Neutral Citation Number: [2023] EWHC 2296 (Ch)

Case No: PT-2019-MAN-000097

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Friday, 5th May 2023

Before:

HIS HONOUR JUDGE HODGE KC
(Sitting as a Judge of the High Court)
- -

Between:

VALERIE MAY OLGA SIM

Claimant

- and -

(1) KATIE ELLEN ELIZABETH PIMLOTT
(2) ALISTAIR SIM
(3) DAVID AUSTIN SIM
(4) CALLUM SIM
(5) LOUISE CALDER
(6)STEPHANIE LOUISE CALDER
(7) FRASER GRAHAM CALDER
(8) RONAN ALEXANDER CALDER
(9) ISABELLA MIA SIM
(10) ELLIE IMOGEN SIM
(11) OLIVER EDMUND DAVID PIMLOTT and
(12) FINN WILLIAM PIMLOTT
(Children acting by their Father and Litigation Friend, Mr Richard Pimlott)
(13) SCARLETT TALITHA SIM and
(14) CONWAY NOAH SIM
(Children acting by their Mother and Litigation Friend, Mrs Toya Sim)

Defendants

- -
- -

THE CLAIMANT appeared **In Person**

MR JAMES FRYER-SPEDDING (instructed by **Pannone Corporate LLP**) for the **1st, 3rd, 5th** and **11th** to **14th Defendants**
THE 2nd DEFENDANT appeared **In Person**

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APPROVED JUDGMENT

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HIS HONOUR JUDGE HODGE KC:

1. This is my extemporary judgment on the fourth day of the trial of a claim by Mrs Valerie May Olga Sim for reasonable financial provision from the estate of her late husband, Dr David Morrice Sim, in proceedings in the Business and Property Courts in Manchester which are proceeding under case number PT-2019-MAN-000097. Mrs Sim also seeks declarations as to her ownership and orders for delivery-up of certain items which she says were gifts to her from her late husband, as set out at paragraph 86 of her first witness statement.

2. Over the last three days, I have heard evidence and argument in the case. Ideally, I would have wished to have taken time to prepare a written judgment but I feel that it is more important - given that I cannot sit next week on this case - for me to set out my decision and reasons whilst matters are fresh in my mind; and, also, to relieve the parties of the anxiety that will inevitably affect them until such time as I have delivered judgment.

3. This judgment is structured as follows:

I: The parties

II: The will

III: The proceedings

IV: The trial

V: The witnesses

VI: The applicable law

VII: The submissions

VIII: Analysis and conclusions, and

IX: The gifts.

I: THE PARTIES

4. The late Dr Sim, who was a former GP, lived a complicated life, as the number of parties to this litigation testifies. He had children from three marriages and one extra-marital relationship. Dr Sim was born on 14th May 1938. He made his last operative will on 19th December 2017, when he was in the last stages of his life. He died a little under a month later, on 16th January 2018, at the age of 79. Probate of his will was granted on 19th March 2019 to the first, second, and third defendants, who are three of his adult children. The net value of his estate for probate purposes was sworn at £1.209 million.

5. As I have said, Dr Sim married three times. His first marriage was to Anne, and there was one daughter of that marriage, Louise Calder, who is the fifth defendant. She is a beneficiary under the will but, apart from acknowledging service, stating her intention to contest the claim, she has played no active part in these proceedings. She did not attend the trial; and it is fair to say that whilst Mrs Sim has criticisms of all of her late husband's other children, apart from her own son, Callum, Mrs Sim has maintained no adverse allegations against Louise.

6. Dr Sim's next child is the third defendant, David Austin Sim, who is now 56 years of age. He is the third defendant solely in his capacity as an executor of the will. He is not a beneficiary under that will. He is the son of a previous relationship by Dr Sim with Yvonne Saville.

7. Dr Sim's second wife was Pauline. That marriage produced two children; Katie Ellen Elizabeth Pimlott, the first defendant, and Alistair Sim, the second defendant. They are both executors of, and beneficiaries under, the will.

8. The late Dr Sim was divorced from Pauline, but for many years prior to that divorce, he had been in a relationship with the claimant, Valerie Sim. She was born on 30th April 1957 and is therefore now 66 years of age. She entered into a relationship with Dr Sim when she was very young, although she had previously been married and had two children, Jennifer and François. That relationship began in 1982.

9. Dr Sim was divorced from Pauline in 1993 and Valerie Sim moved into his home with him in about 1995 or 1996. They were married on 16th July 1998. Their relationship had therefore lasted some 35 years by the time of Dr Sim's death; and they had, by then, been married for 19 and a half years. There was one child of that marriage, Callum Sim, who is the fourth defendant, and is 30 years of age.

10. Katie, Alistair, David junior, Callum and Louise were the original five defendants to this claim under the Inheritance (Provision for Family Dependants) Act 1975. However, further defendants have been added during the course of the proceedings. There are five adult grandchildren, who are defendants 6-10. Stephanie, Fraser and Ronan are in their early-to-mid-thirties, and they are defendants 6, 7 and 8. They are the children of Louise, the fifth defendant. Defendants 9 and 10, Isabella and Ellie, are in their early-twenties, and they are the two daughters of Alistair, the second defendant.

11. There are, in addition, four minor grandchildren. Defendants 11 and 12, Oliver and Finn, are 16 and 13 years of age respectively. They are Katie's two children; and their litigation friend is their father, Mr Richard Pimlott. Defendants 13 and 14 are

the two children of David junior, the third defendant. They are Scarlett and Conway, aged 16 and 11 respectively; and their litigation friend is David's wife, Mrs Toya Sim.

12. At the time the claim form was issued, the claimant was represented by Myerson Solicitors LLP. They were the solicitors on the record from 19th September 2019, when the Part 8 claim form was issued, until 14th November 2012, when they ceased to act for Valerie Sim. Since then, she has represented herself as a litigant-in-person.

13. The second defendant, Alistair, is also a litigant-in-person, who has represented himself throughout the proceedings, and at this trial.

14. The first, third, fifth and 11th-14th defendants are all represented by Pannone Corporate LLP; and, at trial, they have appeared by Mr James Friar-Spedding (of counsel). Those are the parties to the litigation.

II: THE WILL

15. The will was drafted for the late Dr Sim by Mr Simon Hughes of Bramhall Solicitors and was executed on 19th December 2017, at a time when Dr Sim was resident at Brook View Nursing and Residential Centre in Alderley Edge, Cheshire.

16. Having revoked all other earlier wills and testamentary dispositions, clause 2 contains various definitions, including that of Valerie Sim as 'my Spouse' and Alistair, Katie, Louise and Callum as 'my Children'. The 'Beneficiaries' is designated as meaning "my Children and any issue of mine who are alive at the start of or born during the Trust Period" of 125 years starting with Dr Sim's death. References to any beneficiary reaching 'the Specified Age' are to be references to their reaching the age of 21 years.

17. Clause 3 appointed Katie, Alistair and David as the executors and trustees of the will. David, of course, was not a beneficiary.

18. Clause 4 (headed 'Legacies') gave a tax-free sum of £20,000 of each of the deceased's grandchildren living at his death, with the usual provision for substitution. In the event, there were nine grandchildren living at the date of the deceased's death and therefore that pecuniary legacy amounts, in total, to £180,000. As I have indicated, there are five adult grandchildren and four minor grandchildren.

19. I should read clause 4.2.1 in full because it lies at the heart of this case.

> "In this sub-clause, the expression 'the Conditions Precedent' means:
>
> (i) the execution of a written deed of release by my Spouse of all rights she may have to claim against my estate under the Inheritance (Provision for Family and Dependents) Act 1975 ... or otherwise to assert any claim or interest in relation to any asset owned by me at the date of my death including my interest in my property in Dubai, such release to be in the form supplied by my Executors to my Spouse and to be delivered by my Spouse to my Executors within two months of the date that such deed is requested; and
>
> (ii) the vacating by my Spouse (and anyone else who may be in occupation) of Lothlorian House, 29a Carwood Road, Bramhall, Stockport, SK7 3LR and the handing-over of the keys thereto to my Executors; and
>
> (iii) fulfilment of the proviso set out in sub-clause 4.2.3 below."

20. By clause 4.2.2, the deceased gave, subject to his spouse fulfilling the conditions precedent, the sum of £250,000 absolutely.

21. By clause 4.2.3, Dr Sim gave a further £125,000 to his spouse, provided that within six months of the date of his death, she "has done all acts and things that may be required in order to release her interest in the property in Dubai that I jointly-own" with her (defined as 'the Dubai Property') "such that the entire beneficial interest in the Dubai Property is free to pass (and does in fact pass) under the terms of this Will

and/or in accordance with Sharia Law without my Spouse to any extent benefiting therefrom".

22. By clause 5, the deceased gave the residue of his estate, out of which were to be paid his funeral and testamentary expenses and any debts, and any property over which he had at his death any general power of appointment to his trustees on the usual trusts for sale and conversion. That property is referred to in the will as 'my Residuary Estate'.

23. Clause 6 provides for the 'Residuary Trusts':

> "Subject to the Overriding Powers conferred by clause 7 below, my Trustees shall hold my Residuary Estate upon the following trusts and with and subject to the following powers and provisions:
>
> 6.1 To pay its income to my Spouse during my Spouse's lifetime;
>
> 6.2 Subject to sub-clause 6.1 above, my Trustees shall hold my Residuary Estate (as to both capital and income) upon trust to divide the same into seven equal parts and hold such parts as follows:
>
> 6.2.1 Two equal parts upon trust for my son Alistair Sim absolutely;
>
> 6.2.2 Two equal parts upon trust for my daughter Katie Ellen Elizabeth Pimlott absolutely;
>
> 6.2.3 Two equal parts upon trust for my son Callum Sim absolutely;
>
> 6.2.4 One equal part upon trust for my daughter Louise Calder absolutely."

24. Clause 7 is headed 'Overriding Powers'. It provides for the trustees to have the following powers (defined as 'Overriding Powers'):

> "7.1 Power of appointment:
>
> (a) my Trustees may appoint that they shall hold all or any part of my Residuary Estate for the benefit of any Beneficiaries, on such terms as my Trustees think fit;
>
> (b) an appointment may create any provisions and in particular

> (i) discretionary trusts,
>
> (ii) dispositive or administrative powers exercisable by any Person;
>
> (c) an appointment shall be made by deed and may be revocable or irrevocable.
>
> 7.2 Power of advancement:
>
> My Trustees may pay or apply all or any part of my Residuary Estate for the advancement or benefit of any Beneficiary.
>
> 7.3 The overriding powers shall be exercisable only:
>
> (a) during the Trust Period;
>
> (b) at a time when there are at least two Trustees or any sole Trustee is a Corporate Trustee."

25. I note that the deceased's spouse is not included within the class of beneficiaries.

26. Clause 8 contains powers of advancement and maintenance. Clause 9 provides for default trusts. Clause 10 contains various administrative powers.

27. Clause 11 contains various miscellaneous provisions, including clause 11.3, whereby, for the avoidance of doubt, the deceased declares that his son, David Sim, had been fully provided for under arrangements made during his lifetime and it was not intended therefore that he should receive any benefit under the Will; and the deceased confirmed that it was for that reason that he had neither been named as one of the deceased's beneficiaries under the Will, nor included within the definition of 'my Children'.

28. Clause 12 is headed 'Personal Interests of Trustees'. It provides:

> "Any of my Trustees may join in exercising any of the powers conferred on them by the provisions of this Will and/or the general law notwithstanding that he or she is a beneficiary and will or may benefit from any such exercise or may otherwise have a direct or other personal interest in the mode or result of exercising such powers."

29. Clauses 13 and 14 are an indemnity in favour of the trustees and a professional charging clause.

30. The Will was witnessed by two solicitors practising with Bramhall Solicitors.

31. The thinking of the deceased underlying the will is set out in three documents within trial bundle D. The first is a file attendance note of 11th December 2017, at D/833-836. This is a type-written attendance note by Simon Hughes which supplements a two-page manuscript attendance note that appears at pages D/837-838.

32. The former document records Mr Hughes's arrival at Brook View Nursing Home at 3.00 p.m. on 11th December 2017, where he was greeted by Katie at the door of Dr Sim's room. That was the first time that Mr Hughes had met Dr Sim; and, apart from a brief conversation earlier that day with Katie on the telephone, the first contact he had had with her.

