Neutral Citation Number: [2020] EWHC 1471 (Ch)

Case No: PT-2019-000448

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

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

Date: 12/6/2020

Before:

MASTER CLARK

- -

Between:

DR MARY-ANN GARDINER **Claimant**

- and -

(1) MR MARK ALEXANDER TABET
(2) MS MAIA TABET **Defendants**

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Aidan Briggs (instructed by **L E Law Solicitors**) for the **Defendants**
Jack Dillon (instructed by **Simons Muirhead & Burton LLP**) for **Mr Jamal Hammoud** and **Mr Moshin Lakhim** (non-party respondents)

Hearing date: 11 May 2020

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Approved Judgment

This is the approved judgment, deemed to have been handed down at 10am on the above date, and is to be treated as authentic.

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Master Clark:

1. This is my decision on the defendants' application dated 27 March 2020 seeking non-party disclosure pursuant to CPR 31.17 (as retained in PD 51U - "the disclosure pilot").

Parties and claim

2. The claim is a probate claim seeking proof in solemn form of a will dated 29 May 2017 ("the Will") of Eric Tabet, who died on 21 July 2017. The claimant, Dr Mary-Ann Gardiner, was a friend of the deceased, and is the sole beneficiary under the Will. The defendants, Mark Tabet and Maia Tabet are the deceased's siblings, and would be entitled to his estate under the rules of intestacy if the Will is invalid. They were estranged from the deceased for many years, and had no contact with him until shortly before his death.

3. The deceased suffered from long-standing mental illness (bipolar disease). On 9 May 2017, he was diagnosed with a brain tumour. On 12 May 2017, he was admitted to the Whittington Hospital, and he remained in hospital or hospice care until his death.

4. The particulars of claim set out that the Will was in accordance with the deceased's long held testamentary intentions; and that on 27 May 2017 he gave instructions for it to Mr Jamal Hammoud, his close friend for 30 years. Mr Hammoud is said to have prepared the Will in accordance with those instructions, to have read it out to the deceased, and to have witnessed the deceased's signature of it with another friend, Mr Moshin Lakhim.

5. The Will is a short document in the following terms:

> "I, Eric Tabet, of Waterloo House 155 Upper Street, Islington, London would like to confirm that in the event of my death, all of my belongings and property including Waterloo House 155 Upper Street, Islington, London N1 1RA are to go to Dr Mary-Ann Gardiner of 191 Paradise Peninsula Road, Mooresville, North Carolina, USA 28117 Tel: 00 1 704 608 4020."

It is apparently signed by the deceased, and by Mr Hammoud and Mr Lakhim as "Witness 1" and "Witness 2", although there is no formal attestation clause.

6. The Defence challenges the validity of the Will on three grounds:
   (1) It denies that the signature on the Will is the deceased's – permission has been granted for expert handwriting evidence on this issue;
   (2) It denies that the deceased had capacity to make the Will – permission has been granted for expert psychiatric evidence on this issue;
   (3) It denies that the deceased knew and approved the contents of the Will.

7. As to lack of knowledge and approval, as required by CPR57, the defendants give the following particulars:
   "a. The Deceased had developed cortical blindness, meaning he could not read the purported will as alleged or at all;

b. The purported will does not on its face record that it was read to the Deceased or that by his signature the Deceased intended to give effect to the document as a will;
c. After the date of the purported will the Deceased repeatedly stated to the First Defendant that he had not made a will;
d. After the date of the purported will the Deceased stated to the First Defendant that he intended his estate to pass by intestacy."

8. On 13 November 2018, Mr Hammoud produced a full statement setting out the circumstances leading up to and surrounding the preparation and execution of the Will, and exhibiting a limited number of documents (the exhibit was not in evidence before me). This included evidence that on 26 May 2017 the claimant (who had just arrived in London from her home in the USA) had given him a printed copy (signed by the deceased) of an email dated 7 February 2009 ("the 2009 email") stating:

> "To whom it may concern:
> This is to verify that in the case of accident or death my belongings and my property including Waterloo House are to go to [the claimant]
> Eric Tabet"

Mr Hammoud's evidence is that he handed this email to the deceased when he next visited him in hospital, and asked him what he would like him (Mr Hammoud) to do with it. The deceased, he says, instructed him to type up a fresh document with the same content as the 2009 email leaving the entirety of his estate to the claimant.

