notes include reference to risk of financial exploitation, with past safeguarding issues raised in 2010, 2011, and 2012. Noted that VA was being investigated by Hackney's legal department	H/135-136
20.03.2013	LC is moved into hospital after threatening MC with violence	H/140-141
14.05.2013	LC moves into a care home	G2/3/15
03.07.2013	Hackney documents express concern that VA has been using the LPA to financially abuse LC and was trying to withdraw £20,000 to pay for a funeral	B/162
11.07.2013	S&H write to MC accusing her of letting the Property to private tenants and telling her that her only legal right is to occupy the property for the duration of her marriage	B/176-177
31.07.2013	Letter on behalf of MC to SH denying the allegation	B/178
16.08.2013	SH write to MC accusing her of throwing away 'Victorian doors' and indicating a wish to inspect and for HS and VA to occupy two of the rooms whenever they are in London.	B/179-180
21.08.2013	Walter Jennings write to SH asking for documentation, confirming that she had not disposed of doors, or let any rooms, and that she did not think HS and VA occupying practical.	B/181
23.08.2013	S&H reply to WJ repeating their requests and giving some of the documentation	B/182
28.08.2013	WJ write to S&H repeating their request for the LPA and suggesting they make an appointment to view the	B/183

	property.	
03.09.2013	S&H reply, again threatening proceedings	B/184
10.09.2013	WJ reply querying inter alia whether S&H can properly represent LC	B/185-186
02.10.2013	S&H write to WJ requesting access on 15.10.2013	B/187
14.10.2013	S&H write to WJ saying they wish VA and HS to occupy the top floor space with a separate entrance via the basement, and to share the bathrooms and toilets.	B/188
16.10.2013	WJ write to S&H refusing to reply until outstanding queries are addressed	B/189
08.11.2013	S&H write to WJ saying that VA will be moving in within 7 days	B/190
13.11.2013	WJ respond saying that VA entering will constitute harassment	B/191
12.08.2014	S&H write to WJ and MC saying that HS intends to occupy the top floor of the Property from 15-25.09.2014	B/192-193
19.08.2014	Lelia Williams writes on behalf of MC to S&H stating that the intention of HS and VA to begin occupying is a breach of her right to quiet enjoyment	B/194
07.10.2014	JA writes to MC with draft plans to divide the Property into two units	B/195
10.10.2014	JA writes to MC saying that VA wanted to inspect the property on 17.10.2014 and repeating that she could not let it	B/196
14.10.2014	VA brings possession proceedings in respect of 27 GR (instructing James Allie of S&H)	B/96-103
10.11.2014	JA writes to MC saying that VA intends to inspect the property on 21.11.2014 and that they intended to apply to revoke her right to occupy once they had evidence that she was sub-letting a room	B/197-198
16.11.2014	LW responds asking S&H to write to WJ. She refuses the inspection and says that MC is not in a position to have work done at the Property	B/199
19.11.2014	VA obtains a possession order over 27 GR	B/109

20.03.2015	The home rights claim is issued	G2/1/37
09.04.2015	JA writes to MC saying they want to sell the Property because she had refused to consent to divide the Property	D/28 (original not in bundle)
31.08.2015	LC dies, MC's home rights cease	B/56
03.09.2015	S&H write to the Coroner asking them to withhold LC's body from MC	B/200
04.09.2015	The Coroner writes to S&H indicating that the body will be retained during the inquest, after which it will be released to the daughters	B/201
23.12.2015	Ds are registered as sole owners of the Property	D/19
30.12.2015	Date of IHT return	B/57-71 and 74-89
22.03.2016	Hackney issues credit note for £3,426.93 leaving balance of £2,705.46	G2/3/36
23.03.2016	HMRC calculate IHT at £345,795.88	B/90-92
24.03.2016	HMRC stamp IHT421	B/72-73
29.03.2016	DWP agree to pay £12,157.69 to VA in respect of state pension	B/202
01.04.2016	Ds' serve C with notice to quit the Property	G1/5/22-24
29.04.2016	Ds issue possession proceedings	G1/5/1
10 May 2016	DJ Lightman makes no order on the home rights claim and no order as to costs	G1/5/49
16.05.2016	C's defence to the possession proceedings	G1/5/5
01.06.2016	Ds' reply in the possession proceedings	G1/5/14
15.06.2016	Hearing before DJ Rand and date of DJ Rand's possession order	G1/5/16 and 25-32
07.09.2016	RC write to S&H requesting information concerning the Transfer, the estate, the LPA, and asking them to consent to setting aside the warrant and possession order	D/1-4
12.09.2016	RC write to S&H chasing a response	D/5