33. It is unnecessary for me to reproduce in this judgment the contents of that attendance note in full. Mr Hughes noted that Dr Sim was completely alert. He was asked if he had any objection to Mr Hughes discussing the Will with Katie present and Dr Sim confirmed that he had no such objection, and that it would assist him to have her there, given that she was in a position to explain the family background and situation.

34. Dr Sim confirmed that he had read and approved the draft will previously prepared by Xavier Patterson, subject to certain points. Dr Sim pointed out that spelling of his middle name was incorrect in the draft. The word "Morrice" should be spelt M-O-R-R-I-C-E, and not (as appeared in the draft) "Morris", spelt M-O-R-R-I-S. Dr Sim explained that, for reasons of fairness, Callum was not to be excluded from the will

but was to be given a share of residue equal to those of Alistair and Katie. The omission in the draft of any reference to the Dubai property was to be rectified.

35. Mr Hughes recorded that he was aware that the implications of the 1975 Act had been explained to Dr Sim, in the sense that it would be necessary for the will to make necessary financial provision for Valerie, given that if this were not done, she would be able to challenge the will. Mr Hughes indicated that he could not guarantee that the will would be immune from such a challenge, or that a court would not eventually overturn whatever was said in the will in favour of a more generous approach to Valerie.

36. It was agreed that they would stick with the present figure for the cash legacy to Valerie of £250,000, but Dd Sim no longer wanted to make a gift of his 50% share in the Dubai property to her. His concern was that that was too generous. He would prefer his will to contain a provision under which an extra cash payment in the sum of £125,000, amounting to 50% of the estimated value of the Dubai property (of £250,000), should be paid out of the estate to Valerie in return for her releasing her interest in the Dubai property.

37. With regard to Valerie, Dr Sim said that his relationship with her had deteriorated such that he wished to limit the provision he made for her under his will to the maximum permitted by law.

38. There was then discussion of Dr Sim's assets. The matrimonial home, which was in Dr Sim's sole name, was said to be worth £1.2 million. The flat in Dubai, in joint names, was thought to be worth £250,000; and Dr Sim was said to have about £35,000 cash in a bank account in Dubai. Reference was made to two other bank

accounts, totalling £50,000, and a debt from the deceased of £50,000 due from his son, David junior.

39. It was noted that Valerie would obtain a widow's pension via the NHS Scheme which would give her monthly payments at a reduced rate. It was thought that she would receive £1,750 per month, which was 50% of the current £3,500 a month that Dr Sim was receiving.

40. There was discussion of the gift in favour of the grandchildren in the sum of £20,000. Dr Sim confirmed that there were nine grandchildren, so this would account for cash coming out of the estate, free of tax, of £180,000.

41. There was discussion about the Dubai property. Dr Sim thought that it would be far better for Valerie to be bought out by means of a cash payment of £125,000 from his estate. He considered that that would be a good way of providing for her, since it would put total cash into her hands of £375,000.

42. I read the next paragraph in full:

> "On the matter of making the 250K cash gift in favour of Valerie conditional, he agreed that this was a good approach, although I did emphasise that there was no guarantee that use of such a conditional gift would result in Valerie not bringing 1975 Act proceedings - mentioned the fact that Valerie getting cash in hand might just operate as an incentive for Valerie to release any claim she might have but that we would just have to wait and see. David did make the point that he thought that whatever we said in the Will, his wife would not be happy with it and she would end up litigating. He was quite happy for the level of provision in favour of Valerie as detailed above and considered that the same was totally reasonable."

43. There was then discussion of the spouse exemption and the fact that the trustees could use their overriding powers to determine Valerie's life interest in the balance of the capital in favour of the remainder beneficiaries, such that they would receive such

capital absolutely on an accelerated basis. There was brief discussion of the possible application of Sharia law to the Dubai property.

44. There was discussion of the identity of the executors. Then I should read the next paragraph in full:

> "We noted that the £125K payment to buy Valerie out of the Dubai Property could come out of the bank accounts and moneys repaid to the estate by David Sim junior. Also noted that having regard to the cash gifts in the Will payable to the grandchildren (£180,000,) and Valerie (£250,000) there was only one way that such gifts totalling £430,000 ... could be funded, i.e. they would have to be funded by the sale proceeds of the Bramhall Property. I calculated on that basis in very rough terms therefore that the residuary estate would following the sale of Lothlorian House work out in the sum of £770K (i.e. £1.2 million less £430K)."

45. The note then records that Mr Hughes had spent 55 minutes with Dr Sim. At 3.55 p.m. Mr Hughes said to Katie that it would be necessary for him to spend some time with David on his own in order to check his instructions without her being in the room. At that point, Katie left the nursing home; and Mr Hughes then had a further private discussion with Dr Sim lasting about 15 minutes. Mr Hughes left Brook View at approximately 4.10 p.m.

46. Mr Hughes records:

> "During my private meeting with David he confirmed all the instructions that we had been through while Katie was present and David said that such instructions did accurately represent his wishes. He confirmed to me that there was no question of anyone putting pressure upon him to make his Will in the way he had instructed me. I said that I would draw up a fair copy of the Will implementing his instructions and that I would re-attend upon him for the purpose of getting the new Will signed as soon as possible.
>
> David had 100% mental capacity during the entire meeting and displayed no signs of confusion at any point."

47. There is then a further file note of the execution meeting, at 4.00 p.m. on 19th December 2017. That file note is at pages D/840-841 and records a total time engaged of 30 minutes. I need refer only to one paragraph, numbered (2):

> "I also confirmed that the Will included the clause dealing with the additional cash sum of £125K to be paid to Valerie in return for her releasing her interest in the Dubai property - David confirmed that such clause was exactly what he wanted - he also confirmed that he understood and approved the Conditions Precedent to the gift of £250K in favour of Valerie taking effect - we again discussed the chances of Valerie taking the £250K plus £125K (total £375K) without bringing any challenge to the Will - David repeated his view that Valerie would challenge the Will but agreed that it was worth offering the immediate cash payment of £375K in the hope that Valerie might release her rights to challenge the Will in order to obtain the same."

48. There is also, at page D/839, a short attendance note of the other attesting witness, Mr Mark Maguire, who records that "David was responsive, noting the points made by Simon, and appeared fully present". Mr Maguire notes that Simon, David and himself were the only persons present throughout the attendance.

III: THE PROCEEDINGS

49. As I have already said, the late Dr Sim passed away on 16th January 2018. At that time, there were divorce proceedings pending between himself and the claimant, who had also issued proceedings against Dr Sim (even though he was no longer physically present in the matrimonial home) seeking non-molestation and occupation orders against him. A hearing had been fixed for a few weeks' time.

50. Three days after the death, there was a letter, written on 19th January 2019, by solicitors instructed by Mrs Sim, Myerson Solicitors LLP, to Bramhall Solicitors. It is at page E/1069. It recorded that they had been instructed on behalf of Mrs Sim. They understood that her husband had recently passed away and, at that time, Mrs Sim was unaware either of the date of the deceased's funeral, and the arrangements in relation

to the same, or of the contents of Dr Sim's will. Bramhall were asked to provide a copy.

51. The letter continued:

> "We intend to take our client's immediate instructions in relation to all issues arising both prior and post-death. Until we have attended upon our client, we cannot comment upon her intentions. Our client however is resident in the property and we see no reason, at this particular stage, as to why you need keys to access the property. It might have been more sensitive to have sent your letter, without threats and demands, following the deceased's funeral and full disclosure of the deceased's Will and the identity of your clients.
>
> As an aside, irrespective of the parties' intentions to a divorce … the parties were married for a considerable period of time. It is only right that our client should be given a reasonable period of time, following the deceased's death, to consider her position."

52. On 5th February 2018, Myerson wrote a *Larke v Nugus* letter to Bramhall Solicitors, seeking responses to no less than 26 points in relation to the will. That letter of 5th February 2018 is at E/1073-1075.

53. Bramhall's substantive response is dated 23rd March 2018 and can be found at E/1080-1083. That response was clearly informed by the contents of a document prepared by Mr Simon Hughes on the same day, at D/856-857, headed 'Will Preparation Summary'.

54. At paragraph 15 of that letter, in response to the question: "What reasons did the Deceased give for making Katie Pimlott, Alistair Sim and David Sim his executors?" Bramhall responded as follows:

> "The deceased informed me that there was a severe breakdown of trust between the deceased and your client, Valerie Sim, such that he would not have dreamt of appointing Valerie as one of his executors/trustees. As is clear from the instructions we received, one of the main objectives of the Will was to limit the benefits to be received by Valerie within the constraints of the 1975 Act, thereby ensuring

> maximum benefit for the children of the deceased. Against that backdrop, the deceased made clear that he initially wanted Katie and Alastair to be his executors and trustees. He subsequently decided to add in David Sim junior as an executor and trustee: see my file note dated 11/12/2017 for more details."

55. Myerson responded on 13th April 2018. The letter stated that they had been instructed to investigate the validity of the will and that such investigations were ongoing, with a caveat having been registered preventing the named executors from obtaining a grant of probate. The letter went on to say that in addition, or in the alternative, Myerson were instructed to pursue a claim pursuant to the 1975 Act. Mrs Sim was the surviving spouse of the deceased and had a strong claim under the Act based on her own financial needs and resources, and the information Myerson were in possession of as to the financial needs and resources of the deceased's children. Bramhall were invited to note that Mrs Sim would not vacate the property, which must not be placed on the market for sale. Mrs Sim would not allow access until her claim was finalised, either by way of a validity challenge or the Inheritance Act. Reference was made in the concluding paragraph to the fact that Mrs Sim was not yet in receipt of the deceased's NHS widow's pension.

56. A further letter was written from Myerson on 3rd May at E/1089-1090. Reference was made to the fact that Myerson had requested the deceased's medical records in order to fully investigate the grounds of lack of capacity and want of knowledge and approval. The letter concluded:

> "In the event that a challenge in respect of the validity of the Will is not applicable, we confirm it is our client's intention to bring a claim under the Inheritance (Provision for Family and Dependents) Act 1975. We will notify you of this following our review of the deceased's medical records and will provide you with a letter of claim as soon as possible."

57. In light of that correspondence, I am told that no formal request for a written Deed of Release pursuant to clause 4.2.1 of the will was ever made because Mrs Sim had made it clear, through her solicitors, that she would be pursuing, rather than releasing, any claims under the 1975 Act.

58. Probate was granted on 19th March 2019. The Part 8 claim form seeking relief under the 1975 Act was issued exactly six months later, on 19th September 2019. It named the first five defendants. It was not, however, served until 14th January 2020. As well as the claim for reasonable financial provision, the claim form also sought declaratory relief in relation to Mrs Sim's ownership and delivery up of various items which she said had been gifted to her over the years by the late Dr Sim, as listed at paragraph 86 of her first witness statement.

59. Mrs Sim has made no less than four witness statements in support of her claim. The first two, dated 18th September 2019 and 14th May 2021, were made whilst Myerson were still acting for her. Mrs Sim became a litigant-in-person as from 14th November 2021, and she was therefore responsible for her witness statements of 16th January 2022 and 29th January 2023.

60. By an order that I made at the pre-trial review on 6th February 2023, only paragraphs 140, 141 and paragraphs 171-179 were to be received in evidence at the trial of this claim, the remaining paragraphs of the fourth witness statement having been ruled inadmissible. My reasons for that ruling are set out in an extemporary judgment that I delivered at the pre-trial review, which took place remotely on 6th February 2023. Reference should be made to a transcript of that extemporary judgment should it be necessary to understand the reasons for ruling those paragraphs out of consideration at the trial. As far as I am aware, there has been no attempt to appeal that decision.

61. The first defendant, Katie, relies upon two witness statements, dated 18th March 2021 and 26th January 2023. The second defendant, Alistair, who has at all times acted for himself, has made one witness statement, dated 18th March 2021. The third defendant, David, has made four witness statements, dated 18th March 2021, 24th March 2021, 21st May 2021 and 17th January 2022. The fourth defendant, Callum, the claimant's son, perhaps understandably, supports his mother's claim. He has made two witness statements, one, and possibly both, dated 19th March 2021. Neither was signed by him, although when he came to give evidence remotely at trial, he confirmed the contents of those witness statements. The fifth defendant, Louise, filed an acknowledgment of service stating her intention to contest the proceedings, but she has not filed any witness evidence.

