Neutral Citation Number: [2023] EWHC 329 (Ch)

Case No: PT-2021-000991

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

Royal Courts of Justice, 7 Rolls Building
Fetter Lane, London, EC4A 1NL
Date:17 February 2023

Before :

THE HONOURABLE MR JUSTICE TROWER

Between :

(1) DAVID ARTHUR STEUART GLADSTONE
(2) MATTHEW ADRIAN STEUART GLADSTONE

Claimants

and

(1) LEIGH ELAINE ANNA WHITE
(2) NIGEL GEORGE FROSTICK
(3) GILDA BERYL BARRETT

Defendants

And Between:

LEIGH ELAINE ANNA WHITE

Part 20 Claimant

and

DAVID ARTHUR STEUART GLADSTONE

Part 20 Defendant

TRACEY ANGUS KC and ROSE FETHERSTONHAUGH (instructed by **Boodle Hatfield LLP**) for the **First Claimant and Part 20 Defendant**
PENELOPE REED KC and TOBY BISHOP (instructed by **Charles Russell Speechleys LLP**) for the **First Defendant and Part 20 Claimant**
ARABELLA ADAMS (instructed by **Boodle Hatfield LLP)** for the **Second Claimant**

Hearing dates: 27 October, 28 October, 31 October, 1 November, 2 November, 3 November, 7 November and 8 November 2022

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30am on Friday 17 February 2023 by circulation to the parties or their representatives by email and release to the National Archives

Mr Justice Trower :

Introduction

1. By these proceedings, the first claimant, Mr David Gladstone ("David"), seeks possession of the property known as Wotton House, Wotton Underwood, Aylesbury, Bucks together with its grounds and other adjacent land ("Wotton") from the first defendant Ms Leigh White ("Leigh"). Throughout the trial, their own counsel have referred to the parties and members of their immediate family by their first names. For reasons of clarity and consistency, I shall adopt the same course, without intending any disrespect to the individuals concerned.

2. David also seeks an order and declaration that the assignment of six investment assurance bonds (the "Bonds") made by him to Leigh in 2017 and 2018 are rescinded and/or set aside as having been procured by undue influence. There is a claim for certain relief consequential on any declaration or order based on a finding of undue influence.

3. The second claimant, Mr Matthew Gladstone ("Matthew"), is David's nephew and one of the three trustees of a settlement settled by David on 25 February 2019 for the maintenance, repair and preservation of the grounds at Wotton (the "new WEMF"). David appointed Matthew in his place on 12 October 2021 pursuant to the power of appointment under the new WEMF. David and Matthew seek an order that Leigh be removed as a trustee of the new WEMF and for the appointment of a partner of Boodle Hatfield LLP, Ms Natasha Hassall, as trustee in her place. As matters currently stand the four trustees of the new WEMF are Matthew, Leigh, Mr Nigel Frostick (a solicitor) and Mrs Gilda Barrett (a tax manager). Mr Frostick and Mrs Barrett have been joined as defendants to the proceedings, but they are neutral as to the result and have not played an active role, although they were summonsed to give evidence by David.

4. Leigh admits that she and her minor son Edward are in possession of Wotton, but she claims that David is estopped from seeking possession against her, relying on the principles of proprietary estoppel. In her Defence and Part 20 Claim, she says that the promise or assurance on which she bases her claim was first made to her by David at lunch at the National Liberal Club in London (the "NLC") to which she was invited by him at some point in June 2007 (the "NLC lunch"). Her pleaded case is that, at the NLC lunch, David told her that he and his then wife (now deceased), Mrs Mary Elizabeth April Gladstone ("April"), would like her "to take on or inherit Wotton" after their deaths, having changed their plans to leave Wotton to their daughter, Perdita, and her husband Mr Mark Williams ("Mark"). She pleads that the same assurance was made to her on numerous occasions thereafter and that it was mutually understood between her and David that she would inherit Wotton after April and David had died.

5. In paragraph 72 of her Defence and Part 20 Claim, which was also particularised with a number of events I shall consider later in this judgment, Leigh summarised her case on the continuing assurances as follows:

> "From around 2007 [David] repeatedly assured [Leigh] by his words and conduct that she would be in control of Wotton after his death and would be given such interest in Wotton or control over it to enable her to do so and further assured her that he would provide for her out of the rest of his estate with sufficient assets to maintain Wotton including the use of the two London properties"

6. The reference to the London properties is to two properties owned by David at 1 and 2 Mountfort Terrace, Islington (the "London properties"). David (together with April before her death) has occupied a maisonette flat in the London properties as his London home. I shall call the flat "Mountfort Terrace". The legal titles to the London properties were transferred by David as sole proprietor to himself and Leigh on 5 December 2018. At the time David did so, he and Leigh also declared that they held the London properties on trust for David absolutely.

7. Leigh then went on to plead that, as a result of the assurances I have mentioned, she:

> "expected that she would live at Wotton for the rest of her life together with her family, would be in control of the running of the Wotton estate and the New WEMF (or any resettlement of the funds held on that trust) and other assets required to maintain Wotton including the London properties and would be able to control the person who would take over or inherit Wotton after her death, whether that be her daughter or some other person. She further expected that she would either inherit Wotton outright or would have a beneficial interest under a trust which held Wotton in order to fulfil those expectations induced by the assurances made to her by [David]. She expected to devote the rest of her life to running Wotton."

8. It is Leigh's case that she has acted to her detriment in relying on those assurances. I shall examine this allegation in more detail later in this judgment, but the detriment is said to have taken the form of becoming increasingly involved in the running of Wotton such that she had to move into Wotton with her son at a school nearby, a move which was at considerable personal expense to her because she had to live away from her husband and daughter during the week. It is also alleged that she wound down her legal practice in 2017 in order to take on a full-time role of managing Wotton for which she was paid nothing to start with; a development which involved a significant risk both to her career and her financial security for her and her family.

9. As part of the detriment on which she relies, Leigh also asserts that she became a part of David's family life and was heavily involved in looking after his adult son and daughter, Perdita and Patrick, both of whom had significant health problems and have now died and that she provided support to David when April was suffering from dementia. In short it was alleged by Leigh that she "positioned her entire life on the basis that she was going to inherit Wotton". She contends that, in these circumstances, it is unconscionable for David to seek possession of Wotton and that he is thereby estopped from requiring her to vacate.

10. However, it became clear during the trial that, whatever the nature of the assurance she might have been given by David, it did not amount to an assurance that she was entitled to occupy Wotton before his death. I will explain a little later in this judgment the circumstances in which she has come to be (and remains) in occupation of Wotton, but in her closing submissions Ms Penelope Reed KC accepted on behalf

of Leigh that, subject to safeguards being put in place to ensure what she called a smooth handover on David's death, Leigh would give up possession. This concession was inevitable considering Leigh's acceptance when giving evidence that she had no legal basis for staying at Wotton once her licence to do so had been withdrawn by David, as has happened. The reason she gave for continuing in possession after her licence to occupy had been withdrawn was simply her concern that once she left it would become impossible for her to return.

11. Leigh does not just advance her proprietary estoppel case as a defence to David's claim for possession. She also counterclaims for a declaration that she is entitled to remain at Wotton until David's death and an order that on his death, Wotton be transferred to her. She also seeks an order that the London properties be transferred to her on the death of David or into a trust for the maintenance of Wotton if the court thinks fit. The grounds for this head of relief are that it is said to have been part of the assurances on which she relied that she would have sufficient provision made for her out of the rest of David's estate to maintain Wotton which would include what was pleaded to be "the use of the two London properties".

12. There is no formal evidence on the value of the properties which Leigh seeks to have transferred to her, but there is correspondence from 2013 which indicates that the London properties were then worth £7 million. There is evidence that Wotton itself is difficult to value, but a conservative valuation was thought to be £10 million in 2015 and it is now estimated to be worth between £10 million and £15 million. The extent to which Leigh was aware of the value of Wotton and the London properties at the time she acted in the way that she did after the NLC lunch was not explored at the trial. However, the nature of the properties is such that it will have been obvious to her, and to David, that their value was very substantial.

13. As to the claim of undue influence in relation to the Bonds, they had an aggregate value of approximately £800,000 and it is common ground that they were assigned to Leigh without any legal restriction on their disposal or the use to which they or their proceeds could be put. Leigh admits in her Defence that the relationship between her and David was one of mutual trust and confidence, but there was stress on the mutuality and she denies that it was one such that undue influence can be presumed. She asserts that David was always capable of seeking and taking advice in relation to the assignments and did so on his own initiative. She also denies that the assignments call for an explanation and says that, insofar as any presumption of undue influence arises, it is clearly rebutted on the facts of the case.

14. The outcome of the claim for removal of Leigh as a trustee of the new WEMF will depend on the conclusions I reach on the proprietary estoppel claim. In part this is because Leigh also pleads reliance on the same assurances on which she relies in support of that claim in order to substantiate her contention that David is estopped from seeking to remove her as a trustee of the new WEMF. But it is also very clear that the relationship between her and David, who is the settlor and remains the current owner of Wotton for the maintenance and preservation of which the new WEMF was established, has broken down, while her relationship with Matthew, the trustee recently appointed by David, is such that they cannot sensibly work together. This points to Leigh's removal if she fails to establish her entitlement to remain at or inherit Wotton, and in closing Ms Reed accepted that Leigh would have to be

removed if her proprietary estoppel claim failed. The position will be more complex if her proprietary estoppel claim were to succeed, whether in whole or in part.

15. I shall explain my conclusions at the end of this judgment, but it is convenient to describe the applicable principles of law at this stage. I hope that this will assist in placing what is inevitably a lengthy section on the facts in its proper context.

Proprietary estoppel: the law

16. There was very little disagreement between Ms Tracey Angus KC, acting for David, and Ms Reed as to the legal principles applicable to Leigh's proprietary estoppel claim in relation to Wotton, but there were some differences in emphasis in their respective approaches. I can summarise the law as follows.

17. In order to establish her claim to relief Leigh must prove (a) that David gave her the assurance on which she now relies, i.e., that she would be given control of Wotton after his death and that he would make provision from his estate with sufficient assets including from the use of the London properties, to enable her to maintain Wotton, (b) that she reasonably relied upon that assurance and (c) that she has suffered detriment by virtue of her (reasonable) reliance: *Thorner v Major* [2009] UKHL 18 ("*Thorner*") at [29]. The extent to which it was reasonable for Leigh to have relied on what she was (or thought she had been) told by David in the way that she says she did is an important aspect of the present case.

18. However, as Ms Reed submitted, these are not watertight compartments. In approaching the issue of whether an estoppel has arisen the matter has to be looked at in the round. As Robert Walker LJ said in *Gillett v Holt* [2001] Ch 210 at 225 c-d:

> "… it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood. Moreover, the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round."

19. The assurance must be unambiguous and must appear to have been intended to be taken seriously. What is meant by this is that the assurance must be "clear enough", but what amounts to sufficient clarity in this context is, as Lord Walker explained in *Thorner* at [56], "hugely dependent on context". As is also apparent from *Thorner* (see e.g., the discussion on reasonable reliance at [74ff]), one of the questions which may arise in a context such as the present is whether what was said amounted to an assurance that the promisee would receive the property, or whether it amounted to no more than a statement about the promisor's current intention with no assurance that the promisor might not change their mind whether in whole or in part.

20. There must be a sufficient link between the assurances relied upon and the conduct that is said to constitute the detriment, but the promises do not have to be the sole inducement for what is said to be the detrimental conduct (*Gillett v Holt* [2001] Ch 210 at 226G, citing with approval *Wayling v Jones* (1993) 69 P & CR 170, 173). It appears from Lord Neuberger's judgment in *Thorner* at [78] that, if what Leigh was told by David was reasonably understood by her to amount to an assurance, and if she then reasonably acted to her detriment in reliance on that understanding, David may be bound even if he may not have intended what he said to have had that effect unless (in a rare case) he could not reasonably have expected Leigh so to rely.

21. Further, the items of detriment relied on must be specifically alleged and proved and the court should not readily infer detriment where that has not been done. The court must take account of countervailing benefits both when assessing whether there has been sufficient detriment to give rise to an estoppel and in considering the appropriate relief if the claimant has satisfied the court that an estoppel arises.

22. The detriment need not consist of the expenditure of money or other financial detriment, but it must be substantial, and the requirement is to be approached as part of a broad inquiry as to whether in all the circumstances, repudiation of the promise or assurance is or is not unconscionable: *Gillett v Holt* [2001] Ch 210, 232D-E, per Robert Walker LJ. A narrow financial view of detriment is wrong: *Gillett v Holt* at 235B-C. This is also well illustrated by those cases (of which *Suggitt v Suggitt* [2011] WTLR 1841 and on appeal at [2012] WTLR 1607 is one) in which the claimant positioned his whole life on the basis of the assurances given to and reasonably believed by him.

23. It is a necessary element of the doctrine of proprietary estoppel that the assurances given to the claimant "should relate to identified property owned (or, perhaps, about to be owned) by the defendant" (*Thorner* at [61]). From this principle, Ms Angus submitted that proprietary estoppel cannot arise in cases where the assurance given to the claimant was that she would be given a job, role or responsibility, a submission with which I agree. Moreover, the assurance must have been given by the owner of the property in question or with their authority (*Pleming v Hampton* [2004] EWCA Civ 446 at [35]).

24. As to relief, the leading case is now the recent decision of the Supreme Court in *Guest v Guest* [2022] UKSC 27 ("Guest"). Lord Briggs described the aim of the remedy to be granted where the jurisdiction is established at [94] of his judgment as follows:

> "For the reasons given, neither expectation fulfilment nor detriment compensation is the aim of the remedy. The aim remains what it has always been, namely the prevention or undoing of unconscionable conduct. In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the proposed remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm."

Undue influence: the law

25. David claims that a presumption of undue influence in relation to the assignment of the Bonds to Leigh has arisen and has not been rebutted. The starting point is, therefore, the decision of the House of Lords, in *Royal Bank of Scotland v Etridge* (No. 2) [2002] 2 AC 773 ("*Etridge*"). In *Etridge*, Lord Nicholls explained the applicable principles at [14] as follows:

> "Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other."

26. In the light of *Etridge*, the approach which the court is required to take where a claim of undue influence is made can be summarised as follows:

i) Whether a transaction was brought about by the exercise of undue influence is a question of fact, and the burden of proving undue influence rests on the donor, in this case David (*Etridge* at [13]).

ii) If a donor proves, on the balance of probabilities, that there was a relationship of trust and confidence between the parties and a transaction which calls for an explanation, the burden of proof is *prima facie* discharged, which means that an evidential burden then falls on the donee (Leigh) to produce evidence to rebut that *prima facie* case (*Etridge* at [14]).

iii) Concepts of ascendency and dependency are used in the authorities to describe a relationship in which a presumption of undue influence will arise where the relevant transaction calls for an explanation, but Lord Nicholls (in *Etridge* at [14]) treated trust and confidence by one party in the other in relation to the management of his financial affairs as being an appropriate description of the relevant relationship. It is apparent from his analysis that the relationship aspect of the test may be satisfied where the donor places sufficient trust and confidence in the donee's role in the management of his financial affairs, even though the donee may not be ascendant in other aspects of the same relationship. The answer will depend on all the circumstances of the case.

iv) For the presumption to be engaged, a transaction which calls for an explanation is one which is not readily explicable by the relationship of the parties or by reference to the normal motives by which people act. It has also been identified as one which can be characterised as immoderate or irrational (*Etridge* at [22]).

v) The weight of the presumption will depend on the nature of the relationship and the nature of the impugned transaction. Thus, the greater the disadvantage

of the transaction to the donor, the more cogent must be the explanation before the presumption is rebutted (*Etridge* at [24]).

vi) In order to rebut the presumption, the donee must prove that the donor entered into the transaction of their own free will, independent of the influence that the donee was able to exercise over him (see e.g., *Smith v Cooper* [2010] EWCA Civ 722 at [71], per Lloyd LJ). This can be achieved through proof that informed advice was given by an independent third party, often but not necessarily a solicitor. Whether that advice will be sufficient to give rise to what Lord Nicholls called an "emancipating effect" is a question of fact to be decided having regard to all of the evidence (*Etridge* at [20]).

vii) If a donor succeeds in setting aside a gift or other transaction by this route, he does so because he has succeeded in establishing a case of undue influence. In other words, the court has drawn appropriate inferences of fact upon a balanced consideration of the whole of the evidence at the end of a trial in which the burden of proof rested upon the donor.

Wotton

27. Wotton is at the centre of this dispute. Wotton House itself is a distinguished Grade 1 listed building originally built between 1704 and 1714 and then in part redesigned by Sir John Soane after a major fire in 1820. It is surrounded by pleasure grounds and sits in a listed landscape, originally the work of Lancelot 'Capability' Brown. The upgrading of this landscape to a Grade 1 listing in 2016 was the culmination of an on-going restoration project in which David took considerable pride. He attributed much of the credit for what had been achieved to his estate manager, who had been working at Wotton since 1985, Mr Michael Harrison. He gave evidence at the trial for David.

28. The main house was purchased by April's mother, Mrs Elaine Brunner, in the late 1950s, shortly before it was due to be demolished. By this stage, much of the surrounding land and gardens, including the former coach house known as the South Pavilion and parts of the pleasure grounds had been sub-divided and sold off. One of the things that Mrs Brunner set about doing was to buy back parts of the surrounding land as and when it became available and she engaged the well-known conservation architect, Donald Insall, to restore the house itself, a project which was largely complete by the time that April and David married in July 1961.

29. In April 1996, Mrs Brunner established a settlement described as a maintenance fund settlement for heritage property ("HPMF") for the purpose of maintaining the grounds at Wotton (the "old WEMF"). The old WEMF was the predecessor of the new WEMF in respect of which the application to remove Leigh as trustee is made. The recitals to the old WEMF recited that the grounds at Wotton were qualifying property within the meaning of Schedule 4 of the Inheritance Tax Act 1984, which indicated that the old WEMF qualified for the favourable inheritance tax ("IHT") treatment granted by that legislation.

30. Although in some respects bearing the appearance of a non-charitable purpose trust, HPMFs are valid because they benefit the person who owns or occupies heritage

property. In broad terms the favourable treatment they attract for IHT purposes is that transfers of value into them are exempt, there is no periodic charge, and no exit charge provided the trust property is re-settled into another such trust within 30 days. It is usual for the trust deed to provide for the trustees to be granted a power of revocation and a power to appoint to members of a class of beneficiaries who are then able to resettle the trust property within the 30 day period on a new HPMF. In order to qualify for this favourable IHT treatment, trust income must be used either to maintain property which HMRC have agreed is heritage property, or property within the fund itself. At least one trustee must be a professional trustee and any change of trusteeship requires the approval of HMRC. The original trustees of the old WEMF were April, David, Mr Frostick and Mrs Barrett.

31. Mrs Brunner died in April 1998, two years after the old WEMF was established. April was the residuary beneficiary under her will and as such took the entirety of her estate, including Wotton, apart from certain shareholdings which were given to the trustees of the old WEMF. By a subsequent deed of variation dated 9 March 1999, provision was made for the payment of a number of legacies including £50,000 each to or for the benefit of April's and David's children, Perdita and Patrick. In the case of Perdita, the legacy was a payment to her absolutely. In the case of Patrick the legacy was a payment to the trustees of her will to be held on protective trusts ("Patrick's trust").

32. When Mrs Brunner died, David and April began to spend more time at Wotton, dividing their time between Wotton and Mountfort Terrace. David said that their usual pattern was to spend part of the week in London and the rest of the week and the weekends at Wotton. David said that they dedicated a great deal of their time and energy, whether in London or at Wotton, to the restoration, maintenance and preservation of Wotton. He said that they always found it possible to carry on that work of managing Wotton without living there full time. Amongst other matters, David, much assisted by Mr Harrison, worked on the restoration of the Soane Tribune in the main house with the assistance of the architect Ptolemy Dean, and also worked on much of the original landscaping of the grounds. The other members of what was described as David's Wotton team who featured in the evidence included his part time secretary, Ms Penny Maier, who gave oral evidence at the trial and two housekeeper / cleaners, Nancy Taylor and her mother Heather.

33. The funds in the old WEMF were never sufficient to meet the cost of maintaining the grounds at Wotton. Since Mrs Brunner's death, the shortfall, along with the cost of maintaining the main house, has been made up from David's and April's personal resources, including rent from letting parts of the London properties and, prior to their assignment to Leigh, income from the Bonds. Other sources of income included the rent from the two self-contained flats in the main house, one of which, the Gosfield flat, is currently occupied by Mr Jugdip Parmar and the other of which, the Temple flat, is occupied by Dr Andrew Stockley. Both Mr Parmar and Dr Stockley gave evidence for David at the trial. Other buildings architecturally associated with Wotton House itself were either let to tenants which therefore generated further income (the Clock Pavilion) or had never been acquired by Mrs Brunner in the first place (the former coach house known as the South Pavilion and, since approximately 2008, owned and occupied by the Blair family).

David and his family

34. David is a retired diplomat. He was the United Kingdom's High Commissioner to Sri Lanka between 1987-1991 and opened the embassy in the then newly independent state of Ukraine in late 1991. It is plain that he is a cultivated, intelligent and sensitive man with wide ranging interests including architecture, landscape gardening and music. He has been able to use Wotton in order to further his enjoyment of these interests, in particular by his work on the house and grounds and by arranging many concerts and musical events over the years. His desire for what he regards as his legacy to be continued is of central relevance to some of the issues which arise in this case.

35. The members of David's family who featured in the evidence included his former wife, April, who died in January 2014 after a long and distressing battle with Alzheimer's disease and his current wife, formerly Mary Lowe now Mary Gladstone ("Mary"), whom he married on 9 October 2020. He and April had two children. The elder child was an adopted daughter, Perdita, who had significant health problems including alcohol abuse. She was born in January 1965 and died in March 2022, aged 57. Perdita married Mark in 1986, but they separated in 2006 and divorced in 2008. She had four children, the eldest of whom, Christopher is now 33. David's and April's younger child was Patrick who suffered from severe schizophrenia. He was born in January 1969 and died unexpectedly on 14 October 2016, aged 47. Patrick died unmarried and had no children.

36. David also has two nephews: Matthew, whom I have already mentioned, and his brother Ben Gladstone. They are children of his brother, Christopher Gladstone, who died in 2012.

37. David is now 87 years old and very frail. He has severe osteoarthritis and is in constant pain. Following multiple vertebral fractures in 2018, he is confined to a wheelchair. He cannot move or support himself and is reliant on others for personal care. He now lives at Mary's home in Cumbria, where he has been sheltering since shortly before the national lockdown caused by the onset of the Covid-19 pandemic in early 2020. He is very keen to return to Wotton before he dies. For reasons which will become apparent later in this judgment, he does not feel able to do so while Leigh remains in occupation.

38. David is cared for by Mary, who is herself 84 years old, Mary's assistant (Mrs Stephanie Brumwell) and a full-time live-in carer (Mr Rory Coghlan). Although David's solicitors and counsel are satisfied that he continues to have capacity to give instructions for the conduct of these proceedings, he has mild cognitive impairment and mild delirium, the features of which were described in the evidence as reduced alertness, disorientation, impaired attention and fluctuation. He suffers from extreme fatigue and cannot concentrate for more than short periods of time.

39. Mary, Mrs Brumwell and Mr Coghlan all gave oral evidence at the trial, but David did not. Although he made a witness statement dated 16 September 2022, and suitable arrangements were put in place for him to give his oral evidence remotely and for short periods at a time, by 25 October it had become apparent to his solicitor, Ms Andrea Zavos, a partner in Boodle Hatfield, that David's health was deteriorating to such an extent that giving oral evidence at all would be too much for him. This

concern was confirmed by Professor Alistair Burns, a professor of old age psychiatry at the University of Manchester, whose opinion was that appearing in court, even with the adjustments that had been agreed by the parties and sanctioned by the court, would be deleterious to him, because of his physical and mental frailty. In the result, an application was made (and not opposed by Leigh) for permission to rely on his witness statement as hearsay. I acceded to that application at the outset of the trial. This has of course meant that Ms Reed has not had the opportunity of putting any part of Leigh's case to David in cross-examination and affects the weight I am able to ascribe to the matters dealt with in his witness statement, more particularly where it is inconsistent with other material relied on by Leigh.

40. It has, however, been possible to gain some further understanding of David's evidence from the contemporaneous correspondence and, for part of the period with which these proceedings are concerned, from his own diaries. The diaries span the years 2011 to 2018 and in some respects they have been very informative because they seem to record his real thoughts from time to time. But they also have to be treated with some caution, because there is no indication that they were written to be read by others and so the significance of and manner in which some events and thoughts are expressed is not always easy to assess.

Leigh and her family

41. Leigh was born in October 1967 and is therefore 32 years younger than David. She studied law and anthropology at the LSE and then qualified as a solicitor at Clifford Chance in March 1996. After qualification, she worked in the firm's Hong Kong office on matters relating to the new Hong Kong airport and the Peregrine insolvency. She had two years post-qualification experience with Clifford Chance but left after a complaint about the way she had been treated subsequent to her father's death.

42. As with the nature and extent of her experience at Clifford Chance, the next stages in Leigh's career up until the time of the NLC lunch were explored at the trial. They related to her allegations that she suffered substantial detriment from the assurances that David gave her, and in particular her case that she changed the whole course of her life in reliance on the promise that she would inherit Wotton.

43. After leaving Clifford Chance, Leigh then went to Weil Gotshal and Manges ("WGM") where she spent approximately one year (earning c.£52,500 p.a.), followed by Shearman and Sterling (earning c.£65,500), which she left at some point in mid-2000 in order to study for a Master's degree in international law at King's College, London. This was a one-year course after which she spent six months at the Law Commission finishing there in April 2002. The way that she described her interests at this stage were international law and development, interests which had some relevance to a project on the reform of security interests in banking and finance which is what took her to the Law Commission in the first place. Her salary at the Law Commission was £35,572.

44. On 27 July 2002, Leigh married Mr Robert Belcher ("Robert"), a chartered accountant, who also gave evidence at the trial. The wedding was at Wotton and Leigh, whose father had died in a road accident in November 1997, was given away

by David. As I shall explain, they had first met several years earlier. Shortly before the wedding, Leigh had joined the United Nations Compensation Committee based in Geneva and worked on what she described as large and complex claims arising out of Iraq's invasion of Kuwait. Her annual salary, anyway from November 2002, was approximately £52,600 (being the sterling equivalent of Leigh's contractual entitlement of US$87,673, although she said she was actually paid in Swiss francs).

45. It follows that in very broad terms Leigh was then earning the same that she was earning at WGM four years earlier. In her evidence, Leigh distanced herself from the description that was used in her counsel's skeleton argument that she was an "international finance specialist". Although I must assume that she was happy with that phrase at the time it was used, I think that she was right to take that course. As she accepted in the witness box, it would be an exaggeration of the level of experience which she acquired both in private practice and while employed by public bodies.

46. The UNCC project had ended (or at least was becoming insufficiently challenging to retain Leigh's interest) by the end of 2004, by which time her first child, Rosina, had been born. She left the UN in January 2005. At around the same time, Leigh also suffered the death of a sibling, when her sister died from an aortic aneurism. She then took a career break until after the birth of her second child, Edward, in October 2005.

47. After Edward had been born, Leigh made efforts during the course of 2006 to find work and was keen to develop an international practice, but the focus was on self-employed consultancy opportunities which is not particularly surprising given the fact that she was also bringing up her young family. I was taken to correspondence from which it is evident that these efforts involved consideration of possible consultancy work in relation to a Vanuatu telecoms project which did not in the event come to anything. However, for most of the period with which these proceedings are concerned, Leigh was working as a sole practitioner doing domestic work. As I shall explain, she has now wound down her legal practice. There is an issue with which I shall deal later in this judgment as to whether that occurred in 2017 as she contends or not until September 2018, which is David's case.

48. Leigh and Robert's family home is a property they own in East Sussex (Park Grove) which they moved into in 2007. According to their witness statements, this is where they still live, anyway while they are not at Wotton, which is where they have been spending much if not most of their time for the past few years.

Leigh's relationship with the Gladstones: general

49. Much of the evidence at trial related to how it was that Leigh came to have the very close relationship with David and April that she undoubtedly did, the form which that relationship took and the circumstances in which it broke down. So far as the causes of action are concerned, the nature of the relationship is relevant on more than one level. It is material to the likelihood of David making a promise in the form in which Leigh alleges he made it, and to the question of whether it was reasonable for Leigh to rely on it, if he did. It is also relevant to the undue influence claim and the dependency which David is now said to have had on Leigh by the time the Bonds were assigned to her in 2017 and 2018.

50. In broad terms I will describe my findings of fact chronologically, but it is important to say at the outset that some detail of the relationship is necessary because it was by all accounts an unusual one. In his diary, David described it on one occasion in 2011 as unique but by that he meant unique "for him", although Leigh picked up that word in her witness statement and made the slightly odd comment that "unique" was entirely consistent with how they viewed each other. Whether unusual or unique is the right characterisation, it is obviously not a blood relationship, but it is at the heart of Leigh's case that it shared many of the characteristics of a blood relationship and it is accepted by all parties to have been one that was very close.

51. The relationship also manifested itself in what was undoubtedly the important role that Leigh played in supporting David's family. She did so against the background of difficulties in David's relationship with Perdita in particular. Leigh made much in her evidence of how dysfunctional this relationship was, and I accept that what she recorded in her witness statement reflected her own perceptions. However it remained the case that Perdita and her children were either the residuary beneficiaries under David's will or later on were members of a discretionary class. Leigh has always known that that was the case.

52. Much of the early parts of Leigh's witness statement stressed the distance which members of the Gladstone family had to each other. It is obvious that this evidence was thought relevant as a contrast to the intimacy of the relationship which she herself had with April and David. I have little doubt that her relationship with them was indeed close and loving. I do not, however, accept that the way that she described the relationship that David had with members of his family was balanced or accurate. There is no doubt that there were times at which David's relationship with his own children and his nephews was fractious, difficult and overwhelmingly frustrating to him and he was not shy about expressing that. But there are also many occasions, apparent from the documentation, when David welcomed them as a core part of his life.

53. What Leigh brought to David's life was a degree of stability and, above all competence, which was sadly lacking in his own children. In my judgment, that was the foundation of the love and the respect that he had for Leigh. But that falls a long way short of demonstrating that, as Leigh would have it, she was his obvious heir. It merely shows that she was the one person to whom he was close in whom he felt the most able to repose his full trust and confidence, particularly when it came to managing his affairs.

Leigh's relationship with David and April: the early years

54. Leigh first met David and April in 1993 through a mutual friend. This was not long after David had left Sri Lanka as High Commissioner and before Leigh had qualified as a solicitor. They had a shared interest in Sri Lanka because Leigh had been there as a volunteer English teacher after finishing her A levels in 1986. It was common ground that David and Leigh also shared an interest in classical music and the theatre.

55. It was Leigh's evidence that she learned about David's and April's family not long after they first met when she was invited to supper at Mountfort Terrace. In

particular, Leigh learnt how Patrick suffered from a then undiagnosed mental illness and about what appeared to be the difficult relationship that David and April had with their adopted daughter, Perdita, which she said was not close. By this stage Perdita was married with at least one child (Christopher). Leigh said it was apparent from how they spoke about their relationship with their children that David and April were struggling to cope emotionally with the practicalities and sadness of (most particularly) the situation Patrick found himself in.

56. Leigh explained how she related to David's and April's experiences, because her own father, who had trained as an architect and had worked for Morgan Stanley, had contracted legionnaires disease aged 48, and suffered brain damage as a result of the disease. Later, in November 1997, he was killed crossing the road. She said it had been a very difficult time for her family, and that her siblings had both suffered greatly from mental health issues following her father's death. This particular aspect of the empathy therefore developed some time after her first meeting with David and April. She said that she recognised in David and April the loneliness and emotional shellshock that she was feeling at that time from the tragedies in her own life, and the courage required to deal with these issues. She explained how for these reasons they quickly became each other's mutual confidants. She said that April in particular was a source of great solace and comfort to her, and that the relationship which developed was born out of mutual support.

57. The way that David described the early relationship was somewhat different in emphasis. He said in his witness statement that he and April certainly saw Leigh as a very dear friend and looked upon her and trusted her as if she were a close family member. They respected and valued her professional expertise as a solicitor. The impression he conveys is one of a deep and genuine affection, but also of a relationship in which Leigh's professional competence as well as the empathy she displayed provided for him some of what he might have hoped for (but did not have) from his own children.

58. Fairly rapidly, Leigh came to regard herself, and said that David regarded her, as his "surrogate daughter", something which Robert confirmed as being the way that she thought of herself by the time that they were married in 2002. As I have mentioned, David agreed that he and April certainly looked upon Leigh and trusted her as if she were a close family member. Although he did not think that April ever thought of Leigh as her daughter, there were certainly occasions on which he himself used the expression "surrogate daughter" when referring to Leigh, although Leigh herself said in her own oral evidence that David would not have described her in that way to her face. I was, however, shown two e-mails from March 2015 and September 2016 (both after April's death) when this was the way in which he described her to third parties.

59. There are also several other examples in the papers of occasions on which David referred to Leigh and her family as part of his family: "she really has become a daughter" in November 2011, Leigh now acting as "semi official daughter" in January 2012 and "my lovely adopted family". However, it is clear from other evidence that Leigh was not the only younger woman to whom the phrase "surrogate daughter" was applied and the way in which David expressed himself (as reflected in some of his correspondence) demonstrated a turn of phrase which was from time to time quite extravagant when communicating with and about his friends – a contrast with what

appears to have been a more reserved approach when talking about members of his own immediate family, and more particularly Patrick and Perdita. Nonetheless, I agree that it was Leigh to whom the soubriquet of surrogate daughter was most often applied. She was undoubtedly treated differently from other women in David's life and this, as well as her professional expertise and obvious competence, were the drivers behind the position in which she became established in due course in the management and direction of David's affairs.

60. Not surprisingly given the passage of time, the evidence as to the amount of time that Leigh spent with April and David in the nine or ten years after they met was relatively sparse. It was in this period that Mrs Brunner died, and Leigh said that she thinks she was the first person to be invited to Wotton by April and David after Mrs Brunner's death. By 2000, she was close enough to have supper with David at the NLC the evening before he was having a hip operation, as to which she said he was "terrified", while that Christmas she and Robert (who was by then her partner) took Christmas lunch to David and April at Mountfort Terrace.

61. I have already explained that Leigh and Robert were married at Wotton in 2002 and that she was given away by David. He explained that he could not remember if Leigh had asked him to walk her down the aisle, or if he had offered to do it himself. But he did remember the reason he agreed to give her away was because he felt sorry for her as her own father had died and she had a difficult relationship with her mother and family generally. Leigh does not accept that she had anything other than a very strong bond with her mother and it is not necessary to make any findings on that aspect of the evidence. What is clear is that, whatever the impetus for doing so, David stepped into the role of Leigh's father for the wedding, driving her to the church in a classic car, walking her up the aisle and making a speech from the steps of Wotton House. He also attended Robert's stag night in London before the wedding and at about the same time referred to April and himself in an e-mail to Leigh as "mum and dad".

62. In her evidence, Leigh gave a number of other examples of the regularity of her contact with April and David and the way in which significant events in her life were shared with them or marked by them. She explained how Mr Harrison planted a tree at Wotton as a surprise wedding gift, how on their first wedding anniversary she and Robert took April and David to the Manoir aux Quat' Saisons and how, although she was working in Geneva between 2002 and 2005, she would still see them regularly, either visiting Wotton or meeting them in London. She said that they came to visit her in Geneva several times.