9. On 28 February 2019 Mr Lakhim produced a statement as to the circumstances leading up to and his witnessing of the deceased's signature of the Will.

10. Mr Hammoud and Mr Lakhim are the respondents to this application.

11. The claim was issued on 3 June 2019. Directions were made at a CCMC on 5 December 2019. They required the parties to agree a list of issues for disclosure by 24 April 2020, and either give disclosure by agreement or for the claimant to request a disclosure guidance hearing by 8 May 2020.

12. Since no executor is appointed by the Will, title to the deceased's property (including his paper work) vests in the Public Trustee, unless and until a full grant (of letters of administration with the Will annexed) or limited grant is made. No limited grant appears to have been made. However, the claimant has taken *de facto* possession of the deceased's paperwork.

13. The parties have been unable to agree the list of issues for disclosure. I note that the defendants' version of the list of issues seeks to expand into a description of the types of documents that are disclosable in respect of each issue. This is misconceived, as, at best, it relates to the model of disclosure.

14. The evidence before me includes a list entitled "Claimant's schedule of key documents", copies of which documents have been provided to the defendants. It includes email correspondence between the deceased and others, between the

respondents, and documents signed by the deceased. The claimant's position is that no further disclosure should be ordered, and she resists an order for Extended Disclosure. However, for reasons that were not explained to me, the claimant has not requested a disclosure guidance hearing.

15. The directions also required the parties to provide to their respective experts original documents bearing the deceased's signature by 27 March 2020, and for experts' reports to be exchanged by 24 April 2020. This deadline appears not to have been met, and no application for an extension of time made.

Application

16. The defendants' solicitors first wrote to each of the respondents on 21 January 2020, seeking the documents sought in this application.

17. In his email response dated 25 March 2020 to that letter, Mr Hammoud replied:

> "I am not in possession of any relevant documents and information, and any documents and information that may be of relevance of which I am aware have been provided to me to Dr Gardiner's solicitors."

18. The order sought at the hearing (which was in some respects narrower than in the application notice) was that the respondents serve

> "a disclosure statement in form N265 listing any documents in the following categories which are or have been in their possession or control:
> a. correspondence including emails, text messages and call logs showing any communications between them and the other Respondent or Mary-Ann Gardiner between 21 May 2017 to 21 July 2017 inclusive;
> b. Any will, draft will or written instructions for a will (including a written record of instructions given orally) made by or at the request of Mr Eric Tabet;
> c. Any drafts of the tenancy agreement signed on 4 June 2017, or any written instructions for that document;
> …
> e. Any written correspondence between them and Mr Eric Tabet concerning his testamentary wishes in the period from 1 January 2012 to 21 July 2017;
> f. Any documents bearing the signature of Mr Eric Tabet dating from 1 January 2017"

19. The evidence in support of the application was the witness statement dated 27 March 2020 of Neil Lloyd-Evans, the defendants' solicitor. The evidence in opposition was the witness statement dated 1 May 2020 of Peter Gould, the respondents' solicitor.

Legal principles

20. CPR 31.17 provides, so far as relevant:

> "(3) The court may make an order under this rule only where—

(a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
(b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(4) An order under this rule must—
(a) specify the documents or the classes of documents which the respondent must disclose; and
(b) require the respondent, when making disclosure, to specify any of those documents—
(i) which are no longer in his control; or
(ii) in respect of which he claims a right or duty to withhold inspection."

21. The following principles thus apply to this claim:
(1) The documents must be likely either to support the defendants' case or undermine the claimant's case ("relevance");
(2) The disclosure must be necessary to dispose fairly of the claim or save costs ("necessity");
(3) Even if the above two conditions are satisfied, the court has a discretion as to whether to order non-party disclosure ("discretion").

22. In addition, because generally a non-party has no access to the pleadings or evidence in the claim, the court must be satisfied that there are documents falling within the specified classes sought, and that they are likely either to support the defendants' case or undermine the claimant's case: *Re Howglen* [2001] 1 All ER 376 at 382-3.

23. Ordering disclosure against non-parties is the exception rather than the rule (*Frankson v Home Office* [2003] EWCA Civ 655; [2003] 1 W.L.R. 1952 at [10]) and the jurisdiction should be exercised with caution (*Re Howglen* at 382).

"*Likely to support"*

24. "Likely to" means "may well", not "more likely than not.": *Three Rivers DC v. Bank of England (No. 4)* [2003] 1 WLR 210.