62. All five of the adult grandchildren filed acknowledgments of service, stating their intention to contest the proceedings. In their acknowledgments, they also included short evidence explaining why they were very grateful to have discovered that they were in receipt of pecuniary legacies of £20,000 each from their grandfather; and explaining how useful those pecuniary legacies would be for them in their separate, and individual, financial circumstances.

63. Following the later joinder of the four minor grandchildren, there have been short witness statements from their litigation friends, Richard Pimlott and Toya Sim, both dated 9th January 2023. Neither of those witness statements addresses the individual financial circumstances of the relevant minor grandchildren.

64. It is perhaps appropriate to mention in this case that, with the exception of the second defendant (Alistair) and the fourth defendant (Callum), none of the defendants relies upon their own individual financial circumstances in resisting this 1975 Act claim,

although, as Mr Fryer-Spedding has pointed out on behalf of the defendants whom he represents, that is not necessarily any reason why the court should accede to the claim brought by Mrs Sim

65. In addition to the evidence of fact, there is expert evidence from no less than four expert witnesses in different fields of practice who have given evidence as single joint experts.

66. The first is Mr John Daniels, of Jigsaw Surveyors, who has provided evidence as to the open market value of the principal asset in the estate, the former matrimonial home at Lothlorian House, Bramhall. The open market value is £1.2 million, and the open market rental value at various dates between 2018 and 2022 has increased from £2,000 per calendar month to £2,600 per calendar month.

67. The second joint expert is Mr Paul Mills, a chartered financial planner with Millcroft Wealth Management Limited, who addresses the income that might reasonably be expected to be generated from the residuary estate over the remainder of the claimant's lifetime. It proceeds on alternative bases that the estate to which regard is to be had is either £950,000 or £600,000

68. The third joint expert is Mr Ali Ismael Al Zarouni, the founder and managing partner of a law firm practising in Dubai. He gives evidence as to how the assets in Dubai, namely the late Dr Sim's half share in the Dubai apartment, and moneys standing to the credit of his account at a Dubai bank, stand to devolve under local Sharia law.

69. In summary, the claimant is entitled to a one-eighth share in the deceased's half-share in the Dubai property, and also to a one-eighth share in the moneys standing to the credit of the local bank account. The balance is to be divided between the three sons

and the two daughters of the late Dr Sim, with sons receiving, surprisingly to those in this jurisdiction, twice the amount to which daughters are to be entitled.

70. The fourth joint expert is Mr Ryan Gargan, who is a leasing manager with a real estate practice in Dubai. He gives evidence as to the open market value, and the open market rental value, of the apartment at Marina Heights, Dubai Marina, that was held in the joint names of Dr Sim and his wife. The property itself is worth some £241,500, meaning that a half share would be worth £120,750. Those, of course, are rough figures because they depend upon the prevailing exchange rate between local currency, the Dirham, and the pound sterling. The rental value is put in the region of 85,000-90,000 Dirham per year.

71. The proceedings have been the subject of a number of case-management orders, which have been complicated by the intervention of the trial of a preliminary issue that took place in February 2022 before His Honour Judge Stephen Davies (sitting as a Judge of the High Court).

72. Essentially, the preliminary issue came about because the claimant asserted that the late Dr Sim had a beneficial 45% shareholding in a company operated and apparently owned by his son, Mr David Sim, called Brickies Limited. Judge Stephen Davies rejected that claim and held that the estate had no such beneficial entitlement to his shares in that company.

73. There was an application for permission to appeal that decision, which has taken a long time to be considered because, in April of last year, the claimant sadly suffered severe brain injuries in a road traffic collision, which made it difficult for her to comply with repeated requests by the Court of Appeal for the provision of documents.

There were various extensions of time granted in relation to the application for permission to appeal, and for the provision of documents in support thereof.

74. Indeed, the application for permission to appeal was still extant on 8th September last year when Judge Stephen Davies made directions leading to the trial of this substantive claim, including directions for expert evidence, and set a trial window.

75. Notice of this trial date was issued on 8th January 2023, and a pre-trial review took place before me on 6th February 2023, at which (amongst other things) I made the order excluding large parts of the claimant's fourth witness statement from consideration at this trial.

76. The application for permission to appeal Judge Stephen Davies's order was still outstanding when the claimant issued an application to adjourn this trial, which came before me, remotely, on 24th April 2023. I refused that application to adjourn the trial. The basis upon which the application was made was that the application for permission to appeal Judge Stephen Davies's order was still pending. In the event, my decision has proved a sensible one because, on the very next day, the application for permission to appeal was refused, on the papers, by Arnold LJ; and a copy of his reasons has been included within the trial papers. That decision was made on 25th April 2023.

77. That brief chronology explains how it is that this 1975 Act claim has come on for trial more than five years after the late Dr Sim's death.

IV: THE TRIAL

78. The trial had been listed to start this Tuesday (2nd May) on 18th January 2023, with various directions being given to enable the trial to proceed. Given that the claimant

was not represented by solicitors or counsel, the responsibility for producing the bundles for trial had been assigned to Pannone Corporate LLP, as solicitors for the represented defendants. They filed electronic bundles on 17th April, and lodged paper copies at court on 18th April.

79. A supplemental bundle, marked X, was lodged on 27th April; and that bundle has been supplemented with further documents as the trial has proceeded. As a result, the documentation produced by Pannone Corporate now extends to some 1,270 pages.

80. In the late afternoon of last Thursday, 27th April, Mrs Sim filed a link to two supplemental bundles of documents on which she wished to rely. I accessed them through CE-File on Monday, 1st May, and discovered that they comprised a series of separate pdf files. The first bundle comprised 19 pdf files, and the second bundle comprised 25 pdf files.

81. Shortly before midnight on the Bank Holiday Monday, 1st May, the day before the trial, the claimant sent an e-mail to the court saying that she had sent two links via WeTransfer. The first contained 161 pages, which was Mrs Sim's supplemental bundle for use at trial. The second was said to contain audio recordings and transcripts. She said that she would not be playing the audio recordings as she did not have a device which could do so; nor was she able to do that herself. She had included them for the court's attention, should anyone wish to hear them. The claimant said that she would be relying on the transcripts at pages 1-51 of the numbered bundle. That e-mail was sent to me at just before 9.30 on the morning of the first day of the trial (2nd May).

82. In view of the way the claimant proceeded to present her case at trial, I did, at the end of the second day of the trial, and during the course of that evening, access and read

the whole of the 51 pages of transcripts. I have noted their contents.

83. Also on the morning of the first day of the trial, I was alerted, for the first time, to the position of the fourth defendant, Callum Sim. At lunchtime on 28th April, Callum had sent an e-mail to the court stating that he was scheduled to appear before me on 2nd May as a witness in this case. He requested, for the first time, permission to appear via video-link for the trial, as he said he had been contracted to work in London until 13th May and could not be released, as he was a crucial part of the job. He explained that it was the first full-time contract he had been given in years, and stepping down for even a day would be unmanageable for the company, and would likely result in him losing his job entirely. Being young and unrepresented, and managing anxiety disorder and PTSD, he found it very difficult to try to find a solution to the situation that would have resulted in him still being able to appear at court in person. He therefore asked to be given the opportunity to appear remotely.

84. I invited the court to e-mail Callum and to ask certain questions, including the contact details he was offering, and where he was proposing to join the hearing from. I asked for details of when he had secured the job and what it was, where his place of employment was, and why he had only been contacting the court on the afternoon of Friday 28th April, which was the last working day before the trial, given that the Monday was a Bank Holiday. I asked for documentation proving his employment; and the court indicated that, should I approve his request, he would have to join the hearing by CVP, which would require him to have a camera and join the hearing by a link sent to his e-mail address. The court's e-mail also enquired whether he had sight of the hearing bundles to enable him to see the documents if he did attend remotely.

85. Callum responded to that request at 2.42, providing his e-mail address. He explained that he would be joining from Hornchurch, in east London. His employment was an acting job, currently with the Queen's Theatre at Hornchurch, and moving back to Bolton on 14th May. He said he had signed a contract at the start of - he said this month, but he clearly meant April - but he said he did not have a formal schedule from stage management until the night of 30th April. He had not been aware until just before the first performance on 27th April how difficult it would be to get back and forth from Hornchurch to Manchester. He had not realised that the Monday was a Bank Holiday; and he apologised that he had made an unnecessary hurdle for the judge and the court staff. He also attached an early, and unsigned, version of the contract he had received. This made it clear that he was appearing as an actor in a production with a rehearsal period commencing on 27th March and the first performance being on 27th April 2023, with the engagement running for a guaranteed period until 3rd June 2023. The contract was signed by two of the three theatres concerned on 30th March 2023.

86. It was very late for such a request to be made, but the court was able to accommodate Callum, and he did attend remotely by CVP for over an hour, giving evidence on day 2 of the trial, in the early afternoon.

87. The trial took place over three days, starting at 10.30 on Tuesday 2nd May, at court 42 in the Manchester Civil Justice Centre. For much of the trial, the claimant has been assisted by representatives of Support Through Court (to whom the court is grateful). After various housekeeping matters and openings, the claimant was in the witness box for over six hours. She was cross-examined by Mr Fryer-Spedding from about 11.50 on the morning of day 1, and concluding at about 11.30 on the morning

of day 2. She was then further cross-examined by Alistair for about 50 minutes; and then I questioned Mrs Sim for about 20 minutes.

88. The second, and the only other witness in support of the claimant's case, was her son Callum, the fourth defendant, who gave evidence, via CVP, on the early afternoon of day 2 for a little over an hour from a bedroom in Hornchurch, twice punctuated by the barking of a dog.

89. The afternoon of day 2 was taken up with evidence from Mr Pimlott, as litigation friend for his two children, for about ten minutes; from Alistair, for about 20 minutes; from Katie, for about 25 minutes; and from David, for about 35 minutes. The evidence concluded on day 2 of the trial, at about 4.25.

90. Yesterday, day 3 of the trial, the court heard closing speeches between about ten o'clock and a little after three o'clock in the afternoon. The claimant addressed the court for about an hour. She did so by reference to her written notes. In his closing remarks, Mr Fryer-Spedding noted that the claimant had been able to prepare and deliver a speech fluently for over more than an hour.

91. Mr Fryer-Spedding then proceeded to address the court for about two-and-a-half hours, either side of the short adjournment. Alistair indicated that, in view of Mr Fryer-Spedding's submissions, he did not feel the need to add anything to them.

92. The claimant then proceeded to address the court in response for about a further half hour.

93. The court rose yesterday a little after three o'clock, with a view to delivering this extemporary judgment at 11 o'clock this morning.

V: THE WITNESSES

94. Mr Fryer-Spedding, in his closing submissions, mounted a firm attack on both the reliability and the credibility of the claimant as a witness. He was also highly critical of the way in which the claimant had advanced her case. He described her evidence and submissions in terms of a torrent of foul abuse, which he said was absolutely appalling, and which had involved the defendants in listening to the name of their father being traduced, and their own characters being assassinated, in open court, with allegations being made against them which had never been put to them in cross-examination and to which, therefore, they had never been given any opportunity to respond.

95. At heart, however, Mr Fryer-Spedding submitted that I should treat the claimant as a highly unreliable witness, who has shown herself ready to present false and exaggerated evidence, with a view to deliberately misleading the court. He recognised that if what the claimant had been saying about her late husband, and their marriage, was true, it was the most appalling account of domestic abuse. If, however, that account were untrue, then it clearly involved the most appalling lies, directed to a person who was no longer capable of defending himself.

96. Mr Fryer-Spedding rightly submitted that the court must consider what the claimant had been saying against the background of the known, or the indisputable, facts. He invited the court to weigh the claimant's account against the contemporaneous documents, and the undisputed facts; and he also invited the court to consider the absence of evidence which was available, and might have been of useful probative value, but which had never been presented to the court

97. Mr Fryer-Spedding was referring, in terms, to the absence of any evidence from the claimant's daughter by her first marriage, Jennifer. There was also a son by that marriage, François; but he is resident abroad and does not appear to have played any part in the previous proceedings between the claimant and her late husband. That is not, however, the case, with the claimant's daughter, Jennifer. Although it is not in evidence before the court, it is clear from the terms of a witness statement that the late Dr Sim made in late-December 2017, that Jennifer had made a witness statement in support of her mother's claims for non-molestation and occupation orders in respect of the matrimonial home against her husband, which Dr Sim vehemently disputed, and to which he took great offence. That is clear from the terms of his own witness statement.