63. It is also apparent, both from Leigh's own statement and from some of the photographs which have been put in evidence that David and April had an affectionate interest in Leigh and Robert's children: Rosina born in February 2004 and Edward born in October 2005. Leigh regarded this interest as being akin to the interest of a grandparent and she explained how, when the children were young, they all continued to visit Wotton regularly and the children would sleep on the nursery floor. She also said that her family and April and David holidayed together in 2004, although the evidence is not entirely clear as to whether such a holiday occurred on more than one occasion. Leigh confirmed in her oral evidence that at this stage she had no expectation of inheriting Wotton.

64. I think that the small, but in some respects significant, differences in emphasis which each of Leigh and David put on the nature of their relationship in those earlier years reflects their own genuine beliefs as to how each of them saw their relationship with the other. This was informed in part by the differences in their respective backgrounds and age, but the evidence shows, perhaps not surprisingly, that the interest which Leigh had in Wotton, in David and April and in the sophisticated circles in which they moved was of more obvious significance to her than the interest which David displayed in the circles in which Leigh moved.

65. In reaching that conclusion I do not belittle the enduring interest which each of them showed in the other and their immediate families. Furthermore, the evidence disclosed a number of examples which demonstrated that David and (before the Alzheimer's disease took hold) April enjoyed meeting Leigh's friends. They obviously relished contact with younger people and David in particular showed great pleasure in holding the events at Wotton which attracted others and at which Leigh said that she and her friends were regular attendees.

66. In any event, what is not in doubt is that, as time went by, Leigh did a very great deal to assist David in caring for April, Patrick and Perdita. It is also clear that David and April were both very fond not just of Leigh, but also of Rosina and Edward, and in many respects treated them as if they were part of their extended family. This was a two way process in the sense that Leigh confirmed in cross examination, and I accept, that the assistance which she gave to Perdita during the period prior to 2007 was in no way affected by any expectation of inheriting Wotton but was only out of the bond that she felt to the family. From fairly early on, the relationship was one in which Leigh was able to give practical help to David and April, and all of them demonstrated considerable emotional support for each other.

67. Without in anyway playing down the emotional dependency which in the early years Leigh placed on her relationship with April and David, it is clear that the balance of dependency changed over time as David grew older and his dependency on Leigh became more marked. This was particularly the case in relation to matters of financial management, but also manifested itself in other aspects of their relationship. This is an issue to which I shall return.

68. Another aspect of their relationship which it is appropriate to describe at this stage is the strength of Leigh's character. She expresses herself clearly, is intelligent and has plainly been highly efficient in the tasks that she sets herself, which have included much that she has done on behalf of David. There is no doubt that she could also be very kind and demonstrated many acts of selflessness in her dealings - that was also the way she was described by a barrister friend of hers who gave evidence, Ms Astra Emir.

69. However, there is a less positive side to her character. She showed herself to be opinionated, had a tendency to rub people up the wrong way and, as time went on, she developed what Mary was later to describe as a sense of entitlement. Although this clearly caused a number of people to dislike her, it is important not to be distracted by such sentiments when assessing their evidence. However, of more direct relevance, particularly to the undue influence claim, David said that Leigh has a forceful personality and when he was younger and stronger, he had no difficulty in standing up

to her, but as he grew older, and as his health declined, he had found it increasingly difficult to do so.

70. I think that David's description of Leigh as forceful is borne out by the written evidence, her demeanour when giving her oral evidence and some of what was described by other witnesses. There is also a body of evidence, which I accept, that it was not unusual for Leigh to become angry, confrontational and aggressive when crossed. Much of the evidence to this effect dated from the period when the relationship between David and Leigh was or was on the point of breaking down and more particularly after he had asked her to leave Wotton. Thus, there was striking evidence from Mr Harrison, Mr Parmar and Dr Stockley who all described recent events which were not in my view embellished, and which are only explicable as a reflection of Leigh acting in a controlling manner which at times became positively aggressive. I do not think it is necessary to describe the detail, but in my judgment it was credible and compelling. Indeed, Leigh admitted in her own evidence that on what she called "very rare occasions when provoked to the point of no return", she was capable of shouting at people with her face two inches away from theirs.

71. Standing alone, the evidential weight of these particular events is rendered less significant by the fact that by this stage, Leigh was under pressure from David's request that she leave Wotton. But they are entirely consistent with a more general propensity to lash out when things were not going her way and for that to have been an aspect of the controlling side to her character. In my view this is of direct relevance to the undue influence claim and the nature of the relationship between David and Leigh after the time of Patrick's death.

72. Although the examples given by these witnesses relate to more recent years, it is clear that this side to her character was manifest at times well before David left for Cumbria at the beginning of the Covid-19 pandemic. There was evidence from quite early on of the impact which her forcefulness had on David from his family doctor, Dr Hannah Flinders, who described in a convincing manner how, as early as 2012, she was struck by the "significant psychological control Leigh appeared to have over David". Consistent evidence, albeit from a different perspective was given by Ms Penelope Maier who had worked for David as his secretary and personal assistant since 2001. She first met Leigh at a court hearing in Aylesbury in 2012 (to which I will revert a little later), but saw more of her at Wotton after Patrick's death in 2016. She described how she would not have wanted to get on the wrong side of Leigh and tried to stay out of her way. Dr Stockley also gave evidence of what he had been told by Heather about an occasion in the kitchen at the wake after April's death when Leigh lost her temper in a manner which, on Dr Stockley's account (which I accept) was both inappropriate and unwarranted.

73. Much of this conduct appears to have occurred when Leigh was under stress, but David's diaries and e-mails also reflect what can only be described as confusion in his own mind about the benefits for him (and, before her death, April) of what Leigh was urging upon him. I have formed the view that this was sometimes caused by concerns he had about her character. Sometimes this reflected the substance of what was being debated but sometimes it went more to the peremptory tone in which Leigh expressed herself. There are many examples of this in the papers relating to different aspects of David's affairs and his relationship with her. In the end, the way that this played out

in the period after David and Mary left for Cumbria in 2020 was to be one of the factors which caused the current dispute to come to a head.

Leigh's involvement in Wotton: the early years

74. There was some relatively limited evidence about Leigh's involvement in what she called decisions about Wotton during the period prior to the NLC lunch at which she said that David gave her for the first time the assurance on which she now relies. Leigh explained that this involvement developed fairly soon after Mrs Brunner's death in 1998, which she called very early on in her relationship with David. She gave two examples – one when he consulted her about how to reply to a letter from Lord Rothschild enquiring about a possible purchase of Wotton (a friend of his was looking to buy a home in the area) and another when she helped in relation to a dispute with a German lawyer who was a tenant of the Clock Pavilion. She was called on to interpret the tone of his correspondence and was able to reassure April and David that the language being used was akin to that used in a City negotiation which should not be taken personally.

75. At this early stage Leigh also attended a Sotheby's auction at which some of the contents belonging to Mrs Brunner's estate were sold. She also described how David explained to her that he would never have sufficient funds to restore the Soane Tribune, in which context Robert suggested that he should put monies into a separate company to facilitate the building up of the fund. This company was called Wotton House Ltd ("WHL") and was incorporated in October 2002. She said in her statement that David, April, Robert and she were appointed directors, although she confirmed in her oral evidence that it was only David and April who were the shareholders.

76. It was put to Leigh in cross examination that the Wotton matters to which Leigh was referred by David at this stage were those which had a legal flavour. Leigh was reluctant in cross-examination to accept that this was the case, but I think she was wrong to do so. When pressed on this subject by Ms Angus, her answers were markedly defensive and I was left with the impression that she had difficulty facing up to the fact that the aspects of Wotton on which she was being consulted related more to finance, business and law, being matters on which David trusted her judgment. At this stage there was no evidence that he consulted her because he thought that she might become in any sense his successor or heir, and nor did she think that this was a position or role that she was being lined up to take on.

77. I reach that conclusion having regard not just to the nature of the issues with which David asked Leigh to become involved, but also to what appear to have been David's own interests and the matters which he was more than happy to leave to others. In particular, there is no indication that David was focussed on developing or managing the business aspects of Wotton. They were not where his real interests lay. His real interests were in the use to which Wotton was and could be put in the form of cultural and other events, and in preserving and enhancing its architectural distinction and the quality of its landscape.

78. For David some of the practicalities of property management were a necessary evil. He was very grateful to Leigh for the assistance which she gave him on those parts of

the management of Wotton, which he found tiresome or difficult to deal with. Without detracting in any way from the affection which he undoubtedly felt for Leigh, that was the principal capacity in which she started to become increasingly indispensable to him.

The NLC lunch and the 2007 EPA

79. On Leigh's case, the NLC lunch was a very important event, because it was the first occasion on which the assurance on which she now relies was given. At the time she made her witness statement, Leigh did not recall the precise date it was held but said that it was sometime around August 2007. As a result of her oral evidence, I think that the more likely date was early July 2007, and that effectively became common ground during the course of her cross-examination. She described how she received a more formal invitation than she was accustomed to receiving from David and she said that he told her it was a "Wotton business" lunch.

80. Leigh then explained in her witness statement that "It was at that lunch that David asked would I take on Wotton after him and April." She said that David explained that Perdita and her husband Mark had been destined to take on Wotton, but they had now separated and were in the process of divorcing. She also said that David seemed relieved when she agreed. In her Defence and Part 20 Claim, Leigh described this as an assurance which took the following form:

> "By this [David] meant and [Leigh] understood him to mean that she would inherit Wotton and the inheritance would follow her family line.".

81. David did not address the NLC lunch in the witness statement he made for the trial. However, his position was clearly set out in his Reply, verified by a statement of truth signed by him. He admitted that the lunch had taken place, but said that, given the passage of time, he could not recall precisely what was said. It was pleaded that he remembered that there was some discussion regarding the future of Wotton and who might take on its "stewardship" and that it was considered that Leigh might be an appropriate person to do so. David specifically denied that he told Leigh that he and April would like her to "take on" Wotton after their deaths and that in so saying he meant or could reasonably have been taken to mean that Leigh would inherit Wotton and the inheritance would follow her family line. He therefore denied that, whatever he may have said, the words could reasonably have been taken by Leigh to have had the meaning she now ascribes to them.

82. In order to explain my conclusions on what was actually said and conveyed at the NLC lunch, it is necessary to set it in its proper context, and more especially the context of what else was being considered at the same time as a role for Leigh going forward. As an event, the lunch does not sit in isolation, because it occurred at a time when David and April were in any event engaged in discussions with their professional advisors (and in particular Mr Frostick, who had acted for the family since the early 1990s) about the proper ordering of their affairs. By then they were both in their 70s and their two children suffered from the health (and in the case of Perdita marital) problems I have already mentioned.

83. In December 2006, Mr Frostick had written to David and April in relation to, amongst other matters, their wills and a jointly held Welsh property they owned at Maes-y-fforch. He advised that it was sensible to transfer the Welsh property into a discretionary trust, with the discretionary beneficiaries being their children, grandchildren and any other persons whom they would like to benefit. Its value was less than their nil rate band for IHT purposes and CGT could be held over. He explained that a discretionary trust gave no entitlement to a discretionary beneficiary to receive anything from the trust. He also advised that it would be a good idea to transfer the Clock Pavilion into the old WEMF and reminded David that he had sent him a draft will earlier in the year including provision for a nil rate band discretionary trust on first death. At this stage there was no mention of Leigh.

84. The first time at which it is documented that Leigh might have a more formal role in April's and David's affairs than had been the case hitherto was a few months later. On 27 April 2007, David wrote to Mr Frostick, in response to being told that the existing enduring power of attorney ("EPA") regime was due to come to an end in the autumn. David said that he agreed that he and April should appoint additional attorneys and that he was happy to take Mr Frostick's advice as to whether to wait for the new regime to come into effect or to appoint a new attorney straight away. He said that they both wished to appoint Leigh as one of their new attorneys and sought Mr Frostick's consent to being added to the list as another, a proposal to which he agreed. He said that he chose Leigh because she was both a good friend and a solicitor.

85. The evidence was unclear as to whether or not Leigh had been asked by David (or April) whether she would be prepared to act as attorney at the time of David's letter to Mr Frostick of 27 April. I think that it is likely that she had, and Leigh seemed to accept as much in her oral evidence. The form of the letter itself is more consistent with a conclusion that the proposal had already been agreed by Leigh, and there would have been no point in Mr Frostick preparing drafts (which he had by 3 May 2007), if David had not already obtained Leigh's consent.

86. In the event, each of David and April executed new EPAs on 26 July 2007 and each appointed the other, together with Leigh and Mr Frostick as their attorneys empowered to act jointly and severally. They each included a condition that the attorneys may not act until in the opinion of the donor's medical practitioner they were unable for any medical reason to manage their own affairs or in other circumstances where they gave consent for their attorneys to act. Each of the EPAs was countersigned by Leigh and Mr Frostick on 8 and 9 August 2007 respectively.

87. Meanwhile, in an e-mail to David dated 13 July 2007, Mr Frostick reverted to the more general estate planning and trusteeship issues which had been the subject of his December letter. At this stage, Leigh's only involvement so far as Mr Frostick was aware was as an attorney under the proposed EPAs. In his e-mail Mr Frostick raised the question of whether it would be sensible for David to consider asking Leigh to be a trustee of the discretionary trust to hold the Welsh property and the discretionary trusts proposed to be established under David's and April's wills, the forms of which were by then under consideration. She was clearly well-established as a close and competent friend for whom David and April had great affection and in whom they placed much trust.

88. There was then a meeting at Mr Frostick's offices on 17 July, which Leigh thought took place after the NLC lunch, and I think she is probably right about that. It was attended by David, April, Leigh, Mr Frostick and Mrs Barrett. The proposals discussed were those reflected in Mr Frostick's 13 July e-mail. So far as David's and April's wills were concerned, the manuscript notes of the meeting indicate that a nil rate band discretionary trust would be established with each spouse taking first on the death of the other, Wotton was to go to the trustees of the WEMF and there was a proposal that what was described as "the ultimate residue" was to go to charity. It was anticipated that Leigh would be included as a trustee of the will trusts.

89. Leigh was cross-examined about this meeting. She said that it was about general estate planning and that the precise terms of David's and April's wills would not have been discussed in her presence. If and to the extent that she meant that she did not know even in broad terms how their estates were to be held after their death, I do not think she is right about that. Even though no final decisions were taken at the meeting, and the discussions focussed on generalities rather than the detailed drafting, I am satisfied that Leigh will have left that meeting well aware that it was not intended that either David's or April's wills, both of which were then being discussed, would include her as a beneficiary. The role proposed for her was to be as trustee, a role which she was happy to accept.

90. I reach this conclusion because, although I accept that part of Leigh's evidence which was to the effect that the matters being discussed were all very new to her, there is no evidence from the documents relating to that meeting that she was even being contemplated as a beneficiary at this stage. Mr Frostick and Mrs Barrett had both been providing professional services to the family for many years and they were clear that nothing to this effect was raised with them. In my judgment, as any prospect of Leigh as a (let alone the) beneficiary would have gone to the heart of what was being discussed, it would have been very surprising if such a significant possibility had been under consideration by April and David but was not recorded.

91. I also think that it is improbable that whatever David might have said at the NLC lunch was in any material respect different from, let alone inconsistent with, what he discussed at the meeting held with his professional advisors at the same time. As the meeting took place after the NLC lunch, I also think that it would be very surprising if it did not register with Leigh that what was then being discussed appeared to cut across what she now says she had been promised a short while before at a meeting which was so recent and significant that it must have been fresh in her mind.

92. In my judgment, it follows that, even if Leigh had been given the clear assurance about absolute ownership that she now claims, she must have realised almost immediately either that David had not articulated what he meant to say in a manner that reflected his true intention or that she had misunderstood what had been said. It is also striking that Leigh said nothing at the time about this disconnect, an omission which points to a conclusion that the assurance in the terms advanced was never given, or even if it was, that it was not a statement, assurance or promise on which it was safe or reasonable for her to rely.

93. There are also a number of aspects of what Leigh says was said by David at the NLC lunch which are inconsistent with her case that whatever was said took the form of the assurance which she now says was given. In my judgment they are much more

consistent with an expression by David of a desire to see whether Leigh was willing to take on the role of trustee or other unspecified fiduciary, in a form which gave her an influential voice in what might happen to Wotton going forward. A trustee with management responsibility is a much more probable construction of what David had in mind and said.

94. This role would have been consistent with the proposal, which Leigh had in principle accepted, that she would become one of the attorneys under April's and David's new EPAs. Contrary to Leigh's pleaded case, I have concluded that a plan that she would inherit Wotton is most unlikely to have been a motivation behind that proposal. The motivation for those appointments was that Leigh was a very close and younger friend whom they trusted and of whom they were very fond. Critically, as well, she was perceived by them to have the aptitude of a trained solicitor who had shown herself very willing to assist in the management of their affairs going forward and to provide them with support in the difficulties of the relationships with their own children, whose own health problems made them unsuitable to fulfil that role.

95. Another reason why I think it is unlikely that Leigh was given any assurance in the form she now says she remembers is the fact that April was still alive at the time the assurance was said to have been given, and Wotton then belonged to her, not to David. There is no evidence that Leigh discussed with April what she said she had been promised by David. Of course, there are contexts in which what is said by one spouse can be taken to be an accurate reflection of what is intended by the other, and more importantly can be relied on as such, but I do not think that this was one of them.

96. This was significant because Leigh knew that Wotton then belonged to April not David. At this stage, there was no particular indication that April would die first, and Leigh had always assumed that Perdita and Mark would take over Wotton in due course. In effect, her case is that, in the absence of April, she was being told by David that very valuable property which Leigh knew still belonged to April was no longer to be left to one of their children (or their grandchildren) but was to be left to her instead. Even if it were to pass through David's hands if April were to die first, it is peculiar that there is no evidence that Leigh was assured by the spouse from whom the property really emanated that she would ultimately be what she came to call the "heiress".

97. As I understood her evidence, Leigh said that she did not remember being that surprised by what David had said at the NLC lunch, because there was what she described as an obvious problem in the light of Perdita and Mark's separation. She said that she had what she called a sense of responsibility, pride and fate from what she was told. I do not doubt that she felt anyway the first two of those emotions, because it is plain that David had by then developed great trust and confidence in her and her abilities. But I think that the fact she was not particularly surprised is far more consistent with the pride which she felt in David's recognition of her legal and managerial abilities as a prospective steward or trustee, than it would have been in his choice of her as the recipient of an absolute ownership interest in a valuable historic property.

98. This is also consistent with the way that Leigh says the assurance was actually expressed: "David asked would I take on Wotton after him and April". It had been

pleaded slightly differently in Leigh's Defence, where it was said that David told her that he and April "would like her to take on Wotton after their deaths". In my view, both of these formulations suggests a reference more to the burden of the responsibilities which accompany management and trusteeship than they do to the benefit of inheritance with the freedom to treat Wotton as her own.

99. Indeed, I agree with Ms Angus that an intent that she should have a management role is more consistent with the thrust of the way in which Leigh first advanced her case in the letter of claim sent by her solicitors at the outset of these proceedings. In that letter there was a focus on an assurance that David "intended for her to take over the maintenance of Wotton" and asked her if she would "look after" Wotton after he and April died. This is consistent with what David said in his Reply and Defence to Counterclaim, viz. that he remembered that there was some discussion regarding the future of Wotton and who might take on what he called its "stewardship", another concept which was also referred to in the letter of claim (although as Ms Reed pointed out in her closing submissions it did not feature in David's diary or any contemporary document), and that it was considered that Leigh might be an appropriate person to do so. In my judgment this is very much closer to what was actually said than any language which pointed towards, let alone promised, outright or absolute inheritance by Leigh.

100. The use of the word "stewardship" requires some explanation. Ms Reed said that it was a later gloss David gave to what he had said at the time. I do not think that is correct. The word was originally used in the letter of claim written by Leigh's solicitors before the issue of these proceedings in order to describe the future role that David had in mind for Leigh at the time of the NLC lunch. It was then picked up by David's solicitors in their letter of response and in David's Reply and Defence to Counterclaim as a useful description which covered in general terms the nature of what David had in mind. Whether or not that precise word was actually used by David at the NLC lunch, I think that what he said conveyed to Leigh that stewardship of Wotton was what he had in mind. It was Leigh's word and the use of that concept in her letter of claim reflects the fact that she too understood that stewardship underpinned David's intent.

101. I also consider that, when set in their proper contexts, all of these ways of expressing what was said were very much closer to an expression by David of what he would then have liked to happen i.e., a statement of present intent. They fall well short of a promise or assurance that it would. Indeed, the way that Leigh expressed her appreciation of the position is also consistent with this conclusion because she spoke of her 'understanding' of what David meant by the phrase "take on" and that her understanding was of April's and David's present intention. Thus, she said in her witness statement that "it was my understanding that April and David intended that I would be the next "heiress" of Wotton House" and she concluded her oral evidence by saying "I understood David wanted me to be the next person to take on Wotton." Although she went on to say, "I was going to be the next heiress and it would follow in my family line", the language she recollects taken as a whole is more consistent with a current wish demonstrating present intent, than it is with an assurance that something was to happen in any event, and could not reasonably be taken as such.

102. Leigh also explained that David did not discuss the practicalities of what she called "my involvement in the succession of Wotton at that lunch" although she assumed

that professional advisors would be needed to deal with tax and ownership transfer issues, and in her oral evidence she accepted that taking on Wotton would require her to fulfil many roles and that trusts would be involved. In my view, this of itself gives some sense of the limited extent to which David's thinking about the future had by then developed and that this must have been obvious to Leigh. The two go together, but the relief which Leigh said that David displayed when she agreed to take on Wotton is consistent with a focus on finding somebody to take on the role of 'steward', whom he hoped would fulfil his expectations for the ongoing management of Wotton, rather more than the obvious benefit which would accrue to the recipient of an asset to be inherited without strings attached on his death.

103. It is also relevant to an assessment of what Leigh might reasonably have thought she was being told because, as she said in her oral evidence, "nothing was ever very clear when you had meetings with David and April because it went on for so very long". This was an answer Leigh gave when she was asked by Ms Angus why she did not appreciate from the 17 July meeting with Mr Frostick that she was not getting anything under April's will, but it reflected what I am satisfied was the way that David expressed himself when talking about matters such as the future of Wotton. Nothing was ever very clear.

The 2008 wills

104. On a domestic and family level, the relationship continued to be close after the NLC lunch. Leigh said that from around 2007, they would spend every Christmas or Boxing Day and every Easter with David and April, and continued to do so until the outbreak of the Covid-19 pandemic. She said that, in 2009, she and Robert hosted celebrations for Patrick's 40th birthday in Sussex, an occasion that was attended by David, April, Patrick, Perdita and her daughter Natasha. She also identified one other occasion on which April came to stay with her in Sussex in February 2011 and gave examples of an occasion on which David attended Rosina's and Edward's school speech day and said that he wanted to attend a grandparent's day at their prep school.

105. All of this was consistent with Leigh being treated by David and April as part of their family. This was undoubtedly fortified by the fact that April's EPA had had to be registered in April 2010 and Leigh in her role as attorney then had some involvement in the execution of legal documentation once April no longer had capacity to do so for herself. At this stage, however, her role as April's attorney seems to have been more concerned with the time and effort which she devoted to helping David in his care for April. This commitment increased as April's medical condition deteriorated and the impact of Alzheimer's on the way she was able to lead her life increased.

106. The next event of significance was the execution by David and April of their wills (the "2008 wills"), something that had been discussed at the meeting with Mr Frostick in July 2007. In the event they were not executed until 17 August 2008 and took a slightly different form from that originally intended. They each appointed the other and Mr Frostick as executors and trustees. April gave her residuary estate (including Wotton) to David but, if he should predecease her, gave Wotton to the old WEMF and her residuary estate to Perdita. David gave a legacy of £100,000 to SANE and his residuary estate to April but, if April should predecease him, gave his residuary estate

to Perdita and in default her children. The effect, therefore, was that, if April died first, Wotton would go to David and then on his death to Perdita and if David died first Wotton would go to the old WEMF. Neither of the 2008 wills made any mention of Leigh either as a beneficiary or a trustee. On the face of it, the terms of the 2008 wills are impossible to reconcile with the assurance that Leigh says she was given by David at the NLC lunch.

107. Leigh's evidence as to when she saw the 2008 wills themselves is unclear. In her witness statement she said:

> "I was also aware from David that shortly after my appointment as his and April's attorney, they made new Wills in 2008. David would have discussed this with me afterwards and then either David or Nigel on David's authority must have given me copies. I had no involvement in the drafting of those Wills. My understanding of the background for the 2008 Wills from speaking to David and April was that they wanted to alter their succession plans in the light of Perdita's state of health (as I have described above) and recent divorce, but they were a temporary measure until the future of Wotton had a finalised structure that was fully thought out. As it was becoming increasingly apparent that Patrick, Perdita, and April would be unable to take over Wotton, there was a real possibility that there would be a lacuna in a smooth succession if, for example, David predeceased April."

108. In her oral evidence, Leigh initially said that she did not think that she saw the wills until after April had died (which was much later in January 2014), but she then accepted that she must have been wrong about that, because there was an entry in David's diary from June 2012 in which David and Leigh went through the will together in the context of a discussion about how Wotton could be left to Patrick, but with the property itself to be managed by Leigh. David said "Feel better after a working Sunday with Leigh going through A's + my wills working out how to leave W free of IHT to Patrick, administered by Leigh as Regent. Not quite there yet – we seek Counsel's opinion." Even June 2012 cannot really be said to be "shortly after" she became April's and David's attorney and it remained unclear when it was that she said that she first saw the wills themselves. The following passage from her cross-examination is relevant to this issue:

> Q. So it is now your case that you didn't actually see the Wills after they were made? You didn't see them until much later?
>
> A. David wasn't in the habit of showing very private documents. As we saw in the e-mail with Natasha he said, should he show Leigh the Will, the 2015 Will, so he wouldn't have created these and then suddenly handed them over to me. It would have been apropos of, perhaps something else needs to move now.
>
> Q. And did he discuss with you what they said?
>
> A. I mean, I would have known that it's going into a trust, so as far as that goes, yes.
>
> Q. Did you know that April had left Wotton to David?

A. Yes, I mean. Into spouse and then into the WEMF trust.

Q. So you knew that. Something I am struggling with is how, after the lunch, if you knew that was the term of April's Will and also did you know that David left his estate to April.

A. Yes.

Q. Failing which Purdy, how could you have expected, knowing that, to inherit Wotton?

A. Because of the trust and because of Patrick. So something obviously had to be -- something had to change because somebody would need to monitor Patrick, look after Patrick.

Q. So, is it fair to say you knew that, unless they changed their Wills, you wouldn't inherit?

A. But I was going to be a trustee, so I would have a part of a role even at the simplest base.

Q. But not in these Wills you are not a trustee.

A. Not by that time, but it was all part of the process, of building up to a sustainable future in legal terms.

Q. Yes, I am just trying to capture what your thought processes were at the time in 2007 or 2008 when David discussed the terms of these Wills with you.

A. But he wouldn't have discussed the terms of these Wills in 2007 because they weren't drafted.

Q. 2008, I beg your pardon.

A. But I don't –

Q. You said that you didn't -- you knew what they said, okay. I accept he may not have given you copies, but what I am trying to grasp with you is, presumably you would have also realised, because it would be very hard not to, that unless these Wills were changed, you were not going to inherit anything from Wotton?

A. That was all the process. That was part of the process. That's why we had lots of meetings with Gilda and Nigel. But I would not have seen those Wills in 2008. I am pretty sure David wouldn't have just handed over them to me and showed them. It was all part of April's declining capacity and what is going to happen and something needs to be done.

Q. So I think the answer is yes, isn't it? You knew, unless the wills were going to be changed, you wouldn't inherit?

A. Outright, but I would still be the main beneficiary and the main manager and the main chatelain.

109. I am satisfied from this exchange that, although Leigh probably did not see the 2008 wills themselves until later on, she knew their contents not long after their execution and in particular that she would not inherit unless those contents were changed. Even any contemplated trusteeship, which would not of itself indicate the absolute inheritance she now claims, did not on the face of the 2008 wills extend to her being a trustee of Wotton. She sought to explain the irreconcilability between those contents and what she said she had been assured, not only on the basis that the 2008 wills were a temporary measure, but also on the basis that they were "all part of the process, of building up to a sustainable future in legal terms". I found this answer difficult to accept in circumstances in which (a) there is nothing to corroborate the 'temporary measure' assertion and (b) the terms of the 2008 wills were irreconcilable with the assurance she says that she was given by David. I think that Leigh is mistaken in this part of her evidence.

110. It is of particular significance that they were executed a full year after both the original discussions with Mr Frostick in which she was not identified as a beneficiary and the NLC lunch. I am satisfied that, if the assurance had really been given, there would have been both some form of record which reflected her putative role as a beneficiary and some form of explanation of why it was that a process or inconsistent temporary measure was required; there is none. I am also satisfied that it was unreasonable for a solicitor in the position of Leigh to rely on the assurance she now says she had been given at the NLC lunch in knowledge of the contents of the 2008 wills, and with no written record of the inconsistent promise she said that David had made.

111. On 23 February 2009, David and April both executed codicils to their 2008 wills by which they each gave to the trustees of those wills, £50,000 to be held on trust for Patrick and Perdita and any issue, together with their spouses. The clause by which each of these gifts was made only took effect in circumstances in which the other spouse was the survivor. It follows that the effect of the codicil was to establish a trust fund from that part of each testator's residuary estate which would otherwise have passed under the original will to the other spouse. The execution of the codicils amounted to a further confirmation in 2009 that Leigh was not then intended by either April or David to be a beneficiary or a trustee under the terms of their wills. The codicils were further testamentary documents executed more than 18 months after the NLC lunch. In my view their execution gives the lie to Leigh's suggestion either that those aspects of the 2008 wills which did not recognise her as a member of the class of beneficiaries were only a temporary measure or that it was reasonable for her to assume that they were.

<u>The period between the NLC lunch and October 2011</u>

112. Leigh's case was that, after the NLC lunch, she started to rely on David's assurances by acting to her detriment in a number of respects. In particular it was pleaded that she became increasingly involved in Wotton affairs by drafting contracts and dealing with tenants and contractors. This allegation was primarily made in support of her case that there was a build-up to the time in 2017 when she moved into Wotton, but it is of some relevance to understand the extent to which this had started in the years between 2007 and 2011.

113. It was not in issue that, during the period between the NLC lunch and October 2011, David was continuing to run Wotton. The evidence is that Leigh had some involvement and was asked by David to assist from time to time, but over the course of that four-year period her role can properly be described as very limited (although I have little doubt that on a personal level she continued to see a lot of the family and to assist with a number of family matters). Thus, the examples to which my attention was specifically drawn and about which Leigh was asked in cross examination were a brief exchange of e-mails with David in June 2010 in relation to the bankruptcy of a tenant of a cottage at Wotton. She also commented on some draft correspondence in July and August 2010 between David and Mrs Blair in relation to the Blair family's interest in the orangery. In my view, this was exactly the sort of input which anyone might expect to ask of a family member or close friend who also happened to be a solicitor. There was also some very short correspondence in relation to WHL, in 2008 and 2009, but Leigh accepted in her oral evidence that she was simply acting as conduit to Robert (through the joint e-mail address), who was administering WHL and charging for those services.

114. Towards the end of this period, Leigh attended a meeting of the trustees of the old WEMF held at Wotton House on 16 September 2011. This was the first time that she had attended such a meeting and she did so in her capacity as April's attorney, her EPA having been registered during the course of 2010. As a result of the meeting Leigh agreed to do two things. The first was to chase the contractor in relation to an issue which had arisen on the Rotunda roof. She did so and charged a fee of £350 (for which payment was sought from the relevant insurers), which she accepted constituted a fair amount for the time she spent on the issue. The second was some correspondence with John D Wood in relation to planning permission for a building at Wotton known as the Terrapin. Leigh said that this took up three to five hours of her time over a period at the end of 2011.

115. In light of the fact that her substantiated involvement in Wotton's affairs during this four-year period was so limited, Leigh was challenged as to why she had given the impression in her witness statement that it had increased materially after the NLC lunch. This is relevant not just to the allegation of detriment, but also to the allegation made in the particulars to paragraph 72 of her Defence that the assurance said to have been given at the NLC lunch was repeated to her by David on numerous occasions and was the subject of a mutual understanding between them. Her answer was that there was certainly a lot more involvement than is evidenced by any of the documentation before the court. In her closing submissions, Ms Reed provided the court with a list of matters in which Leigh was involved in the form of an Excel spreadsheet. From this it is possible to identify by reference to the underlying documents some further very small Wotton-related matters in which Leigh appeared to have been involved, but was not of course able to deal with matters which were not evidenced by the documents. In the event this document operated as a useful cross-check, but did not affect my view of the position overall.

116. I am sure Leigh is right to say that everything she did in relation to Wotton will not have been recorded or evidenced in writing, but given the range and type of documentary material that has been disclosed, I am satisfied that anything material that might properly be treated as work done by way of assistance in the management of Wotton and David's Wotton-related affairs will have been evidenced in writing in

some form or other. To that extent, such further involvement as Leigh had, is properly to be characterised as discussions between her and David about a subject in which she was interested and in respect of which she hoped and expected to be able to play a more important role in the future. More importantly for present purposes, I do not think that what Leigh did in relation to Wotton during this period comes anywhere near establishing that such detriment as she may have suffered can properly be characterised as substantial. It also does nothing to support her case that her involvement, such as it was, provides positive corroboration either that the assurance claimed was given at the NLC lunch, or that she and David were proceeding on the basis of a mutual understanding that she would inherit Wotton after he and April had died.

The October 2011 dinner

117. The reason I have described the limited role fulfilled by Leigh at Wotton during the four-year period between the NLC lunch and October 2011 is that this period ended with the next specific assurance on which she relied. The occasion was not mentioned in Leigh's statements of case, but she said in her witness statement that a promise was made to her at dinner with David on 27 October 2011 at a Thai restaurant in Upper Street, Islington. She said that "on that occasion David categorically stated that I would be given Wotton". She said in her witness statement that David's diary entry was consistent with her recollection. This was a reference to the diaries disclosed in these proceedings of which the relevant entry is as follows:

> "There is now no going back. Wotton is promised to Leigh + after her Rosi, so continuing the female line of ownership. Sealed over dinner at the Thai restaurant in Upper St next door but 2 to Granita. So months – years – of prevarication are ended; perversely just after both Jacob Rothschild + MW had argued against such a course. Am I mad? Or reckless? Or just treading my usual wayward path, unable to do the expected, normal, rational thing? It's fitting that we [were] talking all around our shared SL experience + PNG. When will I ever learn? Now we have to make the deal concrete through changes to our wills, while not letting on to anyone. My justification lies in Leigh's proposal that A leaves W to Patrick in 1st instance, to be managed by Trust, so going with A's only expressed wish."

118. Taken in isolation, this diary entry is clear support for Leigh's case as to David's intentions at the time. In assessing the extent to which a free-standing assurance was made at this meeting, it is significant that much of the diary entry is expressed in language that is much more certain than the imprecise indications given by David at the NLC lunch. In particular David refers to having made a promise and the word 'ownership' is used with reference to Leigh's role.