25. Both sides referred me to [38] in *Three Rivers*:

> "First, as we have said, (i) rule 31.17 gives no power to order a non-party to disclose documents which do not meet the threshold condition in sub-paragraph (a) of paragraph (3); and (ii) that cannot be circumvented by including documents which do not meet that threshold condition in a class which also includes documents which do meet that condition. Second, the test under the threshold condition is whether the document is likely to support the case for the applicant or adversely affect the case of one of the other parties. Third, when applying that test it has to be accepted, and is not material, that some documents which may then appear likely to support the case of the applicant or adversely affect the case of one of the other parties will turn out, in the event, not do so. Fourth, in applying the test to individual documents, it is necessary to have in mind that each document has to be read in context; so

> that a document which, considered in isolation, might appear not to satisfy the test, may do so if viewed as one of a class. Fifth, there is no objection to an order for disclosure of a class of documents provided that the court is satisfied that all the documents in the class do meet the threshold condition. In particular, if the court is satisfied that all the documents in the class, viewed individually and as members of the class, do meet that condition—in the sense that there are no documents within the class which cannot be said to be "likely to support … or adversely affect"—then it is immaterial that some of the documents in the class will turn out, in the event, not to support the case of the applicant or adversely affect the case of one of the other parties."

26. "Case" means pleaded case: *Abbas v Yousuf* [2014] EWHC 662 (QB) at [30]. The court must therefore look carefully at the pleadings, and decide what issues arise on them. As explained by Eady J in *Flood v Times Newspapers* [2009] EWHC 411 (QB) [2009] E.M.L.R. 18 at [36]:

> "It is elementary, of course, as in relation to the disclosure of documents more generally, that in determining whether a document or class of documents has a potentially relevant bearing on one or more of the live issues in the case, one should focus narrowly on the pleadings as they stand, in order to see how the issues have been defined up to that point. Thus, as I have already pointed out, one cannot be guided by speculation as to how a different case might be pleaded, after a new source of documents is investigated, or as to matters which are merely canvassed in evidence—without being incorporated into a pleading."

27. Before turning the specific categories sought, some general points arise.

Necessity

28. The defendants' counsel placed necessity at the forefront of his submissions. He relied upon the well-known guidance in *Larke v Nugus* (1979) 123 SJ 337 (later reported in [2000] WTLR 1033):

> "Where there is litigation about a will, every effort should be made by the executors to avoid costly litigation if that can be avoided and, when there are circumstances of suspicion attending the execution and making of a will, one of the measures which can be taken is to give full and frank information to those who might have an interest in attacking the will as to how the will came to be made".

29. *Larke v Nugus* itself was a case in which the solicitor who prepared the will was himself an executor. However, in *Bukenham v Dickinson* [2000] W.T.L.R. 1083, it was held to apply to a solicitor who prepared a will, but was not an executor. In *Re Catling* [2014] EWHC 180 (Ch), the guidance was held to be a statement of best practice and not confined to solicitors.

30. The defendants' counsel then submitted that a *Larke v Nugus* request in this case would be expected to elicit the equivalent of the full will file (which would include any correspondence with the Deceased) as well as:
    (1) when instructions were first received;

(2) notes of any meetings with the deceased, including who was present;
(3) what indications the deceased gave that he knew he was making a will;
(4) whether and to what extent previous wills were discussed, and how the provisions of the will were explained to the deceased;
(5) the precise circumstances of the execution of the Will;

and, it follows, any documents recording or evidencing the above.

31. He then submitted that probate proceedings are quasi-inquisitorial (as reflected in the special rules of CPR 57), and in order to comply with the Overriding Objective the court must have all evidence reasonably available to it in order to determine whether the will is valid.

32. He submitted that the circumstances in which the Will was prepared and executed are already highly suspicious:
(1) the deceased was on any account suffering a severe mental illness and was extremely unwell with an inoperable brain tumour;
(2) capacity is in issue;
(3) it was the claimant who first raised with Mr Hammoud the deceased's testamentary wishes, and provided him with the 2009 email as a prompt;
(4) Mr Hammoud then prompted the deceased, using this email, to make the Will;
(5) despite claiming to have drafted the Will over the weekend, it now appears Mr Hammoud drafted the Will barely 2 hours before it was apparently executed – although, as the respondents' counsel pointed out, 29 May 2017 was a bank holiday Monday, so the reference to "the weekend" seems to be accurate;
(6) Mr Hammoud has not explained where he got the claimant's address which appears in the Will, but it must be assumed he got it from the claimant, most likely in further electronic communications;
(7) only a few days after the Will was executed, someone also drafted a tenancy agreement of his property in favour of the claimant and gave it to him to sign;
(8) both the deceased and Mr Hammoud subsequently denied the existence of a will.