98. In a witness statement dated 27th December 2017, in the proceedings brought by the claimant in the County Court at Stockport, Dr Sim makes reference, at D/847, to a witness statement of Jennifer dated 1st November 2017. In the course of that statement, he refers to an allegation (at paragraph 50 of Jennifer's statement) of the rape of his wife which he states is absolutely denied. Looking at the contents of Dr Sim's witness statement, it is clear that Jennifer's statement had extended to at least 84 paragraphs. In those circumstances, Mr Fryer-Spedding points out that it is surprising that there is no evidence from Jennifer to support her mother's account.

99. This was a matter that I had raised with the claimant at the end of her cross-examination, enquiring why the court was receiving no evidence from Jennifer. Mrs Sim's explanation was that she had not wanted to embroil her daughter in anything that would affect her future or her professional career. She had not wanted Jennifer's career to be affected because of something that she, Mrs Sim, was involved with.

This was reiterated again in closing by Mrs Sim, in response to Mr Fryer-Spedding's criticism of the non-appearance of Jennifer.

100. In response to that, Mrs Sim said that there had been an agreement to remove a witness statement from Jennifer from the documents that were before the court because Mrs Sim no longer intended to rely upon it. I enquired about this, and I was told that it related to a request that had been made in an e-mail at E/1132, dated 14th February 2023, where Mrs Sim had said: "I withdraw the witness statement from my daughter and request that it be removed from the main trial bundle, as she will not be playing a part in the main trial. The statement was produced on request by my then solicitors and has never been used since." That request was complied with; but Mr Fryer-Spedding points out there was no agreement that comment should not be made about Jennifer's absence from this trial.

101. I have heard what Mrs Sim has had to say about not calling Jennifer. I understand her reluctance to do so; but the effect of not calling Jennifer is that I have been denied the evidence of a professional person whose evidence might have been of assistance to the court. I make no assumptions about what evidence Jennifer might have given; but the deliberate decision of the claimant not to rely upon Jennifer's evidence means that she provides no support for the claimant's case, when it is clear that she might have done so. The point Mr Fryer-Spedding makes is that there is no one, other than Callum, who lends any support to the claimant's allegations, which are of a serious kind.

102. So far as Callum is concerned, Mr Fryer-Spedding submits that he was clearly giving evidence to assist his mother's case. He clearly has a financial interest in the outcome of this litigation; he clearly has a total and undisguised dislike for his half-siblings; he

has also had a tendency to make clandestine recordings, in which he has presented a narrative to his father, whilst secretly recording his responses, with which, certainly on occasion, his father did not agree. Mr Fryer-Spedding invited the court to find that Callum's willingness to record his father, and to lead him in conversations, does not operate to his credit. It is part of the creation of a false narrative in order to foster the claimant's case.

103. I am satisfied that those criticisms are well-founded, save that I reject the submission that Callum's evidence is in any way clouded by any thought that he might benefit personally from the outcome of this litigation. I am entirely satisfied, however, that his evidence is coloured by his support for his mother. Indeed, there is a telling passage in one of the recordings, covertly made by Callum on 12th December 2017 (at page 45 of the bundle of the claimant's transcripts), where Dr Sim said (referring to Callum's half-siblings): "Callum, you have been brainwashed against them for years."

104. I am entirely satisfied that I cannot treat Callum's evidence, or the recordings that he has made, as in any way reliable. It is quite clear from the transcript of an exchange on 22nd November 2017 (at pages 39-40), that it was in fact Callum who was suggesting to his father that it was Katie who had been suggesting that Mrs Sim had been neglecting Dr Sim at home. Callum has also clearly paid no attention to remarks by his father, describing the evidence that Mrs Sim was giving against Dr Sim, in terms of "a torrent of foul abuse". In the same passage, Dr Sim said: "Your mother has accused me of a lot worse, which you seem to ignore." Callum commented (with reference to the witness statements in the matrimonial proceedings): "I have not read any statements." Dr Sim said: "You should." Callum said: "I told you, I have not read

anyone's statements." Dr Sim said: "You should. It is appalling. Absolutely utterly appalling. Just a torrent of foul abuse."

105. Callum clearly has adopted his own perception of things without adequately taking account of what his own father was saying about matters. I cannot regard Callum as a reliable or a credible witness, whose evidence is capable of supporting the claimant's evidence and case.

106. I therefore find myself left with the claimant's evidence on its own; and I have to weigh that against the documentary evidence, and such evidence as remains from Dr Sim. I had the opportunity of observing Mrs Sim over the course of some six hours of her evidence, and also during the course of her closing submissions, extending over an hour, and then a further half hour in reply. She is clearly a well-educated and articulate lady who, although she has told the court that she is still suffering from the effects of the unfortunate brain injury that she suffered following a road traffic accident last April, has nevertheless been able to present her case fluently to the court.

107. Mrs Sim trained as a teacher; and she told the court that when Callum was a baby, she had started a law course at Manchester Metropolitan University, which she was unfortunately unable to complete, but where she had secured a 96% score in her first year.

108. I am entirely satisfied that Mrs Sim had a tendency to exaggerate in her evidence, and also to make false allegations. She disagreed with almost everything that was said against her case; and she had a tendency to refuse to listen to, or engage with, questioning. When, in opening, Mr Fryer-Spedding was objecting to the late production of the transcripts, Mrs Sim maintained that they would show that it was not she who was responsible for instigating the matrimonial proceedings that she had

brought against her late husband, but rather the defendants. She accused them of being in the way. Speaking of the period from August or September 2017, she said that, by then, her husband was a very ill man and that she had known that; but that the matrimonial proceedings had come about because of the way he was being controlled by his children. I am entirely satisfied that that is not the case. I am also satisfied that the transcripts do not support the case of coercion that the claimant was advancing.

109. Both in evidence and in submission, the claimant repeated the mantra that domestic abuse is the backbone of this case and it is why we are here today. The court recognises the seriousness of domestic abuse; it recognises its insidious nature; it recognises that it is difficult for the court to know what goes on behind closed doors. But here the late Dr Sim was being separately recorded, both by Callum, apparently on his mobile phone, and by the claimant, on a plug-type device which she had purchased over the internet by searching against 'spying devices'; yet, when asked, she was forced to recognise that the recordings do not disclose any threats to her from her husband.

110. As Mr Fryer-Spedding emphasised, there are serious problems with the transcripts. The ones on which the claimant places reliance extend over a period from 14th June 2017 through to after Dr Sim's death on 16th January 2018; but transcripts, even on particular days, are clearly not complete, and they are completely without any real context. Moreover, if they are truly reflective of the claimant's case, then they simply do not support what she is saying. I recognise that the transcripts with which the court has been provided only start in June 2017; but there is no reason why, if things were as bad as the claimant maintains, she should not have taken steps (as she later

did) to obtain a spying device, and to start recording her late husband's conversations, much earlier.

111. As I say, the court recognises the insidious nature of domestic abuse and, more particularly, allegations of rape; but it also recognises that these are allegations which can be readily made and are difficult to rebut, particularly after the death of the alleged perpetrator. They must therefore be weighed closely against both the contemporaneous evidence, and the way they have been presented to the court. They must also be weighed against the general reliability and credibility of the person making the allegations in relation to other matters, where the accuser's evidence can be reliably tested.

112. I have now reached three minutes past one. What I propose to do is to resume at 1.40. We will resume at 1.40.

(Adjourned for a short time)

113. I am satisfied that Mrs Sim's evidence is unreliable. It is substantially inconsistent at times, and is also exaggerated. The claimant demonstrated an unwillingness to answer questions, which I am satisfied she well-understood, preferring instead to enter into rambling, and aggressive, counter-attacks. By way of example, I am satisfied that Mrs Sim has exaggerated her evidence as to the extent to which she had been suffering pain, which she has used to justify her reluctance to receive Dr Sim back into the matrimonial home. In cross-examination, it was put to Mrs Sim that she had explained that she had been unable to care for Dr Sim fully and properly because of the back injury she had suffered. She was asked where, on a scale of one to ten - with one being the least painful and ten the most - she would rate her back pain, and she said nine out of ten. She said that she had excruciating back pain.

114. Mr Fryer-Spedding put it to her that this was not consistent with the medical records at D/814. On 17th May 2017, Mrs Sim had attended the GP surgery at Bramhall Health Centre and had seen Dr Shilpa Grewal. Her problem was said to be back pain. The history taken was that she had fallen two months previously whilst caring for her husband. She was suffering mild ongoing pain. On examination, she was described as having good flexion but mild discomfort. It was put to her that she had been complaining of mild back pain and her answer was that she had had terrible back pain. Mr Fryer-Spedding put it to her that this was a minor back complaint, and Mrs Sim repeated that she had had terrible back pain. I am satisfied that Mrs Sim was exaggerating the degree of back pain she had been suffering in her evidence to the court in order to use it to justify no longer having Dr Sim remaining at home.

115. On the next record of a medical consultation, at the same GP surgery, on 1st June 2017, there is no reference to any continuing back pain. I am satisfied that this is an example of the claimant exaggerating her evidence to the court; and that this demonstrates the unreliability of the claimant's evidence.

116. In the course of his closing, Mr Fryer-Spedding referred to four separate examples of false evidence on the part of the claimant. The first was the allegation of rape. This was vehemently denied by Dr Sim in his witness statement of 27th December 2017, responding to Jennifer's allegation in paragraph 50 of her witness statement (which is not before the court).

117. At no time had Dr Sim ever been arrested for or charged with, let alone convicted, of any charge of rape; but the fact is that Mrs Sim has not told a consistent story over time. The nature of her allegations have changed. In her first witness statement in

support of this claim, there is no reference to rape at all. The highest it is put, at paragraph 79, is that Mrs Sim had to endure:

> "... a huge amount of abuse, be that physical, sexual and mental abuse. David controlled me throughout our 20-year marriage, wanting to know who I was seeing and why, being in charge of our money and taking back the bank cards whenever he wanted to."

118. The first appearance of an allegation of rape is to be found at paragraph 69 of Mrs Sim's third witness statement:

> "In 2010 he put me through the most degrading aspect of abuse; he raped me on several occasions. He told me that there was no safe place in our home for me to hide because if I moved to any other bedroom he would find me and he did."

119. During that year, there were divorce proceedings on foot in the County Court at Manchester (under claim number MA09D00586). A decree nisi was apparently pronounced in due course but, by consent, on 24th December 2012, the decree nisi was rescinded by order of District Judge Smith; and the claimant's divorce petition was dismissed. I will return to that shortly when I come to deal with the authorship of a letter at D/781 of 17th January 2012.

120. However, the fact remains that by the time of the first divorce petition in 2009, the claimant had every reason, and opportunity, to take any allegation of rape to the police. The claimant's explanation for not doing so is that she was concerned that, by doing so, the late Dr Sim would lose his position as a general practitioner, and it would affect his relations with his children and grandchildren. Of course, if Dr Sim were guilty of rape, he ought not to have been allowed to remain in practice, or as a consultant general practitioner; but the claimant's case, in her third witness statement, is that she had been raped, not once, but "on several occasions". There is no reference to that in the medical records of an attendance upon the claimant at her GP surgery on

24th December 2010, which merely states that the claimant is under a lot of stress at the moment. She had moved out of the home and in with her daughter, and she was in touch with the CID for domestic violence issues. There is reference to rape in the entry for 31st March 2017; but what is recorded there is: "One episode of physical abuse and rape in past. Husband."

121. Mrs Sim also relies upon two further documents. The first is a letter which she wrote in her own hand to her solicitor at the time, Mr Edward Kitchen, then of Pannone LLP. That letter appears at pages 136-137 of the bundle that was submitted to the court at the very beginning of this trial. It was difficult to read in handwritten form and I therefore invited Mrs Sim, overnight, on the first day of the trial, to produce a transcript, which she did the following morning. Comparison of that transcript with the handwritten letter reveals a number of very minor inaccuracies. These were noted by me, and are recorded in the tracked changes transcript at pages 96-97 of the supplemental bundle X.

122. However, what I also noted was that a whole paragraph on the second page, beginning at the third line, had been omitted. That has now been supplied in the corrected transcript, with tracked changes at pages 96-97. The missing paragraph reads that: "... Jennifer will have some recollection of one such incident as he recognised his odd behaviour while I was completely lost to red wine".

123. The claimant says that the omission of that paragraph was simply a mistake on her part. Given the sensitivity with which she regards any references to Jennifer, I am afraid I cannot accept that explanation. I am satisfied that she omitted to transcribe that paragraph deliberately. I am also satisfied, as Mr Fryer-Spedding urged upon me,

that it does cast some doubt upon the selection, and the accuracy, of the transcription of the various recordings on which the claimant relies.