119. There was also a much later diary entry which alluded to this occasion. The entry was primarily concerned with the Blair family's interest in the orangery. It is dated 6 June 2013 and took the following form, which Ms Reed said demonstrated that David regarded himself as bound by the assurances he had given at the Upper Street restaurant more than 18 months earlier:

> "Michael brings the bedroom carpet to London, hangs the Gwyneth painting on the top stairs, mends the table and takes the bigger Gwyneth back to Wotton. Things are beginning to fall into place. But Leigh rings and throws a boulder into the calm pond. Insists that I don't sell the orangery to Cherie because she wants to play around with it herself one day. I suddenly realise I'm trapped for good. I can deal with Cherie on her own but not if I'm having to fend off Leigh at the same time. I can never be free at Wotton again. Known it in principle ever since our Upper St dinner (how like Tony and Gordon) but this is the first time that the practical consequences become so clear. She now feels strong enough to question my motive for any need to sell the orangery. Now Wales and Grenville have gone I can't need the money."

120. Reverting to the first entry, it recognised that steps still had to be taken before what David called the 'deal' could become concrete. In my judgment, both entries are equally consistent with a promise of something, as yet unclear, falling well short of any form of absolute ownership. As Leigh accepted in her oral evidence, the plan could only be implemented if changes were made to the 2008 wills, and she knew that was the case. As will appear, this remained the position at the time of the second diary entry which was made at a time when discussions in relation to the future of Wotton were very much focussed on a trust structure in which Leigh would have an important role but would certainly not be the only beneficiary.

121. Both of the diary entries also reflected the continuation of an agonising by David as to whether what he referred to as the promise that was sealed over dinner was the rational thing to do. He also felt the need to express the justification that might otherwise not exist, which was that Wotton would be left to Patrick in the first instance to be managed by a trust, and that this was April's only expressed wish (a reference it would appear to wishes expressed by April before her Alzheimer's disease had progressed to the extent that her EPA had to be registered).

122. Leigh said in her oral evidence that April had also expressed a wish that she should inherit Wotton, a wish which would have given greater substance to her case. However, this is not what is recorded by David. Indeed, he says that April's only expressed wish was that Patrick should inherit in the first instance. In my judgment, Leigh's evidence on this point was unconvincing. It was based on a single occasion as long before as 2000 when she told Leigh "I wish we could just adopt you". In my view a statement to that effect falls well short of establishing that April wanted Leigh to inherit Wotton, let alone an assurance that she would. In any event what was said by April was long before her 2008 will and her 2009 codicil were executed and was contradicted by both of those documents.

123. I shall come on to what happened with the change to the wills, but the proposal reflected in the October 2011 diary entry meant that the immediacy of Leigh's interest would depend on the length of time for which Patrick lived. This remained the case at the time of the second diary entry. He was two years younger than her and, although she said in evidence that he might die early because he was very unhealthy, the highest that Leigh's expectations could be put, if based on what she was told as reflected in the 2011 and 2013 diary entries, can only have been that she would only inherit if there were no issues in making the changes to the wills and if she outlived Patrick. The diary entry is, therefore, inconsistent with the representation she now says was made to her that she would inherit on David's death.

124. In his witness statement for the trial, David said that he has no memory of either making the diary entry or the dinner in Islington to which it related. But David's memory is poor on many matters and, as I have already said, the expression of intention reflected in the diary entries is clearer than the evidence as to what occurred at the NLC lunch. Despite this I am not satisfied that it was reasonable for Leigh to conclude that she had been given an unambiguous or unconditional assurance at this stage that she would be the absolute owner of Wotton in due course, or that it was reasonable for her to rely on what was said to her (whatever that may in fact have been) in a manner that amounted to substantial detriment.

125. This is partly because I have no clear evidence as to what was in fact said. Many of David's diary entries give the appearance of rumination and introspection, as much as they do a reliable record of what occurred. This is particularly important for the purposes of the jurisdiction on which Leigh relies, partly because there is a critical distinction between a commitment by David to leave property to Leigh and an expression without commitment of a current intention to do so. But, as will appear, it was also because an absolute transfer of ownership was wholly inconsistent with the various structures that were under consideration at the time that the diary entries were being made. In the context of the complexity that everyone knew existed in relation to giving legal effect to David's wishes, I am not satisfied that whatever was said in the Thai restaurant in Islington amounted to the former rather than the latter.

126. There is also another difficulty with Leigh's evidence on this point. I do not think that Leigh has any unprompted recollection of the words that were used by David. Whatever was said by David is now said by Leigh to have been a clear and categorical assurance, but it was not mentioned in her letter of claim, any of the pre-action correspondence or her Defence and Part 20 Claim. For this reason it is rather surprising that she said in her witness statement that what was recorded in David's diaries "is consistent with my recollection". The absence of any mention of this meeting in the early stages of this dispute is more consistent with it being the case that her sight of the diaries jogged a memory rather than it being (as she implied in her witness statement) the other way round. Leigh said in her oral evidence that the reason for her failure to mention it any earlier was that there were so many assurances she had been given by David. This is not very convincing in circumstances in which, when it came to the trial, Leigh placed so much reliance on what had occurred at the Thai restaurant. I think that, until she saw the diary entry, Leigh had no memory of what had been said at the dinner in Islington. If she had, she would have raised it earlier.

127. The fact that Leigh has no unprompted recollection of her own in relation to this meeting tells against what was said as having the significance she now attributes to it. It also means that I have approached her evidence as to the precise form that the assurance took and the basis for the understanding which she then developed with some care.

128. Another reason why I am not satisfied that any assurance Leigh was given at the October 2011 dinner was in its proper context "clear enough" for her to rely on is because (as Leigh's own evidence indicates), David could be long-winded, talking around problems without getting to the point. Clarity of expression on this kind of issue was not David's forte and Leigh has not satisfied me that what was actually said to her was sufficiently unambiguous, more particularly having regard to the

discussions which were still plainly going in the early part of the following year (and thereafter) as to Wotton's future, a point with which I shall deal shortly. I do, however, agree that what was said on this occasion must have fortified Leigh's belief that she had been selected by David to play an important role in the future of Wotton going forward.

129. In short, I have concluded that it is more likely than not that, whatever was said did not amount to more than an expression of David's intention that Leigh should take on ownership of Wotton in the future, but it could not reasonably have been thought to have gone any further than that. The reorganisation of how Wotton would devolve would be complex and, as I shall come on to explain, there was much more to be done to put in place what was required in order to reflect what the diary entry evidences to have been David's then current intention. In my judgment, even if what was then said might have been taken by Leigh as an assurance capable of having the binding effect she asserts, it would not have been reasonable for her to have assumed that unforeseen difficulties might not arise, more particularly as she cannot have anticipated how far into the future such current intentions might have been required to project. The fact that she was both a solicitor and not a blood relative is a material part of this conclusion.

The period between the October 2011 dinner and Patrick's death

130. There was then a five-year period between October 2011 and 14 October 2016 (when Patrick died) in which Leigh continued to participate in the life of the Gladstone family, and also to be engaged in some activity assisting in the management of Wotton. During this period, April died and a number of events occurred relating to the ultimate disposition of property David inherited from April, most particularly Wotton itself and the Bonds.

131. At the beginning of this period, the deterioration in April's condition led to the recruitment with Leigh's assistance of a carer (Debbie) to assist David. This occurred in November 2011. Dr Flinders was very concerned about the quality of the care which Debbie provided, and after April had been assessed by a psychogeriatrician in March 2012, she was admitted into residential care at Lennox House, a care home close to Mountfort Terrace. Disagreement about what should happen seems to have caused some tension between Leigh (who was of course one of April's attorneys) and Dr Flinders.

132. At about the same time, at a meeting in March 2012 recorded in a letter from Mr Frostick to David of 29 March 2012, David told Mr Frostick that he did not consider that Perdita was capable of dealing with any substantial assets but that he wished to make reasonable provision for her and her family. In his letter, Mr Frostick then recorded that:

> "You considered that the future of Wotton for example may well be best provided for by making provision for Leigh White and her family. You told me that Leigh had been a considerable support to you and to April through your current difficulties."

133. David had no memory of this letter, but whatever he may have had in mind by the word 'provision', this language reflects a current intention to consider providing Leigh and her family with an as-yet uncertain interest in assets to facilitate the maintenance of Wotton itself in the future. It was expressed in very much more cautious language than had been used by David in his diary entry in relation to the October 2011 dinner and falls well short of any suggestion that a clear assurance to effect a future transfer of ownership had already been given. Indeed, it is a clear indication that David had not conveyed to Mr Frostick any suggestion that anything more for Leigh was contemplated, let alone already promised.

134. Mr Frostick went on to record that he understood that April would wish to make provision for Patrick and there had been a discussion of the possibility of setting up a suitable form of protective or discretionary trust, along the lines of what had already been established as Patrick's trust on the variation of Mrs Brunner's will. Mr Frostick also recorded that David wanted Leigh's children to be the ultimate beneficiaries of Patrick's trust on his death. He went on to record that they had discussed the tax advantage of making gifts to charities and that David had concluded that he would like to make gifts to Perdita of the London properties and needed to take into account the needs of Mr Harrison, who was to be the recipient of a substantial legacy.

135. David replied in a letter to Mr Frostick on 3 April 2012, which included the following paragraph, which in my judgment is inconsistent with any suggestion that David thought that he had already promised Wotton to Leigh or that the provision for Leigh and her family referred to in Mr Frostick's 29 March letter was Wotton itself:

> "The other big issue we need to address is the future ownership of Wotton House - as opposed to the Grounds: should we try and set up a separate Maintenance Fund for it? For whose benefit should it be? What part can Patrick play, etc? … I think you are absolutely right to suggest that we need specialist advice. Should that in fact be the first move, with our next meeting, to which Leigh would be invited, to follow receipt of the advice?

136. In my judgment, it is clear from this correspondence that David was a long way from finalising his thoughts about who should ultimately benefit from Wotton itself on his death, which he had by then appreciated was likely to be after April's, and how that should be achieved. He indicated that he had in mind making provision for Leigh and her family in the context of preserving Wotton for the future, but I am not satisfied that his thinking had got any further than that. As Mrs Barrett accepted in her evidence, it was no surprise that Leigh was going to be involved in the estate planning given that she was proposed as some sort of beneficiary, but there is no suggestion that an outright transfer to her was even in the frame as an option. Indeed it was made explicitly clear at that stage, that transfer into some form of restricted fund or charity remained a possibility. There was also no thought that Leigh or her family might have anything to do with the London properties, which at this stage in David's thinking were to be allocated to Perdita and her family.

137. The next event was that, in the light of the deterioration in April's condition, the old WEMF trustees decided (at a meeting held on 24 April 2012) that Leigh should replace her as a trustee. At the meeting at which this was decided, which was also attended by Leigh, it was agreed that Patrick should be involved in the future of Wotton and the old WEMF in accordance with April's wishes and Leigh said that she

saw herself as a support for Patrick and would do her best to facilitate his involvement.

138. At the same meeting it was recorded that consideration was given to the creation of a discretionary trust of which Patrick could be a beneficiary and also to the creation of a charitable trust into which the trustees could forward all or part of the assets of the old WEMF. The objects of the trust would be the gardens and the maintenance of musical arts events such as had been carried out hitherto by David and April in Wotton House. There was also a discussion of the possibility that Wotton House itself might be put into a proposed new WEMF settlement, a possibility which was specifically referred to in the notes for the meeting prepared by Mr Frostick.

139. In her oral evidence Leigh accepted that there was no suggestion at that meeting that she was to have a beneficial interest in Wotton in any event, and I am satisfied it would have been mentioned either if David had already concluded that that was to happen at some stage come what may, or if Leigh had really believed that this would happen in any event, rather than having some form of hope or expectation that one day it might. In short it is clear that much of what was under discussion at this stage was inconsistent with any idea that Leigh had been assured that she would end up as the person to whom (come what may) Wotton would devolve and Leigh knew that this was the case. What was discussed, however, was that David would write a clear statement of wishes which seems to have generated what happened next.

140. Not long after this meeting, Leigh and David had a discussion (while Leigh was staying at Wotton for the weekend) about the 2008 wills. This was recorded in the 10 June 2012 extract from David's diaries that I have already cited. The discussion was about how Wotton was to be left to Patrick free of IHT, although with Leigh as 'regent'. I cannot be certain what the word 'regent' may have meant to David and Leigh, but its most natural meaning conveys the concept of governance on behalf of someone else, either because they are incapable or because they are a minor. In my judgment the likelihood is that the concept of regency as used at this stage was more about the appointment of a fiduciary with powers to act as such, than it was about the beneficial inheritance of property. The evidence is consistent with that being what they both meant. I do not agree with the suggestion made on behalf of Leigh in closing that the concept of regency is likely to have been limited to involving Patrick as much as she could.

141. There also seems to have been another discussion relating to the future of Wotton between David and Leigh on 5 August 2012 and David's diary entry gives some sense of the extent to which David was still wrestling with what to do. In that entry, David records that he was too tired to think straight, and Leigh accepted that this may have been one of the occasions on which she was taking the lead in discussion about the future.

142. It was around this time that a document which came to be called the Wotton Charter was first discussed. It was designed to be a document setting out David's and April's wishes for Wotton and it went through a number of drafts, which David worked on in conjunction with Leigh. The outline objectives set out in the first draft referred to Leigh's role as being to act as regent, attorney, trustee and guardian for Patrick and concluded with two options, one being to settle Wotton House on Patrick now, and the other being to put Wotton as a whole into the existing maintenance fund (by

which David meant the old WEMF). Mitigating the effect of IHT was also an important objective.

143. Leigh was asked about her notes of the discussions in relation to the Wotton Charter. It is very clear, both from them and her oral evidence that many different ideas were (as she put it) being "mooted, mooted, mooted, mooted, mooted" and this carried on until the time at which Boodle Hatfield first became involved in September 2013 (as to which see below). In short there were a whole series of options on the table, but none of them referred to a long-term objective that, after David's and April's death, Leigh was to inherit an outright interest in Wotton, or indeed have any beneficial interest in it.

144. A draft of the Wotton Charter was then shared by David with Mr Frostick at some stage before 17 November 2012. The draft sent to Mr Frostick was probably the draft on which Leigh had commented and returned to David on 11 October 2012. As with all the drafts of the Charter, it refers to "whoever takes over Wotton" as being required to abide by a Code of Conduct. There was no suggestion in the document which Leigh had seen, and on which she had commented, that she might have any beneficial interest in Wotton, let alone an absolute interest. Her role was to be as attorney for Patrick.

145. Mr Frostick's reaction in his e-mail of 17 November 2012 was that the proposals were very interesting and compelling but involved a larger project than that contemplated by his initial limited concerns about rearranging the trusteeship of the old WEMF due to April's incapacity which had been discussed at the trustees' meeting on 24 April 2012. Mr Frostick expressed the view that advice about the future of Wotton would best be obtained from a specialist private client solicitor, but that they could still go forward separately to instruct counsel in relation to the narrower issue of the trusteeship of the old WEMF. He suggested that it would be good to have a meeting at which Mrs Barrett and Leigh might also be present to review David's paper, Leigh's comments on it and his own draft, with a view to agreeing how to proceed. That meeting was held on 10 December 2012.

146. April's incapacity was one of the issues that then needed to be dealt with in relation to the old WEMF. It was decided to obtain an opinion from counsel (Mr Christopher Semken) on whether a court application was required in order to replace April, together with a report on April's capacity and HMRC approval. At the same time it was also decided to seek general advice from counsel on the future of Wotton. The recommendation of Mr Semken by Mr Frostick was based on a list prepared by Leigh and was accepted by David after what he called guidance "by my in-house legal team", a reference to Leigh.

147. The version of the Wotton Charter enclosed with the instructions to Mr Semken dated 15 March 2013 had been prepared with the involvement of David, Leigh and Mr Frostick, all of whom commented on the drafting. It fleshed out what was described as April's and David's wish that whoever takes over Wotton should abide by a code of conduct. That code of conduct provided that Wotton should remain in private ownership and carry on the tradition of openness and inclusivity established over the past half-century. It should be used to promote in particular (a) the discussion of political and human rights issues free from sectarian or party-political affiliation, (b) dissent as a positive value, (c) scholarship in the field of architecture and landscape

gardening and (d) the performance of live music and the encouragement of young musicians.

148. In pursuit of those ends, the objectives identified were to avoid a forced sale through excessive liability to IHT, to set up a long-term tax efficient structure to ensure the future of Wotton being managed or owned by individuals observing David's wishes to sustain the code of conduct and, in the short term, to devise a way of passing ownership of Wotton House from April to a trust in which their son Patrick would be involved at least in name.

149. The focus was on Patrick's position, but Leigh was mentioned as the person who would handle Patrick's affairs on a 'Regency' basis acting as attorney. David also mentioned that "the aim is therefore to allow Wotton House to be owned nominally by Patrick but actually run managed [sic] by trustees including [Leigh] on his behalf". That was the full extent to which Leigh was mentioned in the Wotton Charter. More particularly, there was no reference to her as being the ultimate owner. No good reason was put forward as to why this was not mentioned if that was what was intended.

150. Mr Semken was also told in his instructions that the future of the old WEMF was of concern to the trustees. He was also told that "Wotton House and the Pleasure Grounds (benefited by WEMF) are vested in April Gladstone and after the death of David and April Gladstone there is some practical uncertainty as to how the affairs of Wotton Estate can be ordered in the absence of family beneficiaries who may be able to carry the burden." It was also said that the trustees were considering establishing a charitable trust and Mr Semken was pointed to the Wotton Charter as reflecting the current thinking. Leigh participated in the preparation of those instructions in the same way that she had participated in the drafting of the Wotton Charter. She therefore knew that they made no mention of, and were in a number of respects inconsistent with, the assurances that she now says had been made to her by David in 2007 and more recently at the end of 2011.

151. Before Mr Semken had completed his advice, Perdita executed a power of attorney (not an EPA or LPA) in favour of Leigh dated 25 April 2013. This was witnessed by David and seems to have been a response to the financial difficulties in which Perdita then found herself. Leigh explained that there were a number of occasions over the course of the next few years in which she helped Perdita in the organisation of her finances. She said that those financial difficulties persisted until Perdita sold her property in Hackney in January 2015 and moved into one of the flats in the London properties. Eventually, on 1 July 2020, Perdita executed a lasting power of attorney ("LPA") in favour of Leigh, for which Mary acted as certificate provider.

152. In his Note of Advice dated 24 May 2013, Mr Semken dealt primarily with the process for replacing April as a trustee of the old WEMF, but he also expressed views on possible ways forward in light of the final version of the Wotton Charter. Mr Semken opined on the merits of a transfer of Wotton into a charitable trust if proper provision for its upkeep could not be made. He also said that it would be difficult to achieve a result which involved Patrick receiving personal benefit from trust assets.

153. Leigh did not accept that this demonstrated that the question of whether or not a charitable trust structure for Wotton (whether before or after Patrick's death) was a

suitable way forward was itself one of the principal matters for consideration, nor did she agree that this and the form of the instruction to Mr Semken demonstrated that there was uncertainty about how Wotton was to devolve. I am satisfied, from what Mr Semken was told at the time, that Leigh was wrong about this, and I did not find her evidence on this issue to be at all convincing.

154. Mr Semken's note was discussed at a meeting of the old WEMF trustees held on 29 July 2013 at which Leigh was present. Her own notes of that meeting record that one of the questions which was discussed was the possible transfer of Wotton House into the old WEMF. Whether or not this question was a main issue for discussion, it was a matter on which there would have been no reason for Mr Semken to advise at all if an ultimate inheritance by Leigh had already been promised to her. She must have known that this was the case because she clearly focused on the point by annotating Mr Semken's Note with a question "Ask what mileage around a charitable trust?" a question which simply would not have arisen if she thought that she had already been promised Wotton, and which did not seem to reflect any protestation by Leigh that this was up for consideration at all.

155. In short, the fact that there was this uncertainty, and that some form of charitable structure was under active consideration when Mr Semken was being instructed is in my judgment clear. As a minimum, the form of the structure going forward remained under discussion and Leigh knew that pinning David down was a difficult thing to do (she herself referred to David's tendency to "kick the can further down the line"). This evident uncertainty as to what to do is inconsistent with Leigh's case that she was given the firm assurances that she says that she was given in 2007 and 2011 that she would inherit outright in due course. The fact that she knew at the time that this was the case, and I am satisfied that she did, also supports David's case that it was unreasonable for her to rely on what she might then have thought she had been promised without further formal clarification of what her entitlement was to be, a clarification which there is no evidence that she ever sought or received. This was all the more apparent from the fact that the Wotton Charter made clear that David wanted to try to bind his successors into the objectives of the Wotton Charter; itself difficult to reconcile with the absolute and unrestricted ownership to which Leigh now claims to be entitled.

156. This lack of certainty about exactly what would or might happen to Wotton continued to be a consistent theme in other pieces of evidence at this stage. I have already mentioned the 6 June 2013 diary entry in relation to the October 2011 dinner. There was a further entry on 1 August 2013 when David was recording a long lunch in a noisy Turkish restaurant with a friend called Makram, whom he said "still pushes to help set up a charitable institute at W – in my name". David then went on to record that:

> "He says everyone's greedy & will be pushing for a part of W - & obviously includes Leigh, who was cool towards his charity idea. There are plenty of rocks & reefs ahead and Hannah exposed some unwittingly last night, by saying that the Borgo will never pay partly because she believes local mafiosi (public as well as private) will never let Giulia (or Stefi) succeed. But G and S will be bound to go on trying, & involving Ben to maximum & if they ultimately fail, what will Ben do but hope for W? Which will be brutal for me if Leigh is taking over and I have to say blood is not thicker than water. I might be glad to escape to Cumbria."

157. This reference to Ben and to Borgo was a reference to David's nephew and to a property in Italy. Taken overall, it seems to me that this entry shows that David's ruminations at this stage were that he still saw Leigh, who was not of course a blood relative, as the person best equipped to take on the running of Wotton in due course. It does not, in my view, demonstrate that an assurance of absolute inheritance come what may, was either intended or had been made in the form that Leigh now asserts. A wrestling in his mind about how to talk to Ben about the future of Wotton and Leigh's intended role in it was to continue for many years, with David still recording in his diary in January 2017 that it remained a dilemma.

158. Meanwhile, in early 2013, David's relationship with Mary, who was an old friend of both David and April from when they were at Oxford, was starting to be rekindled. They had been giving each other mutual support with what Mary described as almost daily telephone calls since October 2012 when her husband had died of pancreatic cancer. As I have already explained, April was by then in a care home Lennox House and being visited by David on a weekly basis.

159. Leigh was eventually appointed a trustee of the old WEMF on 22 August 2013, once her appointment had been approved by HMRC. Her appointment as such was one of the principal matters with which the old WEMF trustees' meeting of 29 July 2013 had been concerned.

160. As I have already mentioned, Mr Frostick had expressed the view towards the end of the previous year that advice from a specialist private client solicitor was desirable. This eventually led, in September 2013, to Leigh contacting Ms Natasha Hassall, a private client partner at Boodle Hatfield, explaining that she and David were April's attorneys and that David had asked her to find suitable expert advice on estate planning, including what she called a heritage property 15 miles outside Oxford (i.e., Wotton). This led to a conversation between Leigh and Ms Hassall in which Leigh explained the background and that David had tended to put off trying to address the succession issues in respect of Wotton. Leigh told Ms Hassall that the grounds at Wotton were in a maintenance fund of which she was now a trustee and, as Ms Hassall recorded "the suggestion has been that somehow Leigh ought to take over the house itself as they very much want it to be kept in private hands and preserved for the future". Ms Hassall was given to understand by Leigh that there was enough in the pot to look after Patrick and Perdita and Wotton House going forward, but it was a matter as to how that was best done.

161. Ms Hassall reverted to Leigh with her initial thoughts in an e-mail of 18 September 2013 which dealt with a number of issues and expressed a provisional view that it might be sensible to apply for a statutory will to be put in place for April. She suggested that everything should pass to David either outright or in a life interest trust on April's death, but that if April were to survive David there should be a discretionary trust. Based on what she had been told, Ms Hassall assumed that Leigh would be a trustee of any discretionary trust. Leigh accepted in her oral evidence that she knew that this would mean that the discretionary trustees had flexibility when a death arose, which would allow them to review the situation at that stage and make appropriate decisions going forward.

162. A meeting was then arranged with Ms Hassall. It was attended by David and Leigh and was held at Wotton House on 4 November 2013. Ms Hassall was filled in as to

the family background and there was then a discussion as to what might happen to Wotton on the death of the survivor of April and David. Ms Hassall suggested that there was a reasonable likelihood that Wotton House would qualify for conditional exemption from IHT as to which David was uncertain. She explained that the downside would be that public access would be required but David seemed to think that the 28-day per annum access requirement would be acceptable. Ms Hassall then went on to explain that perhaps the answer might be a discretionary trust so that ultimately everything would fall into that trust. She said that she had a slight preference for that, as monies might need to be spent on Wotton House and it may well be that an alternative suggestion as to a disabled trust for the benefit of Patrick would be too narrowly structured.

163. There was also a discussion about the possibility of a trustee (which Ms Hassall thought was clearly a reference to Leigh) being able to live in Wotton House when she needed to run things. Ms Hassall advised that this should be possible one way or another and said that, if a trustee was also a beneficiary, they could benefit from the trust property, but if they were not, it might need to be achieved through some sort of charging mechanism or if they needed to be at the house in order to fulfil their functions as trustee.

164. Leigh said it was obvious to her that Ms Hassall had formed the view that the manner in which David was referring to his preferred successor during the course of this meeting was that he was referring to her. There was however some confusion in her oral evidence as to whether it was clear that it was envisaged at the meeting by all participants that she would be a beneficiary, as opposed to just a trustee. She eventually reiterated that it was, although if that was indeed the state of mind which everyone had, it is surprising that the attendance note of the meeting does not make explicit that this was the case. I should add that Ms Hassall said in her evidence that she had no independent recollection of the meeting apart from what was recorded in the attendance note.

165. There was also a reference in the note of the meeting that David had mentioned to Ms Hassall a concern about his own nephews. Ms Hassall was left under the clear impression that he felt under pressure from one of them who had expectations that he would succeed to Wotton House. Ms Hassall and Leigh are both recorded as having emphasised that the nephews' expectations were irrelevant (apparently a reference to Matthew and Ben), and Leigh is recorded as having reminded David that April's very clear wish had been that they should not benefit. What April would have wanted was obviously important to David, but although this is consistent with April not having wanted David's nephews to benefit, there is nothing to indicate that she wanted Leigh to inherit either and indeed Mr Frostick (who was one of April's attorneys) confirmed that April had never given him any instructions to that effect.

166. Ms Hassall's terms of engagement letter, identifying her clients as David and Leigh in their capacity as April's attorneys, was then sent to them on 6 November 2013. Her note of advice was first sent in draft to Leigh at the end of November 2013. After Leigh had commented on the draft, there was a further exchange of correspondence between Leigh and Ms Hassall and the final version was then sent to David (copied to Leigh) on 16 December 2013.

167. Ms Hassall explained the rules in relation to conditional exemption from IHT on heritage property and how the means by which assets in heritage maintenance funds used to support such property (i.e., HPMFs) will themselves receive favourable IHT and CGT treatment. She thought at first glance that Wotton House should meet the necessary standard of being a building of outstanding historic or architectural interest. She identified that April's and David's key objectives were to provide for their children, Perdita and Patrick, and to secure the future of Wotton House preferably in private hands.

168. There was more than one mention of Leigh in the note. It was explained that one of the assumptions on which the note was prepared was that Leigh "would consider managing the opening of Wotton House (in addition to the grounds) to the public". She was also mentioned in Ms Hassall's discussion of the second option for the best way forward, which was that David's will should establish a discretionary will trust holding "the whole of his estate (including Wotton House and grounds, assuming he survives April) with a wide class of beneficiaries, including the children and possibly including Leigh (in practice, to maintain the house). Leigh would presumably be a trustee."

169. It is clear from this note that three things were suggested in relation to Leigh. The first is that she would be a trustee of David's proposed will trust. The second is that it was anticipated that she might (not would) be included in a wide class of beneficiaries under the discretionary trust. The third is that the purpose of including her as a beneficiary would be to facilitate the maintenance of the house, a matter to which Ms Hassall reverted later on in her note, where she also suggested that it would be appropriate to settle a new HPMF including Leigh within its class of beneficiaries. In her oral evidence, Leigh confirmed that she knew that she would therefore be one member of a class from which the trustees would be able to select, and that it was up to the trustees to make that selection. She also explained that David would have to prepare a careful letter of wishes to support the trustees and set out very clearly his and April's wishes and priorities.

170. All of this is consistent with Leigh having a role as a trustee and as being contemplated as a suitable manager of Wotton going forward. It is also consistent with the likelihood, albeit not certainty, that Leigh would be included as a member of a discretionary class of beneficiaries under David's proposed will trust. The starting point for considering her as a beneficiary had been the idea that she may need to be one (as opposed to simply a trustee) if she was to be able to occupy the house without charge for the purposes of maintaining it. In my judgment it is wholly inconsistent with David having determined that Leigh should be entitled to inherit Wotton unconditionally and come what may, and there is nothing in the contemporaneous documentation to the contrary. I am satisfied that, if Leigh had been given the assurances on which she now relies, the basic objectives as to which (and assumptions on which) Ms Hassall was asked to advise would have been incomplete and the exchange of e-mails Leigh had with Ms Hassall would have been misleading. It is inconceivable that Leigh would not have drawn that to the attention of Ms Hassall or David. She did not do so, whether by commenting to that effect on the draft of the Note sent to her by Ms Hassall or at all.

171. Indeed, her comments included one to the effect that the flexibility of a discretionary trust was attractive and that it would be necessary to obtain David's view on whether

he wanted Perdita's children, from whom Leigh told Ms Hassall that Perdita was then estranged, to receive outright gifts or to have ongoing entitlements under a trust structure (it was never thought that Patrick would have any children). She also confirmed that she understood (as was the case) that the present state of play under David's and April's wills was that, if David were to predecease April, which she thought was perfectly possible because April had rallied from her recent stroke, Wotton would pass into the old WEMF with the residue passing to Perdita. David recorded in his diary for 21 and 22 December 2013 that this was a state of affairs on which he was lectured by Leigh as likely to lead to a legal mess if he were to predecease April and which he resolved to tackle head on in the new year.

172. It was suggested that Leigh had no expertise as a trust or wills lawyer, and I accept that is correct as far as it goes. Thus, she was quite wrong about a number of technical matters relating to trusts, such as what appears to have been her belief that it was necessary for every trust to have a solicitor as a trustee. But I do not consider that she was quite as ignorant on some of the more critical aspects of trusts as she initially sought to convey. A comparison of two passages in her oral evidence illustrates the point. Early in her evidence there was the following exchange:

> "Q. Do you know what a discretionary trust is, Ms White?
>
> A. Well, vaguely but I think there are various different types of discretionary trusts.
>
> Q. Yes, but there is a clue, is there not, in what they are called?
>
> A. Discretionary.
>
> Q. A discretionary trust, yes.
>
> A. Yes.
>
> Q. And what that means, does it not, is that no beneficiary has an entitlement to anything?
>
> A. Well, I wouldn't have particularly known that.
>
> Q. What did you understand a discretionary trust to mean?
>
> A. I'm not sure I can recall if I was looking into it in detail at that time."

173. Leigh's position then shifted and later in her evidence, she accepted that, certainly by September 2013 (at the time that Ms Hassall was first advising), she knew rather more about discretionary trusts than the original exchange disclosed. In particular, she agreed that a discretionary trust gave trustees freedom to make decisions on the basis of the relevant factors at the time. The following three-part exchange summarises where the evidence ended up, both in relation to the trust itself as constituted by what was then proposed for David's will and in relation to the intended letter of wishes. I am satisfied from these exchanges that Leigh knew that the unqualified inheritance she said she had been assured by David was incompatible with the structures that she knew were being put in place to implement what he wanted to achieve:

"Q… So, you didn't at that point express any questions to Ms Hassall about what she was meaning by a discretionary trust, did you?

A. No.

Q. And by "flexibility", what did you understand that to mean?

A. Flexibility to deal with the situation on the ground as it was when a death arose.

Q. So it would allow the trustees to review the situation then?

A. Yes.

Q. And make decisions?

A. Yes.

Q. That is in effect the essence of a discretionary trust, isn't it, that the trustees decide on the basis of the relevant factors at the time?

A. Yes, I would agree.

…

Q. And also in terms of becoming a beneficiary, what was being considered was you possibly being included in a class of beneficiaries?

A. Yes, because I was the one who was going to be in the house.

Q. But if you are included in a class of beneficiaries, that's just the class within whom the trustees select who to benefit, isn't it?

A. Yes. I think that's how trusts work.

Q. Yes, that is how trusts work, and discretionary trusts mean it is up to the trustees to decide who benefits.

A. Yes.

…

Q… So just on that point, were you aware of the fact that trustees of a discretionary trust often looked to the Letter of Wishes for Guidance as to how to exercise their powers?

A. Yes.

Q. And it's guidance. You also know that?

A. Yes, because I remember a conversation I had with Natasha when she said, "You don't have to take any notice of that."

> Q. Yes. Trustees can't slavishly follow, is the words, a letter of wishes, but they usually take it into account.
>
> A. Yes.
>
> Q. Would you agree with that? Does that accord with your understanding at the time?
>
> A. I have no insight into trusts or letters of wishes other than an obvious man on the Clapham Common bus who has a legal degree. It is not my speciality, but yes."

174. In my view, it is impossible to reconcile the understanding which Leigh plainly had as to how discretionary trusts and letters of wishes work with a belief that the assurance she said she was given by David was one on which she could reasonably rely. The most that it was reasonable for her to say was that she was encouraged in an expectation that she would be able to run Wotton after David's death for so long as the trustees (having proper regard to their duties) considered that it was appropriate for her to do so. It would have been unreasonable for a person in her position and with her intellect and experience to assume that anything more than that might happen. In my judgment, to go further and assume that, by reason of David's prior assurances to her (whatever the precise form that they took), the trustees were bound to appoint Wotton to her in due course would have been an unreasonable basis on which to structure her whole life going forward, quite apart from countenancing the possibility of a fairly obvious breach of trust.

175. Shortly before the final version of Ms Hassall's note was sent to David, there was a meeting of the trustees of the old WEMF attended by Leigh. This was the first occasion on which David's accountant, Colin Gray, met Leigh. Mr Gray had acted for April and David since March 2010, although his role had been limited to preparing their tax returns for which David and Mrs Barrett between them would provide all the necessary information. He was also responsible for preparing accounts for the old WEMF. David recorded in his diary for 13 December 2013 that he found the meeting to be very calming. He also recorded that he thought that Wotton's affairs were at last stable and in good hands, that a future was being mapped out by people who knew what they were doing (a clear reference to Ms Hassall) and that Leigh was, so he thought, "coming to be accepted by Michael H as the successor. He's shrewd enough to pick up the signals".

176. Mr Harrison confirmed in his evidence that long-term he thought that Leigh was going to be David's successor at Wotton, but his evidence was relatively tentative about what that meant and how he had indeed picked up any signals: "I'm not really sure. It's … David had always, anything he ever said to me about the future of Wotton he hoped it would continue as it was."