33. In these circumstances, therefore, he submitted that the disclosure sought was necessary to dispose fairly of the claim.

34. As to this, the guidance in *Larke v Nugus* is intended to deal with the practical problem that a person seeking to challenge a will may have no direct knowledge of the circumstances of its preparation and execution. It originates in Law Society guidance (based on an Opinion obtained from Sir Milner Holland in the 1950s) which was in effect approved by the Court of Appeal in *Larke v Nugus*: see *Williams, Mortimer & Sunnucks* (21st edn) at para 29-14. The information and documents are to be provided before the claim is commenced. If it not provided, there may be costs consequences. The obligation is a matter of professional conduct for solicitors, and "best practice" for lay persons; it is not enforceable by an order of the court.

35. However, the court has powers under sections 122 and 123 of the Senior Courts Act 1981 to compel production of "testamentary documents" and for non-parties to be examined as to them: see CPR PD 57A, para 7. They include a will, a draft of a

will, and written instructions for a will made by or at the request of, or under the instructions of, the testator: CPR 57.1.

36. The *Larke v Nugus* guidance, the court's powers under ss122 and 123 of the SCA 1981 and the special rules applying to probate claims in CPR Pt 57 (for example, default judgment is not available in a probate claim) reflect the quasi-inquisitorial nature of the probate jurisdiction. This arises from the fact that a grant in solemn form is binding on all those interested in the estate of the deceased with notice of the proceedings, and is conclusive proof of the personal representative's title to the estate to the whole world.

37. When, therefore, the court considers whether the disclosure sought is necessary to determine the claim, in my judgment, this is to be determined in the context of the quasi-inquisitorial nature of probate claims. However, the requirement of relevance must first be met before necessity falls to be considered.

Relevance – scope of issues in the claim

38. The defendants' counsel's submissions were made on the basis that the defendants' case included a case that the circumstances in which the will was executed are such as to arouse the court's suspicion. Each of the categories of documents sought were, he said, likely to support that case (and the defences set out at paragraph 6 above).

39. As to this, the defendants have not pleaded that the circumstances in which the will was executed are such as to arouse the court's suspicion. Contrary to their counsel's submission, therefore, this is not part of the defendants' case; and documents relevant to that allegation do not satisfy the relevance test.

The nature of the evidence relevant to whether the deceased signed the Will

40. The respondents' counsel submitted that the issue of whether the deceased signed the Will would be determined solely on the expert evidence. He accepted that the defendants are entitled to seek disclosure of documents that could help the experts give evidence as to the authenticity of the signature. However, since the defendants do not allege conspiracy or forgery by the respondents, they are not, he submitted, entitled to documents which might support or undermine such an allegation unless and until they plead it.

41. I do not accept that submission. The issue of whether the deceased signed the Will is to be determined by the judge, in the light of all the evidence, including but not limited to the expert evidence (which in any event may not be conclusive). In my judgment, any document which evidences whether the deceased signed the Will satisfies the relevance test. The fact that that evidence could also be used to support an allegation of conspiracy or forgery does not alter that position.

Prematurity of application

42. The respondents' counsel submitted that the application was premature for the following reasons:
    (1) As noted above, the parties have not agreed either the list of issues for disclosure or the applicable models. The list was, he submitted, an important tool for the court to focus "narrowly on the issues" (*Flood*).

(2) Determining the application now runs the risk that the respondents would be ordered to produce documents that the claimant would not be; and this risk could be avoided it this application was heard after primary disclosure.
(3) The parties are on the point of exchanging handwriting reports. It would he said, be grossly unfair for the respondents to be ordered to give extensive non-party disclosure when the defendants' expert report may not, in the event, support the defendants' case on authenticity. The respondents should not give up the privacy of the documents for a case that may soon prove to be unsustainable.
(4) The supplemental report of the defendants' expert, Professor Jacoby, gives rise to difficulties in the defendants' case; and it would be unfair to the respondent to force them to give disclosure when the defendants' case may be unsustainable.