124. That letter to Mr Kitchen does contain references to being regularly pressured into having sex with her husband, and with him persisting, despite Mrs Sim's objections. It also records that on Bonfire Night - it says 25th November - and also on 16th December, the claimant was "forced into having sex with [Dr Sim] as he purposely and repeatedly plied me with red wine which he knows will cause me to become incapable of controlling myself, then he would take advantage of me either on the sofa or up in bed". Mrs Sim says that she realised that she was in Dr Sim's bed one such time and left the room, returning back to Jennifer's bed. There is then the paragraph referring to Jennifer which was omitted from Mrs Sim's transcription, and which I have just quoted.

125. The letter continues:

> "This has continued on a few more occasions since then and that is really the reason that I have decided to get away from Jennifer's bed and back to the marital bed as I believe that it will prevent the children from knowing just what I was having to cope with.
>
> Callum told me that he had come in from a Bonfire Night party and found his father naked on the sofa and was puzzled as to why he was in that condition. That was simply because on that night David had done the same thing to me.
>
> Like I said, he tried again last night - that must have been the night of 3rd/4th March 2010 - but failed in his attempts, as he always says that it is because he loves me and that he wants to do this as much as he can before I leave the marriage as he cannot do this to anyone else."

The letter ends with a plea to Mr Kitchen to please try to read this letter.

126. Mr Kitchen's reply, on 9th March, was to say how sorry he was to hear the difficulties that his client had been facing, and that he had had no idea. From his perspective, he

must advise her with regard to the law. Whilst he had no doubt that what he was being told was the truth, he also did not doubt that David would vehemently and absolutely deny what she was saying; and it would then be a case of his word against hers:

> "You do, of course, have the option of reporting the matter to the police and I have already advised you that you should consider going to see your GP or another doctor in the event that you do not feel comfortable attending your own surgery because David is still a locum there".

127. Mr Kitchen then sets out another option, in which he again emphasises that it would be Mrs Sim's word against her husband's, and that any application would be fraught with danger and would have no guarantee of success. The alternative would be for her to leave the property which, again, was not ideal. Mr Kitchen advises Mrs Sim to try and avoid alcohol in any form whilst she is in the house when her husband is there, because it was clear that it was being used as a weapon against her. Mr Kitchen also advised Mrs Sim to ensure that she had a lock and bolt put on her bedroom door, and that she did not remain in the marital bed.

128. Mr Kitchen concludes by saying that this is a very difficult subject and, in all of it, he retains a huge amount of sympathy for her position. But they must look at it practically, and she must take a decision as to how she would wish to proceed. The letter concludes: "Perhaps once you have read this letter, you will contact me to discuss matters further and let me know your instructions as to how you wish to proceed". There is no evidence of any follow-up to that.

129. As I have indicated, there was an attendance upon a GP on 24th December 2010; but nothing more is recorded beyond reference to the claimant being in touch with the CID for domestic violence issues.

130. The other documentary evidence on which Mrs Sim places reliance is what is described as a 'Threats to Life Warning Notice', dated 23rd December 2010. This is at D/750. This notice is of a threat to Mrs Sim's personal safety. The writer states that they are in receipt of information that suggests that her "personal safety is now in danger". The writer stresses that the police will not, under any circumstances, disclose to Mrs Sim the origin of this information and, furthermore, the writer cannot comment on the precise content or the reliability or otherwise of the information. The writer has no reason to disbelieve the information; and says that they are not in receipt of any other information in relation to this matter, nor did they have any direct involvement in this case. In bold type it is said that: "Police have received information that suggests your personal safety is under threat from your husband, Dr David SIM. The direct threat may come from persons unknown to you."

131. What is curious about this notice is that it appears to have been issued by a Detective Superintendent in the Serious and Organised Crime Group of Greater Manchester Police. Following on from this notice, Mrs Sim left the matrimonial home for a few months and stayed with her daughter, although she eventually returned.

132. The matter was the subject of correspondence between solicitors representing Dr Sim (O'Garras Solicitors) and Greater Manchester Police. What is significant about that is that the correspondence was addressed to the Serious and Organised Crime Group, and the response came from the Force Robbery Unit. The letter notes that the detective constable who had initially issued Mrs Sim with the threat to life warning notice in December 2010 had made a number of failed attempts to contact Mrs Sim in February 2011, as a result of which she had attended Manchester County Court on

21st February 2011 purely to re-establish contact with Mrs Sim and to obtain an update with regards to her case.

133. I should observe that in the course of his evidence in 2017, in response to Mrs Sim's attempt to oust Dr Sim from his property, Dr Sim stated that he himself had been in receipt of a similar Threat to Life Notice at that time.

134. It is impossible for this court, on this limited evidence, and at this distance in time, to form any view as to the nature and source of any threat to life; but what I do note is that notice of this was coming from the Serious and Organised Crime Group, and the Force Robbery Unit, rather than the Domestic Abuse Unit, which, as appears from other correspondence (at D/799), is quite clearly a separate unit within Greater Manchester Police.

135. Mr Fryer-Spedding's point is that there was no reason why, if Dr Sim had been raping his wife, she should not have reported this fact to the police at this time, particularly since she had already left the family home. He also emphasises the fact that the sole report to the police is of one single episode. He makes the point that Mrs Sim has not told a consistent story, but rather one where there are significant, and telling, contradictions; nor is there any corroborative evidence. Dr Sim had clearly denied these allegations when they were raised against him in 2017.

136. For all these reasons, and because, in other respects, I have found the claimant to be an unreliable witness, I am unable to accept that she has made good her serious allegations of rape against Dr Sim. What are these other respects? They are the fact that I am satisfied that Mrs Sim has not been honest with the court in other respects.

137. The second matter on which Mr Fryer-Spedding places reliance is the authorship of a letter at D/781, dated 17th January 2012; a matter of a week before the Decree Nisi was rescinded, and the divorce petition was dismissed by consent. That letter has to be put in the context of an earlier letter, written by Dr Sim's solicitors and headed, 'Without Prejudice - Save as to Costs', dated 16th January 2012. By that letter, in consideration of Mrs Sim not taking up the Decree Absolute, and continuing to care for Dr Sim and the household, he agreed to provide Mrs Sim with a weekly payment of not less than £200 per week and, in addition, to be responsible for all household bills and all necessary food and provisions. Alternative provision was to be made in the event that Mrs Sim did make the Decree Nisi absolute or did not remain in the house to continue with the care of Dr Sim and the house and the household.

138. On 17th January, Dr Sim's solicitors, O'Garras Solicitors, wrote to him by fax, attaching a copy of a letter that the writer said had arrived from Mrs Sim and enquiring how Dr Sim wanted the writer to reply. That letter appears at D/781. It is dated 17th January 2012 and is addressed to O'Garras Solicitors and marked 'Without Prejudice. It reads:

> "I refer to the recent correspondence between your client and myself. I write in response to your client's considerations and proposals.
>
> I have made my willingness to remain in the marriage and care for Dr Sim clear, but this can only be on the understanding that:
>
> 1. There be a transfer now of a half share of the matrimonial home into my name so that your client and I are joint owners in equal shares.
>
> 2. The pension trustees be directed to execute the appropriate declaration earmarking in my favour the appropriate beneficial interest the pension fund
>
> 3. Dr Sim keeps his promises to pay all my legal costs in connection with the divorce proceeding and the above transfer and declaration and for our daughter's wedding.

> I have impressed upon your client the fact that we are both in agreement that we want to remain together and refrain from obtaining a Decree Absolute. However from my point of view that can only happen if I have some security for the future. If Dr Sim is serious about matters there should be no problem in agreeing to these proposals. The offer you make on Dr Sim's behalf in the event of the divorce not proceeding gives me no real security for the future. What I want is a sensible and concrete agreement with which we are both happy so that we can move on into the future without fear of vulnerability for either of us."

139. In her evidence, early in the afternoon of Day 2, at about 2.30 p.m., Mrs Sim vehemently denied having written that letter. I am satisfied that that assertion is demonstrably untrue. What Mrs Sim said was: "I did not type this; my solicitor would have done. There is no signature there. I have not signed this. I do know that after the hearing the judge rescinded the Decree Nisi." She suggested that it had to be written by Pannone, who were speaking on her behalf. Earlier, when it was put to her that she had agreed to rescind the Decree Nisi, she said that was the order the judge passed down. "He did not ask me in court whether I consented. I cannot remember what happened. I accepted it and walked away." She again later reiterated: "I have never written this letter". She even suggested that O'Garras Solicitors could have written the letter for her to sign.

140. I am entirely satisfied that Mrs Sim did write that letter, and that there was no reason for any third party to write it on her behalf. I am satisfied that she was denying the letter because she was seeking to distance herself from it, since it referred to her continuing marriage in financial and transactional terms. I am satisfied that Mrs Sim was giving evidence that was manifestly, and to her knowledge, untrue. What is also significant is that there is no reference to any sexual or domestic abuse, or any condition in the letter relating to such matters.

141. The third matter on which Mr Fryer-Spedding placed reliance was Mrs Sim's evidence that she had visited her husband in the care home at about 9.30 on the morning of Christmas Day 2017 without having signed the visitors book. I am entirely satisfied, by reference to the entries in the GP records in October and November 2017, that it is inherently unlikely that Dr Sim would have wished to see his wife at that time; and that he did so is entirely contradicted by the witness statement that he signed on 27th December 2017. In paragraph 2 of that witness statement (at D/843), Dr Sim says that he is now resident in a nursing home: "Resultant upon the Applicant's treatment of me I asked the Hospital not to allow her admittance and since then I am happy to report I have not had to see her."

142. I recognise that that witness statement, which is typed up, may have been prepared in advance of Christmas Day 2017; but it is signed by Dr Sim, below the words: "I believe the contents of this my Statement, are true". I am satisfied that Dr Sim would not have signed it in that form had that paragraph not remained the case. It is also inherently unlikely, in view of all that was going on at the time, that Dr Sim would have wished to see his wife at the time.

143. I fully accept that in the transcript of the recording made covertly by Callum on 12th December 2017 (at page 44 of the bundle of transcripts), Dr Sim stated to Callum that his mother was not going to be kicked out of the house when he died, adding that that was important. However, given that only the previous day the solicitor, Mr Hughes, had attended upon Dr Sim, and had received instructions for a will which would have resulted in the need for the house to be sold in order to raise the necessary moneys to pay the grandchildren's legacies, it is quite clear that Dr Sim must have been lying to Callum, no doubt with a view to Callum passing the information on to his mother in

an attempt to mislead her as to what was happening with regard to the house in the will. But what also comes out of that transcript is the way in which Dr Sim viewed his wife as saying terrible things about him, and also lies, which is consistent with the earlier transcript on 22nd November where Dr Sim recorded that Callum's mother had accused him of a lot worse and had produced just a torrent of foul abuse. Against that background, I cannot accept that Dr Sim would have wished to see his wife on Christmas Day in the manner she alleges, or that he in fact did so.

144. The fourth matter on which Mr Fryer-Spedding relies is the alleged gift of the Bentley motor car to Mrs Sim. This is the subject, and indeed the most valuable subject, of the claim for declaratory relief and delivery up advanced at paragraph 86 of Mrs Sim's first witness statement. The Bentley is first addressed at paragraph 78 of that first witness statement. There, Mrs Sim refers to "a high standard of lifestyle during the course of my relationship and marriage with David". That is said to be reflected in her schedule of expenditure. "An example of the standard of lifestyle we previously enjoyed is that David gifted me the Bentley so that I could use it to go to Ascot every year."

145. Mr Fryer-Spedding points out that a different story is told at paragraph 40 of Mrs Sim's second witness statement. There, it is said that the Bentley was given to Mrs Sim to thank her for caring for David during his illness. She says she can remember him telling her how grateful he was, as no other woman would have done this for him. None of the defendants were present at the time, so they are not able to give evidence in this respect. Mr Fryer-Spedding points to two inconsistent explanations for the gift which Mrs Sim alleges of the Bentley motor car. I note that in the estate capital account, at page 39, the Bentley is valued at £63,000, whereas the other two cars, the

Jaguar and the Mercedes, are valued at £4,000 and £2,000 respectively. It is clearly the most valuable.