16.09.2016	RC write to S&H informing them that they had applied to suspend the warrant and set aside the possession order and seeking their agreement to the same	D/6
19.09.2016	RC write to S&H serving notice of hearing of the application to set aside the possession order and warrant and seeking their consent	D/7
19.09.2016	S&H serve 'legal submission' opposing the application	D/8-10
27.09.2016	RC make Larke v Nugus request to S&H	D/11
29.09.2016	Order of DJ Parker suspending the warrant	G1/5/17
30.09.2016	JA e-mails RC claiming that MC's GP had certified his capacity to execute the LPA, that he (JA) took instructions for the will, and that the outstanding IHT was £345,795.88	D/12
03.10.2016	RC write to S&H again requesting a Larke v Nugus statement and a substantive reply to their earlier letters, and taking issue with parts of JA's e-mail of 30.09.2016	D/13-15
07.10.2016	S&H reply substantively but without a Larke v Nugus statement or the will file. They claim that the only asset in the estate is the Property, that LC had capacity to make his will, and that the possession order was properly made	D/16-20
12.10.2016	RC reply noting that several queries remained outstanding, again requesting a Larke statement, querying why the Transfer was only made to the daughters, querying the tax calculation/valuation, requesting a complete copy of the LPA, and asserting defences to the possession proceedings	D/21-23
12.10.2016	RC write to S&H again requesting a Larke v Nugus statement	D/24-25
17.10.2016	JA replies with some Larke information but not dealing with all queries	D/26-29
19.10.2016	RC chasing response to outstanding queries and continuing to query the transfer and tax	D/30-31
31.10.2016	RC e-mail S&H chasing responses to outstanding queries	D/32-33
08.11.2016	S&H reply with the LPA, asking RC to directly contact HMRC re the tax position, and accepting that MC is	D/34-35

	entitled to a third interest	
11.11.2016	RC e-mail S&H noting that LC's GP had *not* certified his capacity to make the LPA, raising further queries re the IHT, and asking whether S&H had intended their letter of 08.11.2016 as an offer of 1/3 in the property	D/36-38
11.11.2016	S&H e-mail RC, claiming that their previous claim that a GP had signed the power of attorney had been made in error, stating that they would review their file re tax and valuation, stating that they had not made an offer, and that the dispute was MC's fault due to her not agreeing to converting the Property and accusing RC of a 'fishing exercise'	D/39
02.12.2016	RC write to S&H chasing a response to outstanding queries, threatening a complaint to the SRA, chasing a copy of the IHT400, and asking whether probate had been granted	D/40-41
17.01.2017	MC is examined by Specialist Registrar Nicola Wilson who finds there was insufficient evidence to diagnose MC with dementia, and that there was no evidence of functional impairment, behavioural problems, or personality change	B/33A-33B
19.04.2017	RC e-mail S&H to say that they have referred the failure to provide information to the SRA and asking if they can accept a letter of claim re IPFDA	D/43
19.04.2017	S&H e-mail RC to say they are not instructed to receive a letter of claim re IPFDA	D/42
13.06.2017	Order of HHJ Baucher granting permission to appeal the possession order	G1/5/21
19.06.2017	VA is granted a licence to rent 27 GR by the London Borough of Waltham Forest	G1/5/118
04.07.2017	Letters of claim sent to D1 and D2 seeking disclosure in line with ACTAPS protocol	D/43-46; D/47-49
17.07.2017	S&H write to RC claiming that the letter of claim is 'an attempt to harass and bully the client' and invite them to issue an IPFDA claim, describing the request for pre-action disclosure as a 'fishing exercise'. They also claim that the pre-action letters were written without instructions from MC.	D/50-52
03.08.2017	RC write to S&H, noting that the pre-action letters were protocol-compliant, querying the basis for S&H's	D/53-54