Need for approved list of issues for disclosure

43. Contrary to the respondents' counsel's submissions, at the high level which the disclosure pilot requires, the issues in this claim seem to me to be straightforward:
(1) Did the deceased sign the Will?
(2) Did the deceased have testamentary capacity at the dates of giving instructions for and executing the Will?
(3) Did the deceased know and approve the contents of the Will?
The defendants' application is, in my judgment, to be considered by reference to those issues.

Non-party disclosure before primary disclosure

44. Having identified the issues, the question of whether to order disclosure is to be determined within the framework of CPR 31.17, by reference to the documents or classes of documents held by the respondents. These documents may or may not overlap with documents held by the claimant. Whether the claimant should give Extended Disclosure, and, if so, the model of disclosure, is a distinct matter to be determined within the framework of the disclosure pilot. These are separate questions, to be decided independently of each other.

Whether application should be after handwriting reports

45. As to the significance of the handwriting experts' reports, the documents sought include examples of the deceased's signature, which are of course relevant to those reports. As to the other documents sought, as discussed above, the handwriting reports are just one part of the evidence as to whether the deceased signed the Will, and they go only to that one issue. The fact that the handwriting reports have not yet been exchanged is not, in my judgment, a reason not to determine this application.

Whether defendants' case may be unsustainable

46. A similar point may be made in relation to Doctor Jacoby's report, which is also only part of the evidence as to capacity, and does not go to the other issues in the claim. The claimant has not applied for summary judgment, and I cannot conclude at this stage that the Defence and Counterclaim are unsustainable.

Documents sought

47. I turn therefore to consider each category of documents sought by the defendants, and by reference to its relevance, necessity and whether I should exercise my discretion to order its disclosure.

Written communications or evidence of communications between the respondents and between each of them and the claimant: 21 May 2017 to 21 July 2017 inclusive

48. These are sought on the basis that they will show how the Will came to be drafted, and in particular, what discussions took place relating to the preparation of the Will.

49. The respondents' counsel submitted that these documents are irrelevant and that the attempt to obtain them was a textbook fishing expedition. They do not, he said, go to any of the defendants' pleaded grounds for challenging the Will.

50. He also submitted that the defendants would obtain any disclosable correspondence between the claimant and either of the respondents in due course, so that at best correspondence should be limited to correspondence between the respondents.

51. As to relevance, the claimant's pleaded case is that the Will prepared by Mr Hammoud was in accordance with the deceased's testamentary intentions. This is denied by the defendants, and so is an issue in the claim. The respondents and the claimant are persons who knew of the deceased's testamentary intentions. Any documents held by them recording or evidencing them will be relevant.

52. The deceased's capacity is also an issue in the claim. As Professor Jacoby expressly (and correctly) acknowledges, this is an issue for the court, albeit assisted by expert evidence. The respondents have direct knowledge of the deceased's mental state at the time when he gave instructions for and executed the Will. Again, because the respondents were close friends of the deceased, they (and the claimant) are likely to have documents that evidence his capacity: letters, texts or emails passing between them in which they discuss his state of mind.

53. I note that the respondents' solicitor does not say that such documents do not exist. The correspondence in the period sought is in my judgment likely to contain evidence as to the deceased's testamentary intentions and his capacity which may well either adversely affect the claimant's case or support the defendant's case. I exclude call logs because they will not evidence these matters.

54. In my judgment, therefore, these documents satisfy the relevance test. They are also necessary to dispose fairly of the claim, because of the defendants' lack of any direct knowledge of the relevant events. The respondents have not given evidence as to the documents they have provided to the claimant. The claimant has not told the defendants what documents she has obtained from the respondents, nor the extent to which documents held by her overlap with those documents. There may be relevant documents which the respondents have not provided to the claimant. In my judgment, the possibility of some overlap with the claimant's disclosure does not render disclosure by the respondents unnecessary.

55. I also consider that I should exercise my discretion to order disclosure to enable the court to carry out its quasi-inquisitorial function. The fact that the period in respect

of which they are sought, 21 May 2017 to 21 July 2017, is relatively short means that the burden on the respondents is not great.

56. I do not overlook that these documents may contain personal and sensitive passages. This is not uncommon in cases of this type, and, if necessary, the court can prevent reference being made to passages which are irrelevant to the matters which it has to decide.