146. Mr Fryer-Spedding points out that the claim to the Bentley is one that was made only some 18 months after the death of Dr Sim, and for the first time, on 13th June 2019. Moreover, the Bentley had been addressed in correspondence long before that yet no claim had been advanced in relation to it, unlike other items. Reference was made both during the course of Mrs Sim's cross-examination, and in Mr Fryer-Spedding's closing, to letters at: E/1088 (13th April 2018); D/1104 (4th December 2018); D1105 and 1106; E/1114 (5th February 2019) paragraph 4 at page 1115; and finally E/1117 and E/1119 (on 20th and 21st March 2019). In none of those letters was any claim being asserted to the Bentley motor car, when one would expect it to have been made, had it been a gift, as Mrs Sim alleges.

147. The letter at E/1120 is the first claim to the Bentley by Mrs Sim; and the terms of the letter make it quite clear that this is the first time Myerson had been alerted to such a claim. The relevant paragraph reads:

> "In addition to the cars listed above, we have since been instructed that the Bentley was also a gift to our client from the Deceased. This was an omission from the list as included in our letter dated 4 December 2018."

148. It is completely implausible, as Mr Fryer-Spedding submits, that Mrs Sim should have forgotten about the gift to her of this valuable motor car, whether its motivation had been to enable her to travel to Ascot for the races or as a thank you for her care to the husband who later had to leave her home.

149. I am entirely satisfied that this is a late assertion of a gift that has been manufactured to support a claim to the most valuable motor car owned by the late Dr Sim. I accept

Mr Fryer-Spedding's characterisation of the claimant as having gone "hell for leather to get everything she possibly can, even if it means exaggerating or inventing evidence".

150. Mrs Sim has repeatedly accused her late husband of controlling and abusive conduct. During the course of her cross-examination, reference was made to an incident when she refused to allow her husband a key to their home when he was going out for a meal with Alistair and his family. Mrs Sim accepted that she was not prepared to comply with her husband's request for a key. Indeed, she accepts that she refused a request by her husband's solicitors for a key. She said that that was because she was worried about her own safety, because of the Threats to Life Warning Notice in December 2010. Mrs Sim said that she did not trust her husband, and that he knew that because she told him so. She explains that despite his frailty, he knew people who might harm her.

151. At this point in her evidence, I asked whether Mrs Sim would describe the refusal to allow a person to have a key to their own home as 'controlling conduct'. Her response was: "Quite honestly, I did not feel I was controlling him." She referred to the Threat to Life Warning Notice which was, of course, in December 2010. She said she had been intimidated by Dr Sim's children, and when she was asleep at night she would not know what might happen. Neither Jennifer nor Callum had a key to the house, she said. She was the only key-holder at the time.

152. Mrs Sim then said that her husband had asked her to tell one of the carers, Lynn, not to come back and shower him and instead for the claimant to do so. Mr Fryer-Spedding inquired: "Was that despite the excruciating pain?" and the answer was: "The pain has not been bad all the time."

153. In addition to those unsatisfactory aspects of the claimant's evidence identified by Mr Fryer-Spedding, there is one further aspect that I identified, at the end of Mrs Sim's cross-examination. One of the items to which she lays claim (at paragraph 86 of her first witness statement) is a piano. The circumstances of the gift of that musical instrument are, so far as I can see, not addressed in her written evidence, and so I asked Mrs Sim about the piano, a photograph of which can be found at D/1053.

154. Mrs Sim's evidence was that one of David's friends had died. He had a baby grand piano; and Dr Sim said: "This is for you". So I asked Mrs Sim: "Do you play the piano?" She said: "It has been with us ever since. I have learned to play the piano." She could not tell the court when the piano had been acquired. She could not remember the name of the friend who had died. She said that she thought that Dr Sim had purchased it, but she did not know how. I then asked Mrs Sim: "What make is it?" Her answer was: "I am really not sure. I could find out when I go home tonight." I indicated that what I had wanted to know was whether she knew the maker of the piano because I am satisfied that if someone is playing a baby grand piano, they will at least know the maker of the musical instrument, whether it be Yamaha, Bluthner, Kawai, Bechstein, Schimmel, Steinway or whoever; but Mrs Sim had been unable to assist the court. Mrs Sim's inability to answer my question is only supportive of the view I had already formed of the unreliability of her evidence; but, again, I find it concerning that she was claiming ownership of a piano - a baby grand piano - not knowing who, in fact, the maker of the instrument was.

155. For all of those reasons, I am satisfied that I cannot regard the claimant as a reliable witness, or as a narrator of truth.

156. In the course of his closing submissions, Mr Fryer-Spedding had taken me to passages in the judgment on the trial of the preliminary issue of His Honour Judge Stephen Davies, at paragraphs 14-19, where Judge Davies had expressed adverse views about Mrs Sim's credibility, describing her as "unreliable and inconsistent" and "inherently contradictory", citing examples in support.

157. I am not bound by those findings. I am alive to the fact that I must form my own view about the reliability and the credibility of Mrs Sim; but I simply note that the view I have formed is consistent with the view that Judge Stephen Davies formed at an earlier trial, having heard the claimant give her evidence.

158. So far as the defendants who gave evidence, and also Mr Pimlott are concerned, it is sufficient for me to endorse what Mr Fryer-Spedding had to say about them. I am satisfied that they gave straightforward evidence. They were subjected to provocative and offensive questioning, but they did not materially alter their evidence in any way. I am entirely satisfied that they were honest witnesses, who were doing their best to assist the court; and that the allegations that have been levelled at them are wholly without any substance. That concludes my review of the witness evidence.

VI: THE APPLICABLE LAW

159. The relevant statutory provisions are well-known. By section 1 of the 1975 Act, a surviving spouse may apply to the court for an order under section 2 of the Act on the ground that the disposition of the deceased's estate effected by their Will is not such as to make reasonable financial provision for the applicant.

160. In the case of a surviving spouse, 'reasonable financial provision' means such financial provision as it would be reasonable in all the circumstances of the case for

the survivor to receive, whether or not that provision is required for their maintenance.

161. The court has wide powers to make orders conferred by section 2. Those orders extend to the power to order the settlement for the benefit of the applicant of such property comprised in the net estate as may be specified, and an order varying, for the applicant's benefit, the trusts on which the deceased's estate are held.

162. Section 3 sets out the matters to which the court is to have regard in exercising its powers under section 2. Those apply both in deciding whether reasonable financial provision has been made by the will and, if not, in determining whether, and in what manner, it should exercise its powers under the section. Those matters are:

> "(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future"
>
> – I can pass over (b) which is not engaged in the present case –
>
> "(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"
>
> – and here I am concerned only with the positions of Alistair, Callum, and the grandchildren –
>
> "(d) any obligations and responsibilities which the deceased had towards any applicant for an order ... 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 ... 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."

163. In the case of a surviving spouse, the court shall, in addition, have regard to:

> "(a) the age of the applicant and the duration of the marriage …;

> (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family."

I have no doubt that that includes caring for the deceased himself.

164. In the case of an application by a wife, the court is also required to have regard to the provision which the applicant might reasonably have expected to receive if, on the day on which the deceased died, the marriage, instead of being terminated by death, had been terminated by divorce; but nothing requires the court to treat such provision as setting either an upper or a lower limit on the provision which may be made by any order under section 2.

165. By sub-section 3 (5):

> "In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing."

166. I have been taken to a number of authorities. In one of the versions of her skeleton argument, Mrs Sim referred me to the decision of the House of Lords in *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776; and also to the decision of His Honour Judge Raeside QC in *Wills v Sowray* [2020] EWHC 939 (Ch). Those are both authorities on claims by way of proprietary estoppel; and I consider them to be of no relevance to this 1975 Act claim. Therefore I do not refer further to them.

167. The leading authority on claims under the 1975 Act is the decision of a seven-strong Supreme Court in *Ilott v The Blue Cross* [2017] UKSC 17, reported at [2018] AC 545. That was a claim for provision by a child, in the person of an estranged adult daughter, for whom the deceased mother had made no testamentary provision, and the beneficiaries were all charities. The case is, therefore, very different from the present, which is a claim by a surviving spouse. Nevertheless, although the court was there

concerned with the maintenance standard of provision, rather than the more generous standard applicable in the case of a surviving spouse, there is some useful guidance to be gleaned from the authority.

168. At paragraph 18, Lord Hughes, who delivered the leading judgment (with which all the other Justices of the Supreme Court agreed), referred to the much-cited passage from the judgment of Oliver J in the seminal case of *Re Coventry (Deceased)* [1980] Ch 461, at 474-475, to the effect that the purpose of the 1975 Act is not to provide legacies or rewards for meritorious conduct, and emphasising that "an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases". In order to enable the court to interfere with, and reform, those dispositions, it must be shown not only that the deceased acted unreasonably, but that, looked at objectively, his disposition produces an unreasonable result by failing to make any greater provision for the applicant.

169. At paragraphs 23 and 24, Lord Hughes referred to the fact that it has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process, viz (1) has there been a failure to make reasonable financial provision for the applicant and, if so, (2) what order ought to be made? Lord Hughes recognised that there was, in most cases, a very large degree of overlap between the two stages. The court, if it determines that the will does not make reasonable financial provision for the claimant, should tailor its order to what is, in all the circumstances, reasonable. Section 3 (1), in introducing the factors to be considered by the court, makes them applicable equally to both stages. Thus, Lord Hughes said, the two questions will usually become: (1) did the will make reasonable financial provision for the claimant

and (2) if not, what reasonable financial provision ought now to be made for him or her?

170. At paragraph 24, Lord Hughes recognised that there might be some cases in which it would be convenient to separate those questions, but in many cases exactly the same conclusions would both answer the question whether reasonable financial provision had been made for the claimant and identify what that financial provision should be. The Act plainly required a broad-brush approach from the judge to very variable personal and family circumstances. There could be nothing wrong with the judge simply setting out the facts as he finds them and then addressing both questions arising under the Act without repeating them. Whether best described as a value-judgment or as a discretion (and Lord Hughes considered the former to be preferable), both stages of the process were said to be highly individual in every case. Any order made by a judge ought to be upset only if he had erred in principle or in law.

171. At paragraph 34, Lord Hughes stated that the Act requires a single assessment by the judge of what reasonable financial provision should be made in all the circumstances of the case. The section 3 factors were all to be considered, so far as they are relevant; and in the light of them, a single assessment of reasonable financial provision should be made.

172. At paragraph 46, Lord Hughes addressed the fact that the beneficiaries in that case were charities. It had been suggested that the claims of the charities were not on a par with the claim of the estranged daughter. Lord Hughes recognised that charities depend heavily on testamentary bequests for their work, which is by definition of public benefit. He also stated that, more fundamentally, the charities were the chosen

beneficiaries of the deceased. He then said this: "They did not have to justify a claim on the basis of need under the 1975 Act, as Mrs Ilott necessarily had to do."

173. Mr Fryer-Spedding emphasised three principles, all of which I would accept. First, the burden of proof in this case rests on Mrs Sim; secondly, the court does not have carte blanche to reform Dr Sim's testamentary dispositions; and thirdly, the fact that the other beneficiaries have no specific competing needs is not a factor that weighs in Mrs Sim's favour. A beneficiary does not have to justify their case on the basis of need. Rather, they are the chosen beneficiaries of the deceased.

174. I have expressed concern about the overriding powers in the Will. In that connection, Mr Fryer-Spedding took me to the decision of the Court of Appeal in the case of *Cowan v Foreman* [2019] EWCA Civ 1336, reported at [2020] Fam 129. He referred me to paragraphs 53-56, disagreeing with the conclusion of the judge in the lower court that the substantive claim had no real prospect of success. The issue was whether the judge had erred in law by giving insufficient weight to the fact that claimant was a discretionary beneficiary and her life interest in the residuary trust could be terminated by the exercise of the power of appointment.

175. The applicant submitted, with success, that there was a real prospect of success in arguing that outright provision should have been made for the claimant, rather than provision as a discretionary beneficiary of the trust and a life interest thereunder.

176. At paragraph 58 of her leading judgment, Asplin LJ emphasised that it had been the wrong question to ask whether the deceased's intentions were reasonable; rather, the right question had been to ask whether reasonable financial provision had been made for the claimant. At paragraph 60, Asplin LJ recognised that it was not being suggested that every claimant was entitled to outright testamentary provision, or that

in every case a beneficial interest in a discretionary trust could never amount to reasonable financial provision, for the purposes of the 1975 Act.