	claim that MC lacked capacity, and again requesting details about his pensions	
04.08.2017	S&H write to 'put [RC] to proof' to that MC gave instructions for the pre-action letters	D/55
04.08.2017	Hackney write to MC regarding an inspection of the Property	D/58
09.08.2017	S&H write to RC again claiming that MC lacks capacity and asking if they will be attending the inspection	D/56-57
11.08.2017	RC e-mail S&H stating that they are awaiting instructions but noting that the allegations of MC lacking capacity are unsubstantiated.	D/59
14.08.2017	S&H e-mail RC again asserting that the reason MC had not yet given instructions on their letter of 09.08.2017 was that she lacked capacity	D/60
26.10.2017	Leroy Scott is granted letters of administration over the estate of Mrs Ashman for the use and benefit of Eva Scott	B/110-111
29.09.2017	RC e-mail S&H to inform that they had instructions to commence a claim under IPFDA and TOLATA, and requesting that S&H desist from further unsubstantiated allegations that MC lacked capacity	D/61
18.10.2017	MC attends memory clinic at Homerton Hospital – cognitive testing does not indicate significant cognitive impairment. Consultant does not consider it appropriate to engage with request for capacity assessment because there was nothing to displace the presumption of capacity	B/31-33
09.11.2017	Huttons write to VA seeking to know whether she was LC's daughter, whether she was in control of 27GR, whether it was tenanted, and whether she had the deeds; and whether she was prepared to give the keys/control to Leroy Scott	B/120-121
09.11.2017	Huttons write to S&H attaching grant of representation attaching copy letter they had written to VA	B/113
13.11.2017	S&H write to Mr Lines' firm noting that they had previously 'obtained grant of probate' in respect of Mrs Ashman's estate and asking them to clarify the position	B/112

13.11.2017	S&H write to Huttons enclosing their letter of 13.11.2017 to Rubin Lewis O'Brien LLP	B/122
15.11.2017	Mr Lines e-mails S&H informing them that Mr Moore's client had a grant and that they should be corresponding with Huttons	B/114
15.11.2017	S&H e-mail Mr Lines asking what happened to his 'grant of probate'	B/115
15.11.2017	Mr Lines e-mails S&H repeating his position	B/116
15.11.2017	S&H e-mail Mr Lines (copying in Huttons) stating that he will 'revert to the law society solicitors line to clarify the way forward'	B/117
15.11.2017	Mr Lines e-mail S&H noting that Mr Allie had refused to take his call. He explained that his previous grant had expired due to Mr Scott's grant	B/119
15.11.2017	Huttons e-mail JA noting that Mr Lines' grant was only made 'until further representation be granted' and pressing for a substantive reply.	B/123
15.11.2017	Huttons e-mail JA noting that both they and Mr Lines had explained the position to him and requesting a reply to the letter of 10.11.2017	B/124
16.11.2017	RC e-mail S&H informing them that they had discovered LC's pension and requesting a death certificate to be provided to the company	D/62
17.11.2017	S&H e-mail RC asking them to provide details of the pension and inviting them to complain to the SRA	D/63
17.11.2017	RC e-mail S&H to again request a copy of the death certificate indicating that they will then ask the company to contact them	D/63
17.11.2017	S&H refuse to provide the death certificate and again request the pension details	D/64
17.11.2017	S&H send Doris Ashman's will to Huttons and ask them on what basis they act on behalf of Mrs Ashman's estate	B/127
21.11.2017	Huttons e-mail JA thanking him for the will and noting that the original was not found it would be presumed destroyed. He requested a full reply to the letter dated 09.11.2017	B/178