177. This concept of succession gained a little more traction when, in early January 2014, David invited Leigh to join him at a Historic House Association ("HHA") conference at Knebworth House which he wanted to go to, because as he put it in an e-mail to the HHA director general, he was having to "plan the future of Wotton against a backdrop of approaching senility and problematic succession and I suspect that my problems may be shared by other Historic Home owners." This seminar on succession and

inheritance took place on 22 May 2014, but his involvement of Leigh was clearly consistent with Leigh being in the frame as a 'successor', although it is telling that he was still describing the succession as problematic, which betrays at least some tension with Leigh's case that she already had a clear and unambiguous assurance that it would happen. In my view this indicates a crystalising belief that Leigh was best placed to manage Wotton going forward, but falls well short of the confirmed assurance of an absolute inheritance which Leigh claims to have been given.

April's death and the immediate aftermath

178. April died on 29 January 2014 before Boodle Hatfield were able to implement David's instructions, given at Ms Hassall's suggestion, to apply to court for the making of a statutory will. Under the terms of her 2008 will, the entirety of her estate, including Wotton, passed to David. It also included the Bonds, valued for probate purposes at £750,000, together with approximately £250,000 in cash.

179. April had been ill for a considerable period before she died. Leigh's evidence was that both she and David were immensely sad, in her case because April had become such an important part of her life. She explained that she looked after David in the immediate aftermath and Dr Stockley described how it was Leigh and her two children who were standing beside David at the graveside, a slightly different emphasis from the closing submission that "it was Leigh who David stood beside him at the graveside".

180. Boodle Hatfield's next involvement was in May 2014 when Ms Hassall gave some advice to David (copied to Leigh) as to the best means for putting the London properties into an endowment fund to support Wotton. However, the question of estate planning more generally was only resurrected by Leigh when she wrote to Ms Hassall on 8 October 2014 saying that she and David had met and had discussed how to get all necessary documents together to progress a smooth hand over of Wotton. This led to a telephone conversation between Ms Hassall and Leigh in which Leigh told Ms Hassall that David was "looking quite frail these days" and was finding administration increasingly complex and hard to manage.

181. For her part Ms Hassall stressed that the key was for David to have a good flexible will and a very clear letter of wishes. Ms Hassall suggested a meeting with David, possibly without Leigh present, so that she could understand exactly what he wanted. The note makes very clear that Ms Hassall remained uncertain as to what his actual wishes were. She also recorded that it was very important that clarity as to Leigh's future role should be given. As a result of this conversation with Leigh, Ms Hassall recorded that David viewed her as the right person to take everything on but did not want to have difficult conversations with his nephews. Leigh said that David had said to her that she was the closest April had to a daughter and that he trusts her to sort everything out, and that he sees Wotton very much as being April's property.

182. In her oral evidence relating to the note of this telephone conversation, Leigh did not accept that it reflected the uncertainty that David still had as to the precise role that Leigh might have in relation to Wotton going forward. She said that it was clear that he had it in mind that she would "take on" Wotton, although how that would be

effected was still unclear. That may be the case in the sense that David's wish that Leigh should have a central role in the management of Wotton going forward was clear enough, but I do not agree that this answers the question of whether he intended that she should own it outright (let alone that he had given her a clear assurance to that effect), or merely that he should attempt to put in place a structure pursuant to which her role in its management could best be facilitated.

183. I did not find Leigh's answers in cross examination on this issue at this stage to be very satisfactory. Thus, she gave somewhat inconsistent evidence on the issue of whether she thought that David's intentions were that legally speaking she would be free to sell Wotton after his death and I think that the reality is clear that David did not intend that she should be able to do that, or even control the sale in her own right. In my view it remains the case at this stage that David's focus was on the role she should play and the status she should be given to facilitate her ability to play that role, a focus which was well reflected in what Ms Hassall recorded in the note of her telephone conversation with Leigh dated 15 October 2014:

> "NJH felt that it was very important that there was something to show Leigh exactly what her mandate was, and that some clarification was needed as to what Leigh's role might potentially be and how far it should go."

184. The whole concept of Leigh having a 'mandate' is consistent with my conclusion that David's approach was that he wanted Leigh to run Wotton in accordance with certain codified principles that were enforceable as such. It is inconsistent with Leigh having the proprietary interests and rights of an absolute owner. There is no contemporaneous evidence to indicate that Leigh then thought she had been promised that she would have such proprietary interests or rights in due course.

185. At about the same time, David was seeking advice from his financial adviser, Mr Paul Cameron Taylor (who had been advising David since 2008), as to what to do with the £250,000 cash deposits inherited from April. He made clear that he wanted to know "where to place the funds, for security and income". Mr Cameron Taylor also raised the question of arranging for the Bonds to be put into David's name and the possibility of a meeting with a solicitor for the purpose of putting the Bonds into a discounted gift trust ("DGT"). A DGT is an IHT planning arrangement which enables the settlor to withdraw income from the settled property during their lifetime without it being treated as part of their estate on death for IHT purposes. Any transfer into a DGT will, to the extent that the value transferred is over the transferor's available nil rate band, trigger a 20% IHT charge.

186. David and Mr Cameron Taylor then had a meeting in early November 2014, but no further steps to deal with the investment proposals seem to have been taken at this stage. Furthermore, it is clear that Mr Cameron Taylor took the view that what to do with the Bonds was a matter on which legal advice was required. I shall come back to the Bonds a little later, but the reason for this was that the tax position was not straightforward. The Bonds had originally been purchased in 2000, and it was possible for the holder to withdraw 5% of their initial value (£37,000) per annum without incurring any tax liability on that withdrawal. This could continue until 2020, provided that they were not surrendered. Thereafter, the holder could have continued to make withdrawals, but 80% of the value of such withdrawals would have been taxed at their marginal rate of income tax.

187. There were also IHT issues to be considered. As Mr Cameron Taylor explained in his witness statement:

> "The joint life assurance bonds from the outset paid out a 5% annual withdrawal paid monthly. The 5% withdrawals were deemed withdrawal of capital and after 20 years the 5% would have added up to 100% of the original investment and any further withdrawals would have tax payable and reportable as income. … This concerned me because, as I explained to David, any surrender or sale of the bonds would incur income tax for David on the gains since 2000. In addition, should he die with the bonds in place they would all be surrendered and additional income tax incurred on the gain. As David's other assets exceeded the nil rate band on his death, the full value of the bonds would be subject to inheritance tax at 40%."

David's 2015 will and letter of wishes

188. Towards the end of 2014, the process of drafting a new will for David started, but only after David had had the suggested meeting with Ms Hassall in the absence of Leigh, which was held on 13 November 2014. It was recognised by Leigh and David that, in the light of Ms Hassall's initial advice, one of the key issues in planning for the future was to ensure that he had a carefully drafted will with a carefully drafted letter of wishes. As Leigh explained in her evidence, this was to ensure that David's wishes were translated into something legal.

189. Leigh also understood the importance of David having a meeting alone with Ms Hassall in circumstances in which it was contemplated that she might be one of the beneficiaries under his will. The way David described this meeting with Ms Hassall in his diary was a meeting "to make sure she understands what succession at Wotton means". Strangely, Leigh did not accept in her oral evidence that similar ethical considerations would apply where a donor was deciding whether to make a lifetime gift, although she did accept that this might depend on context. I was left with the clear impression that her hesitancy on this issue was influenced by the impact that such a concession might be thought to have on the undue influence claim in relation to the Bonds.

190. A summary of David's draft will was then sent to him in mid-December. It identified Leigh and Mr Frostick as the proposed executors and trustees and Ms Hassall's explanation of the proposed Clause 5 was in the following terms:

> "Clause 5 deals with the rest of your assets after payment of your funeral expenses, debts and any inheritance tax (called your "Residuary Trust Fund"). All your assets are put into a discretionary trust, of which the beneficiaries are Perdita, Patrick, your grandchildren and descendants (whether legitimate, illegitimate or adopted) and Leigh. You were to give some thought to the identity of other beneficiaries. Have you any more names to include? I have tentatively included a power for your Trustees to add to the class of beneficiaries as I think this might be helpful for Leigh in due course, but you may wish to think about that."

191. This reflected Ms Hassall's understanding of David's intention that Leigh was to be the competent and trusted professional who was intended as an important and influential participant in what would happen in the future. She was to fulfil that role for the benefit of a wide class of beneficiaries of which she herself was only one.

192. Before the final version of his will was executed, David had a further meeting with Ms Hassall on 17 March 2015 at which, amongst other things, he asked Ms Hassall if she would be prepared to be a trustee. In David's diary note of this meeting he said "She['s] so sympathetic I take her into full confidence + w/o consulting Leigh ask if she'd [act as] a Trustee". Having asked whether that would be all right with Leigh, Ms Hassall agreed with this proposal. From the way in which David's diary note of this meeting was written, I agree with Ms Angus' submission that David deliberately sought Ms Hassall's consent to be a trustee without first obtaining Leigh's agreement, but that Ms Hassall said what she did because she wanted to ensure that David was comfortable with her ability to work with Leigh as her co-trustee.

193. A further version of the will was then sent by Ms Hassall to David together with a draft letter of wishes addressed to his executors and trustees. David responded by saying that he had not yet shown the will to Leigh and asked Ms Hassall whether "it is normal to show a Will to the principal beneficiary". He also said that "It strikes me that some people could accuse [Leigh] of exercising undue influence over a vulnerable old man and she just might find it helpful to be able to say in all honesty that she did not know what I had decided. Or am I being ridiculous?". Ms Hassall replied by explaining that he was under no obligation to mention its contents to Leigh or anyone but was free to do so if he wished. She said that she understood his concern about a potential claim that Leigh may have exercised undue influence, but said that:

> "I made careful notes of the meetings in which you gave instructions, Leigh was not present, and these notes show that I was happy you had capacity to make the Will, had a clear understanding of what you wanted (and why) and were not subject to any undue influence. From a legal perspective, this should be sufficient to rebut such a claim in the unlikely event of its being made and I hope settles your own qualms too."

194. Leigh relies on this reference to her as the "principal beneficiary" and the concern about undue influence as an accurate reflection of the way that David then saw her position. As Ms Reed said in her closing submissions, it demonstrates that Leigh would effectively be the person in the driving seat. Ms Hassall was asked in cross examination about it and gave the following answer:

> "A. I don't think David talked in technical legal terms at all. Leigh was a beneficiary, and she was from my perspective, I think when one looks at the letter of wishes, there is quite a lot of emphasis on Patrick being able to enjoy Wotton, and that was very clear from the document that was attached to the letter of wishes, which David had prepared, so Patrick was a very important beneficiary; I think Leigh was extremely important to David, actually not so much in terms of being a beneficiary, but because she was going to look after Wotton, and David was extremely concerned, I think and I think that is evident in the letter of wishes about the future of Wotton; Leigh was key to that.

> Q. He is clearly worried, is he not, that Leigh is going to be met with some suggestion after he has died that she has unduly influenced him, so he thinks, does he not, that he has effectively made her, as he puts it, "his principal beneficiary"?
>
> A. I can't guess at exactly what David was meaning. What I thought his view was is what was said in the letter of wishes about Leigh managing and being responsible for Wotton. She was key from that perspective. I think that went beyond merely being a trustee in terms of carrying out functional managerial roles, such as collecting in rents and dealing with repairs. He, I think, envisaged a wider role because of course there was a lot of emphasis in the letter of wishes on the Wotton Charter and managing Wotton in accordance with those principles, so I think the role that he had in mind for Leigh was more than being a mere trustee.
>
> Q. Yes.
>
> A. And, of course, he said she might need to live there in order to carry out that role."

195. In my judgment, the most important aspect of what Ms Hassall said was that Leigh was key because of what David had said in the letter of wishes about her managing and being responsible for Wotton. She was a beneficiary as well and the existence of a prospective managerial role was the sense in which he was using the phrase "principal beneficiary". She was by then well-established under David's will as a very important member of a discretionary class, but her importance flowed not from the nature of any discretionary beneficial interest intended for her, but from the role she was intended to fulfil. It is clear that she was in no sense designated as an owner. I also accept Ms Hassall's evidence that she did not understand David to intend Leigh to be the absolute owner of Wotton after his death and I am satisfied that, whatever she might have hoped would happen in due course, Leigh then appreciated that this was the case.

196. There was some other relevant activity in March 2015 relating to Leigh's role in the Gladstone family, because at the same time that the drafts of David's will were being prepared and amended by Ms Hassall, David and Leigh were in communication with each other on the subject of Leigh being appointed as Patrick's attorney. By then, Leigh had been appointed (on 18 November 2014) by Mr Frostick as one of two new trustees of the protective trusts established for Patrick by the variation of Mrs Brunner's will. April as one of the two trustees had died and the other new trustee was David. Leigh had first suggested to David in February 2015 that she should also be appointed as Patrick's attorney, that suggestion having been made to her by a friend who worked with vulnerable people in the NHS. By mid-April 2015 Patrick had signed an LPA giving effect to the appointment, when Leigh had correspondence with David about obtaining details of Patrick's bank accounts. Thereafter, Leigh described herself as acting as "solicitor / attorney" for Patrick.

197. There were also meetings of the old WEMF trustees, and the trustees of Patrick's trust held on 13 March 2015. Leigh attended both meetings in her capacity as a trustee. The day before, Mr Cameron Taylor had written to David and Mr Frostick as trustees of April's will, recommending that Patrick's legacy, given under the 2009 codicil to

April's will should be invested in a Prudential bond. I was shown no evidence that there was any further discussion of the Bonds or the £250,000 at this stage.

198. David's will was then executed on 13 April 2015 ("David's 2015 will"). David recorded in his diary that having done so he felt quite grown up. He went on to record that Leigh was spared the mess she feared but in return will have to deal with a disappointed Ben. It is fairly clear from the terms of the letter of wishes I refer to below that this was a reference to that letter expressing the wish that Leigh should have a managing role at Wotton going forward, rather than Ben (anyway as a starting point), whom David was conscious was hoping to fulfil the same role. In my judgment, it was not a reference to Leigh taking any form of absolute interest to the exclusion of Ben.

199. David's 2015 will appointed Leigh, Mr Frostick and Ms Hassall to be the executors and trustees of the will. It gave to Leigh for her own absolute use and benefit all David's personal chattels, subject to a non-binding wish that she should then dispose of them in accordance with any written memoranda left with the will or his personal papers. As Ms Hassall had said, it was done this way because it was simpler administratively to leave them all to one person, with the wish that he or she should distribute them in accordance with a separate note. There is little doubt that Leigh's role as the person responsible for the distribution of David's chattels in accordance with his non-binding wishes reflects the trust and confidence he had in her as somebody who would carry out his wishes after his death without being under any legal obligation to do so.

200. David's 2015 will also gave two specific bequests: £250,000 to Mr Harrison and £50,000 to the charity SANE. It gave the remainder of his estate to his trustees to be held by them upon such trusts in favour of all or any one or more of such members of a discretionary class as they may appoint. The discretionary class was defined to mean and include (a) issue of David's, whether children or more remote, who were living at his death or born during the trust period, (b) Leigh and (c) any other persons whom the trustees may appoint as additional members of the discretionary class.

201. As was to be expected in a will establishing a discretionary trust of this type, it was clear from the face of David's 2015 will that the trustees had an absolute discretion at any time during the trust period to apply the whole or any part of David's residuary estate to or for the benefit of such members of the discretionary class in such shares and in such manner as in their absolute discretion they might think fit. The letter of wishes signed at the same time reflected the way in which David wanted his trustees to exercise the powers and discretions given by his 2015 will without imposing any legal obligations on them to do so. It is therefore an important document dealing as it does with a number of aspects of David's wishes as to how his estate should be divided up "in light of the beneficiaries' needs and the circumstances as they exist at the time of my death, and to enable sensible decisions to be made regarding Wotton House".

202. First of all, David expressed a wish that the financial assistance he currently provided for Perdita should continue for as long as necessary. By that he meant that she should receive sufficient income to support herself, and if she ever had need of more substantial support, he wanted his trustees to provide it. He wanted the accommodation he was then providing for Perdita to continue for as long as

necessary. As to Patrick, he wanted to ensure that funds were not provided for him for so long as his needs were met by state benefits, because of concern that any extra provision from the estate might jeopardise his receipt of those benefits. If those benefits were to cease, David wanted any extra financial support to be provided for Patrick from his residuary trust fund. He said that he still wished Patrick to benefit from his estate in any way that may be arranged and gave by way of example coming to Wotton House on a regular basis. He said that it was also April's wish that, whenever possible, Patrick might benefit in broad terms from Wotton House and their estates.

203. As to his grandchildren, David expressed a wish that his trustees should make some provision for them and said that he would like them to benefit equally from his will except for Christopher, who bore the brunt of Perdita's illness at a very testing time. He left open the question of how much Christopher should receive but said that when the others were reasonably mature his trustees might consider giving them a substantial sum; say £100,000 each, at the age of 30.

204. As to Wotton House, David expressed the wish that it should remain in private ownership, ideally to be used to promote the principles and objectives set out in the Wotton Charter. He suggested that it would almost certainly make sense to apply for Wotton House to be conditionally exempt from IHT following his death and that the trustees may wish to consider creating a maintenance fund out of which it might be supported. He explained that he wanted a fund in the form of the old WEMF to continue but said that it may be appropriate to amalgamate the old WEMF with any new maintenance fund established to support Wotton House. The letter of wishes then set out in three paragraphs a number of matters which have central relevance to Leigh's claim:

> "10. I am conscious that somebody will need to take over the day to day running of Wotton House and that this might entail their moving into the house. In the first instance I envisage this person being Leigh White, whom I trust to run Wotton House as April and I would have wished in accordance with the Charter. In due course it might be that Leigh's daughter, Rosie, is the most suitable person to "take on" Wotton House after her mother and if so I should like you to add Rosie to the class of beneficiaries in order to facilitate this. I have given you power to add to the class of beneficiaries with this step in mind.
>
> 11. If for whatever reason you do not think it sensible for Rosie to assume responsibility for the management of Wotton House or if for any reason Leigh is unable to continue with the responsibility for Wotton, it might be that you consider adding my nephew Ben as a beneficiary of my Residuary Trust Fund so that he can take on the role.
>
> 12. In providing for the future of Wotton House, however, my overriding concern is that it will continue to be run in the way April and I envisaged when drawing up the Charter. The suggestions regarding Rosie and Ben are for guidance only and I would not wish you to feel bound by them. I trust that you are sufficiently familiar with the circumstances of Wotton House and my and April's family and wishes to judge how best to give effect to our wishes."

205. The evidence was not very precise as to when Leigh first saw the executed version of David's will, but she knew of its proposed contents at or by the time of its execution and, like Mr Frostick, she was sent a copy by Ms Hassall on 28 September 2015. On 12 October 2015, David's letter of wishes was sent by Ms Hassall to Leigh and Mr Frostick. In her covering letter to Leigh, Ms Hassall drew attention to the fact that, under David's will, his executors and trustees were given wide powers to use their discretion in distributing his estate among a class of beneficiaries, and that the letter of wishes contained guidance from David on how he would like them to exercise those powers.

206. In my view, the letter of wishes reflects the fact that, by this time, David had come to regard Leigh as the beneficiary by whom it was most likely that Wotton would be enjoyed in due course in the sense of managing it and occupying it. That included the likelihood that the trustees would wish her to manage Wotton House and its grounds, and if necessary to live there after his death. It might also have included an appointment to her out of the discretionary trusts in due course, but there was no indication in the letter of wishes that this was specifically contemplated, let alone inevitable.

207. However, all of this was driven by the belief David then had that Leigh was the one most likely to continue to run Wotton in the way that he and April had envisaged. The discretionary trust and the letter of wishes were the essential tools with which he wanted to do all he could to ensure that this overriding consideration continued to be enforced. For David that was the critical consideration, not the fact that it was Leigh whom he then perceived as being the one he trusted to achieve the aims of the Wotton Charter. That is the context in which David made the remarks that he did to others about the future.

208. I have already described the signals which Mr Harrison had picked up. Something more specific is recorded in David's diary as having been said to him at this stage, i.e., September 2015, by April's former carer, Debbie (who had continued to work for David and help with Patrick after April' death): "Over supper subject of inheritance comes up and Debbie says, unbidden, there's only one person I could leave W to - in her view. It was a great comfort." Exactly who said what in front of whom is not entirely clear, but the entry is certainly evidence that David had a current intention to 'leave' Wotton to Leigh. A short while later, there was at least one other example from David's diaries of him expressing himself to others in a manner which demonstrated an existing intent that Leigh should succeed him in his work at Wotton. On 27 March 2016, David recorded "I tell C [*a friend, Curzon*] about succession and she approves – relief. She likes and admires Leigh and thinks I've judged well."

209. However, that does not mean that Leigh is correct to rely as she does on David's 2015 will, the letter of wishes and the surrounding circumstances as supportive of her proprietary estoppel claim. In my judgment, what was said in those documents falls well short of providing that support. Indeed, I think it is clear that they are inconsistent with her case. The will created a discretionary class of beneficiaries capable of benefiting from the trust property including Wotton. In the light of the role envisaged for her in the letter of wishes, Leigh was an important beneficiary, but she was still only one. Under the will itself, she was treated differently from the remaining members of the class only by reason of her position as donee of David's personal chattels. Under the letter of wishes, the role proposed for Leigh was more

clearly defined. She was quite specifically identified as a person David envisaged as carrying out a management role in accordance with the Wotton Charter, but the whole structure was inconsistent with her being a beneficiary to whom specific property was to be applied (or for whom it was to be held) in a manner reflecting the assurance she says she was given.

210. Furthermore, it is striking that, despite the apparent care with which this whole structure was put in place, there is no document which contains specific reference to the possibility that the trustees might consider it appropriate to exercise a power to appoint Wotton House, or indeed any other part of the capital of David's estate, for the exclusive benefit of Leigh. Likewise, neither the will itself nor the letter of wishes refers to the grant to Leigh of any form of occupation rights in Wotton. Leigh is an able lawyer and was intimately involved in the process by which this structure was put together. In the light of this material, I think it is most unlikely that, if Leigh had thought that she had been given any form of binding assurance in the form she now claims to have received, she would not have realised she ought to have had it properly recorded before taking any steps to rely upon it. In my view, the fact that Leigh did not suggest at any stage that by making a will and a letter of wishes in the form that he did, David was acting in breach of the assurances she now says that he gave, is a clear indication that the assurances were never given and, even if she came to think that they had been, that it was unreasonable for her to continue to rely on them.

211. In my judgment, the substance of what David spelt out in the letter of wishes was that he envisaged that the trustees would arrange for Leigh to take over the day-to-day running of Wotton House and might move into it for that purpose. The structure of the letter is that this was the context (important as it was in the light of the Wotton Charter) in which Leigh was to be a member of the discretionary class of beneficiaries, not the other way around. Indeed, it is clear from what David had to say about the possibility of adding Rosina and Ben to the class of beneficiaries, that this was suggested in order to facilitate an assumption of management responsibility in due course. I agree that the way the letter expresses David's wishes as to Leigh's role is firmer than his intentions as to whether Rosina or Ben might assume responsibility in due course, but the clear focus is on Leigh's role, not any ownership interest akin to that which she now seeks to establish.

212. In her oral evidence, Leigh did not accept that David's letter of wishes contemplated that it was open to the trustees to stop her living at Wotton if she was not running it in accordance with the Wotton Charter. In my judgment, Leigh was wrong about that and, whatever her memory may now be, I think it likely that she knew that at the time. It is plain that David's 2015 will gave the trustees the power to stop her from occupying Wotton, and in my judgment it is apparent from the letter of wishes that it would have been David's wish that this should happen if she had moved into Wotton House, but then gave up complying with the Charter.

213. I also do not accept that it is right to approach this part of the case (as was suggested by Ms Reed) on the basis that the reality was that the other trustees were going to do what Leigh wanted them to. Both Mr Frostick and Ms Hassall were experienced lawyers who knew that they should have proper regard to David's wishes for Wotton as reflected in the letter of wishes and they both knew that there were other members of the class of beneficiaries. I do not believe that they would simply have rolled over and done what Leigh wanted without regard to the way she might have chosen to

behave. That would have been to ignore the first sentence of paragraph 12 of the letter of wishes, which in my view reflected something that David considered to be an essential part of his legacy.

214. In reaching my conclusions on this part of the case, I have also had regard to a rather puzzling comment made by Leigh in her witness statement relating to her state of mind at or about the time it was being suggested that she might be an appropriate assignee of the Bonds (an issue to which I will revert below), some time after she had been sent a copy of David's 2015 will. Leigh said the following about her understanding of how his estate would be distributed:

> "My understanding from David and his advisers was that the bonds which we had been looking at with Paul Cameron Taylor were part of David's estate, the majority of which was being left to me under the terms of David's 2015 Will to deal with at my discretion."

215. While Leigh may have convinced herself that this was her understanding of the effect of David's 2015 will at or about the time of its execution, I am satisfied that she is mistaken. Even the most rudimentary perusal of David's 2015 will and letter of wishes would have disclosed that this was a misdescription of the position, particularly in the light of what she now accepts to have been her understanding of how a discretionary trust works. The only part of David's estate that was being left to Leigh to be dealt with at her discretion was his personal chattels. The remainder was being left to trustees (of which she was only one) to deal with at their discretion. In my view the true position would have been apparent to any layman, let alone a solicitor, and I am not satisfied that the understanding she now professes to have, was the understanding she had at the time.

The 2015 LPA and Leigh's first meeting with Mary

216. By this stage, David's ability to manage on his own was beginning to deteriorate. One of the clearer manifestations of this was when Leigh asked Mr Frostick in August 2015 whether David should execute one of the new forms of LPA because registration was possible without loss of capacity. In this context, she explained that David regularly mentioned to her his difficulty in writing and said that he was suffering from macular degeneration. On the day that Leigh was sent a copy of David's 2015 will by Ms Hassall, David executed a health and welfare LPA (the "2015 LPA") appointing Leigh and Dr James Dooley as joint attorneys. Dr Dooley was a friend of David's and is a consultant in hepatology.

217. It was not long after this that Leigh says she met Mary for the first time. At this stage David and Mary had been in their rekindled relationship for over three years and when asked about any previous contact they had had, Mary said that she had no recollection of speaking to Leigh before they first met. She accepted though that Leigh was by then a very important part of David's life, which was plainly the case.

218. At some stage after they had met, Mary said that David told her that he thought that Leigh would be the person to carry on Wotton after his death. When he said this to her, she understood that Wotton was in trust although she did not know its terms. It

was put to Mary in cross examination that she referred to Leigh as "the heiress". She denied that she ever called her that, not least because "She wasn't an heiress as I understand the word".

219. There is a small but significant point which flows from the use that Leigh made of the word "heiress" on a number of occasions in her evidence, which is illustrated by the first of two occasions on which Leigh said that Mary used the word heiress in relation to her. Leigh's evidence was contained in the following passage in her witness statement:

> "Mary once said in an email to me on 26 October 2018 that I was the one good decision David had made, in relation to my appointment as his attorney and heiress and generally my taking care of him, his family and Wotton, as well as facilitating them being together."

220. This was plainly designed to give the impression that the concept of Leigh being an heiress, whatever that may mean, was one that was agreed with by Mary and referred to by her in the relevant e-mail. In fact the e-mail to which Leigh referred makes no allusion, whether directly or indirectly, to the concept of Leigh being an heiress. In my view, this e-mail is in all respects consistent with David's case. It simply expresses great and affectionate gratitude for the role that Leigh was undertaking as attorney in sorting out a problem at the London properties. What Mary actually said was:

> "The one really intelligent decision David has taken is to have given you Power of Attorney, thank God its in place...all the support I can give you you shall have & richly deserve together dearest Leigh with my love MXX"

221. If, as must be assumed, Leigh's evidence was that she regarded that e-mail as a recognition by Mary of what she (Leigh) conceived to be a description of her as an assured heiress, it falls well short of the status which Leigh now seeks to achieve by the relief she seeks to achieve in these proceedings.

222. I accept Mary's evidence on this point. I do not think that she used the word "heiress" when referring to Leigh. It is obvious that she did not do so in the e-mail on which Leigh relied, but nor do I think that she used the word in the other context in which Leigh said that she did, which was when she was describing David's reaction to an altercation she had had with Mrs Brumwell, which I will describe a little later. In my view, it is also an illuminating example of an occasion on which Leigh saw herself as having a status recognised in the eyes of others, which went materially beyond that which she had been accorded by them.

The Prudential DGT and the Bonds

223. In September 2015, the question of investing the c.£250,000 which David had discussed the previous autumn with Mr Cameron Taylor, arose again. In the first instance, he raised it with his investment managers, J M Finn, but made clear that whatever investments were chosen, he was still looking for an enhanced monthly income stream for Wotton. He reiterated the same point when he raised it with Mr

Cameron Taylor at the end of October and again at the beginning of November 2015. He made clear that he wanted income rather than capital growth, and that the simplest solution may be to build up his holding of bonds, thoughts with which Mr Cameron Taylor expressed his agreement. Although initially Leigh declined to accept that the evidence demonstrated that David's concern was about generating income, she eventually agreed that this was the case and I think she was right to do so.

224. David then had a meeting with Mr Cameron Taylor towards the end of November 2015 at which two matters relating to David's inheritance from April (what David called the "remnants of April's estate") were discussed. The first was the cash sum of £250,000, which Mr Cameron Taylor recommended should be invested in a Prudential Inheritance bond DGT. The second was a transfer of the Bonds into a DGT. He recorded in his 15 December letter of advice dealing with the Prudential DGT that David's two aims were to increase his general level of spendable income and to reduce the effect of eventual IHT on his estate. The proposal was that David and Leigh would be trustees of the discretionary trust.

225. As to the Bonds, Mr Cameron Taylor's idea was that the Bonds might be transferred into another DGT, on discretionary trusts. He said that this was a solution he had been considering for some time because the Bonds had been taken out as long ago as 2000. What he had in mind was that, by transferring the Bonds to a DGT on discretionary trust there would be, as he put it, "lifetime income and the capital was outside the estate". He said that he wanted to try and find a way of effecting the transfer out of David's estate without creating a chargeable event.

226. At the end of 2015, Mr Frostick had said that this was an area on which he thought that more specialised advice was required and Mr Cameron Taylor suggested that David should go to Charles Russell ("CRS"). He also said that, before doing so, he could meet with David and Leigh to explain in advance what was involved and to clarify some additional points about the trust for Wotton and the payment of current income. Although Mr Cameron Taylor could not now recall having a conversation with David to the effect that he wanted the income from the Bonds to be available for Wotton, I think that this is the most likely reason that he expressed himself in the way that he did.

227. On 14 January 2016, David, Leigh and Mr Cameron Taylor met to discuss the £250,000 Prudential DGT. Leigh thinks that this was the first time that she had met Mr Cameron Taylor, although he was not so sure. I do not think that this matters very much, although he says that then or about then he formed the view (as a matter of ongoing impression) that the relationship of David and Leigh was similar to that of father and daughter. It is not entirely clear that this description derived from his own unprompted observation, but whether or not it did, the description is wholly understandable in the light of the mutual affection they clearly both had for each other and the role that Leigh had plainly developed in assisting David in the management of his affairs.

228. There was then a delay while a medical report was obtained for the purposes of the Prudential DGT, but the investment was eventually approved on standard terms at the beginning of May 2016. In the e-mail dated 12 May 2016 by which Mr Cameron Taylor informed David and Leigh that this was the case, he said that progress could

now be made in setting up a DGT into which to assign the Bonds and that he would get in touch with CRS to move that forward.

229. Shortly thereafter, on 24 May 2016, Mr Cameron Taylor met David and Leigh to discuss matters, at which stage his focus continued to be on establishing a trust for the Bonds. Leigh said that she believed that some form of an assignment of the Bonds could be an option. The way that she explained in her statement what happened at this meeting was that Mr Cameron Taylor:

> "explained that the idea was to get the money out of the bonds which would cease to have any tax benefit for David in a few years' time without incurring huge Capital Gains Tax and to avoid full inheritance tax being chargeable. He also suggested the option of a Discounted Gift Trust, on which he wanted to obtain legal advice as to the structuring and tax considerations."

230. It seems likely that Mr Cameron Taylor's explanation of the proposal did not achieve all it was designed to do, because David recorded in his diary that he left the meeting "the whole purpose not entirely clear" and, by the next day, had forgotten what the meeting with CRS (by then fixed for 14 June 2016) was to be about. Despite the way he expressed himself in his diary, Leigh said in her oral evidence that David was too astute not to have appreciated what the purpose of the meeting with Mr Cameron Taylor had been, but I do not think that is quite right, not least because she herself responded to his query by saying "That's ok, don't sweat the small stuff …". I think that the reality was that David was not fully concentrating on the possible options for the Bonds and he was not interested in the detail of how what he wanted was to be achieved. His main concern was keeping the income stream flowing, principally for Wotton. This was all apparent to Leigh.

231. In any event, what is clear from the way in which Leigh expressed herself is that Mr Cameron Taylor focused on the second of the two aims that had originally been recorded in his December 2015 letter in relation to the investment of the proceeds of April's estate: i.e., to reduce the effect of eventual IHT on David's estate. She made no mention of any discussion about an increase in David's general level of spendable income.

232. These two aims were of course inter-linked, but it was part of the way that Ms Angus presented David's case that this showed a mismatch between the issues with which Leigh appeared to be concerned (viz. minimising IHT with the assistance of Mr Cameron Taylor) and the income-stream maintenance issues for the benefit of Wotton which appeared to have been David's real concern. She drew attention to the fact that David had never himself expressed the same concern about IHT that he had expressed about maintaining an income flow, and that he had in any event already taken estate planning advice from Boodle Hatfield with whose advice he appeared to be very happy and which had culminated in the execution of David's 2015 will and his letter of wishes. This is an aspect of the case to which I shall return.

233. What is also clear is that, prior to the meeting with CRS, the only proposal in relation to the Bonds was that they be assigned to a DGT so that income withdrawals for David could continue. Leigh's role in relation to the DGT was to be as a trustee, and David had no discussion either with Leigh herself or with Mr Cameron Taylor that it was intended that she would be a beneficiary of the DGT. Leigh's case was that it

must have been intended that she would be, because she was the person who was going to take Wotton forward, but that rather begs the question and illustrates one of the problems with a lot of Leigh's evidence, which is that she had a tendency to assume that things would happen because, looked at through her spectacles, they should have done. For his part, Mr Cameron Taylor pointed out that, as the proposal for a DGT was not implemented, they never got to the stage of a discussion about who the beneficiaries of the suggested trust might be. Whatever the reasons, Mr Cameron Taylor was right about that.

234. The meeting between David, Leigh, Mr Cameron Taylor and Mr Charles Hutton of CRS took place on 14 June 2016. There was no note of this meeting and the only reference in David's diary was the somewhat terse comment: "Consult a lawyer at Newgate with Leigh about trust. All very necessary but very boring and no doubt expensive". But it is possible to get some understanding of the advice that was given from an e-mail sent by Mr Cameron Taylor to David and Leigh at the beginning of the following week. Before explaining what I draw from that e-mail, I should deal with a relatively minor, but in some respects significant, dispute over whether or not David spoke to Leigh about the need to avoid unnecessary lawyers costs on the day of the meeting.