177. I accept Mr Fryer-Spedding's submission that the effect of that decision is pithily stated at paragraph 272 of the monumental decision of Upper Tribunal Judge Mark West in the case of *Ramus v Holt* [2022] EWHC 2309 (Ch):

> "The fact that a widow is made the object of a discretionary trust (or of a terminable life interest) does not of itself mean that the disposition of her husband's estate under his will does not make reasonable financial provision for her."

Everything depends upon the facts and the circumstances of the individual case. A terminable life interest may, in an appropriate case, constitute reasonable financial provision for a widow.

178. Finally, I was taken to the decision of Briggs J in *Lilleyman v Lilleyman* [2012] EWHC 821 (Ch), reported at [2023] Ch 225. That was a claim for reasonable financial provision by a surviving spouse where the deceased husband had left a large estate and the marriage had been of short duration, so it is very different on the facts from the present case; and I am acutely conscious of that fact.

179. I was referred to what is said at paragraphs 45-47 and paragraph 60. At paragraphs 45-47, Briggs J said this:

> "45. To a chancery judge, for whom the jurisprudence about financial relief on divorce is not the bread and butter of his daily fare, the divorce cross-check introduces a range of additional legal complications, arising from the still developing principles originating in the epoch-making decision of the House of Lords in *White v White* [2001] 1 AC 596. Quite separately, there arises the difficulty of applying those principles, as required by the divorce cross-check, to the undeniably different circumstances surrounding the termination of a marriage by death, rather than breakdown of the relationship. In that respect, the chancery judge may suffer from a lesser disadvantage.

> 46. Taking those matters in turn, I would tentatively summarise the divorce principles relevant to the present case as follows. First, the fundamental principle which illuminates all the detail is that a marriage is now recognised to be an essentially equal partnership. In consequence, the division of the available property upon breakdown of the marriage must be conducted upon the basis of fairness and non-discrimination, arising from the basic concept of equality permeating a marriage as is now understood. But equality of treatment does not necessarily lead to equality of outcome.
>
> 47. That basic concept gives rise to three requirements, which may be summarised as financial needs, compensation and sharing. Meeting each of the divorcing parties' frequently different financial needs is the first call upon the available property, and frequently exhausts it. Compensation addresses prospective economic disparity between the parties arising from the way they conducted their marriage and usually, but not invariably, compensates the wife rather than the husband. Sharing is applied when there is property still available after the first two requirements have been satisfied, and in principle extends to all the parties' property but, to the extent that the property is 'non-matrimonial', there is likely to be better reason to depart from it. The concept is particularly applicable to what is sometimes described as the 'fruits of the partnership' in relation to which the yardstick of equality is applied as an aid, but not as a rule. It will be apparent that I have derived the above summary of the essential principles from an attempt to assimilate the speeches of Lord Nicholls and Baroness Hale in *Miller v Miller* [2006] 2 AC 618, in which they summarise the effect of the change in thinking brought about by *White v White*, and also from *Charman v Charman (No 4)* [2007] EWCA Civ 503, [2007] 1 FLR 1246, in particular at paragraph 66."

180. At paragraph 60, Briggs J mentioned a decision of Black J in which the divorce cross-check had been closely analysed in the context of an Inheritance Act claim by a widow. Black J's conclusion, with which Briggs J agreed, was that:

> "... the cross-check should be treated neither as a floor nor a ceiling in relation to the relief available under the Inheritance Act, nor as something which requires a meticulous quasi-divorce application to be analysed side by side with the application of the separate provisions in section 3 of the Act. The divorce cross-check is just that, a cross-check, no more and no less. It is, like all the other matters to be taken into account under section 3, of infinitely variable weight on the facts of each particular case."

181. What I take from the authorities is that, essentially, I must focus upon whether, on the particular facts, and in the particular circumstances, of the instant case, the disposition

of the late Dr Sim's estate effected by his will is or is not such as to make reasonable financial provision for Mrs Sim. In doing so, I must bear in mind that this was a very long relationship of some 35 years, and a marriage of 19 and a half years.

182. I am not satisfied that this was a marriage involving rape or domestic abuse. This was clearly what Mrs Sim describes, at paragraph 8 of her second witness statement, as "a complicated relationship". Despite that, she says that she loved and cared for her late husband. It is quite clear, however, that there had been ups and downs in the relationship, as evidenced by the 2009 divorce proceedings and the rescission of the resulting Decree Nisi and the dismissal of the divorce petition in January 2012; and that there were further serious problems towards the end of Dr Sim's life. I am satisfied that this case must be viewed having regard to those circumstances.

VII: CLOSING SUBMISSIONS

183. In her fluent and well-prepared closing address, Mrs Sim emphasised that domestic abuse was the backbone to her case. She said that she regarded her experiences as the equivalent of 'domestic terrorism'. She considered that she had not been adequately provided for by her late husband's last will. She correctly identified the two questions as: (1) whether the will failed to make reasonable financial provision for her, and (2), if so, what that should be. She referred to the various statutory factors; and she submitted that, generally, a surviving spouse should not be worse off on death than on divorce.

184. Mrs Sim was now facing physical issues, including brain damage, following a 35-year relationship and a 20-year marriage. She asserts that she endured rape on many occasions, and had been told by her husband that rape in marriage did not count in court.

185. She relies on the fact that she was caused to sell a rented housing association property, at 12 Hurley Drive, which had been acquired pursuant to the right to buy provisions, at a discounted price, which Dr Sim had lent to her. She then moved into a five-bedroom property, at 3 Walnut Close, Wilmslow, before moving into Lothlorian House. She asserts that Dr Sim had effectively stolen her own property from her, and given it to his son.

186. The way David Sim junior put it was that Mrs Sim had been a long-standing, sitting housing authority tenant who had enjoyed the right to buy. After the three years moratorium on any onward sale, she had been able to sell the property on to David Sim junior; and had received back the amount she had been lent by her husband, without whom she would not have been able to afford to purchase the property. David said that his father had purchased a car for her, and that she had received £2,000 in cash. He went on to say that he had spent £15,000 of his own money in renovating the property before selling it on. He emphasised that there was no way that, without the financial assistance of Dr Sim, the claimant could ever have afforded to buy the property.

187. I am entirely satisfied that the claimant suffered no financial disadvantage by entering into that transaction. She was never in any position to exercise the right to buy herself. She received the opportunity of residing in a much superior property in Winslow; and eventually she moved into Lothlorian House and has resided there, and she continues to do so.

188. I do not regard the transaction involving Hurley Close as affecting the reasonableness of the financial provision that the claimant should be entitled to receive from the deceased's estate. It does, however, emphasise the need for the claimant to have

secure accommodation during her final years, although, happily, these are likely to be measured in decades rather than single years.

189. Mrs Sim described her marriage as a 'hot bed of heinous abuse'. She was scared in the home and terrified when she was outside it. She described herself as having to hide knives under her bed. She referred to conversations with her husband in which he had said that he owed his children nothing because they are all been adequately provided for. She also asserted that her husband's will, in its current form, was not Mr Sim's wish. That is clearly not the case, as evidenced by the solicitors' attendance notes. Mrs Sim also maintained that her husband had assured her that she would not be kicked out of her home after he died. I am satisfied that that is Mrs Sim's adoption of what appears in the transcript of the conversation between Dr Sim and Callum, which Callum secretly recorded on 12th December 2017, when his father was either in hospital or residing in the nursing home. Mrs Sim also asserts that her husband was confused a lot whilst he was in her care in September and October, and until his death. Again, that is clearly not the case when one looks at the solicitors' attendance notes. It is also clearly not the case when one looks at the transcripts of the conversations secretly recorded by Callum.

190. Mrs Sim maintained, both in evidence and in closing, that Dr Sim had wanted had to have the house and Callum to have the property in Dubai. That is clearly not what Dr Sim intended by his will. She says that he was frightened to upset his children because he feared being cut off from his grandchildren. Mrs Sim also asserted that the children's interference knew no bounds. It was a constant theme, both of Mrs Sim's evidence and her case, that it would be intolerable for her to be forced to leave her home.

191. Mrs Sim also asserted that the audio recordings are a true reflection of her husband's mind and wishes. He said things he would not have said if he had known that he was being recorded. That may well be true; but, certainly on my analysis, having spent over two hours reading through the transcripts, they do not support Mrs Sim's case.

192. Mr Fryer-Spedding, in closing, provided reasons, which I have accepted, as to why I should not accept the evidence of either Mrs Sim or Callum. He also gave me reasons why I should distrust the evidence provided by the transcripts, save to the extent that they might prove adverse to Mrs Sim's case. He pointed to the dangers of edited recordings, incomplete recordings, and recordings taken out of context. He pointed to the fact that we do not have complete recordings; and, in that regard, I bear in mind that Callum told me that a lot of the recordings had gone missing.

193. I am satisfied that I should be extremely cautious before accepting any of the evidence in the transcripts; and I hope that I have applied that caution. But, in my judgment, the transcripts do not bear the meaning for which either Mrs Sim or Callum contend. I am also alive to the fact that, in certain respects, Callum was trying to bring his father round to his point of view, in particular in suggesting that it was Katie who had been responsible for suggesting that Mrs Sim was not taking proper care of her husband.

194. Mr Fryer-Spedding took me to the relevant passages from the authorities, to which I have already referred, emphasising that the relevant test is objective. He addressed, as he had done in his skeleton argument, and by reference to that document, the various statutory factors which are at play in the present case. He emphasised that, even on her own evidence, the claimant had been meeting her expenditure as it was falling due. I note, in response to Mr Fryer-Spedding's questioning, that there was no current

deficit of income over expenditure, Mrs Sim's response was: "I am looking after myself quite comfortably at the moment." She also recognised that because she had just reached state pension age, she would probably have some extra money coming in, although I am conscious that that may result in some corresponding reduction in her universal credit payments.

195. Mr Fryer-Spedding emphasised that by moving to a smaller property, Mrs Sim would reduce her outgoings in terms both of council tax and utilities costs. He emphasised that the NHS widow's pension was securely index-linked, as evidenced by the fact that it has been increasing over the last few years; and that she would now be entitled to a state pension om top.

196. Mr Fryer-Spedding also drew my attention to the fact that we have so far received very little detail about any claim for personal injuries resulting from the road traffic accident last April; but in so far as Mrs Sim was suffering as a result of that accident, then that was properly the subject of compensation in legal proceedings against the driver or their insurers, rather than for consideration by the court on the present application, even though the court must have regard to circumstances as at the date of this hearing.

197. In short, there was said to be no convincing income deficit need; and the £375,000 which Mrs Sim would have received had she complied with the conditions of Dr Sim's will would, on the evidence of available properties, as identified by Katie in her second witness statement, have been sufficient to meet the reasonable accommodation needs of Mrs Sim.

198. To apply the 50:50 rule on divorce, dividing the estate between two, would, according to Mr Fryer-Spedding, ignore both the conduct of Mrs Sim and the value of the

pensions that she was receiving in her capacity as Dr Sim's widow. He pointed out that the value of the NHS pension of £2,000 a month, in capital terms, would be some £226,000. When added to the £375,000, that would comprise roughly half the estate. I am not sure that that is necessarily a fair calculation because, of course, it treats the NHS pension as forming part of the estate when it does not.

199. Mr Fryer-Spedding also emphasised: (1) the testamentary freedom which had entitled Dr Sim to make the will that he did; and (2) that Mrs Sim had been continuing to live in the matrimonial home, rent-free, ever since her husband's death.

200. Those, essentially, were the submissions.

VIII: ANALYSIS AND CONCLUSIONS

201. I have already explained why I cannot accept Mrs Sim's case of domestic abuse, both financial and sexual. I am entirely satisfied that Mrs Sim was, at least at the end of Dr Sim's life, when he had retired even from all consultancy work, spending money at a rate which was not warranted by Dr Sim's incoming financial resources, and that this was a matter of concern to him.

202. I am satisfied that, in his final months, whatever care she may have bestowed upon him in the past, Mrs Sim had decided that she did not want to have Dr Sim at home, or to care for him. I am satisfied that that was not because of the pain she was in because of the back injury she had sustained since that is inconsistent with the medical evidence. It is also inconsistent with instructing a carer not to attend for the purpose of showering Dr Sim, which, when that was drawn to Mrs Sim's attention by Mr Fryer-Spedding, had resulted in the statement that: "The pain was not so bad all the time". That, I find, was the true position.