22.11.2017	JA e-mails Huttons claiming that Eva Scott is dead and that the will is valid, and querying whether her LPA in favour of Leroy Scott remained valid	B/130
22.11.2017	Huttons e-mail JA denying that Eva Scott is dead, and noting that the grant of representation is conclusive. They again requested a reply to the letter of 09.11.2017	B/131-132
22.11.2017	JA e-mails Huttons confirming that he Eva Scott was *not* dead, and asking whether Eva Scott's second son was aware of Leroy Scott's instructions. He also claimed that the LPA had lapsed because Eva Scott lacked capacity. He says that he is not instructed in relation to the administration of Mrs Ashman's estate but asserted that the will determines distribution and entitlement to probate.	B/135
22.11.2017	IM e-mails JA pointing out that an LPA survives incapacity and that Eva Scott's other children did not need to be involved in the administration.	B/140
24.11.2017	IM e-mails JM the LPA in favour of Leroy Scott	B/146
01.12.2017	RC e-mail S&H with details of LC's pension scheme	D/65
04.12.2017	JA e-mails IM stating that he has been instructed that Leroy Scott's brother disputes the instructions in relation to Eva Scott's intentions, and threatens proceedings in the Court of Protection	B/147
04.12.2017	IM e-mails JA telling him that the starting point for any disputes should be the OPG and again asks for a substantive response.	B/148
05.12.2017	JA e-mails IM stating 'at least you are aware of the approach that we will be taking in this case'	B/150
12.12.2017	RC e-mail S&H noting that they had discovered that LC's death had in fact not been registered, and informing them that proceedings had been prepared	D/66
14.12.2017	Railway Pension Scheme write to S&H stating that a spouse's pension may be payable but they require the original death certificate.	G2/3/50
14.12.2017	JA e-mails Huttons stating that he has instructions from 3 of the beneficiaries in Doris Ashman's will and that they are object to Leroy Scott acting as executor, and that he is therefore not instructed to respond. He then sought information about another property.	B/151

15.12.2017	Order of HHJ Baucher setting aside the possession order and staying the possession claim	NA
15.12.2017	Claim numbered PT-2017-000220 is issued	A/1/1
15.12.2017	RC e-mail S&H to inform them that the proceedings had been issued and asking if they had instructions to accept service	D/67
02.01.2018	Huttons write to JA asking for the names of his clients and pointing out that there is a conflict of interest between them.	B/152
02.01.2018	Letter from Huttons to MC asking her to make contact	B/153
10.01.2018	RC e-mail S&H asking them to release the death certificate so that they could liaise with LC's pension scheme	D/68
12.01.2018	S&H e-mail RC claiming that the pension scheme had told them that there were no payments due	D/69
12.01.2018	RC e-mail to again query why S&H had not registered LC's death	D/69
19.01.2018	E-mails between Huttons and RC	G1/5/116-117
23.01.2018	RC e-mail S&H asking if they are instructed in the proceedings and repeating their request for a detailed account and a full copy of the IHT400	D/70
23.01.2018	S&H e-mail RC stating that they are not instructed	D/71
23.01.2018	S&H write to the Railway Pension scheme asking if the pension passed to MC	G2/3/52
25.01.2018	VA and HS acknowledge service (naming S&H as their solicitors)	A/1/3
30 January 2018	Railways Pension Scheme write to S&H stating 'payment has not yet been made to the widow as we still await sight of the death certificate'	G2/3/53
07.02.2018	RC e-mail S&H seeking to agree directions and asking for voluntary disclosure	D/72
07.02.2018	S&H e-mail RC refusing to give disclosure on the ground that the daughters had not taken probate, but agreeing to provide the IHT returns and indicating that the matter was not suitable for the multi-track	D/73