Will, draft Will, written instructions

57. The respondents accept that all hard and soft copies of documents in this class are disclosable; although at the hearing it was unclear whether the Word version of the draft Will had been provided.

Drafts of and written instructions for the tenancy agreement dated 4 June 2017

58. The basis on which this is sought is:

> "The timing of the tenancy agreement is highly suspicious, and goes to the relationship between the Deceased and the Claimant, as well as Mr Hammoud's relationship with the Claimant if he was the one who drafted it."

59. The tenancy agreement is not referred to in the Defence, nor, as noted above, does the Defence allege suspicious circumstances. There is no allegation of undue influence by either the claimant or Mr Hammoud. I do not therefore accept the basis put forward by the defendants for their disclosure.

60. However, they are documents which will show the extent to which the deceased was able to formulate instructions to grant a tenancy agreement and his understanding of it. They are therefore likely either to adversely affect the claimant's case or support the defendants' case on the two issues of capacity and knowledge and approval. I will therefore order their disclosure.

Written correspondence between the respondents and the deceased concerning his testamentary wishes in the period from 1 January 2012 to 21 July 2017

61. These are sought on the basis that they provide instances of the deceased's signature, as well as being relevant to the questions of capacity and knowledge and approval.

62. Whether documents bearing the deceased's signature should be disclosed is discussed below.

63. The issues to which these documents are capable of being relevant are testamentary capacity to make the Will, and knowledge and approval of the contents of the Will. The directly relevant period is that leading up the preparation and execution of the Will (and the short period thereafter). Mr Hammoud's statement refers to discussions with the deceased as to his testamentary wishes in October or November 2016. The relevant period is therefore in my judgment 1 September 2016 to 21 July 2017.

64. So far as capacity is concerned, it is the only relevant period. Any variations in the deceased's capacity in the 5½ years before he made the Will are of negligible

probative value in determining whether he had capacity when he gave instructions for and executed the Will.

65. As to knowledge and approval, the claimant's pleaded case is that the testamentary intentions expressed in the Will had been held by the deceased for a long time. If this is correct, then it could support the inference that the Will reflected his true testamentary intentions. The extended period sought could produce documents which show this. However, such documents would not adversely affect the claimant's case. The defendants do not put forward a positive case that at any time the deceased intended to benefit them (or anyone other than the claimant) or to die intestate. So the disclosure they seek would be to prove a negative i.e. that the deceased did not have the long held testamentary wishes which the claimant says he had. But correspondence between the deceased and the respondents in which he does not discuss his testamentary wishes would not show that. It would only show that whatever those wishes were, the deceased did not express them in his correspondence. I am not therefore satisfied that the documents sought satisfy the relevance test.

66. If I am wrong as to that, I am not persuaded that disclosure in the period before 1 September 2016 would be necessary for the fair disposal of the claim. The deceased's testamentary wishes in that period are not a key issue in the claim. The burden of proof on this issue will be on the claimant; and, as noted, Mr Hammoud says that he has provided all relevant documents to the claimant's solicitors. Furthermore, I would not exercise my discretion to order this disclosure, when the burden of doing so is disproportionate to the slight probative value of the documents.

Documents bearing the deceased's signature dating from 1 January 2017

67. Documents bearing the deceased's signature are plainly relevant to the authenticity of his signature on the Will, and in principle disclosable, as the respondents' counsel accepted. As close friends of the deceased, the respondents (together with the claimant) are the people most likely to have examples of his signatures. To the extent that such documents contain irrelevant or private content, they need only be shown to the experts, and only copies of the relevant parts (with the remainder of the copy redacted) contained in the reports.

68. The primary ground on which the respondents resist disclosure are that this part of the application is unsupported by evidence that more examples are required by the experts (who should have completed their reports by 24 April 2020), and that at least 19 documents are available for comparison: referring to the claimant's schedule of key documents. However, only 7 (excluding the Will) of these are in 2016 or 2017.

69. I do not consider it necessary for an application for disclosure of signature samples to be supported by evidence from the experts that more signatures will improve the basis of their reports; and proceed on the basis that this is so (no doubt up to a theoretical maximum). The experts will reach their conclusions on the basis of the material they are provided with. I therefore consider that these samples are necessary for the fair disposal of the claim. They are not onerous to produce, and I will therefore exercise my discretion to order their disclosure.