235. Leigh said in her witness statement that, after the meeting with Mr Hutton, she had a discussion with David over lunch at which he remarked that he was reluctant to involve even more lawyers on the issue of the Bonds, as he already had enough advisers and thought it would all be expensive. Despite the comment in David's diary about the probable expense, I am satisfied that Leigh is wrong about the circumstances in which any such conversation occurred and the form which it took. The certainty with which she originally described what had occurred dissolved as it became apparent from the documents that they had met for lunch before and not after the meeting. It follows that the context in which Leigh said the comments were made by David was quite different from that which she originally sought to convey: even if made, they cannot have been a response to the advice David had just been given. While I think it is clear that David may have had concerns about professional fees, I am not satisfied that he expressed them in the way that Leigh said he had, nor that he did so having heard what Mr Hutton had to say. More importantly, I am not satisfied that David made clear to Leigh at this stage, anyway in a manner on which it was appropriate for her to rely, that he was not interested in receiving any further legal advice in relation to the Bonds.

236. In his e-mail sent to David and Leigh in the week following the meeting, Mr Cameron Taylor recorded that there were two problems with what he called David's "objective" to assign the Bonds into a DGT "so that income withdrawals could continue".

237. The first problem was that, if David put the Bonds into a discretionary trust, he would incur an IHT charge at 20% on the amount in excess of £325,000, although David could instead "elect for an absolute trust, to benefit single or defined beneficiaries" which, he said, "would have no lifetime [IHT]". There was no mention in the e-mail that Mr Cameron Taylor thought, assumed or had been told that Leigh was or might be in the frame as the potential single beneficiary of what he called an absolute trust, and it is plain that he thought that, even if an absolute trust was the right way forward, it might be established for the benefit of more than one beneficiary.

238. Leigh agreed that there was no discussion at the meeting as to who any single or defined beneficiaries might be, although on this, as on other occasions, Leigh said that a decision had by then been made that she was the person going to take Wotton forward. The thrust of this evidence was that she was the single beneficiary that David would have selected, but I am quite satisfied that this is no more than an assumption she made, based on a hope that she had at the time because she saw that as the most logical solution whether or not David had arrived at a settled intention. Mr Cameron Taylor agreed that there was no such discussion, and there is no basis for concluding either that this was a reflection of anything that David then said or implied, or that he had made up his mind that this was what he wanted to happen in the light of the advice given by Mr Hutton.

239. In her oral evidence Leigh explained that the reason why the possibility of an absolute assignment to her was not mentioned in the notes of the meeting was not because it was not David's settled intention but because "you wouldn't necessarily discuss a simple assignment with [CRS]". In my view that was an extraordinary answer which smacked of an implausible attempt to justify the omission of any discussion about an obvious point to mention if it had been on the table at that stage, let alone already determined. I do not think that it was.

240. The second problem identified in Mr Cameron Taylor's e-mail was the potential of further income tax on withdrawals after four years. Because the Bonds were taken out in 2000, any income withdrawals made beyond the remaining four-year period (i.e., to 2020) would lead to additional tax being payable which would be significant given the level of David's other income. He concluded by saying he was going to pause to review the gains on the policies and consider what other choices were available. He said that he would revert when he had obtained that information.

241. The Prudential DGT for the £250,000 was eventually put in place in June 2016, after which David wrote to Mr Cameron Taylor saying "with luck some income will now follow". This amounted to confirmation that income generation from his investments remained one of David's principal concerns.

242. There was then a pause until 29 July 2016 while Mr Cameron Taylor was obtaining the details of the policy gains on the Bonds. Having obtained that information, he exchanged e-mails with Leigh (but not David) about a meeting, which then occurred in August, probably followed by a further telephone call. David did not participate in the meeting or the telephone discussions, but it appears that Leigh and Mr Cameron Taylor had a more wide-ranging conversation than a technical discussion about the gains on the Bonds. In particular, Leigh's evidence was that she and Mr Cameron Taylor had a discussion about how it was that David viewed her as a principal beneficiary of his estate. She said that this was initiated by an open question from Mr Cameron Taylor to whom her status as intended beneficiary had been apparent from earlier discussions with David in January.

243. Mr Cameron Taylor's evidence was slightly different. He said that he had acquired his understanding of Leigh's role within the family and status of what he called "main beneficiary" over time, although this phrase was his own, not one that was used by David. He was not at all specific about when or how that understanding had been acquired. He thought the situation was an unusual one, but he had understood that it was linked to the fact that David's children were not, as he put it, "in a best position in

their own lives", although his understanding was "foggy". This was not very surprising in light of the fact that David was unlikely to have discussed with him the nature of Patrick and Perdita's difficulties in any detail.

244. I am satisfied that the position of Leigh as a "main beneficiary" of David's estate was not formulated as such in Mr Cameron Taylor's mind prior to his August 2016 discussions with Leigh. By that stage he was aware, in relatively non-specific terms, that both Perdita and Patrick had considerable difficulties in their lives, but he was not aware of the details of those difficulties. He had by then formed a clear impression that David intended that Leigh should play an important role in his affairs, an impression which he picked up as a result of his interaction with David and Leigh over time. He had not, however, seen David's 2015 will, nor had he discussed its terms with David. He was also unaware of the terms of the IHT advice that David had received from Boodle Hatfield and did not know that they had been advising him on succession planning. He did not know that Boodle Hatfield had also advised that David's heritage property (Wotton) might qualify for conditional exemption from IHT and that other income-producing assets could be put in a maintenance fund to maintain the heritage property and thereby be rendered IHT exempt.

245. During the course of the August discussions, Leigh gave Mr Cameron Taylor more detail in relation to the nature of Perdita and Patrick's problems and in my judgment it is likely that it was then, as a result of what Mr Cameron Taylor was told by Leigh, that his understanding of her intended role crystallised into one which assumed that she was also the person who was to be what he called a main beneficiary of David's estate. That is the important context in which Mr Cameron Taylor suggested that the Bonds could be assigned to Leigh, because she was a basic rate taxpayer. There was a discussion of the taxation benefits of top slicing in that context, a benefit which would not be available to David. Leigh's manuscript note of the conversation was in evidence but there was no note prepared by Mr Cameron Taylor of what was discussed. Leigh accepted in her oral evidence that she realised at the time that, if this plan were to be implemented, she would have the tax free income for the next four years, and that, having been given to her, she would be free to do with it what she wanted.

246. One of the more striking aspects of this part of the story arises out of the fact that discussion of the suggestion that the transfer of the Bonds to Leigh as a basic rate taxpayer might be the way forward took place in David's absence, even though it reflected a distinct shift from the ideas which had been discussed with Mr Hutton in June in a manner which appeared to benefit Leigh. Although much of Mr Cameron Taylor's evidence as to the meeting was reconstruction (he said that he had no specific memory of the meeting itself), he accepted that it had happened and he said that amongst other things it would have drawn out whether or not Leigh was a suitable person to whom the Bonds could be assigned. By that, Mr Cameron Taylor was referring to Leigh's own tax position, but he also appears to have assumed that there was no need to consult David, as the putative transferor of the Bonds, on the question of whether or not he thought that Leigh would be a suitable recipient of an unconditional assignment of the Bonds in any event.

247. This assumption was based partly on Mr Cameron Taylor's observation of the relationship between David and Leigh, but it was also informed by what he understood from Leigh as to David's intentions for her in the future. In my view, it is

surprising that any substantive discussion took place in the absence of David as transferor and without obtaining a clear view from him as to whether an absolute assignment to Leigh outside a trust was a solution that he might be prepared to countenance.

248. In her skeleton argument, Ms Reed invited the court to infer that Mr Cameron Taylor consulted David before setting up the meeting with Leigh. I do not think that it would be right for me to do so. There is nothing in any of the documents which indicates that David had any such contact, and Mr Cameron Taylor did not say that he had. His evidence, albeit expressed in a somewhat defensive manner, gave a number of reasons why it was not necessary to ask David to attend, but at no stage did he say that the reason it was not necessary was because he had already discussed this new idea with David, who was content for it to be explored further in his absence.

249. There was then some further communication between Leigh and Mr Cameron Taylor (but not David) relating to her own income position. In particular, Leigh informed Mr Cameron Taylor on 20 September 2016 that she had looked at her own tax returns and had established that "going forward there would be space as it were at least of £7,200 a year which could be utilised for top slicing as I have stopped receiving rental income from a property." Mr Cameron Taylor also had some communication with Mr Hutton when he told him that he would be seeing David sometime after 15 October to discuss whether there was any reasonable way forward. However, the anticipated meeting did not happen, because, before further progress on the assignment proposal could be made, Patrick died.

The impact of Patrick's death and the immediate aftermath

250. Patrick's death on 14 October 2016 was wholly unexpected. Its impact on David is of some significance in these proceedings, because it was relied on as part of the explanation for David's susceptibility to suggestions made by Mr Cameron Taylor and Leigh that it was a good idea to transfer the Bonds to Leigh by way of absolute assignment.

251. There is no doubt that Patrick's death was devastating for David. This was the word that he himself used and similar language was used by Mary and his personal assistant, Ms Maier, who described the immediate effect of Patrick's death as leaving David distraught. As Ms Maier put it in evidence which I accept, David coped better with April's death because it had been on the cards for so long while Patrick's death was just so unexpected, it was heart-breaking. The effect was not just immediate. Dr Flinders, who described David's relationship with Patrick as having been tender (a word that was also used by Mary), said that his death was a most significant bereavement for David from which she believed that he had not yet recovered. Others gave consistent evidence to the same effect. As Mr Harrison said:

> "Patrick's death completely changed David. His physical health went downhill. He just started being a much older man."

252. There was some evidence that, by the time of Patrick's death, a gentle decline in David's health had already started. Thus, one of Leigh's witnesses, Mrs Patricia

Hardingham, described how she was told by Leigh sometime in the summer or autumn of 2016 that David was aging and in need of more personal attention. This was said in the context of her evidence about Edward's schooling (a point to which I will come), but reflects the fact that David was becoming less robust, a material context in which to assess the extent of the impact which Patrick's death had on David's approach to (and ability in) the conduct of his own affairs. The difficulty which he had in coping was reflected in e-mails he wrote at the time - "I find myself hardly able to put one foot in front of another without falling over and have been even more forgetful and incompetent than usual" to one friend and "I was knocked sideways by the wholly unexpected death of my son Patrick just 4 days before your recital and have not felt able to carry on as normal" to another.

253. The devastating impact which Patrick's death had on David does not mean to say that he did not try to carry on as normal, even though as he told some of his friends he did not really feel able to do so. Thus, on 20 October 2016, only a few days after Patrick had died, David had a discussion with Saffery Champness about the application of the conditional exemption rules to Wotton and whether there were any restrictions on the persons to whom a devise could be made. This had been arranged before Patrick died, but the types of Wotton-related activity with which David was quite happy to continue included attending an HHA AGM with Leigh a month later and working with Ms Maier and discussing planting plans with Mr Harrison.

254. There was also at least one conversation between Leigh and David during the period immediately after Patrick's death in which they discussed the future of Wotton, although this was much more to do with how he could divest himself of some of the effort attendant on running a substantial property. As Leigh explained in an e-mail to Mr Cameron Taylor, copied to David, on 16 November 2016:

> "over the past few weeks David and I have had a chance to discuss the running of Wotton; going forward we are both agreed it is sensible for me to take over the brunt of day to day administration."

255. The way that Leigh was telling others what was likely to be happening at Wotton going forward was also reflected in other contexts. Thus, there had been difficulties in Edward's schooling which had led her (in early 2016) to remove him from his prep school close to their home in East Sussex and then embark on a period of home schooling. On 29 November 2016, she wrote to Magdalen College School in Oxford as part of her application for Edward's admission to the school as a day boy (he was then aged 11), and said, by way of background that "as a family we will take over Wotton House in Wotton Underwood" and that they believed that a Magdalen education would suit him well.

256. It was Leigh's case that it went further than a proposal to spend more time at and move into Wotton, because, at about the same time, David had a conversation about what was to happen at Wotton with an old friend of his, Mrs Carolyn Howard-Johnston. She gave evidence at the trial for Leigh and plainly thought that David had behaved very badly in the present dispute by going back on what she understood to be his word. Her evidence was that sometime not long after Patrick had died, she was walking around the lake at Wotton with David and he told her that he had decided to leave his beloved Wotton to Leigh (of whom Mrs Howard-Johnston had not at that stage heard), because she had been a wonderful help to him and to Patrick. She also

said that he had confirmed in this conversation that it had all been done legally. It seemed to her to be a very romantic solution and a lovely end to a story which had otherwise been rather sad.

257. I accept that David and Mrs Howard-Johnston had a conversation along the lines of what she said in her witness statement. However, it is necessary to treat her evidence with some caution because, in an e-mail she wrote to David in February 2021, after she had first learned about what she described as "your problems with Leigh", the emphasis of what she said was rather different. Commenting on an earlier e-mail when she had suggested that David's marriage to Mary might have caused him to change his mind about passing Wotton to Leigh and her family, she said:

> "What I meant was that the fact that you are now remarried could well have caused a change of mind as to the future of Wotton as I recall you telling me some years ago that you were thinking of it landing in the hands of Leigh and family after your death."

258. In my judgment this formulation is a much more probable reflection of what David had actually said. The language Mrs Howard-Johnston used was "thinking of", which is consistent with a statement of present (or even prospective) intent, rather than an assurance or promise, while the concept of Wotton "landing in the hands of Leigh and family" is as capable of describing what was contemplated by David's letter of wishes in any event as it is of describing an absolute inheritance. The reference in her witness statement to it all being done legally can only have been to David's 2015 will and letter of wishes. In my judgment, nothing that was said to Mrs Howard-Johnston added to or was inconsistent with Leigh having the role which I consider to have been contemplated by the letter of wishes. The statement of present intent demonstrated that David did not consider that anything was set in stone. It was simply a question of what he then thought should happen as being best for Wotton.

259. It is also right to say this about Mrs Howard-Johnston's evidence. She described her concern that David should not be allowed to go back on legal documents which she understood he had signed giving effect to his promise to Leigh, and she expressed herself very strongly on the subject. However, it became apparent during Mrs Howard-Johnston's oral evidence that she had not seen the legal documents to which she referred and that she did not know that such legal arrangement as had been reduced to writing made provision for a discretionary trust of Wotton with a class of potential beneficiaries that was wider than Leigh and her family.

260. It also transpired that Mrs Howard-Johnston's information as to the extent of the work which Leigh had done for David over the years came from Leigh's words or conduct (as it did for Ms Emir who said that Leigh's main job seemed to be to organise everything to do with Wotton), and it was Leigh not David who told Mrs Howard-Johnston that David had never paid her for that work. If that is what Leigh did in fact tell Mrs Howard-Johnston, that did not continue to be the case (as will appear). It may well be that Mrs Howard-Johnston would still have expressed her disapproval of David's conduct even if she had been provided with a wholly dispassionate description of what Leigh had done for David and over what period, but I very much doubt she would have done so in the trenchant terms in which she did.

261. During this same period, David took an approach at social occasions and the like which was consistent with an effort to carry on as normal. This was reflected in the evidence from Sir Jeremy Sullivan, a retired Court of Appeal judge, who said that he did not notice a marked decline in David's physical or mental health after Patrick's death. The events described by Sir Jeremy as the occasions on which he was able to observe David were a lunch David hosted on 27 November 2016 (i.e., only shortly after Patrick's death) to celebrate the upgrading of the Wotton landscape to Grade 1, a post-Christmas party in later December 2016, two black tie musical events at Wotton in September and October 2017 and a reception to mark the publication of David's book on Sri Lanka in December 2017.

262. Sir Jeremy thought that he would have noticed if there had been a marked decline, and described David as acting perfectly normally. But he did, of course, agree that people deal with grief in different ways. I think that the reality of the position is that David was putting a brave face on the situation, but e-mails that he wrote to a couple of his old friends showed that he was deeply affected by what appeared to be a very private grief. The evidence showed that this came out in the presence of those with whom he had regular personal contact (Mary, Ms Maier and Mr Harrison) and a professional as well as a personal friendship (Dr Flinders) more easily than those whose friendship, while close and of longstanding, was neither so regular nor so immediate and intimate.

263. Patrick's death was also deeply upsetting to Leigh. She and members of her family played a prominent role at the funeral in that Robert gave a reading and Rosina read a poem she had composed. They all sat in the front row with David, the unconventionality of which (as they were not family) surprised Mary, but she said that it was not a problem for David because "he was spaced out at that funeral".

264. Leigh also does not dispute that Patrick's tragic and unexpected death had a great and lasting impact on David. I do not think, however, that her case on this point was as straightforward as it should have been. In her letter of claim, written before David's undue influence claim had been articulated as such, CRS said on her behalf that "We understand that Mr Gladstone had been very affected by Patrick's death and this precipitated a sharp decline in his physical strength and cognitive stamina". However, there was a shift of emphasis in her Defence because she expressly denied that there had been a sharp decline in David's physical strength and mental stamina and simply said that he was "sad and tired but he continued to have an active social life and to deal with his affairs". Her witness statement addressed this issue in an even more summary manner. It skirted around the effect which Patrick's death had had on David, saying that David simply said that the show must go on, which she said she later realised was his way of dealing with the situation. She described herself as devastated by Patrick's death but there was no mention of a decline in David's cognitive or mental stamina.

265. That is not to say, however, that Leigh's evidence did not deal with a decline in David's health. Rather, she said that the marked deterioration occurred after he had fractured his spine in May 2018 and had received a diagnosis of apraxia in early 2018 followed by a diagnosis of significant cognitive impairment in August 2018 within what she called "the threshold score for a diagnosis of dementia and at risk of becoming delirious". As will become apparent, these events were after all but one of

the Bonds had been assigned to Leigh, while Patrick's death was before the assignments.

266. When Leigh was asked by Ms Angus about what appeared to be this discrepancy in her case, it was put to her that this change in position was affected by concern about the impact of what had been said in the letter of claim on her defence to the undue influence claim in relation to the Bonds. There was the following exchange:

> "Q. The fact is that you changed your position, did you not, because it did not help you in your undue influence case to say that - in your undue influence defence?
>
> A. Well, it is obvious that you would say: oh, you know, he was so vulnerable and didn't know what he was doing, but that wasn't the case, so perhaps I was trying to clarify that.
>
> Q. Well, let us have a look. So, you accept it was impacted by your wish to defend the undue influence case, the fact that you changed your position on that?
>
> A. No. I think I was just clarifying what I thought in the light of -- you are obviously picking it up, so I suppose I am agreeing with you."

267. This was an example of why I have had to approach my assessment of some of Leigh's evidence with caution. I think that she was right to accept in the witness box that she had adapted her case in an attempt to meet a concern about the adverse effect which earlier statements made on her behalf might have been thought to have had on her defence to the undue influence claim. I am satisfied that what was said in her solicitors' original letter of claim gave a more accurate picture of the true position.

Leigh's Wotton and Gladstone-related activity during the period 2011 to 2016

268. Before reverting to what happened with the Bonds, it is convenient to explain my findings as to the other Gladstone-related matters with which Leigh had been involved during the period between the October 2011 dinner in Islington and the time at which Leigh told Mr Cameron Taylor that she and David had agreed that it was sensible for her to take over the brunt of day to day administration relating to the running of Wotton going forward. This is relevant both to the detriment which Leigh says she suffered in reliance on the assurances David had made and to her case that there was a mutual understanding that she would inherit Wotton after his death.

269. The particulars of detriment relied on by Leigh for the five-year period between the October 2011 dinner and Patrick's death were in large part a continuation of the same particulars relied on for the previous four years. In summary, Leigh relied on an increasing involvement in the running of Wotton, and a continuation of the care and assistance which she gave to the family generally.

270. So far as the latter was concerned, in the period prior to April's death, Leigh continued to assist in the provision of care and assistance to April and David and there is no doubt that this increased as April's condition deteriorated. Thus she found Debbie to act as April's carer and, on an occasion when April had been in respite care

for a short period at Burrswood, a care home close to Leigh's own home in Sussex, she had visited her three times per day. The way she put this in her evidence was that: "David was humbled at my devotion to her, but my view was always that that was what you did if you loved someone, and I knew that David needed support." In my judgment, there was no sign that what Leigh had been told by David in 2007 and 2011 was the reason she helped as much as she did with April's care. As she herself was at pains to stress, her devotion to the Gladstone family was free standing. It was not impelled by what David said to her might happen in the future.

271. There is plenty of evidence that, by the time of Patrick's death in October 2016, and for some time beforehand, Leigh had been doing a great deal to assist David in many practical matters concerning Patrick and his affairs. The only evidence of anything substantial that may have been done for Patrick before she became his attorney, i.e. going beyond the essentially social, was an occasion in "around 2014" when Leigh attended a meeting with his psychiatrist and care workers which led to a clean out and redecoration of his flat which she arranged. However, in general terms, she spent a lot of time talking to David about Patrick and paid him many social visits. She said that she did much to keep an eye on him, and I accept that this was indeed the case.

272. From the time she became Patrick's attorney, Leigh seems to have had more contact with the authorities responsible for his care and her role was put on a more formal basis, which involved her being paid for the services she provided. On 9 October 2015, Patrick's LPA had been registered. There were then occasions on which, in conjunction with David, she exercised the power. She was also one of the trustees of Patrick's trust and in that capacity was provided with trust monies to replace items in his flat and refurbish the fabric. The cost of this was funded out of a sum of £10,000 paid to Leigh from the trust monies, as authorised by the trustees on 14 May 2015. From January 2016 Leigh was paid £600 per month from Patrick's trust in order to discharge incidental expenses on his behalf such as petrol expenses, travel and the odd meal out. At the trustees' meeting held on 16 September 2016 the position was again revisited and it was resolved that J M Finn be asked to produce an income of about £600 to £700 per month and that Leigh and Mrs Barrett would liaise to produce accounts. The payments of £600 per month continued to be made to Leigh for a period of time after Patrick's death, the precise length of which is not clear from the evidence.

273. Leigh also charged separately for anyway part of her time spent in providing this considerable amount of support for Patrick. She charged and received £5,775 for the care and assistance she provided in the period April to December 2015 (57.75 hours at £100 per hour on work as his attorney). She did not charge for her time between the end of December 2015 and Patrick's death in October 2016, although as I shall explain David gave her the net funds from Patrick's trust which had devolved on him after Patrick died.

274. During this period, David continued to run Wotton, but it emerged during the evidence that there were five specific Wotton-related matters in respect of which Leigh was also engaged during the 2011-2016 period. This limited involvement over the period is consistent with the evidence from David's personal assistant, Ms Maier, that it was only on Patrick's death that Leigh started to come to Wotton more often.

275. The first of these was the sale of Grenville Cottage and the neighbouring Terrapin to members of the Blair family, which completed in about February 2013; the second related to certain issues arising out of the tenancy of the Clock Pavilion; the third was an exchange of correspondence about letting the Temple flat to Dr Stockley; the fourth was a loan of what were called the Grenville shields by Buckinghamshire County Council Museum to David and the fifth was her involvement in the old WEMF.

276. Leigh was not able to identify any other specific matters on which she was engaged during this period, although she said that whenever she spoke to David she had long discursive conversations and there were "many, many things that aren't documented". She also said that David always invited her along whenever neighbours or other interested parties wanted to talk to him about buying parts of the grounds. She said that she "always had to monitor potential planning applications, and in fact it was me who alerted David about plans to redevelop the barn that had been sold to Tony and Cherie Blair in 2013". She was also involved in their interest in purchasing the orangery and expressed the view that they would have liked to purchase the whole property eventually.

277. Apart from the odd e-mail in which these issues were mentioned, there was no hard evidence that there was anything about them which required significant expenditure of time by Leigh. The concept of continuous monitoring work sought to convey the impression of onerous and time-consuming activity which was not substantiated by any hard evidence. Indeed it is difficult to conclude that any of Leigh's involvement in these other miscellaneous matters could properly be described as time-consuming or substantial. Leigh sought to emphasise in a non-specific way the extent of her role, but I have concluded that on this issue Leigh was prone to exaggeration in the way she expressed herself.

278. One example of this tendency to exaggerate related to the first of the five matters. Leigh's initial description of the protracted saga of the sale of the Grenville cottage spoke of "an awful lot of meetings" she had with the prospective purchasers. Although the deal took some time to complete, when pressed "an awful lot" became three or four meetings. Her description of there being so many e-mails on this subject, and that she had done no more than skim through them for the purposes of the trial, was also a little misleading because it gave the impression of a mass of substantive material. In the event she accepted that much of it was short commentary and duplication. Eventually Leigh accepted that her actual work on the Grenville cottage issue comprised commentary on a draft contract for sale and a draft TP1 transfer, three or four meetings with the prospective purchasers and some commenting-type e-mails. It may have been a protracted saga, but taken in the round it did not take up a substantial part of her time.

279. So far as the second matter was concerned, there were some short e-mails commenting on documentation and Leigh was also involved in service of the notice to quit by hand and she attended a possession hearing in Aylesbury County Court on 10 October 2012. There was also some communication (inspired by Leigh) which David had with John D Wood who agreed to pay for the costs of the possession proceedings, as the keys were released to a new tenant before the deposit was received and in the event a deposit was never paid. This was a single issue on which she was obviously

engaged for some time, but again I think that the impression she gave of it being very time-consuming was overstated.

280. The third matter was agreed to involve a few e-mails, which Leigh accepted were insubstantial. Slightly more work was involved in the fourth matter. It took place in 2015 and related to the loan to Wotton of some shields associated with the Grenville family, who had been owners of Wotton until the early 20th century. Leigh commented on the loan agreements, but there was not a great deal more than that. It was exactly the kind of exercise on which a close friend or family member might be expected to volunteer their assistance if they had some relevant commercial or legal experience to offer.

281. The final matter related to the old WEMF. Leigh attended five trustee meetings between April 2012 and September 2016, initially in her capacity as April's attorney and, after her appointment as trustee of the old WEMF by deed dated 22 August 2013, in her capacity as a trustee. There was one piece of extra work which Leigh agreed to undertake arising out of the March 2015 meeting of the old WEMF trustees. She held a meeting to discuss the division of works to the house and works to the grounds that had been carried out by a longstanding contractor over a period of many years. Leigh accepted that, although this involved her in a single meeting for which she had to make a special round trip, it was not substantial.

The Bonds

282. The destination of the Bonds also arose as an issue in the 16 November 2016 e-mail from Leigh to Mr Cameron-Taylor in which she had told him about her discussion with David on the good sense of her taking over the brunt of day to day administration in relation to Wotton. In a passage which appears after the citation I have set out above, Leigh said that she and David had:

> "briefly discussed the option of assigning the bonds which will mature in the next few years and using these funds to pay maintenance and admin costs of Wotton. With this in mind we would both like to meet as soon as is convenient for you."

283. The reference to "the option of assigning" the Bonds was a reference to the option that had been discussed by Leigh and Mr Cameron Taylor in August 2016. There is no documentation to suggest that there was any other discussion about an assignment (whether to Leigh or to anyone else), apart from this brief discussion which occurred shortly after Patrick's death. To the extent that it was Leigh's evidence that David was aware of the proposal as a result of anything said or done before this brief discussion, she was unable to be specific as to when and by what means David became aware and I think she is mistaken in thinking that he had.

284. The e-mail copied to David on 16 November led to an exchange of e-mails fixing a meeting to be attended by Leigh, David and Mr Cameron Taylor on 15 December 2016. There is no doubt that this meeting took place, but it was also Leigh's case that there were two other meetings in December, both of which were attended only by David and Mr Cameron Taylor: one on 1 December 2016 and a later one on 20 December 2016. I have reached the conclusion that it is very unlikely that Leigh was

right about this. I also think that the evidence points to the 15 December meeting having been the first meeting between David and Mr Cameron Taylor after the occasion on which Leigh and Mr Cameron Taylor had discussed the Bonds in August 2016.

285. As to the suggestion by Leigh that there was also a meeting on 1 December, this is given some substance by the fact that an appointment with Mr Cameron Taylor appears in two of David's appointment diaries. However, it is clear from the e-mail correspondence at the time that no such meeting took place. I think that the diary entry is either a mis-recording (which is more likely), or possibly records the meeting which was then moved to two weeks later and not deleted. Mr Cameron Taylor's recollection of what occurred was very limited and he did not contend that either of the other two meetings happened. The only other evidence that they did is a single uncorroborated sentence in Leigh's witness statement that David told her that he had met Mr Cameron Taylor alone at the beginning of December and again on 20 December 2016. I think that the better view is that she is mistaken about that. With the single exception of the entries in David's appointments diary for 1 December, there is no evidence that either of these meetings occurred. I am satisfied that, if they had, they would have been referred to in some way or another either in correspondence to or from Mr Cameron Taylor or David, or in some other record of the meetings. There is no such correspondence or record.

286. By the time of the 15 December meeting, Leigh had become Mr Cameron Taylor's client. There was a pre-meeting exchange of e-mails about her signing client engagement and confidentiality letters, which she then did. Mr Cameron Taylor explained that what he called his "main objective" in having Leigh as a client was because he needed a full understanding of her overall tax position. Leigh said that she needed to be treated as his client, so that once the Bonds had been assigned to her, he could then take her instructions on what to do with them. Whatever the nature of the need for Leigh to be a client, I am satisfied that she became a client in her capacity as a prospective assignee of the Bonds. As such, it is clear that Leigh's interests as assignee were capable of being in conflict with the interests of David as assignor, more particularly in the absence of his full and informed consent to any assignment.

287. The only document which might have been a note of the meeting which did occur on 15 December 2016 took the form of manuscript notes written by Mr Cameron Taylor on a PQR standard form of personal financial details questionnaire. It was signed by him and countersigned by David, both of whom dated their signatures the day of the meeting. This note recorded changes in David's personal circumstances because of April's death and the grant of probate in July 2014. It also recorded that the meeting was to discuss David's portfolio and contained the following reference to the Bonds:

> "Now wants to assign 5 bonds passed to him from Mary's estate to his main beneficiary, Leigh White. Son is in a care home and daughter does not have ability to help with estate. Forms of assignment to be completed in due course. Gifts will be Potentially Exempt Transfer. We discussed 7 years and tapering. A gift to discretionary trust was completed in June."

288. The reference to Mary was a reference to April whose first name was Mary, but it was a name which David never used. As Leigh agreed, it was almost certainly something lifted by Mr Cameron Taylor from his client file, which gives some indication that not

all of the note was a record of what was actually discussed. But Ms Angus went rather further in her submissions. She said that the note was prepared well before the meeting and reflected what Mr Cameron Taylor had been told by Leigh in August, but not anything that David had said in December. The most significant evidence is that Mr Cameron Taylor recorded that "son is in a care home", when Patrick had in fact died two months earlier in October. The reference to a care home was imprecise but he was certainly in hospital by the time of a trustees' meeting in mid September. There is nothing else in the note which suggests that the note was prepared after his death, nor is there anything which does not reflect what Leigh and Mr Cameron Taylor discussed in August.

289. Mr Cameron Taylor had no independent recollection of what was said at the meeting, but the note was countersigned by David, which might be thought to have confirmed that, even if prepared earlier, it reflected what was discussed. In the broadest sense, I think that it does, but I do not think that it reflects the full picture and also contains some obvious inaccuracies which makes it an inherently unreliable document for at least two reasons.

290. The first is that David's diary entry for that day discloses a rather different understanding of the meeting. It reads "To Paul Cameron Taylor with Leigh to sign new financial disposition for Wotton 'going forward'. I have to believe it's being well handled. Anyway it's now more [*illegible word*] up to Leigh. So far no argument which is great." I think that this shows a rather confused understanding of what had occurred, partly because David had not in fact signed any form of disposition – all that was signed was a file note, but also because he came away thinking that whatever had been done was "for Wotton" which was not recorded as such in the note, even though that was a core issue from David's perspective. It also reads as a diary entry written by a man who thought that what he was doing was for the benefit of Wotton but was rather exhausted by the whole process – he had to believe that it was being well handled and was rather relieved that there had been no arguments about it with Leigh. This reference to "no argument" was not the only occasion on which comments to that effect were made by David.

291. The second is that, quite apart from the confused thinking reflected in the diary entry, the fact that David countersigned a note which referred to Patrick as being in a care home when he had died two months earlier is clear evidence that he was not focusing on what he had been asked to sign. Patrick's death was not just an incidental, albeit tragic, event. It went to the very core of David's plans for the future. The ability for Patrick to benefit from David's estate in general and from Wotton House in particular "in any way that may be arranged" and "wherever possible" was at the heart of David's letter of wishes. In my judgment, if David had been properly focused on what was happening at the 15 December meeting with Mr Cameron Taylor, he would not have countersigned a note that contained such a personal and fundamental inaccuracy on a matter relevant to a central plank of what he wanted to achieve.

292. Mr Cameron Taylor said in his evidence that he had understood from David that Leigh was a major beneficiary of his estate and David agreed with his suggestion that Leigh might be an appropriate recipient of the Bonds as a basic rate taxpayer. I think it is quite likely that a conversation along those lines took place at the 15 December meeting. However, I also think it is likely that the way in which Mr Cameron Taylor remembered it was formed in his mind from the earlier conversation he had had with

Leigh, which was the essential source of some of the information recorded in the PQR form. I do not doubt that Mr Cameron Taylor genuinely believed that what he had recorded was accurate, but I think it was incomplete both in the sense that (for perfectly understandable reasons given its nature as a document) it did not reflect the more nuanced way in which Mr Cameron Taylor came to have the understanding that he did, and because it did not record that the proposed assignment to Leigh was for a specific purpose - Wotton. I have reached the clear conclusion that David never intended that if and when the Bonds were transferred to Leigh they would be at her free and unrestricted disposition.

293. The day after the meeting, Mr Cameron Taylor wrote to David and Leigh suggesting that it would be good to have a further meeting after the New Year to consider some specifics. That meeting took place on 10 January 2017, but David did not attend. Leigh said that the purpose of the meeting was to consider her tax position, in other words the motivation for the assignment of the Bonds. Mr Cameron Taylor suggested to Leigh that the next thing to do was to investigate David's income position and whether the income was being used for Wotton.

294. On 14 February 2017, just over a month after that meeting, David wrote to Mrs Barrett saying that, as part of forward planning, he had been advised by Mr Cameron Taylor that it would be sensible for Leigh to be brought in to understand the various accounts associated with Wotton. He therefore asked her to arrange a meeting with Leigh. Mrs Barrett was still dealing with David's tax affairs, but since the involvement of Boodle Hatfield in 2013, neither she nor Mr Frostick had had any involvement in David's estate or tax planning. Mrs Barrett seems to have thought that the purpose of the meeting was to simplify everything, including by putting all Wotton and London rents into a single account. As she explained in her oral evidence: "it was just about, as far as I remember, the day-to-day running of Wotton, which bills were paid from which account, et cetera." She was asked whether she had understood that Leigh was to be David's successor at Wotton. She said that she did not have that understanding and was not told it by David. Indeed she confirmed elsewhere that David never informed her that he wished Leigh to inherit Wotton on his death.

295. On the face of it, this e-mail gave a clear indication that David was lining up Leigh to play a more significant role in relation to the management of Wotton and in particular the proper accounting for all rents and associated expenses. However, it is also clear that, from Mr Cameron Taylor's perspective, the information was sought and required to assess what income was needed for the maintenance of Wotton and how that could be achieved. Mr Cameron Taylor wanted to know the extent to which the income that was currently required for the maintenance of Wotton included income from the Bonds.