07.02.2018	RC e-mail S&H asking them to e-file their acknowledgment of service and evidence, and pointing out that as a Part 8 claim the proceedings were a multi-track matter	D/73
08.02.2018	RC e-mail S&H noting that they had arranged for the death to be registered and pointing out that S&H's previous e-mail had mis-stated MC's position	D/74
08.02.2018	S&H e-mail RC stating that since the death was registered there was no need for them to provide the death certificate, blaming the need for proceedings on MC's failure to agree to the property being divided, and maintaining that the claim was suitable for the fast track	D/75
09.02.2018	RC e-mail S&H pointing out that the death certificate issue was moot since it had been registered, asking them to clarify whether they were making an offer in relation to the property, repeating that as a Part 8 claim it was allocated to the multi-track, querying why, if the daughters wished to develop the property, they had previously claimed it needed to be sold to pay the IHT bill, and requesting a full list of assets and liabilities	D/76-77
09.02.2018	Holding reply from S&H	D/78
10.02.2018	E-mail from S&H to RC again blaming the proceedings MC for not consenting to division of the property., and stating they were unable to assist on the issue of the list of assets and liabilities and that queries should go directly to VA and HS	D/79
12.02.2018	RC e-mail S&H pointing out that as solicitors on the record they are responsible for dealing with the request for details of assets, and seeking to clarify whether an offer has been made	D/80
29.03.2018	RC serve further witness statements and apply to rely on them	D/83
02.04.2018	S&H e-mail RC to comment on draft directions asking for the disclosure order to delete the reference to 27 GR unless RC could provide evidence that it was part of LC's estate	D/81
02.04.2018	RC e-mail S&H maintaining that 27 GR is relevant and should be within their disclosure obligation	D/82
02.04.2018	RC e-mail S&H asking that the disclosure order extend	D/85

	to all assets in the estate of Doris Ashman	
02.04.2018	S&H e-mail RC asking for evidence that either daughter or LC was registered owner of 27GR and asking why the estate of Mrs Ashman related to that of LC	D/84
02.04.2018	RC e-mail S&H explaining that when an individual dies their estate included any interests of another estate in which they had had an interest and referred them to Ms Gulshan's witness statement	D/84
02.04.2018	S&H e-mail RC claiming that they were unaware and had no instructions, on any link between LC and Glenthorne Road	D/86
02.04.2018	RC e-mail S&H repeating that the explanation for the link between Mrs Ashman's estate and LC's estate is explained in Ms Gulshan's statement	D/86
02.04.2018	RC e-mail S&H explaining the precise link between 27 GR and LC's estate	D/88
06.04.2018	Directions hearing before DM Pickering	A2/1-5
02.05.2018	Helen Coram of Hackney writes to RC. She confirms that Hackney received LC's benefits and private pension and paid his care fees and personal allowance, setting up a Lloyds bank account to manage them, but that they did not have access to his external bank accounts and assets. Savings accumulated were paid toward his funeral costs.	B/153A
07.05.2018	VA's second witness statement	C/7/1-8
07.05.2018	Ds' disclosure list	B/1-3
10.05.2018	RC e-mail S&H pointing out that their disclosure is not compliant	D/89
10.05.2018	S&H post RC a copy of the 27 GR possession proceedings	D/90
11.05.2018	RC again e-mail S&H requesting earlier bank statements, and statements for Santander bank accounts	D/91
14.05.2018	S&H write to RC repeating the position in VA's second statement that no further bank accounts existed	D/92
20.05.2018	C's disclosure list	B/5-9