203. I am entirely satisfied that Mrs Sim, in support of her case, has made distressing, and unwarranted, accusations against Dr Sim's children, with the sole exception of the fifth defendant, Louise Calder.

204. The conduct of Mrs Sim towards her husband in his dying months was simply unwarranted, and wholly unacceptable; and I am entirely satisfied that he had good reason for making the changes to his will that he did. I am entirely satisfied that it was not objectively unreasonable for him to draft the will in the terms that he did, seeking, in so far as possible, to ensure that his wife received no more than the reasonable financial provision that would have been awarded to her on any claim under the 1975 Act.

205. I am entirely satisfied that it was appropriate for Dr Sim to attempt to avoid the delay to the administration of the estate, and the distribution of the pecuniary legacies to the grandchildren, and to attempt to save the costs of this unfortunate litigation by including the provisions in the will that he did.

206. I am conscious, however, that I must not ask the wrong question, which would be whether Dr Sim's intentions were reasonable. Rather, I have to ask whether, objectively, the will made reasonable financial provision for Mrs Sim. In doing so, I have to have regard to the various statutory factors set out in section 3 of the 1975 Act. These were directly addressed, at a time when Mrs Sim was still legally represented, at paragraphs 48 and following of her first witness statement. They are also addressed in Mr Fryer-Spedding's skeleton argument, beginning at paragraph 4.6.

207. Mrs Sim owns a half-share in the Dubai apartment in her own right. She also takes a further one-eighth share of Dr Sim's half-share. That is, in total, a little under

£130,000. Dr Sim had sought to ensure that Mrs Sim could readily realise her interest in that apartment by the provision he made in his will, offering her £125,000 if she gave up her interest in the Dubai apartment. She chose not to do so; but she retains that interest.

208. Mrs Sim is in receipt of an index-linked NHS widow's pension, presently in the order of £2,000 a month. She also will receive a state pension. If I put housing needs on one side, I consider that her financial needs are adequately catered for; and I note that that is what she, herself, said in cross-examination when she said: "I am looking after myself quite comfortably at the moment."

209. So, bearing in mind also that any disabilities she has suffered, and continues to suffer, from the road traffic accident will be addressed by the claim against the driver or their insurers, I am satisfied that the financial resources and financial needs that the claimant has are not such as to mean that a life interest in the deceased's estate is unreasonable financial provision for her. There are no other applicants for the court to consider.

210. So far as the beneficiaries are concerned, I accept that both Callum and Alistair have needs in terms of seeking to get on to, or to re-enter, the housing market. I am also entirely satisfied that it would be wrong not to have due regard to the deceased's testamentary wishes to leave a pecuniary legacy of £20,000 to each of his grandchildren. I am satisfied, in the case of the adult grandchildren, that they can make good use of that money; and, in the future, it may be of benefit to the infant grandchildren as well.

211. The late Dr Sim clearly had responsibilities towards Mrs Sim, as his wife of 19 and a half years, and his personal partner of 35 years. He considered himself to have

continuing obligations towards all of his children, other than David, whom he considered he had already made adequate provision for, as well as his grandchildren.

212. I do not consider that those were legal obligations or responsibilities; but I can see why Dr Sims should feel that he should leave something to his children, other than the one for whom he felt he had already made adequate provision.

213. Judge Stephen Davies has already concluded that the shares in Brickies Limited form no part of the estate. The Dubai apartment is already partly-owned by the claimant; and I see no reason for any further consideration to be given to that.

214. The crucial feature in the present case, particularly bearing in mind the costs of this litigation, is that the only estate available to meet the pecuniary legacies to the grandchildren is Lothlorian House. The deceased, himself, recognised that as a result of his meeting with Mr Hughes in December 2017.

215. In those circumstances, it is wholly unrealistic for the claimant to think that Lothlorian House is not going to have to be sold. I am entirely satisfied that a three-bedroom house within a two-mile radius, of the kind suggested by Katie, is adequate for the claimant's housing needs.

216. I recognise that Callum has suffered from Post-Traumatic Stress Disorder, and is still suffering from such; but he has been treated in exactly the same way as the other adult children of the deceased, and I see no reason why any greater provision should be made for him. In any event, he is not a claimant. If anything, any physical or mental disability on Callum's part would tell against his mother; and I am sure he would not want that to be the case.

217. So far as the circumstances of the case are concerned, I cannot ignore the way in which the claimant conducted herself towards her husband towards the end of his life. He regarded her conduct as deeply hurtful and offensive, and a complete fabrication, involving vague and spurious allegations.

218. I am satisfied that the account of the defendants, other than Callum, of the last few months of the late Dr Sim's life is accurate. It is best reflected in his own witness statements in response to the application that his wife had made against him to exclude him from their own home.

219. I bear in mind the age of Mrs Sim -- she is 66 -- and that this was a long marriage and a long relationship. I recognise the contribution that she has made in looking after the home and, until the last months of his life, the deceased himself. Both of them recognised that there was a 20-year age gap between them, and this clearly affected the amount of care that the deceased received from his wife until the last few months of his life.

220. I bear in mind that on a hypothetical divorce, the claimant might have been expected to receive half of the estate. But, she did have the opportunity of receiving £375,000 (of which £125,000 admittedly represented property she already owned herself), and with a life interest in the residue of the estate, after payment of the legacies and the costs of administration. Mrs Sim also receives the benefit of Dr Sim's NHS pension, a not insignificant £2,000 a month, index-linked. I bear all those factors firmly in mind.

221. On the particular facts, and in the unusual circumstances, of the present case, I consider that: (1) a pecuniary legacy of £250,000; (2) the opportunity to accept a fixed £125,000 in return for the release of her interest in the Dubai apartment, slightly in excess of its market value; and (3) the life interest in the residue of the estate, after

payment of the pecuniary legacies of £180,000 to the grandchildren, and amounting to something in the order of £600,000, did indeed constitute reasonable financial provision for the claimant.

222. The problem facing Mrs Sim is that she did not comply with the conditions that Dr Sims had attached to the payments of £250,000 and £125,000 so, in the event, the only interest which the claimant will receive under the will is the life interest in residue, after payment of the costs and pecuniary legacies; and that life interest itself will be subject to the overriding provisions of the will.

223. In those circumstances, the first question I feel I must ask myself is whether it was reasonable for Dr Sim to include the conditions that he did attach to the two payments, although in the case of the £125,000, the only consequence of not accepting it is that the claimant retains her half-share in the apartment.

224. In my judgment, it was reasonable for those conditions to be attached to the testamentary payments that Dr Sims provided for his wife. In circumstances where the actual provision made by the will is objectively reasonable, in my judgment, it was also reasonable to include a provision intended to discourage the relevant beneficiary from embarking upon what is, *ex hypothesi*, an unwarranted claim under the 1975 Act, with all the consequent delay to the administration of the estate, and accompanying delay in the distribution of assets to beneficiaries, and, in addition, with all the costs associated with defending such a claim.

225. In this case, the grandchildren, five of whom are adults, have already been kept out of their intended legacies for some five years or more. There is also the consideration that where a potential claimant lacks the assets required to meet the costs of litigation if unsuccessful, and where that potential claimant only has a life interest in the estate,

then there is the real concern that the value of the estate will effectively be significantly reduced by the costs of the litigation. In such circumstances, in my judgment, the court should not lightly set aside a reasonable and prudent condition attached to what is reasonable financial provision for the relevant beneficiary.

226. On that basis, due to the course that she has chosen to adopt of pursuing a 1975 Act claim rather than complying with the conditions, in my judgment, it is not unreasonable to hold the claimant to her strict entitlement under the will; in other words, to a life interest in the residue of the estate. In my judgment, it would be wrong in principle for a claimant to pursue a 1975 Act claim in the knowledge that in doing so, they will forego a certain benefit; and then to say that, because they have foregone that benefit, the will fails to make reasonable financial provision for that beneficiary. In my judgment, there is good reason for the court to uphold the validity of such a condition.

227. Looking at the position as at the date of this hearing, I also bear in mind that, within three days or so of the death, the claimant had already instructed solicitors. The claim for reasonable financial provision was not launched until 19th September 2019, exactly six months after the grant of probate. There had been plenty of time for the claimant, with the benefit of legal advice, to consider the available options; and, in those circumstances, it seems to me be to entirely reasonable to hold the claimant to the strict terms of the will.

228. However, I recognise that that creates a particular problem in the present case because, although entitled to a life interest in the residue of the estate, this will leave the claimant homeless. I bear in mind that before the sale of 12 Hurley Close - although I do not consider that this sale was disadvantageous to Mrs Sim - she was in

occupation of a housing authority property. Once Lothlorian House is sold, as it will have to be, she will be homeless. She will have no cash assets or, at her age, access to cash assets, to meet the costs of purchasing a property, or securing alternative accommodation, for herself without renting. Renting, of course, will add to her expenses, although it should be compensated for by the increase in the capital by reference to which her life interest falls to be assessed.

229. Mr Fryer-Spedding says she can move into rented accommodation and, as such, she will be on a par with the situation in which Alistair finds himself; but I have to bear in mind that this was both a long relationship and a long marriage. In those circumstances, it seems to me that reasonable financial provision does require that I should exercise the court's power under section 2 of the 1975 Act to vary, for the claimant's benefit, the trusts on which the late Dr Sim's estate is held, so as to include provision that the claimant is entitled to require the trustees of the estate to set aside a sum of up to £400,000 - which will, of course, have to cover stamp duty, as well as purchase costs – in order to provide a property for the claimant to occupy rent-free as part of her entitlement as life tenant, but on the basis that she pays all the council tax, utilities and other outgoings for the remainder of her life, or such time as she remains capable of living outside some form of care accommodation. That will reduce the amount of capital that will be available on which Mrs Sim will receive the interest; but it will mean that the residue of the estate is invested in a property which, hopefully, will increase in value and, ultimately, will enure for the benefit of the capital remaindermen.

230. It seems to me that that is the one respect in which the will did fail to make reasonable financial provision for the applicant. It was entirely reasonable to include provision

that she should have an option to take a capital sum and, in default, that this should not be available to her. What was unreasonable was in failing to include provision that, if she failed to fulfil the condition, then she could require part of the capital to be applied in the purchase of a home for herself. That is the only respect in which I consider that the will failed to make reasonable financial provision for Mrs Sim because, whilst leaving her with income, it would effectively leave her homeless.

IX: THE GIFTS

231. Mr Fryer-Spedding reminds me that I have omitted to include section IX of the judgment, addressing the claim to a declaration that the claimant is entitled to ownership and delivery up of the various items which are said, in paragraph 86 of her first witness statement, to have been gifted to her over the years.

232. So far as the piano is concerned, I have already indicated that I do not accept that this was a gift to the claimant by her late husband. It was not addressed in her written evidence; and I am not satisfied by the account that she gave to me at the end of her evidence. Therefore, the claim in respect of the piano is dismissed.

233. I must also dismiss the claims in respect of the Mercedes and the Jaguar, as referred to at paragraphs 86.2 and 86.3 of Mrs Sim's first witness statement. These were said to be what the claimant described as 'guilt gifts'. I have rejected her account of domestic abuse; and it follows that I cannot accept the motivation for the gifts and, therefore, the fact of the gifts themselves.

234. So far as the Porsche is concerned, this was not really addressed in any detail in the evidence, largely because by the time the matter came to trial, and indeed by the time the witness statement was written, the Porsche had been written off in an accident and

replaced by another Mercedes motor car which, because of her accident, the claimant is not presently in any position to drive. I am prepared to accept that the claimant was given a car by her late husband. It would appear to have been the Porsche, which was then replaced by the Mercedes; and therefore I would uphold the claim to the replacement for the Porsche, whatever the motor car that represents that now is.

235. So far as the Bentley is concerned, I have already indicated that I reject the claimant's evidence as to the gift of that. She gave two inconsistent explanations for the gift; and it was, as I have already explained, a very late addition to the claim. I do not accept Mrs Sim's claim to the Bentley.

236. So far as the various paintings are concerned, they are of little value: I think that the claimant put a value on them of about £1,000 each. They can be seen in photographs in bundle D, at pages 1054-1059. They were not really addressed in evidence in any detail. The claimant's evidence in relation to them was not challenged; and I see no reason not to accept that these paintings were gifts made to her by Mrs Sim's husband. Therefore, I will uphold the claim in relation to those.

237. That concludes this extemporary judgment.

(For continuation of proceedings: see separate transcript)