296. Ms Angus submitted that I should find that Leigh drafted the e-mail. She said that this was one of a number of e-mails emanating from David's e-mail address which were in fact drafted and sent by Leigh. She had a distinctive style, which included starting e-mails with a lowercase letter. I accept this submission in part, because I think it probable that Leigh initiated, drafted and sent this e-mail (its form and style is much more consistent with Leigh's e-mails than those sent by David without input from Leigh), but there is no evidence that it was prepared and sent without David's knowledge or consent and I do not think it was.

297. However, I consider that the development of this means of communication reflected the increasing reliance which David placed on Leigh when communicating with Mr Cameron Taylor, Mrs Barrett and indeed others in relation to his financial affairs. It also reflected the fact that the impetus for the request it made probably came from Leigh not David. The fact that this e-mail was sent on the day before the inquest into Patrick's death, which Leigh and David attended together, means that I think it likely that he would have given scant attention to the terms in which the e-mail to Mrs Barrett was written.

298. David described the inquest in his diary and how Leigh's presence was as usual invaluable. He also recorded that he was upset by Leigh's suggestion that Patrick had not needed to have his medicine changed ("Leigh upset me by saying Pat didn't need to change medicine or be sectioned because when he stayed with them he was perfectly compliant and okay"). The upset was caused by the fact that the change in Patrick's medicine, which was found to have been the cause of his death, was something which David himself had approved. Understandably, this was the cause of much anxiety for him. However, although Leigh seems to have upset David in relation to this acutely sensitive issue, that should not detract from the fact that David also found Leigh's presence an important source of moral support during this exceptionally stressful time. As he said to her in an e-mail the following day:

> "thank you for yesterday, and indeed for many other days when you've propped me up I thought I could cope reasonably well with Patrick's final chapter but it was more gruelling than I had expected and I absolutely needed my hand held. … Bless you for always being there. We meet again very soon."

299. On 17 February 2017, Leigh and Mrs Barrett had their meeting and went through the accounts. Afterwards, Leigh told Mr Cameron Taylor that the Bond income for the Wotton maintenance generated what she called a surplus, but Mrs Barrett was going to find out from David's accountant, Mr Colin Gray, about his expenditure on the London properties. She obtained that information a few days later and then sent a summary of David's income and expenditure to Leigh, who told Mr Cameron Taylor on 14 March 2017 that to her untrained eye it did not appear that the income from the Bonds was specifically allocated to Wotton. However, Mrs Barrett said in her oral evidence that she did not think that the income from the Bonds was surplus to David's requirements and pointed out that much would depend on what David's plans were for expenditure on Wotton from year to year; it was capable of absorbing an infinite amount of money.

300. Ms Angus submitted that I should conclude that, when it became apparent to Leigh and Mr Cameron Taylor that there was no specific allocation of the Bond income to Wotton expenditure, the plan changed to one in which an unconditional assignment to Leigh was thought to be a feasible way forward. So far as they were concerned, an assignment to Leigh, rather than to a trust, had been on the cards since their meeting in August the previous year. It was also referred to in the 15 December note I have already described. In my view, the evidence establishes that once Leigh had ascertained from Mrs Barrett that the Bond income was not specifically allocated to Wotton maintenance expenditure, but went into David's personal account, the need for any conditionality in relation to the transfer to her disappeared. The evidence does not establish that David was a party to the thinking which led her to that conclusion.

301. By this stage, therefore, Mr Cameron Taylor's focus was on establishing the extent of the income David received from the Bonds, the use to which it was put and how the loss of income from the Bonds would be replaced if they were assigned to Leigh. Mr Cameron Taylor had established that David was withdrawing the permitted 5% (or £37,500) per annum regardless of whether the investment return on the Bonds was keeping up with the rate of withdrawal, a situation that he described as the Bonds 'overpaying' for a long time. This was tax free income in the sense that it was deferred for 20 years. In his e-mail to Leigh of 18 March 2017, he suggested that it would be helpful to know what the income requirement was so that the income from the Bonds could be replaced from another source at a better level, not higher and preferably lower. He proposed a figure of £20,000.

302. It was clear from Mr Cameron Taylor's evidence that the whole purpose of what he was trying to achieve was to minimise a future IHT charge on the surrender of the Bonds on David's death. That was the driver behind his approach and the requirement to assign the Bonds to a third party who was not a higher rate taxpayer was the means by which he sought to achieve that result. Mr Cameron Taylor accepted, however, that the advantage to David as assignor was limited in the sense that it minimised the IHT charge on death or earlier surrender. Self-evidently, the consequence of any assignment that David made would be that he would be giving up income to which he would otherwise have been entitled.

303. Mr Cameron Taylor was unable to say where the proposal that £20,000 was an appropriate figure had come from, although he thinks that it may have come from his analysis of David's JM Finn portfolio. However there was no suggestion that this was discussed with David and, in any event, his evidence was consistent with it being an amount that he thought the portfolio might return, rather than an assessment of what the income requirement to replace the Bond income actually was.

304. Mr Cameron Taylor did not accept that he knew at the time that David wanted the income from the Bonds to continue to be used for Wotton. He also was not aware that Leigh had originally proposed that she would undertake to use the income from the Bonds to maintain Wotton and he had no discussion with Leigh to that effect. His evidence was that he assumed that, going forward, Leigh would use the income from the Bonds to support the family, although the means by which that assumption was to be protected or enforced was simply the closeness of the relationship between David and Leigh, which in his view meant that the process being considered seemed (as he put it) "suitable from the outset".

305. Shortly after the e-mail in which Mr Cameron Taylor had proposed to Leigh that the replacement income requirement was £20,000, there was a meeting of the trustees of Patrick's trust. They resolved to use some of the trust monies to make a number of donations and to pay for a gravestone for Patrick. Mr Frostick also confirmed that, on the death of Patrick as life tenant, April's original entitlement as residuary beneficiary vested in David. Mr Frostick was asked about David's mental state at this stage. He said that he realised that David had been affected by Patrick's death, but he did not notice any diminution in his cognitive stamina. He added that this was not something on which he was qualified to speak, which is doubtless correct on one level, but Mr Frostick's answer does I think support Leigh's case that he was not then suffering from an impairment which made it more than usually difficult for him to process or understand what was being said to him.

306. At this meeting held on 24 March 2017, in the course of discussing the future of the trust following Patrick's death, David made a proposal for a discretionary trust to be established "of whom the beneficiaries could include [Leigh's] son and daughter and [Mr Frostick] agreed to send a note of the requirements". Mrs Barrett said that, while not surprised, she had not anticipated this development. She also thought at the time that maybe it was in consideration for Leigh's care for Patrick, of which she was well aware. Initially she agreed that the establishment of such a trust also made good estate planning sense, but as she clarified in re-examination, it would trigger an IHT charge so that it would only make good planning sense to the extent that it did not exceed David's available nil rate band, £250,000 of which had already been used up by the creation of the Prudential DGT.

307. At around this period, and straddling the date on which five of the six Bonds were ultimately assigned to Leigh, there was other activity in which David was engaged which was said by Leigh to demonstrate that his cognitive abilities (and what Ms Reed called in her closing submissions his stamina for conflict) continued unimpaired. She referred in particular to a dispute in which a charity (SANE) of which David was a staunch supporter was involved. The details of this dispute do not matter for present purposes, but I agree that, although David called on Leigh to help, the correspondence which related to it showed no sign that he was not fully engaged with and focused on what was going on.

308. The assignment of the Bonds from David to Leigh then arose again as an issue in correspondence between Leigh, Mr Cameron Taylor and Mrs Barrett at the end of April 2017. It did so shortly after David had given consent for Leigh and Mr Frostick to act on his behalf under his original 2007 EPA and all authorities conferred by it. There is more than one version of this letter of consent, but the one in the main bundle and in the parties' agreed chronology is dated 19 April 2017. This EPA authorised his attorneys (which at the time of its execution had included April as well as Leigh and Mrs Frostick) to act jointly and severally.

309. This development in Leigh's role was not given immediate prominence by David in the sense that it was only on 25 June 2018 that Mr Gray was informed by David that Leigh was his attorney, and it was even later than this that he was told by Mrs Barrett that Leigh had been brought in in order to ease some of the administration of the London properties and the tenanted property at Wotton and "to assist with the management of his carers and cleaners and so on". Mr Gray was clear in his evidence that at that stage he knew nothing at all about the relationship between Leigh and David.

310. In the course of that correspondence at the end of April 2017, which was not copied to David, Leigh recorded (in an e-mail dated 26 April 2017) that Mr Cameron Taylor would call Mrs Barrett "re assignment of bonds which has been discussed and agreed at several meetings with David". She said that she thought they had discussed the idea that, if assigned to her, she would undertake to pay certain Wotton expenses from the income so that essentially David was not out of pocket. I think that Ms Angus was correct to characterise this e-mail as misleading in the sense that it gives the impression that David had been more involved in the discussions in relation to the assignment of the Bonds than was in fact the case. It also gave the impression that the structure Leigh had in mind was that expenses in relation to Wotton would continue to be paid out of the Bond income after assignment to her come what may, although I

think it is clear that she and Mr Cameron Taylor had earlier been considering the extent to which David's needs for income made that necessary.

311. Mrs Barrett's response to this e-mail was to express a concern that any payment by Leigh of Wotton expenses may lead to a situation in which the assignment of the Bonds would be treated as a gift with reservation of benefit for IHT purposes. The position was then discussed in a telephone call between Mr Cameron Taylor and Mrs Barrett later on the same day (26 April). It is clear that the proposed assignment was of concern to both of them, because David might be left short of income if the assignment took place. Mr Cameron Taylor suggested that this could be solved by David drawing more income from his J M Finn portfolio, a solution which Mrs Barrett made clear in oral evidence did not emanate from her. Mrs Barrett had no specific solution but expressed particular concern that David might not be able to manage if he then suffered voids in his rental receipts.

312. This was a risk for which Mr Cameron Taylor said he did not account in the sense of going through a risk assessment. He said that he was not concerned with everything that could go wrong – he was just trying to address the main issues. I am satisfied that the principal one on which he was focused continued to be a way of minimising the IHT liability that would arise on David's death so long as an alternative source of income could be found.

313. Mrs Barrett thought that the income which could be drawn from the J M Finn portfolio, as mentioned in her discussions with Mr Cameron Taylor, was £25,000, although Mr Cameron Taylor thought it might have been less. She said that she did not give any advice as to whether or not that was an appropriate figure although she accepted that she may have told Mr Cameron Taylor that the replacement income that Leigh and Mr Cameron Taylor had spoken of "would be workable". I do not think, however, that Mrs Barrett expressed any more certain an opinion than that. Her evidence was clear that she was not in a position to advise that David could take a cut in his income from the Bonds, more particularly where it was a reduction from what she understood to be in the region of £3,500 per month tax free. I accept this evidence.

314. More generally, I am satisfied that Mrs Barrett did not give any further advice to David relating to the Bonds over and above the pitfall she pointed out in relation to reservation of benefit (she said that this was not really advice and I agree) and the view she expressed that there was a risk that the assignment of the Bonds might leave David short. Even if it is right to characterise this as advice, as to which I am doubtful, there is no indication that it was given to David direct and I do not think it was. Mrs Barrett's views were only conveyed to Leigh and Mr Cameron Taylor respectively. It follows that the allegation in Leigh's Defence that Mrs Barrett knew about the assignment and provided advice about it is only true in a very limited sense. Such advice as she did give was only concerned with limited and discrete points, was not explained by her to David personally and was given in a context in which Mrs Barrett was uninformed of the complete picture, not having been involved in David's estate planning since before the time that Ms Hassall was instructed.

315. On 26 April 2017, Mr Cameron Taylor then reported to Leigh on his discussions with Mrs Barrett and more particularly on the fact that she had said that she thought that the replacement income they had discussed would be workable. He suggested that

once he had spoken to J M Finn, he and Leigh should meet to look at the bigger picture and implementation. By implementation, he meant completion of the necessary documentation to give effect to the assignments. Eventually, a meeting was arranged for 11am on 20 June 2017.

Assignment of the Bonds and Patrick's trust to Leigh

316. In the run-up to the 20 June 2017 meeting between Leigh and Mr Cameron Taylor, there was a rather puzzling preparatory e-mail sent by Mr Cameron Taylor in response to Leigh asking him whether there was anything else required from her in preparation for the meeting the following week in order to effect the assignments of the Bonds. He said that he wanted to run through with Leigh "what and how we propose to proceed" and specifically said that this meeting "is just the two of us", i.e., excluding David. He was unable to throw light on why he said that, but it confirmed that all the arrangements were continuing to be put in place without any participation by David.

317. Mr Cameron Taylor did, however, produce a file note at the same time (dated 13 June 2017) in which he recorded that "David wishes to assign 6 bonds to Leigh White for "Love and affection". It also said that "After discussion with Accountant, Gilda Barrett, continuing income to be provided from J M Finn portfolio at £15,000 per year". He was unable to remember why it was that the income figure had been reduced, but thought that it would have been after discussion with David, Leigh and J M Finn. However he agreed, and I accept, that the reference in the file note to an assignment to Leigh for love and affection was his terminology, and did not reflect any discussion he had had with David. The Note made no reference to the concerns that Mrs Barrett had expressed about the possible shortfall in David's income and whether he would be able to manage if there were to be voids in his rental receipts and does not reflect David's wish for the income to continue to be used on Wotton.

318. I do not think that I can infer that the Note was made after a meeting between David and Mr Cameron Taylor, as was asserted on behalf of Leigh in opening. Mr Cameron Taylor said that he would normally make file notes after a meeting or telephone conversation, but that was as far as he went. The note itself makes no reference to a meeting in this instance, Mr Cameron Taylor had no independent recollection that any meeting occurred and the surrounding evidence is much more consistent with a conclusion that no such meeting took place. In my judgment it was simply a file note record of what Mr Cameron Taylor understood the position to be based on his previous communications with Mrs Barrett and Leigh.

319. On 18 June 2017, i.e., two days before the meeting that had been fixed for 20 June, an e-mail was sent from David's e-mail address to Mr Frostick in which he said that he had decided to pass Patrick's trust to Leigh, winding up the trust, but leaving the money with J M Finn. This was a change from the wish he had expressed at the trustees meeting of 24 March when he said that he was giving consideration to establishing a discretionary trust with beneficiaries to include Leigh's children. There was a note in Leigh's handwriting in which she recorded a conversation with David to the effect that "Happy for PG trust to go to LW" which is a contemporaneous record of what David had said to her about Patrick's trust. As was put to her in cross

examination, the same note referred to David being "older by the minute" and "slowing down of cognitive functions". Leigh thinks that this was what she was told by David, although it reads more like her observation through listening to what he had to say, than a record of what he told her was his own self analysis.

320. This decision was then acknowledged by Mr Frostick at the end of June. On 3 July, David wrote to him confirming his wish that Mr Frostick should make enquiries of JM Finn checking with them their requirements for the transfer and the valuation position. There was then some correspondence relating to Mr Frostick's need for confirmation that a number of charitable gifts were to be made out of Patrick's trust before it was wound up. This was given by e-mail from David. Leigh relied on the fact that Mr Frostick never questioned the fact that David was giving all of these confirmations in relation to the winding up of Patrick's trust, with the substantial part of the residue being passed to her, as support for her case that David knew what he was doing not just in relation to Patrick's trust but also in relation to the Bonds.

321. Meanwhile, Leigh had signed the deeds of assignment of the Bonds as assignee which she did at the meeting on 20 June 2017. Her signature was witnessed by Mr Cameron Taylor who was present but David was not. The following week Mr Cameron Taylor told Leigh that he had agreed with J M Finn an income level of £15,000 per annum from his portfolio. In an e-mail sent on 27 June 2017, he said that:

> "I should agree this with David and will try to see him next Tuesday afternoon. I wanted to be clear on this before assigning and therefore ending the bond withdrawals."

I think it is clear from this e-mail that, at that stage, and despite what Mr Cameron Taylor said he would have done, there had been no discussion with David about the proposed income level.

322. In the event Mr Cameron Taylor was able to meet with David on 4 July 2017, and he did so at Mountfort Terrace. There is no note of the meeting, it is not mentioned in David's diary and Mr Cameron Taylor had no independent recollection of what occurred. There is no suggestion that anyone other than he and David were present. There is no evidence that he went through the risks of the assignment with David or described to him what might go wrong, and I do not think that he did. Indeed, he said in terms that he did not himself go through all the risks in his own mind for the purposes of thinking through any form of risk assessment. His concern was with addressing the main issues by which he meant minimising IHT and making provision for some level of alternative income. It did not extend to the risk that David might not have enough for himself more particularly in relation to the expenses relating to Wotton.

323. The only record of the meeting which has survived is somewhat tangential. It is contained in a 10 July 2017 e-mail from Mr Cameron Taylor to Leigh which opened with the phrase "It was good to see David last week. David said he is seeing you this week." Despite what Leigh said in her witness statement, the e-mail did not go on to say that Mr Cameron Taylor "had met with David as planned and everything had been agreed". It simply went on to explain that David had asked him about a transfer of £5,563 from David's Sri Lankan bank account to an abandoned property account. This turned out to be a misreading because the figure was for rupees not sterling and

so was wholly trivial. But there was no further description of what else might have happened at the meeting at which Mr Cameron Taylor had seen David 'last week'.

324. Furthermore, there is no correspondence which recorded what else might have happened at the 4 July meeting. More particularly, the facts not only that David could not remember being given any advice (that is unsurprising given his frailty at the time his witness statement was made), but also that Mr Cameron Taylor cannot remember what was said and did not make a note of the meeting, all make it most improbable that any form of explanation was given to David as to the rationale behind the assignments.

325. Ms Angus also submitted that, if Mr Cameron Taylor had explained the tax rationale of the assignment of the Bonds to David, whether at the 4 July meeting or on any other occasion, he is unlikely to have understood it. I do not think that is correct, anyway in the stark terms in which the submission was originally made. Even though some of the analysis was quite complicated, it was capable of being understood. However, I do not consider that Mr Cameron Taylor was at all well-placed to give appropriate explanations and advice and would have struggled to put it in an appropriately holistic context. He knew very little about the more general estate-planning issues which had been dealt with by Boodle Hatfield. In short, while I have no doubt that some effort would have been required for a suitably qualified expert to take David through the detail of what was sought to be achieved, together with the pros and cons of an absolute assignment to Leigh, I think that David was capable of grasping sufficient of what was proposed to be able to make an informed decision. The difficulty is that there is no evidence that he received any such advice and Mr Cameron Taylor was not in a position to give it.

326. One significant aspect of what occurred at this stage was that neither Mr Frostick nor Ms Hassall were consulted or knew about the assignment of the Bonds. In my view, the absence of any consultation with them, and the fact that the proposal was not even mentioned to them, was very surprising, more particularly because at the same time both of them were looking at aspects of David's affairs which were intimately interconnected with the Bonds. Thus, Mr Frostick had recently been authorised to act (together with Leigh) under David's 2007 EPA and was in correspondence at the time about the winding up of Patrick's trust and the distribution of the residue to Leigh. Ms Hassall was not consulted despite the fact that she had been responsible for the tax planning around David's 2015 will and letter of wishes (and the principal reason for the assignment of the Bonds was said to be tax planning considerations) and was at the time looking into the restructuring of the old WEMF to make it more consistent with the will. I will explain what happened on that aspect of the matter below.

327. All but one of the assignments were dated 10 July 2017 and David's signature was witnessed by Mr Cameron Taylor. Although dated 10 July, the evidence points to them having been signed by David at the meeting held on 4 July not the date as at which they were dated and I think that is what occurred. In particular, it is most unlikely that Mr Cameron Taylor's e-mail of 10 July would have opened in the way it did if he was about to have, or had already had, a signing meeting with David on the same day. Furthermore, Mr Cameron Taylor himself gave oral evidence that "it would sound right" that the deeds of assignment were signed on the same occasion, i.e., the 4 July meeting, as the issue in relation to the Sri Lankan rupees bank account

had been raised with him by David (an event of which, not surprisingly given its unusual nature, Mr Cameron Taylor had some independent recollection).

328. The sixth deed of assignment (relating to a Clerical Medical bond) was not signed at the same time as the other five. A form was sent by Mr Cameron Taylor to Leigh on 12 July but Leigh was away until 4 August when she responded to say that she had received the assignment form and was hoping to see David shortly. Having been signed, it was dated 11 August 2017, which was the day after he had supper with Leigh and recorded in his diary that he had at last pinned down Eddi's and Leigh's movements – they were "coming to live midweek at Wotton from end of August. A new era". However, I do not think it is likely that it was signed on this occasion, which is the finding that Ms Angus invited me to make. Mr Cameron Taylor's normal practice was to insert the date after the deed signed by all signatories had been returned to him. David's and Leigh's signatures were both witnessed by Leigh's cleaner, and I think that it was probably signed by David when he was visiting Leigh to go to Glyndebourne.

329. On 8 July 2017, which was therefore at almost exactly the same time as the deeds of assignment of the Bonds were being executed, David also executed a lasting power of attorney for property and financial affairs (the "2017 LPA") appointing Leigh as his sole attorney. His signature and that of Leigh were both witnessed by Mary. Although Mary said that she was quite shocked when, in the context of making her witness statement in these proceedings, she saw that she had witnessed David's signature, she accepted that she had done so. She said that she did not think she knew at the time what she was signing but confirmed in her oral evidence that she did not mean to say that David did not know that that was what he was doing and there is no reason to think that he did not intend to appoint Leigh.

330. Mr Parmar signed as the certificate provider, certifying that as far as he was aware David understood the purpose of the LPA and the scope of the authority conferred under it and that no fraud or undue pressure was being used to induce him to create it. He said in his evidence that the reason he thought that David had appointed Leigh was that she was a close and trusted family friend. The LPA was registered on 9 October 2017 and, in accordance with its terms, Leigh was thereupon empowered (with David's consent before incapacity) to make decisions on his behalf. He confirmed in his oral evidence that he believed David to be of sound mind and "to be okay with this".

331. Leigh relied on the signatures of Mary and Mr Parmar as confirmation that they, both of whom knew David well, believed that David's mind was then working normally and that he was acting free from any pressure by Leigh. I agree with this submission, anyway in the sense that they thought that David was able to appreciate the significance of Leigh's appointment as his attorney and that no pressure was applied on him by her. I do not agree that of itself, this amounted to evidence that David was not vulnerable and susceptible to suggestions from Leigh in relation to his finances. Even though there is no suggestion that Leigh applied any pressure on him to sign the new LPA, I think that he did so at a stage at which his concentration and coordination were changing for the worse, a development which Mary noticed only one month later and about which she gave specific evidence (as will appear below).

332. Meanwhile, there was also some brief correspondence between Leigh and Mr Frostick at the end of June and the beginning of July 2017, during the course of which Leigh pressed for the money authorised to be paid at the 24 March trustees' meeting to be released to her so that she could arrange for the relevant payments to be made. On 5 July 2017, Mr Frostick also passed on to J M Finn, the decision to wind up Patrick's trust and pay the proceeds to Leigh. In the event, this was not put into effect immediately, because there seems to have been some discussion about whether it was open to him to take that course in light of the terms of Mrs Brunner's will. However, Ms Hassall was consulted and the position was clarified during the course of October 2017, as a result of which Leigh received the net proceeds of Patrick's trust (amounting to £97,795) on 8 December 2017.

333. There are two further relevant matters relating to the Bonds. The first was that a new deed of assignment was required for the Prudential policy, which was dealt with some time later. This was only discovered to be necessary when Mr Cameron Taylor was sorting through a number of matters in the light of his imminent retirement. The need for this deed was discussed in e-mail correspondence between Leigh and Mr Cameron Taylor in September 2018 and led to the execution by David of a further deed of assignment dated 20 September 2018. Ms Angus suggested that I should conclude that David's signature was procured on it by Leigh after David had come out of hospital but before she had a meeting with Mr Cameron Taylor on 20 August 2018. I do not think that is correct, not least because there was confusion at the root of the submission as to whether Leigh's meeting with Mr Cameron Taylor was on 20 August or 20 September and it seems from the e-mails that it was in fact on the latter date.

334. More substantively, however, I am not satisfied that Mr Cameron Taylor would have signed as a witness when he did not in fact witness the deed. Post-dating a deed is one thing – it can reflect the time at which the person inserting the date considers that the parties intended it to become effective. Pretending to witness a signature that was not in fact witnessed is quite another. While there is no other evidence that Mr Cameron Taylor met David on or shortly before 20 September 2018, on the balance of probabilities I think it is likely that he did. However, in the light of what had happened previously, I consider that it is unlikely that Mr Cameron Taylor gave any advice to David in relation to the substantive issues bearing on the deed of assignment at this stage and I so find.

335. The second matter is that Leigh has now surrendered the Bonds. She surrendered the Standard Life Bond in April 2018 and the Clerical Medical Bond in June 2018. She then had correspondence with Mr Cameron Taylor in August 2018 about surrendering the others, and surrendered the Friends Life and Aviva Bonds in February 2020. There is a dispute as to whether or not David knew that this was going to occur. David said that he did not, and only knew of their surrender when CRS informed Boodle Hatfield in a letter dated 4 October 2021 shortly before these proceedings were issued. Leigh's case was that he always did, because he knew that one of the principal reasons why the Bonds had been transferred to her in the first place was so that they could be surrendered without incurring very high income tax charges.

336. This aspect of Leigh's case is difficult to accept, not least because, in an e-mail she wrote to Ms Hassall, David and Mary in January 2021, after her conduct had been called into question by David (a point to which I will turn a little later), Leigh said

quite explicitly that the Bonds "remain intact and untouched and do not generate any income and are ring-fenced to be able to be used for future projects in Wotton when it is best to cash them without losing 40% to tax". CRS subsequently sought to explain this comment in correspondence as a reference to the proceeds of the Bonds, but in my judgment it is very difficult to read Leigh's e-mail in this way. If that is what she intended to say, she expressed herself in a misleading manner. I have reached the conclusion that David did not know that Leigh was going to surrender the Bonds and I have also concluded that it is likely that Leigh knew that he did not know. Her sensitivity on this point is the most probable explanation for the way she expressed herself in January 2021.

The replacement of the old WEMF with the new WEMF

337. Meanwhile, there were further discussions in relation to the old WEMF. These discussions and developments were taking place during the period in which the steps to assign the Bonds to Leigh were being implemented. They involved Boodle Hatfield, although Boodle Hatfield were not brought in to express any sort of view or give any form of advice in relation to the assignment of the Bonds.

338. On 12 May 2017, Leigh got in touch with Ms Hassall to say that David had asked whether they ought to be doing anything by way of preparation for an application for conditional exemption from IHT. She said in her e-mail "my understanding as [sic] that it all happens on a transfer situation. Could this be along with making a PET too?". Ms Hassall responded on 17 May to the effect that any conditional exemption claim would need to be made within two years of the death, whether the transfer took effect on the death or as a lifetime gift within the seven-year period prior to the death. Ms Hassall went on to say that, although there was nothing further to be done on that front, there was a question in her mind about the old WEMF and whether anything should be done about it. She said "my worry really is that, particularly with Patrick's death, its beneficiaries are not aligned properly to the future ownership of the House and land."

339. Ms Hassall then prepared a note setting out her thoughts in relation to the old WEMF and sent it to David and Leigh on 30 May 2017 under cover of an e-mail which reiterated her main concern as being that the beneficiaries of the old WEMF were not aligned "to the future owners (or those who would enjoy the use) of the House and Grounds". In her note, she introduced the problem by explaining that the old WEMF was established to support the grounds at Wotton. She said that it was not known if the grounds were ever granted conditional exemption from IHT, but that it was anticipated that Wotton House itself would be of sufficient historical or architectural significance to warrant both support from a maintenance fund and to attract conditional exemption from IHT on David's death. She also reiterated that, on David's death, Wotton House and the grounds would be held in a discretionary trust established by David's 2015 will.

340. Ms Hassall then went on to refer to the fact that only Perdita and her children would be able to benefit under the old WEMF, but that she understood that they were not involved in the running of Wotton House and the grounds and were unlikely to own either in the future. She also said that the latest thinking, confirmed in David's letter

of wishes was that Leigh would take on the role of running Wotton House and its grounds in line with April's and David's wishes as set out in the Wotton Charter. She said that, as Leigh was not a beneficiary of the old WEMF, she would not be able to arrange matters in the most efficient and appropriate way following David's death, and that in practical terms there may be difficulties in liaising with Perdita and her children, as the beneficiaries of the old WEMF, to make suitable arrangements. She then went on to say:

> "It is unclear whether or not, as a matter of general trust law, the [old WEMF] could properly support heritage property owned by an individual (Leigh) who is not a beneficiary of the settlement, or by trustees for individuals who are not beneficiaries of the [old WEMF], or if they are, do not enjoy the use of the property (Perdita and her children)."

341. Ms Hassall's solution was to resettle the old WEMF into a new maintenance fund with a class of beneficiaries to mirror that of David's 2015 will. She advised that, if the trustees of the old WEMF were to appoint the entire fund to David, and he were then to resettle it into the proposed new fund within 30 days, there would be no IHT to pay. She also suggested that, in the long term, it may be sensible to have a single maintenance fund to support both Wotton House and the grounds, but said that the downside would be that this would mean public access requirements would be imposed on Wotton House itself as well as the grounds and that would be something which it may be better to reconsider after David's death.

342. Ms Reed submitted that the use by Ms Hassall of the word "owner" did not fit with the narrative now espoused by David. Ms Hassall did not agree. In her evidence she said that it was difficult to know exactly what she had in mind by the use of the word "owner", but that she was thinking of the letter of wishes, that Leigh would be taking on the running of Wotton House and the grounds, that it was likely that she would have an interest in Wotton and that it was likely that she was going to be living there. Ms Hassall also said that her language might have been clumsy, but that the distinction she intended to draw was that Leigh was clearly going to be a trustee and a beneficiary, while Perdita and her children, although amongst the class of beneficiaries, were not intended (as she understood it) to be involved in the running of the House.

343. Ms Hassall also explained that the point she was trying to get across was that Leigh was intended to have an ownership role at Wotton, and an important one. The essence of her evidence was that the ownership role she was referring to was one in which Leigh was the "main beneficiary" in the sense that I have already explained earlier in this judgment. But also and importantly, the wording of the paragraph in the note contemplated that Wotton may come to be "owned" not just by Leigh, but also by trustees for anyone else who was neither a beneficiary of the old WEMF nor enjoyed the use of the property (Perdita). The letter of wishes had expressed a non-binding desire that Leigh should fulfil certain important duties, but it remained open at any time for the trustees to take another course. By this stage it was clear that there was a greater likelihood that the trustees would consider that Leigh should fulfil that role than it would have been to appoint any of the other members of the class, but the legal position remained open.

344. In my view, the important aspect of this note and the associated e-mails, which was confirmed by Ms Hassall's evidence, is that the description of the difficulties in the existing form of the old WEMF was that its beneficiaries did not match the beneficiaries under David's 2015 will. That was the driving consideration for Ms Hassall, and that was why the description of the individuals capable of being an "owner" in respect of whom the problem might arise was not limited to Leigh – it extended to anyone else who was to be treated as such, but was not a beneficiary of the old WEMF. In the part of the e-mail referred to by Ms Reed, Ms Hassall was seeking to characterise the context in which a mismatch between the beneficiaries under the old WEMF and the beneficiaries under David's 2015 will might matter, where she recognised that it was important to give some description to the differences in interest which Leigh on the one hand and Perdita and her children holding through trustees on the other might have in Wotton. In any event, if Ms Hassall had thought that Leigh was to be the sole beneficial owner of Wotton on David's death, it is difficult to see how she could have thought that the solution she was proposing would be appropriate. It would render the discretionary trusts to be established under David's 2015 will little more than a fiction. I do not think that Ms Hassall can have had that in mind.

345. On 18 June 2017, which was the same day that an e-mail had been sent from David's e-mail address explaining that he had decided to pass Patrick's trust to Leigh, David wrote to Ms Hassall instructing her to proceed with preparing a re-settlement of the old WEMF. She had ascertained from her enquiries of the head of the Heritage section at HMRC that the process would be relatively straightforward and wrote to David on 26 July 2017, copied to Leigh two days later, explaining what needed to be done. There was then some confusion between Ms Hassall and David over whether or not he had instructed her to proceed. Having ascertained that he had, Ms Hassall then spoke to Leigh some time in the course of November 2017 and, having done so, produced a draft for the new WEMF, which was sent to David and copied to Leigh on 7 December 2017.

346. In her covering e-mail she referred to the beneficiaries of the new WEMF as mirroring those under David's 2015 will, which she said was important to avoid a mismatch between the future ownership of the grounds and those intended to benefit. She then continued: "Accordingly, the trustees can appoint the trust fund to any one of Perdita, her children, Leigh (or any other individuals added by the Trustees) after six years." This power was only exercisable with the consent of David, or after his death, Leigh. It was provided that Leigh would be the ultimate beneficiary on expiration of the 125 year trust period and that, subject to the approval of HMRC, she had the power of appointing new trustees on the death of David.

347. There was a long delay in the process of obtaining HMRC's approval for the new WEMF, involving consultation with Natural England and the making of some changes to the plans used for the purposes of identifying the land forming the heritage property able to benefit from the new WEMF. In the event it was only on 21 February 2019 that a deed of revocation and appointment was executed in relation to the old WEMF. This deed provided for the trust fund settled under the old WEMF to be held on trust for David absolutely, freed and discharged from all the trusts, powers and provisions of the old WEMF. Four days later, on 25th February 2019, the new WEMF was established. It was in substantially the same form as the draft which had

originally been sent to David and Leigh in December 2017, save that the ultimate trust clause provided that on expiry of the trust period the trust funds were to be held for such of David's issue as were then living in equal shares.

August 2017 to 2019

348. There were a number of important developments in the period for which the establishment of the new WEMF was under consideration and was then eventually executed. They included a move by Leigh to stay in Wotton House during the week in school term time from September 2017 and a significant decline in David's health, most particularly during the summer of 2018.

349. Of central significance is the fact that, from David's perspective, this was the time at which a gradual breakdown of his relationship with Leigh started, largely caused by her move to Wotton, what he perceived to be her behaviour when she had done so and the exercise of her power as his attorney (under the LPA which was registered in October 2017) to take a number of steps with which he was unhappy and without obtaining his prior agreement. It might be thought surprising that, as these issues began to build, David did nothing about them. The way that David explained it in his witness statement was that he did not feel able to stand in Leigh's way because, if he questioned something she wanted to do or had done, she would carry on regardless. He said that he did not have the energy to challenge her more forcefully. Although this was one of the many issues on which Leigh did not have the opportunity to challenge David's evidence (should she have wished to do so), I accept that in broad terms this was an accurate explanation of his attitude.

350. David's evidence was that the move was not his idea, but was a suggestion that came from Leigh. He said that, by November 2016, Leigh and Robert had become dissatisfied with Edward's prep school and had decided to move him to a different school for the next academic year. Leigh chose Magdalen College School in Oxford due to its academic prestige and was delighted when he gained a place there. She then told David and Mary that she wanted to stay at Wotton during the week because Edward was starting at his new school in September 2017 and it would be convenient for this to happen.

351. This was an arrangement that David was content to accommodate and Leigh and Edward spent the weeks at Wotton, occupying two of the spare bedrooms and went back to East Sussex to be with Robert and Rosina at the weekends and in the school holidays. In her evidence, Mary confirmed that she and David did not envisage that Leigh would live permanently at Wotton during David's lifetime, although she thought that once David had died, Leigh might live there as she put it ""within the parameters" of a trust" because she would be running Wotton. The finalisation of this plan was referred to in the diary entry made by David on 10 August 2017:

> "It's tiring, but have supper with Leigh at Cote and feel much better. Pin down at last Eddie's (and Leigh's) movements. Coming to live midweek at Wotton from end of August. A new era."