08.06.2018	Ds' second disclosure list	B/10-12
08.06.2018	RC write to S&H disclosing correspondence with banks and requesting statements from HS	D/94
13.06.2018	C applies for specific disclosure and removal of executors	NA
19.06.2018	S&H write to RC indicating that RC's request for disclosure is disproportionate because the accounts were empty	D/96
25.06.2018	RC e-mail S&H explaining the continued relevance of the bank statements	D/98
29.06.2018	Trial is listed for 17.10.2018	NA
20.07.2018	RC e-mail S&H again requesting statements from accounts controlled by HS	D/115
23.07.2018	S&H write to RC requesting a draft letter of authority re accounts controlled by HS	D/116
02.08.2018	S&H send RC VA's third statement	D/118
09.08.2018	RC e-mail S&H asking if they intend to apply to rely on VA's third statement at trial, attaching a draft letter of authority, disclosing further bank statements, and noting that the trial had been vacated	D/119
09.08.2018	S&H write to RC state that they will not be giving further disclosure in relation to the Santander bank statements because their clients are not executrices.	D/12-121
17.08.2018	RC write to S&H pointing out that the daughters *were* named as executrices in the will and that they were therefore able to obtain statements for LC's accounts, and disclosing further bank statements	D/122-123
22.08.2018	MC's second disclosure list	B/13-17
23.08.2018	Notice of change from HS ceasing to be represented by S&H	G2/1/40
30.08.2018	Order of DM Bartlett	A2/6-10
31.08.2018	RC write to S&H requesting property held on behalf of LC's estate including Mrs Ashman's will, the original title deeds to 27 GR, and files relating to the administration of LC's estate	D/124

11.09.2018	S&H write to RC stating that their copies of Mrs Ashman's will and the conveyance of 27 GR were provided by HS, and that they did not have a file dealing with the administration of Lloyd's estate	D/125
01.10.2018	RC e-mail S&H noting that VA had not complied with DM Bartlett's disclosure and costs orders	D/126
03.10.2018	Helen Coram e-mails RC their (non-privileged) documents relating to Mr Clarke	B/154
19.10.2018	MC applies to impose sanctions on the daughters	NA
11.10.2018	RC e-mail S&H disclosing records received from Hackney, requesting an extension of time to serve evidence due to VA's late disclosure, requesting that VA disclose her remaining bank statements, and that S&H pay their share of the expert's fees	D/127
09.11.2018	RC e-mail S&H asking them to confirm whether Mr Allie was present when LC executed the will due to the medical records indicating otherwise, and indicating an intention to seek to draw adverse inferences if no statement was served by Mr Allie	D/130
06.12.2018	S&H write to RC effectively conceding the application and giving partial further disclosure	D/133
06.12.2018	RC e-mail to S&H asking that they fully comply with DM Bartlett's disclosure order	D/135
07.12.2018	RC e-mail S&H asking them to provide full details as to the sources of transactions in VA's accounts exceeding £500	D/136
08.12.2018	JA e-mails RC asking for dates of the transactions over £500	D/136A
10.12.2018	Order of DM Bowles	A2/11-14
11.12.2018	RC e-mail JA telling him that the sums are clearly set out in his client's bank statements and in the schedules which were in the bundle for the hearing before DM Bowles	D/136A
31.12.2018 (approx.)	MC suffers a stroke	B/34
02.01.2019	MC is admitted to hospital	B/34

10.01.2019	Order of DM Bowles giving MC permission to serve the mistake claim on HS outside the jurisdiction and giving directions	A2/15-16
11.01.2019	The Mistake Claim is posted to HS	B/18
14.01.2019	RC e-mail S&H noting that the mistake claim had been served on VA directly due to their failure to confirm they were instructed to accept service, asking to inspect correspondence which had been disclosed, for full details of transactions in VA's accounts exceeding £500, for her to account for sums received from LC's pension, and for evidence of the funeral expenses, for correspondence between S&H and Damien Lines, and for an account of all moneys appropriated from LC after the LPA was made.	D/140
17.01.2019	Order of HHJ Milwyn Jarmen QC in claim no F30CF003 imposing freezing injunction on VA in favour of Mr Scott as administrator of the estate of Mrs Ashman	A/2/25-31
19.01.2019	Mr Allie attends MC in hospital (without notice) and conducts a 'personal inspection'	D/141
21.01.2019	S&H write to RC informing them about Mr Allie's 'inspection' and request evidence relating to MC's capacity	D/141
22.01.2019	RC e-mail S&H asking what took place during Mr Allie's 'inspection' and why he felt qualified to carry out an assessment, and expressing concern that this was a breach of the SRA code of conduct	D/142
22.01.2019	S&H write to RC demanding a substantive response to their letter of 21.01.2019 by 06.02.2019	D/143
22.01.2019	S&H send a duplicate of the previous letter with an additional sentence inviting RC to make a complaint to the SRA	D/144
23.01.2019	RC e-mail S&H again requesting an explanation for Mr Allie's 'inspection'	D/147
24.01.2019	S&H appeal against DM Bowles' order of 10.12.2019	A/2/17
25.01.2019	RC e-mail S&H requesting that they refrain from approaching MC	D/148
28.01.2019	RC e-mail S&H concerning the appeal and confirming that MC now lacked capacity and that the appeal was	D/149-150