352. Leigh's evidence was rather different. She said that an arrangement for her to move into Wotton was first discussed with David in November 2016, which would appear to be a reference to the same discussion she had referred to in her e-mail to Mr Cameron Taylor of 16 November 2016 in which she referred to their agreement that it was sensible for her to takeover the brunt of day-to-day administration at Wotton. But she also said that it was something that had been on her mind for a number of years beforehand as a necessity if David died suddenly or decided that he had had enough of managing Wotton. It was a joint decision between David, Robert and her and the culmination of her increasing involvement at Wotton and looking after David and his family.

353. Leigh explained that, if she was going to take over Wotton with her family, it would have to be made into a family home, and that she was encouraged to treat it as that, particularly when David and Mary (who by then had become sufficiently close to David to be described by some witnesses as his partner) were there. She said that the timing of this move coincided with a natural change in schooling for Edward, who was coming up to the stage of taking his common entrance exams. She said that the original plan had been for Edward to go to Tonbridge School, but she and Robert did not see how that could remain feasible if she was to take on Wotton, more particularly because Edward did not wish to be a boarder at Tonbridge, and because the timing might be sudden or unexpected given David's age.

354. Robert confirmed that the decision to send Edward to Magdalen College School rather than leaving him at school in East Sussex or Kent was made when they knew in 2016 "that Leigh was going to be moving into Wotton to help out". He did not accept that there was any connection between the decision to move into Wotton and the fact that Leigh wanted Eddi to go to Magdalen College School and he did not want to board.

355. What is clear is that an application for Edward to attend Magdalen College School was made by Leigh in November 2016, and accepted in April 2017 for him to start in September 2017. The arrangements made by Leigh were that she would be at Wotton during the week with Edward, while Robert stayed in East Sussex with Rosina. It seems that it was Leigh who drove what was to happen, and she did not keep David very well informed of her plans. I have already mentioned David's 10 August diary entry, but he also recorded in his diary for 28 August 2017, which was the weekend that Leigh moved in that "Mary and I discovered that Rob had as little idea as we of what Leigh is cooking up for his children's schooling. But plans are well advanced for Eddie to go to Magdalen College School".

356. Leigh said that the decision to split the family in this way was a very difficult one and that she still reels from the sheer effort of it at times. She said that trying to manage it all was exhausting and gave as an example the fact that she had to do round trips of four hours from Wotton to East Sussex in order to attend Rosina's school concerts. She also described how living apart put an enormous strain on her marriage, how Robert had a stroke in 2019 and how his decision to retire from his accountancy practice shortly afterwards was based on their desire to reunite the family and be able to support her running of Wotton.

357. Leigh said that she does not regret the decision they took at the time "which was based on an understanding of our future at Wotton which we had held for a number of years", but explained that her move, based as it was on that decision, had a significant

effect on both her and her family. This was relied on as detriment, but in assessing this aspect of the case it is important not to lose sight of the fact that Leigh must show that the detriment she suffered was substantial and was sustained in reliance on the assurance that she says that she was given, viz. that she would inherit Wotton as absolute owner come what may.

358. In my view, there is no doubt that the life which Leigh and her family led from the autumn of 2017 onwards was stressful, a conclusion with which Mary agreed. Ms Emir spoke of the fact that the move was very difficult for Leigh and that she was very lonely. The strains which it imposed on her may have been one of the reasons why there was so much evidence that she rubbed so many people up the wrong way. However, I do not accept that this was a life that was required of her in any sense by David, nor do I accept that it was necessary for her to live at Wotton in order to enable her to carry out the tasks that she had agreed to undertake when an increase in her involvement was first discussed in November 2016. When he was younger and fitter, David had found it possible to manage Wotton, while at the same time living an active and fulfilling life in London during the week. Likewise, for the period of almost a year after Patrick's death, which was the catalyst for her increasing role, Leigh was able to fulfil her functions while still living in East Sussex, by which time (as she explained in her e-mail to Magdalen College School dated 29 November 2016 referred to above), Edward had re-joined mainstream schooling, having been home-schooled for a term earlier that year.

359. In my judgment, the decision that was made by Leigh and her family was influenced to some extent by her understanding of what she now expected would happen at Wotton. This expectation was reflected to some extent in what she said to others. Thus, it was at this stage that Ms Emir first gained her understanding from Leigh that she would be inheriting Wotton and it would then be left to her children. Indeed Ms Emir remembered a conversation she had with Leigh in which Leigh described her concerns for people wanting to be friends with Edward for the wrong reasons when they came to learn of his inheritance. I am sure that Ms Emir gave an accurate description of what she was told by Leigh, and it was not said on behalf of David that she did not. What she did, however, confirm was that she had never before been told by Leigh that she was to inherit Wotton, even though Leigh says that she had first been given an assurance to that effect ten years earlier and the relationship was a longstanding one - Ms Emir already knew her well enough to have attended Leigh and Rob's wedding in 2002.

360. Despite her later conduct in refusing to leave Wotton even though she knew that on any view she had no right of occupation before David's death, I am not convinced that this went so far as a desire to entrench herself at Wotton at this stage. There was a more mundane explanation, which was that it enabled her to send Edward to Magdalen College School as a day boy, which she thought would be very good for him. This coincided with her taking on more of the administration at Wotton, and gave her a reason to stay at Wotton during the week in order to facilitate this development in her family life.

361. I think that it was an important factor in what was doubtless a complex family decision that Edward was able to be educated at Magdalen College School. This was a benefit to Leigh's family that would not have been achievable if David had not permitted her to stay at Wotton as a guest during the week. I do not think it is right to

treat what she was told by David, whether that led to an expectation that she would be able to take the benefits of running Wotton in due course if the trustees of David's will thought that was appropriate (which is the core of David's case) or a promise that she would inherit as absolute owner come what may (which is the core of Leigh's case), as the reason for the move that she made in September 2017.

362. So far as David was concerned, there were signs that matters were not going according to plan shortly after Leigh had moved into Wotton House for the weekdays in term time. The core of his complaint is that Leigh began to exercise her management and control of Wotton without proper consultation with him and in a manner which ran contrary to his wishes. As Mary explained in her evidence, which I accept, this was reflected in her feeling that David was less relaxed around Leigh once she moved into Wotton and started to treat Wotton as her own.

363. Mary also gave evidence, which I accept, of the unsatisfactory nature of the domestic arrangements. This gave rise to the kinds of strain which are not wholly surprising given that more than one household were endeavouring to live together for material lengths of time. Even though Wotton is a large house, and neither Leigh nor David were there all of the time, it is clear that there were tensions. By their nature these are difficult things to pin down, but Leigh does not seem to have been as sensitive to this as she should have been, possibly because she had come to treat herself and her family as part of David's family to a much greater extent than he himself accepted. It also seems to have been the case that she regarded herself as having a greater entitlement than that of a guest in the house, which, anyway prior to his death, was not the way that David saw matters. Mary summarised what was going on in her witness statement in the following pithily expressed passage:

> "If Wotton was full of Leigh's guests, people David did not know, he appeared to find it stressful. Although he never said anything to me or to Leigh, his stress was evident to me as he would just sit in his chair looking resigned. I would take my cue from a look from David and we would retire upstairs."

364. Mary said in evidence that nothing was said by her or David on these occasions because it would have been rude. This passage also points to one of the other aspects of this case which is at the core of the way in which David and Leigh had grown to regard and treat each other. David did not always have the energy or will to stand up to Leigh when he should have done. In my view, it is clear that while he was still able to confront Leigh when he had the energy to take a stand, and while he was still quite capable of being forceful and even tactless in his forcefulness when pushed to be so, his instinctive reaction was to avoid confrontation with Leigh if at all possible. This is entirely consistent with the way that Leigh herself described David in her evidence as being a "very, you know, gentle, discursive, thoughtful chap, who likes to discuss things." Given the nature of his character and the forcefulness with which Leigh was often inclined to express herself, it is not surprising that he reacted in the way that he did.

365. It is also relevant that, although David's health did not take a significant turn for the worse until the following year, Mary gave evidence that around about the time that Leigh moved into Wotton, and only very shortly after the assignment of most of the Bonds, she found herself having to face up to a change in David which she said had been coming for some time. She described a short break they had together at Cartmel

in mid-August 2017, as a result of which "I could no longer ignore the little things: his concentration, sleep pattern and coordination were changing for the worse. I became anxious for his health from this point onwards."

366. There was little specific evidence about what occurred between the autumn of 2017 and the summer of 2018 when David was diagnosed with apraxia and a wedge fracture of his spine suggesting osteoporosis. He was then admitted to University College London Hospital ("UCLH") in August 2018, where he spent some time, eventually being discharged during the course of September 2018 and returning to Mountfort Terrace with Mary.

367. At this stage, there was a meeting between Ms Hassall and Leigh at Patisserie Valerie in Oxford about which they both gave evidence. They both remembered the occasion and Leigh was able to give a date (26 June 2018). The only specific part of the conversation that Ms Hassall recalled was that Leigh told her how unwell David had been and that she was concerned about his declining health. Leigh said that she asked if she could pay herself a wage and that Ms Hassall said of course she could, or else someone else would have to be paid to do the job and suggested that £100,000 per annum could be taken as a ball park figure.

368. Ms Hassall had no memory of the discussion, but did not say that the principle of making a charge was not discussed. She was quite adamant, however, that she would not have suggested a figure, not least because she had no knowledge of what was involved at Wotton and she would not have been prepared to hazard a guess – whether at £100,000 or at all. I accept Ms Hassall's evidence on this point. Her explanation as to why she would never have given a figure was entirely credible. Leigh obviously thought that a figure of £100,000 was about right, but I do not know where she got that figure from. In my judgment it was not Ms Hassall. However, leaving aside the figure, it is not surprising to find that Leigh was raising with Ms Hassall the principle of making a charge for the services she was now providing to David. The deterioration in his ability to cope was apparent from the evidence of several witnesses, e.g., Mrs Barrett who explained that, from around this time, she tended to deal with Leigh on administrative matters rather than bother David at all.

369. Shortly after this conversation, Leigh made a final decision to close down her practice as a solicitor. It is not clear precisely when she did so, but it was sometime between 9 August 2018 when she was in touch with her PI insurers seeking confirmation that she could renew her insurance on the terms she had recently been sent and 10 September 2018 when she told them that "after careful consideration I will be closing my practice down. Imminent family illness and death means I have to take over a family trust." .

370. In her statement of case and her evidence Leigh had put the date she decided to cease practice a year earlier. She explained that it was the move to Wotton which precipitated her decision to close her practice. She said that when she was based in East Sussex she was able to work a sufficient number of hours to bring in a reasonable annual revenue, albeit nothing compared to what she would have earned in a full time role, but that this was no longer feasible once she had moved to Wotton and taken on its management on what she called "an often full-time basis". There was some support for this evidence from Leigh's barrister friend, Ms Emir. She gave evidence that she was told by Leigh that she was giving up her legal practice when she moved

into Wotton in September 2017 and said in oral evidence that she was normally quite good with dates.

371. I think that the likely discrepancy is that, strictly speaking Leigh continued in practice after she started to live at Wotton (anyway during the week) in September 2017, but she remained uncertain as to how much time she would have to devote to it, or whether anything other than the short-term continuation of her practice would be possible. I think it is therefore likely that the catalyst for her decision formally to do so was the deterioration in David's health and his admission to UCLH in August 2018, the fact that she expected to be spending more of her time on Wotton affairs and the fact that she thought she would be able to make a full charge to David for her services. I should add that this finding is consistent with the fact that Leigh continued to use a formal signature block "Leigh White | Solicitor" at the end of her e-mails together with a Confidentiality Notice which described her as continuing to be regulated and authorised by the SRA until at least April 2018. Thereafter her use of this signature block was more haphazard but there continue to be examples in the papers of this usage until the end of the year.

372. The next event relied on as having significance was the transfer of the London properties into the joint names of David and Leigh, something which occurred in December 2018. There had been a problem with a tenant, and after an e-mail exchange with Leigh, Ms Hassall wrote to David on 2 November 2018 saying that it made sense for him to transfer the London properties from his sole name into the joint names of himself and Leigh, but to be held on trust for him alone so there would be no element of gift. She said that the purpose of the exercise would be to make life easier for Leigh when managing the properties. She explained to David that, even though Leigh had power of attorney to act for him (the 2017 LPA by then having been registered for a year or so), having Leigh's name on the titles would put her in a position of greater authority in relation to the properties and give her greater freedom of action to manage matters if anything happened to him. The correspondence made clear that this was all about practicalities. There was no change in beneficial ownership. The transfer and accompanying declaration of trust were then executed by David and Leigh in the presence of Mary on 5 December 2018.

373. After Leigh moved into Wotton, a number of disputes developed between her and those who were providing services to David. On one level these disputes are wholly irrelevant because, on Leigh's case, by the time they broke out, David was not entitled to resile from the assurances he had made. It might therefore be said that her behaviour after she moved into Wotton was neither here nor there. I do not think that is right. Although not developed to any extent in argument, there were suggestions in the evidence adduced on behalf of Leigh that David had come under the influence of Mary, and in particular Matthew, who did not like what they discovered David had promised to her, and set out to persuade him to reverse its effect when there was no good reason to do so. I do not think that any such suggestion would be justified. I found both Mary and Matthew to be credible witnesses whose evidence was given in a straight forward manner and with conviction. Mary started out as a great supporter of Leigh. I do not think that she set out to poison David's mind against Leigh, and nor do I think that the evidence establishes that Matthew (against whom the allegation is pleaded) did so either.

374. In my view, the reality was rather more prosaic. There were a number of relatively insignificant and some rather more significant events, which came together to cause David to reach the conclusion that Leigh, the person to whom he had hoped he could entrust the furtherance of his legacy at Wotton, was ill- suited to the task. When he discovered more detail about what had happened in relation to the Bonds, his view that she did not share his vision for the future and should not have it entrusted to her was cemented.

375. Some of the original allegations were not developed during the course of the trial. Thus, although at one stage complaint was made that the services of Savills were dispensed with without David's consent, this was not pursued in submissions. I have not therefore taken it into account. It is also necessary to keep in proportion what is now said by David to have been Leigh's unacceptable behaviour, more particularly during the period of national lockdown because it is all too easy to lose sight of the strains which everyone was under at the time. In making my assessment I have sought to keep such considerations well in mind.

376. Nonetheless, although taken alone each of the events I shall describe as briefly as possible might be characterised as of minor significance, taken together they build up a picture of what Mr Parmar accurately described as controlling behaviour and what Mary saw as the development of a sense of entitlement by Leigh which caused deep and in my view wholly understandable upset to David. At the end of the day, they provide colour as to why David changed his mind about Leigh as the person whom he could trust to preserve and advance his legacy at Wotton in the future. When taken in conjunction with what occurred in relation to the Bonds, they serve to negate the suggestion that, it was unconscionable for David to resile from any promise he may have made to Leigh that she would have the role contemplated by the letter of wishes when he died.

Disputes relating to David's employees and carers

377. The first of these was a dispute with the two cleaners at Wotton, Nancy Taylor and her mother Heather. Ms Maier said that the issue revolved around the fact that Heather was accustomed to be paid in cash, with which Leigh was uncomfortable, although Mr Parmar said that Leigh had told him that she did not like them and did not think that they did much work and were expensive. There was also evidence from Mr Parmar and Dr Stockley of an altercation in which Leigh had accused Heather of stealing food from the fridge. Leigh gave a rather different explanation in her witness statement saying that the whole thing was driven by David, because "there had been various issues and David was not happy". She said that the last straw was when David himself was struggling trying to prepare for a weekend with guests and Heather had left early or not shown up. This evidence was not explored with Leigh in cross-examination.

378. Mary said in her evidence, confirming the evidence given by David in his witness statement, that the dismissal of Heather and Nancy was at Leigh's insistence. She also explained that the position was difficult because Heather and Nancy had been satisfactory for 14 years, and at the time Nancy was heavily pregnant while Heather was waiting for a hip operation. She said that they were nice and helpful "They were

really very good". In my view, the straightforward way in which Mary gave her evidence on this domestic issue was an accurate reflection of the way that she and David both felt.

379. Taken alone, what happened with Nancy and Heather does not throw very much light on any of the issues. It is clear from the contemporaneous correspondence that David was involved in the dismissals and agreed with what should happen, although he said that his agreement was only given after pressure from Leigh, and the surrounding circumstances are consistent with that being the case. The correspondence does not reveal any pressure per se, but I think it does illustrate a more nuanced aspect to the dispute, which was the very different tone in the way in which Leigh thought it was appropriate for the matter to be resolved and the way in which David wanted to proceed. On one level, such matters might be regarded as petty, but they clearly were not for those involved and I think that the wording Leigh thought was appropriate showed a lack of sensitivity to the situation in which David found himself as against a very longstanding member of staff, which could reasonably have grated with him, even though he decided with Leigh's encouragement that he needed to steel himself to dispense with her services.

380. Another bone of contention was the way in which Leigh dealt with the carers employed to look after David. On his discharge from UCLH, David initially had a full council-provided care package of four carers a day, apparently because Mary was deemed to be too old to look after him without their assistance (a decision which left her as she put it half seriously "rather humiliated"). Mary soon realised that the involvement of so many different carers was not going to work and so she contacted Leigh, Matthew's mother and Dr Dooley (David's other attorney under the 2015 LPA), after which Leigh and Dr Dooley in consultation with Mary decided that full time care was required. Shortly thereafter a carer by the name of Joanna was employed, but she proved to be too controlling. She was then dismissed in January 2019 and replaced with another carer, Mr Coghlan, who was employed by Leigh through an agency recommended to Leigh by Dr Dooley.

381. When Mr Coghlan arrived at Wotton he was briefed on David's care needs by Mary, who said that she got on with him very well from the outset - they had something in common having both gone to the same school in Nairobi. However, Mr Coghlan did not stay for long either because, in mid July 2019, he was given a month's notice by Leigh. The circumstances of Mr Coghlan's dismissal by Leigh bear a slightly more detailed examination.

382. Mr Coghlan gave evidence at the trial by video link, and I found him to be a straightforward witness who endeavoured to assist the court without embellishing his evidence. It was, however, clear that he did not get on with Leigh and Leigh did not like him – she confided as much in Ms Emir. I think that one of the reasons that Mr Coghlan did not get on with Leigh was that he formed the view early on that Leigh expected him to carry out tasks which went beyond the role for which he was employed. He also did not like the fact that she had challenged some of his time recording. He said in evidence that his overall impression was that she intimidated David and Mary, because of what he described as the fairly aggressive manner in which she came across.

383. Leigh's case was that Mr Coghlan was neglectful of David and was rude to both Mary and David. At first blush, the allegation of neglect was given some support by Mrs Mary Kench who had started as a part-time cleaner after Heather's departure. She came to Wotton once a fortnight. She gave evidence how she hardly ever saw Mr Coghlan with David and how on more than one occasion he had not responded to calls made by David for assistance. I do not doubt that what she described occurred, but I do not consider that any of it could properly be characterised as anything close to neglect. In my view the evidence falls far short of establishing that any conduct by Mr Coghlan when caring for David could have justified dispensing with his services on those grounds.

384. Leigh also said in her Defence that Mary had indicated that she had no intention of leaving David on his own and that both Mary and David had made clear that a full time carer was not needed or wanted. Her evidence was to the same effect. She said that Mr Coghlan was slow and that a full time carer was not required when they were at Wotton with Mary around.

385. Others in a position to observe Mr Coghlan's care for David disagreed. Thus, Mr Parmar, who lived in one of the flats at Wotton and had been a longstanding friend of Leigh's, said that Mr Coghlan was as good as you could hope for, that both Mary and David liked Mr Coghlan and that everyone apart from Leigh thought he was doing a great job. Ms Maier's evidence is also difficult to reconcile with Leigh's case because she thought that David and Mr Coghlan got on quite well (evidence that is corroborated by the fact that he has now been reemployed by David), but that Leigh thought that he was too expensive.

386. David's evidence was that Mr Coghlan's dismissal was an inconvenient surprise to both him and Mary, because they had been planning to take him with them on a visit to Cumbria. Mary and David confirmed not only that they were not consulted by Leigh, but also that they were not told of the dismissal until Mr Coghlan came to tell them. The fact that the dismissal was a surprise to David and Mary was confirmed by Mr Coghlan's evidence, because when he went upstairs to see them after his services had been dispensed with, he said that they were shocked and did not give the impression that they had been consulted. Mr Parmar also said that he found Mary in the hallway looking timid, worried and helpless immediately afterwards, and I think that Leigh's evidence about Mary's and David's reaction when they saw Leigh after Mr Coghlan had told them what had happened was her way of recording their astonishment at what she had gone and done – I do not accept that it reflected in any way their approval.

387. Perhaps the most striking point about the circumstances of Mr Coghlan's departure was that it was not Leigh's evidence that she had consulted David and Mary beforehand, nor that she had obtained David's consent. This was a startling omission give the role which Mr Coghlan filled. Leigh simply said that she took it from a conversation that she had had with David that he found Mr Coghlan's company unsatisfactory. I do not think that, even if she was left with this impression, what occurred came anywhere near consultation with or consent from David that Mr Coghlan's services should be dispensed with.

388. In the light of this evidence, it is surprising that Mary and David did not challenge Leigh's decision, although they did persuade Mr Coghlan to work out his one month's

notice and he went up with them to Cumbria in order to do so. Mary explained that she was not then David's wife and did not want to fall out with Leigh. She also said that David was too old and ill to do so. In my view, this simply reflected a judgment call they made at the time. They obviously still regarded not falling out with Leigh as more important to them in the overall scheme of things than retaining Mr Coghlan. In my view that does not in any way mean that they condoned what she had done.

389. Mr Parmar did not take it up with Leigh either. It is plain that he really disagreed with what Leigh had done. His explanation of why he did not take it up with her was sad given their relationship, but revealing. He said:

> "I didn't take the issue up with Leigh. Reading everything that was going on, there would be no point; Leigh doesn't listen if she is challenged or criticised her gut reaction is to attack. She just wanted everyone to agree with her point of view about the most trivial thing. You could sense that she was becoming more controlling before it became more apparent in the lockdown period, which I explain below."

390. Stepping back, I have reached the clear conclusion that the manner in which Leigh treated Mr Coghlan could quite properly have been thought by David (and Mary) to have been insensitive and high-handed. It is understandable how, when combined with other small, but for him significant matters, it came to be one of the ingredients in the complete collapse of David's confidence and trust in Leigh. Immediately after Mr Coghlan's dismissal, David and Mary decided that they would stay and live together. She said that at that stage "We were not discussing marriage, but it was clear that we needed to be together to cope with the situation".

The move to Cumbria

391. There was a significant development in David's life caused by the outbreak of the Covid-19 pandemic. In March 2020, he and Mary moved to her house in Cumbria. Leigh continued in occupation of Wotton, and the evidence is that she and her family enjoyed being there. It was David's evidence that, after he and Mary left for Cumbria, Leigh carried on managing his affairs (which is undoubtedly correct), but that she consulted him even less than she had done previously. Mr Harrison said, that it was after the move to Cumbria that there was a big change and Leigh started to throw her weight around. From the evidence I have heard and seen I accept that his perception was one which was justified.

392. The evidence from David and Mary is that their departure for Cumbria was intended to be temporary, and Mary explained that they left in a hurry as she was extremely anxious to take David somewhere where he could safely shield, which was not possible at Wotton. The speed of the decision to move is not surprising given what was occurring in the country more generally at the time and is consistent with the fact that David's old friends, Sir Jeremy Sullivan and his wife, were told by Leigh on the day of the departure and went straight round to say goodbye and wish him well. On this occasion Sir Jeremy noticed what appeared to him to be a marked decline in David's physical and mental health, but also mentioned that he detected no hint by David of any dissatisfaction with Leigh.

393. David's and Mary's stay in Cumbria has proved more permanent than Mary said they had originally envisaged. They have felt unable to return to Wotton, because by the time they wished to do so, Leigh was refusing to vacate. It is Leigh's case that she was told by Mary that she was taking David to Cumbria to die and that, when she visited them in the summer of 2020, she was told by Mary that he had abdicated from Wotton and by David that Cumbria was where he now lived and that Leigh was now in charge of Wotton. Mary denied that she said either of those things and I am not satisfied that Leigh was accurate in her description of what Mary in fact said. But, even if Mary did indicate in some way to Leigh that she thought that David may never return to Wotton, I accept that what David said in his witness statement is the current position:

> "We desperately want to return to live at Wotton but, due to the breakdown of our relationship with Leigh, and her refusal to move out of Wotton, we are unable to do so until the court grants the order for possession I am asking for in this claim."

394. During the period after their departure from Wotton, there continued to be issues with Leigh's conduct which caused David concern. There was a dispute about a small private concert held during the course of 2020, which David thought would be illegal in the light of the COVID-19 restrictions but which Leigh wanted to go ahead. David made clear that the concert should not go ahead and even rang up the tenor to cancel, but Leigh allowed the concert anyway. There were a number of incidents relating to the observance of lockdown rules, which caused upset including issues over the introduction of a system of passes for regular visitors to the park at Wotton. Leigh said that David had agreed in August 2020 for the system to be changed. As she put it, he told her when she went up to Cumbria to visit him that summer that they should try to put a little more squeeze on people for donations and that was what Leigh said she was trying to do. Leigh did not accept that there was disagreement with David at this stage, but I think it is clear that there was.

395. David's concern about these issues had already become apparent by September 2020 when Leigh had the first of several conversations with Ms Hassall about what was starting to go wrong. These conversations started when Leigh and Ms Hassall met for lunch in Oxford on 21 September 2020 and discussed a number of matters relating to Wotton. The meeting was held shortly after David had told Leigh that he and Mary were to marry (as to which see below). In general terms these were points that had given rise to difficulty, described by Leigh as points of confusion, which were points that David had wanted Ms Hassall to raise with Leigh. They included issues over the concert, the arrangement which had been made by Mr Harrison in relation to the passes and concerns about whether Mr Harrison had been spending too much time during lockdown cutting down firewood for his own use. It is clear from the note that there were a number of issues relating to Wotton in respect of which there was a difference of view between them and in respect of which Ms Hassall felt it necessary to remind Leigh that ultimately it was up to David to decide. Leigh sought to minimise the extent of those differences, but I am satisfied that these were points which were important to David and Leigh's attitude to them was upsetting to him, which is why Ms Hassall raised them in the way that she did.

396. The note of the meeting also made clear Ms Hassall's appreciation that Leigh was very frustrated that everything seemed to be left to her by David and that she was not being paid for doing a considerable amount of work. This was not wholly correct,

because she had already been paid substantial amounts in March and August that year. However, Leigh made clear in her cross examination that in her view "I was being underpaid for the amount of work I was doing and the hourly rate I could have been charging".

397. Taken individually, these circumstances have the appearance of being relatively insignificant. They are capable of being characterised as the type of disagreement which might occur when the control and management of family property is being passed from one generation to the next. They take on rather more substantial resonance when looked at collectively, and in the context of the passing of management control to a person in the position of Leigh who, although a longstanding and close family friend, was also a professional, owed the duties of an attorney to David and was receiving payment for the services she was providing.

Colin Gray

398. The next illustration of behaviour by which Leigh caused upset to David in her treatment of those who had been a long-standing part of his life is more serious in the sense that it related to David's finances and the role of David's accountant, Mr Gray. In order to put the rather more significant consequences of this particular dispute in its proper context, it is necessary to explain a little more of the background, which means going back in time to the period before David's and Mary's departure for Cumbria.

399. In a November 2018 e-mail to Mr Gray, Leigh told him that she was acting as David's attorney (a status of which he had already been informed by David earlier in the summer) and enclosed a copy of the 2017 LPA. This was Leigh's first correspondence with Mr Gray although they had met once before in December 2013. She said that she was writing because she was looking for budgetary purposes at what appeared to be a large payment on account of tax in January 2019 that David would have to make. She enquired about the possibilities of deducting carer and household management costs from his rental income for tax purposes. She said that she had started to look into this issue some six months earlier when a potential cash flow issue had arisen in relation to the payment by David of a tax bill due at the end of June 2018.

400. There was then a meeting at Mountfort Terrace on 12 December 2018, at which there was a discussion about what could be deducted for tax purposes and Leigh explained to Mr Gray that she was looking to take over management of the Wotton and London properties. The way that Mr Gray explained his overall perception of Leigh's role was that she was very much on David's side and appeared very keen to reduce the amount of tax payable.

401. Mr Gray said that he did not recollect the meeting in any detail, but he confirmed that Leigh raised the question of the deductibility of management fees she might charge. The way that Leigh explained this in her witness statement was that "we discussed and agreed that we would be inserting a new management level, for tax strategy purposes after discussion with a partner in Dixon Wilson". She had already had the conversation about charging fees with Ms Hassall in the summer of 2018, which was immediately before she took the final decision to wind down her legal practice.

402. During the course of January 2019, Leigh continued her correspondence with Mr Gray. She was attempting to ascertain whether it would be possible to reduce David's payment on account of tax due at the end of the month. The correspondence amounted to an exchange of views on whether certain items of property-related expenditure were deductible. It is quite clear that Leigh was pushing hard to reduce the payment and Mr Gray was adamant that he would not be pressurised into approving a reduction based on what he regarded as spurious costs. During the course of that exchange she also referred to the discussion they had already had about her charging David a management fee of £4,000, which when taken into account together with a number of other expenses would reduce David's payment on account due on 31 January. In the course of that correspondence, Leigh said that:

> "I have never billed any legal/management fees but need to going forward, so there will be additional fees, amount to be advised following discussions with estate expert.

403. Mr Gray explained that, because it was his understanding that Leigh was "looking over all of the bank transactions, administering the properties, sorting out insurance [and] dealing with agents", he thought that her administration costs could be treated as a deductible expense for tax purposes. It was his view that, in those circumstances, she was quite clearly helping to manage the properties. Eventually the appropriate figure for a deduction was agreed.

404. The question of what expenditure was properly deductible arose again in the context of the following year's tax return. It is clear that the relationship between him and Leigh was not particularly cordial by this stage. This cannot have been helped by the fact that, for the previous year's return Mr Gray had had more work to do than he expected at the last minute, that this was caused by the queries that had been raised by Leigh at a late stage in the process, and that she had then queried his fees. Mr Gray clearly thought that this challenge was unwarranted in circumstances in which he considered that the approach she had adopted to the previous year's deductions had generated more work for him.

405. The correspondence for David's tax return due at the end of January 2020 started in October 2019. Mr Gray was unhappy with the amount of detail that Leigh had provided for the deductions she thought that David could claim, and he asked for a meeting with David and Leigh to deal with any queries. Based on his previous experience of dealing with David's tax return, he considered that this was the best way of obtaining the information he required. Leigh explained that David was too frail for a meeting and Mr Gray then asked Mrs Barrett to see if she was able to provide the information he required. It is obvious from the tone of the correspondence that Mr Gray was becoming frustrated with the approach that Leigh was taking to what he regarded as his reasonable enquiries, adopting as he did his long established practices.

406. This relatively tetchy correspondence continued into January 2020. Mr Gray said that he did not feel that he was getting the information he required to make the correct decision and was left with the impression that Leigh was trying to bamboozle him into claiming deductions that were inappropriate. In this context, one of the more significant proposed deductions was Leigh's own management time. Initially she told Mr Gray that the charge for her "legal consultancy and estate management and admin

services" amounted to £57,000. In the event she then invoiced David (on her official paper as a solicitor) a total of £28,000 for the tax year 2018/19 said to have been calculated at 10% of the rental income for the properties (which appears on the face of it to have been an overcharge) together with two further specific projects (unitemised lease renewal services and employment law advice), which she said was the correct amount for tax purposes. She then paid this invoice out of David's rental account on 10 March 2020.

407. In the context of explaining this invoice to Mr Gray, Leigh made a comment which is revealing as to the way in which she regarded the nature of the services she was providing to David:

> "I have spoken to his Trusts and Estates lawyer at length to a separate estates and trusts accountant and have verified that indeed my services should be an expense as they both said "someone would have to be paid to do it". My understanding is that this relates to his estates as in rental properties and indeed Wotton as a historic house. That being said, going forward we may well need specialist input. I certainly cannot afford to put my own career on hold to be paid £28,000 a year for all the time I spend."

408. This last comment was a clear statement of how Leigh regarded the nature of what she was doing. It had a strong business flavour to it and Leigh recognised that the effect it was having on her ability to develop her own career (whatever form that might take going forward) was something for which she needed to be compensated. While that is a perfectly understandable reaction given what she was by then doing at Wotton, if her work for David were otherwise to be capable of being characterised as a detriment, she regarded the compensation that she thought she should be receiving as a necessary means to redress the balance.

409. It is clear that Leigh and Mr Gray did not have a meeting of minds on the correct approach. In a number of respects, Leigh's enthusiasm to increase the level of deductions bore fruit and so to that extent was for David's benefit. However, 60% of the additional deductions related to her own fees and I was left with the clear impression that, by leaving it all to the last minute and adopting the tone that she did, she made the whole process much more fractious than it should have been. Mr Gray was being thorough and methodical, but that was the way he had always been, and reflected a process which had worked well in the past. Leigh then challenged Mr Gray's fees (up from £2,070 the previous year to £3,750) as having given rise to an insupportable increase. Although not of central significance, I am not surprised that there was an increase of the amount Mr Gray sought. In my view Leigh's approach was a further example of a tendency to high-handedness in her dealings with others, the cumulative effect of which was eventually to lead to the breakdown in her relationship with David.

410. Of more obvious significance were the circumstances in which, later on in 2020, Leigh sent an e-mail from David's e-mail account notifying Mr Gray that his services had been dispensed with and that Leigh's husband, Robert, had been appointed in his stead. She said that, by this stage she had formed the view that David did not have any special relationship with or fondness for Mr Gray.

411. David gave clear evidence that this e-mail was sent without obtaining his prior approval and Mr Gray confirmed that David told him a few months later that he had not approved it. This evidence was corroborated by Mary. She described how, shortly after their marriage on 9 October 2020, David spoke to Mr Gray who told David that he no longer acted. It is also corroborated by a contemporaneous e-mail sent by Mr Gray to Mary after that conversation. It is not clear who called who (Mr Gray said that he did so at Mrs Barrett's suggestion and Mary said that David made the call), but I do not think that matters. What matters is that Mary said, and I accept, that David was genuinely shocked by this information. Although David's memory is clearly fallible, I do not think he would have reacted in the way that he did if he had known about the termination of Mr Gray's retainer.

412. One of the striking things about this e-mail is that, although it was drafted and sent by Leigh from David's Wotton e-mail account (to which since his move to Cumbria he had had no access), it was drafted and signed in a form designed to give the impression that the sender was David personally, rather than Leigh as his attorney. Leigh did not dispute that she signed this e-mail in David's name, but said that she did so with his authority, although the fact that this was what she was doing was not spelt out on the face of the e-mail. She said that she spoke to David in Cumbria before she sent the e-mail, and also described a number of previous occasions during the course of 2019 in which she had discussed with David the replacement of Mr Gray with Robert.