	therefore a legal nullity	
29.01.2019	S&H write to RC requesting medical records for the last 4 years, repeating their historic assertion that MC had lacked capacity before her stroke, and disputing that the proposed litigation friend was suitable	D/151-152
30.01.2019	RC e-mail S&H noting that they had never substantiated their claims that MC lacked capacity prior to her stroke, querying why Mrs St Hill was unsuitable, and noting again that the appeal was a nullity and that in any case they were happy for evidence to be served in response to the mistake claim	D/153-154
30.01.2019	Certificates of suitability appointing Mrs St Hill as litigation friend for MC	B/20-23 and 30-31
31.01.2019	RC write to S&H setting out in detail their position on MC's lack of capacity, serving the certificate of suitability, explaining why they had not served medical evidence, explaining their position on the appeal, and repeating their previous requests for documents and information	D/155-159
31.01.2019	RC serve certificate of suitability and CEA notice	B/24-27
31.01.2019	S&H write to RC again requesting medical evidence, claiming that Mrs St Hill could not act as litigation friend because she had filed a witness statement, and inviting RC to issue applications	D/160-161
05.02.2019	S&H write to RC again claiming that Mrs St Hill is unsuitable	D/162-163
05.02.2019	Further order of HHJ Milwyn Jarmen QC in claim no F30CF003 imposing freezing injunction on VA	A2/32-39
06.02.2019	RC e-mail S&H repeating their position concerning medical evidence, and requesting a substantive response to their letter of 31.01.2019	D/166
06.02.2019	S&H write to RC requesting a further response to their letter of 31.01.2019	D/167
06.02.2019	Report of Dr Talelli confirming MC's stroke and that she cannot understand information beyond simple commands and cannot give evidence	B/34-35
07.02.2019	Puja Sharma, head of Legal Services at Homerton Hospital writes to JA indicating that she will be	B/203

	reporting him to the SRA	
08.02.2019	S&H serve RC with a witness statement concerning their reasons for opposing Mrs St Hill's appointment as litigation friend	D/168
13.02.2019	RC e-mail S&H asking them to confirm whether they are instructed in the mistake claim, pointing out that the validation application was not an application to appoint Mrs St Hill and that the witness statement did not contain any grounds for objection to her	D/169
18.02.2019	Order of Arnold J striking out VA's appeal and giving directions for further evidence	A2/17-19
Unknown	S&H write to court seeking to vacate the trial	
26.02.2019	Order of DM Linwood validating steps taken prior to the appointment of Mrs St Hill, and giving directions linked to the daughters' failure to acknowledge service of the mistake claim	A2/20-23
28.02.2019	Order of Nugee J dismissing application by VA	A2/24
28.02.2019	Report of Dr Ajina confirming that MC currently requires 24 hour care and will have lifelong care needs, but it is not possible to say what level those needs will be once she is discharged	B/36-37
03.03.2019	RC e-mail S&H attempting to agree contents of trial bundles	D/175
08.03.2019	RC e-mail S&H attempting to agree indices of trial bundles	D/176
11.03.2019	RC e-mail S&H asking for confirmation that no statements were available relating to a further Santander account	D/177
14.03.2019	S&H e-mail RC stating that they are no longer instructed	NA
15.03.2019	RC e-mail VA seeking to agree the bundles	NA
16.03.2019	VA e-mails RC asking them to send the bundles to S&H	NA