413. I do not accept Leigh's evidence on this point. Leigh has provided no written confirmation of David's approval to what was obviously an important decision. I am satisfied that, even if there had been earlier occasions on which David and Leigh had discussed the possibility of using Robert to deal with his tax affairs, this was no more than a discussion and this was a decision on which David was entitled to expect that Leigh would seek his specific authority and he did not give it. It is self-evident that the removal of a longstanding professional service provider by the client's attorney, and his replacement by that attorney's husband, is a matter for which clear and informed consent was required. In my judgment, the rather vague description of when and how David had given that consent was both unsubstantiated and inadequate. Although Leigh was David's attorney and the LPA had been registered for some time, there was no suggestion that he did not continue to have capacity.

414. Regrettably, I have also concluded that Leigh knew that she was on uncertain ground in terminating Mr Gray's retainer without that specific authority, because otherwise she would not have misled Mr Gray into thinking that the e-mail had come from David direct. In my judgment, the fact that Leigh purported to send the e-mail in David's name without any disclosure to Mr Gray that she was in fact the drafter and sender is a clear indication that Leigh was conscious that, given the longstanding nature of the relationship, Mr Gray might have wanted to speak to David directly for confirmation of his dismissal if he had known that was the case. If she was being as open as she should have been, she would have adopted her usual practice of communicating with Mr Gray in her own name, while describing herself as "Solicitor Power of Attorney for David Gladstone" in the signature block or otherwise made clear to him that, although signed by David, the e-mail had in fact come from her using his account.

415. It is also quite striking that, although the note of Leigh's 21 September 2020 conversation with Ms Hassall discloses that she raised the fact that in her view Mr Gray had not been deducting all of the property expenditure which could properly be deducted for tax purposes, it makes no mention of the fact that she had dispensed with his services and replaced him with Robert which is a surprising omission. This corroborates the fact that David did not then know what Leigh had done.

416. That does not mean to say that David took immediate steps to reverse Leigh's decision. Indeed, he wrote to Robert, shortly after his mid-October discovery of the termination of Mr Gray's retainer, saying that he understood that Robert was preparing the estate accounts and that he (David) would need to approve the tax return. He then waited for three months until Ms Hassall wrote to Leigh on 13 January 2021 explaining the principles on which David wanted Leigh to act as his attorney going forward. Ms Hassall said that David had decided that he wished to continue to use Mr Gray and that while he was grateful for Robert's work in the preparation of his tax return for 2019/20 he had decided to instruct Mr Gray again in respect of the return for 2020/21. While it may seem surprising that David did not respond immediately to what had occurred, I think that this is a good example of the more general approach that David wanted to take to Leigh's conduct of his affairs in the period immediately after his marriage to Mary.

417. Reverting in the chronology to the summer of 2020, a month or so after she had terminated Mr Gray's retainer, Leigh invoiced David for her fees for the period from April 2019 to April 2020 (the earlier £28,000 invoice had been for the previous tax year) in a sum of £48,000. This invoice included a very detailed 9-page month by month breakdown of the work that she had carried out for David. It demonstrated that she had been spending time on a great many of David's affairs both related and unrelated to Wotton and showed that she was charging David for every kind of business, social and domestic activity. The sum of £57,000 was then paid out of the rental account in settlement of this invoice. The extra £9,000 seems to have been payment for an unspecified period after April 2020 in respect of which there was no invoice to which my attention was drawn.

David's and Mary's wedding

418. The next event of significance occurred shortly before David discovered that Leigh had dispensed with Mr Gray's services. David rang Leigh in September 2020 to tell her that he and Mary had decided to get married. Leigh said that she was both surprised and delighted with the news.

419. The meeting between Leigh and Ms Hassall on 21 September 2020 took place shortly after she received this news. It is apparent from the notes of this meeting that, by then, quite significant tensions between David and Leigh had developed. But for understandable reasons Leigh remained keen to attend the wedding. However, Leigh's plans to do so caused yet another altercation, which I can deal with briefly but which again illustrated an attitude which Leigh had adopted to David (and Wotton) that was becoming increasingly grating for David and Mary. The first sign of this was a conversation which Leigh says that she had with Mary in which she said that she had to be at the wedding as this was David getting married and she had been the

greatest facilitator and supporter of Mary's love for David, but Mary "muttered something" to the effect that she might not be able to come.

420. Although described by Leigh as something that was said in a conversation, it is also very similar to something said by Leigh in an e-mail exchange which Leigh and Mary had shortly before the wedding. The context in which that e-mail came to be written was a telephone conversation between Mrs Brumwell and Leigh, about which Mrs Brumwell gave straightforward evidence in a no-nonsense manner which I accept in full. Back in July 2019 Leigh had arranged for Mrs Brumwell to be employed to look after Mary's house, dogs and horses while she was at Wotton with David. When David and Mary arrived in Cumbria, Mrs Brumwell started to spend more and more time working for them and doing their shopping to minimise their exposure to outside contacts. As David's condition deteriorated she soon found herself working seven days per week, until Mr Coghlan was reemployed by them which occurred in July 2021.

421. Leigh called Mrs Brumwell on her mobile phone and suggested that she could bring some clothes for Mary to wear at the wedding which was taking place five days later. Mrs Brumwell said that she thought that Mary would wear something she had in her cupboard. Her evidence was that, for no reason, Leigh then began to scream and shout at her in a manner that she described as horrendous – it was so bad that she had to hold the phone away from her ear. She said that to this day she still has no idea what triggered the attack which she described as vitriolic. She said she was just saying that Mary had some beautiful clothes, but that Leigh was accusing her of trying to take over the wedding. Mrs Brumwell then said that this attack pushed her to swear at Leigh, calling her a fucking nobody and putting the phone down.

422. There was then an exchange of e-mails between Leigh and Mary, as a result of which Mary asked Mrs Brumwell to apologise to Leigh, which she did. During the course of that exchange, Leigh demonstrated how important it was for her to attend the wedding, while Mary asked Leigh not to fall out with Mrs Brumwell. The whole exchange showed the enormous strain of life in lockdown, which must have been very stressful for Mary. She was looking after an ill and frail man whom she was about to marry. In my view, Mary's reaction to the row was entirely understandable.

423. In my view, Leigh's reaction was less understandable (or understanding) given the circumstances. It focused entirely on how she was going to be able to get to the wedding, given the extraordinary nature of the lockdown restrictions and in particular the Cumbria guidelines, which she said did not extend to weddings and were guidance only. I was left with the impression that she had little sensitivity for the way in which a local community in Cumbria might have been very unhappy to see outsiders in their small village – Mary said that Leigh would have been the only outsider. Her lack of understanding of the other perspective, and her insensitivity to the views of others when it had anything to do with David, is reflected in the following parts of her e-mail to Mary, in which she also made the comment about being Mary's greatest supporter and "facilitator of your love for David":

> "The idea that I should miss supporting David and you because the village may deem me to be flouting the rules is simply not an adequate reason and one I didn't dare want to think you held as I find it too upsetting that I should be told I was unwelcome. … The idea of leaving David alone in this huge step is unthinkable. I

> have welcomed you, adored you, rejoiced in your love and cried sheer tears of joy at your marriage, despite it meaning D is unlikely to ever come back to Wotton. I will never cease in my love or support for David and you, for that I need respect from anyone employed to assist."

424. In the event, Leigh drove up and attended the wedding, but she did not feel at all welcome. She said that she felt that the David she had known at Wotton had been hijacked and did not appear to be able "to act with his own agency any more".

425. There was then another meeting on 19 or 26 November 2020 (the date does not matter) between Ms Hassall and Leigh, which this time was held by Zoom. Ms Hassall, who was speaking to Leigh at David's request, recorded that Leigh was clearly well aware (as she put it) that there were various things going on, and later that Leigh was feeling quite uncomfortable about her personal position. She also recorded that Leigh told her about a discussion that Mary and Leigh had had earlier the previous weekend when Mary had accused Leigh of treating her and David like children. The dispute related to the control which Leigh was seeking to exercise over their financial affairs, which Leigh regarded as her being protective of David and Mary, but which they had clearly decided was over-zealous and over-controlling. Leigh's interference was based on a concern she articulated that Mrs Brumwell had been using a debit card on an account into which David's foreign office pension was being paid, which caused Leigh to cancel the card and make arrangements for Mrs Brumwell to be provided with cash. By this stage it was quite clear that Leigh neither liked nor trusted Mrs Brumwell.

426. One of the issues that was discussed in the note of this meeting was that Leigh expressed the view that Mary appeared to be being quite possessive of David in some ways and there were hints that she thought that David had originally resisted what she described as a more defined relationship with Mary. They discussed a number of property-related matters and towards the end of the conversation Leigh said that she now felt that she needed to put everything on a more professional basis. The clear impression from this note was that Leigh was very worried that David had drifted away from having the trust and confidence in her that he used to have and was now under what was, for Leigh, the less desirable and constructive influence of Mary.

427. There continued to be conversations between Leigh and Ms Hassall. The second of these was an important telephone conversation in which Ms Hassall explained that she had been asked by David to raise with Leigh the question of what had happened to the Bonds which David said had disappeared. Ms Hassall was told by Leigh that David had been told by his IFA (a reference to Mr Cameron Taylor) to assign them, but she remained unclear as to where they had been assigned. Leigh told her that one of the Bonds had been cashed in in order to tide things over because of a large cash bill and the installation of lifts at Wotton and in the London properties, but that the other Bonds were safe and ring-fenced with 5% coming in. In fact, as I have already explained, four of them had by then been surrendered. Ms Hassall also explained to Leigh that David had mentioned the Wotton Charter on a number of occasions and that in particular he had concerns about what may be happening with the passes and the increase in Leigh's management fees.

428. Matters continued to deteriorate. The extent to which David's attitude to what was happening at Wotton now that Leigh was in charge, and he was in Cumbria, can be

summarised by what he said in an e-mail to a friend in March 2021:

> "It has been a terrible disappointment to discover that my chosen legatee turns out to have very different understandings about how to tackle the various problems, but I hope & pray that with the aid of some ace lawyers I can face Leigh down & succeed in passing Wotton on to a more deserving heir."

429. By this stage, David had resolved to change his will to exclude Leigh from being one of his intended trustees and from the discretionary class of beneficiaries. On the following day (15 March 2021) David executed a new will in a form which was similar to his 2015 will, but under which the trustees are to be Mary, Matthew, Ben and Mr Frostick and the discretionary class is to comprise Mary, any issue of David's, Matt and his issue, Ben and his issue and any person (including a charity) whom the trustees may during the trust period appoint.

Conclusions: the proprietary estoppel claim

430. All the elements of the cause of action are intimately interlinked, but the first question is whether David ever gave Leigh the assurances on which she now relies. The two occasions on which particular reliance is placed are the NLC lunch in 2007 and the Islington dinner in October 2011, but it is also said that there were many later occasions on which similar assurances were given and David's behaviour was consistent with his commitment and promise to Leigh that Wotton would be hers. Indeed, Ms Reed submitted that this later conduct was only consistent with Leigh having been promised that she would succeed David and be his heir.

431. I have described earlier in this judgment my findings of what David said to Leigh at the NLC lunch. Having regard to the context in which the conversation occurred, I do not consider that what was said was "clear enough" as that phrase was used by Lord Walker in *Thorner* to amount to a promise that "she would inherit Wotton and the inheritance would follow her family line". From David's point of view, he was simply expressing a statement of present intent that he would like Leigh to have a significant managerial role in the running of Wotton after his death. This was a role which might even manifest itself in taking on what was referred to by some of the witnesses as that of a 'chatelaine', but it fell far short of a promise that she would be its absolute owner. He was very fond of her, but it is also plain that he valued her practical and legal abilities on which he continued to place considerable reliance, and it was that which was the driver behind the way in which he expressed his intentions and hopes that she would succeed in managing the affairs of Wotton after his death. She was the person in whom he then had the most confidence that what were later to be described in the Wotton Charter as the objectives or code of conduct for Wotton might best be fulfilled.

432. In reaching that conclusion I think that at the time of the NLC lunch (and indeed for a very long time thereafter) there remained a significant level of uncertainty as to the nature or terms of the benefit (if any) that David envisaged Leigh might receive from Wotton or that Leigh expected might come her way. He knew that the nature of Wotton was such that there was great complexity in achieving any form of clarity in relation to its devolution. Although matters started to clarify as time went by, I am

satisfied that there was very considerable uncertainty at this stage as to what David himself intended to achieve and, once he had worked that out, how it would be implemented. The fact that an appropriate level of certainty in relation to that question is an important part of any proprietary estoppel claim is well-illustrated by Lord Neuberger's discussion in *Thorner* at [90ff] of the differences between the position in that case and the situation in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752.

433. Of course it is possible that the position might have changed as time went by, not least because there is no doubt that the devolution of Wotton continued to be very troubling to David. Indeed the very fact that he found it so difficult is one of the factors on which Ms Angus relied with some justification to demonstrate that he did not give the promise at the NLC lunch that Leigh said he did. However, the fact that what was said at the NLC lunch was not a clear enough assurance as to what would happen does not mean that later words and conduct cannot be relied on by Leigh.

434. In that context, Ms Reed placed much emphasis on the two passages from David's diary dating from 2011 and 2013 which referred to the October 2011 Islington dinner (they are both cited earlier in this judgment) from which it was said that David was clear in his own mind that Leigh would be the owner in due course. It was submitted that this was the context in which the way her role was described in David's 2015 will and letter of wishes amounted to her being his principal putative beneficiary, a status which in David's mind was intended to amount to the same thing. It was submitted that this went far beyond stewardship and reflected David's intention that Leigh would become the ultimate and absolute owner.

435. The language of the Islington dinner diary entries, both written some time before the execution of his 2015 will, is certainly consistent with a belief by David that he had given a significant assurance to Leigh which was intended by him to set a course for the future which involved some form of ownership by Leigh. Ms Reed submitted that several years later Ms Hassall appreciated that this was the case, which is why, when she advised in May 2017, she referred to the possibility of Wotton being owned by Leigh when she was not also a beneficiary of the relevant HPMF (at that stage the old WEMF). In that context, she referred to the desirability of the beneficiaries of the old WEMF being aligned to the future owners, or to those who would enjoy the use of Wotton House and the grounds. However, for the reasons I have explained earlier in this judgment, I do not consider that what Ms Hassall said at that stage bears the weight which Ms Reed seeks to ascribe to it. It is quite clear from Ms Hassall's covering e-mail that her concern related to alignment of the beneficiaries under the old WEMF with those under David's 2015 will and contemplated that Leigh, and indeed others might enjoy the use of Wotton without being an owner. It falls well short of demonstrating that Leigh was the only possible future owner – in fact quite the contrary it contemplated that beneficiaries other than Leigh were in the frame and that the trustees had a discretion as to how the benefits ought to be applied.

436. David's references to disappointing his nephews fall into the same category of conduct. The evidence disclosed three occasions on which his diary recorded entries to that effect (in August 2013, April 2015 and January 2017) and it was one of the points he mentioned when he first met with Ms Hassall in November 2013. However, David is likely to have thought that Leigh's roles as trustee, donee of his personal chattels and member of a discretionary class whom David envisaged would take over

the running of Wotton in the first instance would disappoint his nephews. In other words, it is likely that David would have realised that, by including Leigh in the discretionary class in his 2015 will and by signing a letter of wishes which made clear that he wanted Leigh to be given prior consideration for the role of managing Wotton on a day to day basis, was quite sufficient in itself to have been a disappointment to either or both of them.

437. There are a number of other specific aspects of David's conduct on which Ms Reed relied in her closing submissions. She pointed to things which David did and said both before and after the execution of his 2015 will, which indicated that he must have thought that whatever structure was put in place was consistent with the assurances that Leigh says she was given. It was submitted that this was why the fact that Leigh was only named as one of several discretionary objects under David's 2015 will was not inconsistent with the promise.

438. Thus, Ms Reed relied on David's diary entry from December 2013 to the effect that Leigh was coming to be accepted by Mr Harrison as the successor while the mentions of Leigh's prospective inheritance to April's former carer, Debbie, in September 2015 and to his friend, Curzon, in March 2016 are all consistent with Leigh's case that she was the chosen heir and that this was what David had promised her. She also pointed to what Mrs Howard-Johnston was told by David shortly after Patrick died. For reasons that I have already explained, I do not think that what David said carried with it the meaning which Leigh contended that it did. However, Ms Reed submitted that whatever precise form the conversation took, it evidenced the fact that David thought that his 2015 will and the letter of wishes reflected an arrangement under which he had (as Mrs Howard-Johnston put it in her oral evidence) "basically willed the house to Leigh". It followed, so it was submitted, that, if that is what David thought he had done, that is what he is likely to have promised Leigh that he had in fact done and that is what Leigh is likely to have believed was the case. Indeed, David's continuing reference to Leigh as recently as March 2021 as "my chosen legatee" is a further reflection of what he thought he had done and how, therefore, he must have explained to her that she was to be his heir.

439. I disagree with this analysis. I am not satisfied that anything that David said or thought was materially inconsistent with the case he now advances. So far as the earlier period between the NLC lunch and the execution of David's 2015 will is concerned, there was material such as the form of the 2008 wills which in my judgment was irreconcilable with Leigh's case on the assurance she says she was given. Even towards the latter end of this period, and after the October 2011 Islington dinner, David was still making clear to others (see his letter to Mr Frostick of 3 April 2012 only 6 months after the dinner) that the future ownership of Wotton House itself, and the identity of those for whose benefit it should be held, remained troubling to him. Equally striking was the nature of the instructions to Mr Semken. The fact that the question of charitable ownership was still being discussed in 2013, six years after the NLC lunch and almost two years after the Islington dinner is impossible to reconcile with a belief by David that he had given Leigh the assurances on which she now relies.

440. In my judgment the right analysis is that the sense in which David saw Leigh as his successor, and the sense in which (as he put it in his October 2011 diary entry) he regarded himself as having promised Wotton to Leigh, was consistent with what was

spelt out in his 2015 will and the letter of wishes. Those documents were a tool, but they were wholly inconsistent with the grant to Leigh of any entitlement to ownership, as opposed to an expectation or hope that she would be the right person to enjoy some of the benefits of ownership. David's 2015 will and letter of wishes put in place a structure expressing his intention that Leigh should be the driving force behind what was to happen at Wotton after his death, or were at least consistent with that being what should occur. But it was also clear that David's use of a discretionary trust was designed to be a flexible structure which would assist in achieving a much more nuanced result than that which Leigh says was simply a mechanism for transferring to her an absolute interest in Wotton. The use of such a structure reflected an intention that she should have an important role to play, but it was inconsistent both with a promise that she would have absolute ownership, or that this is what the role intended for her amounted to.

441. So far as the more nuanced result of a flexible structure is concerned, I do not think that David was driven by the tax considerations alluded to by Ms Reed in her closing submissions. In David's mind the driving considerations behind his letter of wishes in so far as they concerned Wotton were twofold. They are both inconsistent with David having given the assurances on which Leigh relies.

442. The first consideration was that Patrick's interests should be given appropriate recognition. It was only as a result of Patrick's early and unexpected death, some 18 months after David's 2015 will was executed, that this wish was overtaken by events. At the time David made what Leigh says were the NLC and Islington promises on which she now relies, there was no particular reason to believe that she would outlive Patrick.

443. The second consideration was a very significant driver behind what David wanted to achieve. He expressed a number of wishes all of which went to his desire to maintain what he saw as his legacy at Wotton. This was the context in which Leigh's role at Wotton was made explicit. David envisaged that Leigh would be the person who would take over the day to day running of Wotton and that this might involve her moving into the house. But in my view it was this way round. It was not expressed on the basis that Leigh would benefit from Wotton per se. It was put on the basis that Leigh was the person whom David then trusted to run Wotton in accordance with the Wotton Charter. What mattered for David was that his legacy should be preserved, and that it was through Leigh, as the person best placed to do so, that this would be achieved. In my judgment, there is no doubt that David wanted to ensure (in so far as he could) that Wotton was preserved and maintained. Although he intended that this preservation and maintenance should be entrusted to Leigh, the letter is inconsistent with any promise to her that this is what would happen come what may, let alone that she could expect to receive an absolute interest as she claims in these proceedings. In short, the reason Leigh was a beneficiary in the first place was that she had a role to carry out at Wotton, not the other way around.

444. I have also reached the conclusion that Leigh was well aware that what David said to her about the future of Wotton was intimately interrelated with the trust he had in her to carry on his legacy at Wotton. She had been involved in the drafting of the Wotton Charter and she also knew that the letter of wishes was clear on this point. This was irreconcilable with any form of absolute ownership for her such that she was entitled to deal with Wotton as she saw fit and I think that Leigh was aware that this was or

certainly might be the case. As I have already found earlier in this judgment, I do not accept that Leigh was right to portray herself as being as ignorant of basic matters of the law of trusts as she claimed to be.

445. For this reason alone I think that, even if David had expressed himself in a manner which appeared to convey a firmer promise of future entitlement than was expressed by his 2015 will and letter of wishes, it was unreasonable for Leigh to restructure her life to her detriment in reliance on what she thought he had said. So far as what Leigh was told at the NLC lunch, I am satisfied that she was entitled to conclude that David wanted her to have an important role in Wotton going forward, all the more so after he and April had died. But even if she had convinced herself that what he had said was that come what may she would be the appointed "heiress", the context in which this assurance was given was not one on which, in my judgment, it was reasonable for her to place substantial reliance in ordering her affairs going forward. There are a number of reasons for this.

446. The first is that, immediately after the NLC lunch, Leigh was present at a meeting at which there were discussions with Mr Frostick that were incompatible with what she now says was said. She must have known from this that she could not rely on what she now says she thought David had meant and, even if my conclusion as to her state of understanding of what he said is wrong, it was unreasonable for her to do so. This was the first of a number of occasions on which any reasonable person in the position of Leigh, more particularly with her knowledge and background, should have been quizzical about informal oral assurances before taking any steps in reliance on them. In my view, the fact that the situation changed so soon after the first assurance was said by Leigh to have been given is a consideration which should have caused her to be particularly careful when things were done or said in the future before placing any substantial or material reliance on them when ordering her affairs going forward.

447. The second reason is that none of the assurances on which Leigh now says that she relied were ever reduced to, or even evidenced in, writing in a form that was addressed to her or which she saw. The lack of any written confirmation, however sparsely expressed, on which it is even arguable that David can have intended her to rely, is in my judgment telling. Such writing as she is now able to point to is in large part David's diary ruminations, which she did not see before these proceedings and of which she was unaware at the time. Otherwise there is nothing which is inconsistent with her being an object of a discretionary trust with the intended but not binding role reflected in the letter of wishes.

448. Of course, there will be many factual contexts in which the way in which promisor and promisee lead their lives means that reasonable reliance can be established notwithstanding the absence of written confirmation (or even explicit words), but in my judgment, this was not one of them. Leigh was not a blood relative and her background as a solicitor means that she appreciated that some documentary evidence would be needed if she were to reorder her life with any degree of assurance that, when the time came (i.e., after David's and April's death), she would be secure in her entitlement to what she said she had been promised. This is all the more so in circumstances in which she knew that the implementation of David's wishes would be inherently complex and was aware of the potential for upset at her role emanating from David's nephews. In my judgment, it would have been unreasonable for a solicitor in her position to assume that the relatively informal conversations and

conduct on which she now relies were a safe basis on which to proceed when she knew that they were inconsistent with, or at the very least not reflected in, the formal documents she had seen.

449. The position did not change as time went on. While Leigh is entitled to point to the occasions on which David spoke of her future role, those that have been identified were relatively informal. This is in contrast to the formality of David's and April's 2008 wills, the 2009 codicil, David's 2015 will and the letter of wishes, all of which she saw and all of which were in my judgment inconsistent with the assurance on which she relies. After Ms Hassall's instruction, the discretionary trust structure was a consistent theme and, although the letter of wishes contemplated that the trustees might want Leigh to move into Wotton House as part of her role in its day to day running, there was no suggestion that she had any right to do so.

450. There are also a number of other events in which Leigh was involved, which were strikingly inconsistent with what she now says she was promised and which renders unreasonable any substantial reliance by her on the assurances she now says she was given. I have already mentioned some of them, but Leigh's role in the drafting of the Wotton Charter in which she was identified as attorney or regent for Patrick, and the instructions to Mr Semken in 2013 are amongst them. Whether or not David appreciated any inconsistency between what he had said to Leigh about the future and the discussions about the possibility of a charitable trust for Wotton, I do not see how it can have been reasonable for Leigh to rely on what she now says were his assurances, while at the same time being party to discussions of a structure which was so significantly inconsistent with them. As Ms Angus submitted, it would also have been unfair of Leigh not to make clear that the discussions were a non-runner because of what she had already been promised by David. She said nothing to that effect.

451. I also consider that the involvement of Ms Hassall in advising as to the future can only have made it even more unreasonable for Leigh to proceed on the basis of any assurances in the form she now says that she had been given. This follows from the fact that Leigh eventually accepted that she knew that the form of discretionary trust structure recommended in Ms Hassall's 2013 advice meant that all future decisions would be left to the trustees having regard to but not being bound by the letter of wishes. This issue arose again a year later at the end of 2014 during the period immediately prior to the execution of David's 2015 will. Ms Hassall's language was all about a role for Leigh and her mandate. At this stage, there was no suggestion that she might be intended to have any proprietary entitlement, let alone that of an absolute owner. In the light of this it would not have been reasonable for her to order any of her affairs in reliance on that belief that an assurance to that effect had been given to her.

452. I have also reached the conclusion that this remained the case throughout Ms Hassall's involvement. Ms Reed relied on Ms Hassall's use of the concept of Leigh having ownership of Wotton at the time the new WEMF was being established. However, I do not accept the submission that Ms Hassall must therefore have thought that David intended that Leigh would become an "owner" in any absolute sense or that this could have given comfort to Leigh such that she could place any substantial reliance on his intention to that effect. Whether or not Ms Hassall's language was clumsy, it is plain that the focus of what she was saying was that the terms of the WEMF and the terms of David's 2015 will needed to be properly aligned. In my

judgment it would not have been reasonable for Leigh to rely on that as giving her any more substantial prospects than those which she might have expected to receive in accordance with the terms of David's 2015 will.

453. I should add one final point on this aspect of the case. Ms Reed submitted that Ms Angus was wrong to contend that Leigh was not justified in relying on any promises made to her in 2007, and indeed in 2011 and later, because she was not mentioned in the 2008 wills and was only an object of David's 2015 will. She said that the doctrine of proprietary estoppel would be wrongly narrowed if that were to be an answer, because it is not the case that a promisee can only rely on a promise, if a will is known to be in existence giving effect to it. I agree with the last point, but that is not an answer to Ms Angus' submission. Her submission was that, because Leigh knew of the terms of the wills shortly after they were made, there was never a time in which she was acting to her detriment in ignorance of David's testamentary intention as reflected in those instruments. The consequence was that it was never reasonable for her to rely on what she thought she had been promised if and to the extent that any aspect of that was inconsistent with the wills and letter of wishes. This is more particularly the case because she is a lawyer and was aware of all the structural complexity required to provide for the future of Wotton. I agree.

454. Before turning to detriment, I should say something about causation. It was submitted on Leigh's behalf that what she was told by David is what caused her to behave in the way she did to members of the Gladstone family. The way that it was put in Ms Reed's closing written submissions was "What would Leigh have done if David had told her that he was no longer leaving Wotton to her? It seems inconceivable that she would have continued her involvement in the family." This was a development of an argument which was advanced in Leigh's skeleton argument at the outset of the trial that it was inherently probable that the promise made to Leigh in 2007 influenced both her career choices and the commitments she made in many different ways to each of April, Perdita and Patrick, as well as to David in coping with his daily life and the tragedies which from time to time befell his family.

455. Ms Angus protested that this way of presenting the case (based as it was said to be on *Wayling v Jones* (1993) 69 P&CR 170) was not foreshadowed in Leigh's skeleton argument, nor was it reflected by the way in which the cross-examinations proceeded. I think she is right about that, but I am not satisfied on the evidence that any assumed assurance of ownership was the only or even a substantial reason that Leigh behaved in the way that she did. I think that she regarded a combination of the long term association she had with David, the pleasure and enjoyment she received from the time she spent at Wotton, the affection she had for the Gladstone family, the place she had in David's affections and the way she was treated under David's 2015 will (notwithstanding the uncertainties contemplated in it) as all being of very considerable benefit to her. This was the case irrespective of the vulnerabilities in relation to the continuation of such benefits after David's death.

456. It follows that there is no reason to think that the assurance must have been given, because otherwise Leigh would not have behaved as she did. I do, however, agree that, if it had been reasonable for Leigh to rely on what she now says was the assurance she was given, that would be likely to have operated as an additional inducement to her to behave in the way that she did. On that basis, in accordance with what was said by Dillon LJ in *Wayling v Jones* at p.173 (i.e., that "the promises

do not have to be the sole inducement for the conduct: it is sufficient if they are an inducement"), a sufficient link between David's assurance and Leigh's conduct would have been established.

457. Turning to detriment, it was not in issue that the detriment does not have to be financial but it must be substantial. Establishing the detriment is part of the broad enquiry as to whether or not repudiation of any assurance is unconscionable and there must be a sufficient causal link between the assurance relied on and the detriment that is asserted. Put another way, it is necessary for Leigh to prove each element of detriment on which she relies and to demonstrate that taken as a whole the detriment is sufficiently substantial having regard to the fact that the court is engaged in a broad inquiry as to whether in all the circumstances, repudiation of any promise or assurance is or is not unconscionable.

458. On one level, any findings I make as to detriment have an air of unreality about them because of the nature of the conclusion I have reached about what Leigh was told by David and what she was led to believe would or might be her future at Wotton. But it is still important to make findings about the extent to which what David said to Leigh about the future at Wotton caused her to act (or not to act) in a particular manner and whether the way she did so can properly be characterised as detriment. The way she behaved, what she did and whether she did it in reasonable reliance on what she was told are all part of the process by which the court reaches a conclusion on whether Leigh has established the estoppel on which she relies. The detriment relied on is pleaded and particularised in paragraph 74 of Leigh's Defence and Part 20 Claim. Ms Angus made her closing submission by reference to this part of Leigh's statement of case and I think that it is appropriate for me to express my own conclusions by reference to the seven pleaded particulars.

459. In doing so, I have taken account of the detailed list of documents which was prepared by Ms Reed to demonstrate the nature and extent of the involvement that Leigh had in David's life and the life of other members of the Gladstone family. It is not in any dispute that Leigh played a significant role in aspects of David's life, but a trawl through the documents in the trial bundles, which demonstrate that Leigh was doing things for David and the family over an extended period can only go so far. Critically, much of what was relied on, cannot really be said to be detriment caused by anything that David said or implied, whether taken alone or in conjunction with other things. It amounted to contact with the Gladstones which brought benefit and pleasure to Leigh and for much of the time was a simple response to the relationship she had with them that had nothing to do with anything that David had said to her about the future of Wotton.

460. The first of the pleaded particulars of detriment is that:

> "[Leigh] became increasingly involved in the running of Wotton including drafting contracts, dealing with tenants and contractors to the point where in 2017 it had become apparent and she and [David] understood that the only way she could manage the workload which involved hundreds of hours adjusting how things were run and overhauling them was for her to move into Wotton with her son at a school nearby."

461. I have included earlier in this judgment separate sections explaining my factual findings in relation to the extent of Leigh's involvement in the running of Wotton. The first period was between the NLC lunch in 2007 and the 2011 Islington dinner and is described in paragraphs 112.ff above. To summarise at this stage David was still running Wotton and I do not think that what Leigh did during this period comes anywhere near establishing that such contribution as she made can properly be characterised as substantial detriment, particularly having regard to the context in which she was involved.

462. The same can be said about the second period between the 2011 Islington dinner and the time shortly after Patrick's death at which Leigh and David agreed that it was sensible for her to take over the brunt of day to day administration relating to the running of Wotton. I have described this period in paragraphs 268.ff above. Taken together, I think that what Leigh did during this five-year period falls a very considerable way short of activity which could properly be characterised as the carrying out of work which amounted to substantial detriment, even if she was motivated to do it by what she had been told by David would or might happen in the future.

463. The third period ran from the time at which Leigh and David had their conversation about a transfer to Leigh of the brunt of the administration until the time that she and Edward moved into Wotton in September 2017. During this period there was a lot of activity in relation to the Bonds, a meeting of the old WEMF trustees and discussions about the establishment of the new WEMF. But none of this could properly be described as dealing with tenants and contractors or adjusting how things were run and overhauling them. The only other specifically evidenced activity that could properly be said to fall into the category described in this particular of detriment was an e-mail exchange with Dr Stockley about renting the Duke's room in Wotton House itself and some involvement which Leigh had in helping to set up a single rent account for Wotton and the London properties.

464. Looked at in the round, it seems to me that the role which Leigh fulfilled in relation to managing Wotton prior to the autumn of 2017 cannot properly be characterised as anything other than relatively minor. Indeed, it is striking that, although Leigh seems to have anticipated that, from November 2016 (shortly after Patrick's death), she would take on the brunt of the day-to-day management of Wotton, there is almost no evidence that she was actually doing so. The position only changed after she moved into Wotton in September 2017, and even then, as she accepted in her oral evidence, it was only after David fractured his back in 2018 that she became more heavily involved in the management of Wotton. Leigh also accepted in her oral evidence that it was not at that stage necessary for her to be living at Wotton to do whatever she was doing, although she continued to maintain that it was at least convenient. So far as this particular of detriment is concerned, it was only in the summer of 2018 that Leigh's role at Wotton developed into an involvement that was sufficiently material to be capable of qualifying as a substantial detriment in its own right. Of course it is necessary to consider what Leigh did in conjunction with what else was going on (to which I will turn), but I think that this particular of detriment was very substantially exaggerated in Leigh's Defence and Part 20 Claim.

465. The asserted need for Leigh to move into Wotton leads into the second of the pleaded particulars of detriment:

> "The move to live at Wotton was at considerable personal expense to [Leigh] in that she lived away from her husband and daughter during the week. [Leigh] arranged her son's secondary schooling based on living at Wotton."

466. As I have already explained, I accept that the arrangements Leigh made in the autumn of 2017 to move into Wotton for weekdays and during term time must have given rise to considerable strains. However, in my judgment, it is important to set the undoubted pressures of a disconnected family life in their proper context. In my judgment, Leigh was not there at David's request, but she moved in largely through her own choice. It was not the case that Leigh and Edward moved into Wotton because she needed to be there in order to carry out any form of management function. She accepted as much when she conceded in cross examination that it was convenient for her to be there rather than necessary.

467. I also do not think it is correct to say that Edward's schooling was based on the need for Leigh to be living at Wotton. It was a much more complex decision than that and was rather more the other way round. The primary reason for Leigh moving to Wotton was that she wanted Edward to go to Magdalen College School. Part of the explanation for that was that she thought that if she were to move to Wotton after David died (as was contemplated by the letter of wishes), that moment may have come at an inconvenient time in Edward's schooling, but it was also because she thought it was a very good school, he was obviously a bright boy and she saw an opportunity for him to go there. I do not think that any of it was driven by a need to be at Wotton.

468. I also think it was important to bear in mind that there were very significant countervailing benefits in being at Wotton (which Ms Reed accepted in Leigh's skeleton for the trial). The pleasure of being in such surroundings is self-evident (and was expressly recognised by Robert when giving evidence about life there during lockdown). It was always open to the family to send Edward to school at Tonbridge if the travelling got too much; there was evidence that his place there was likely to be kept open, and they retained their substantial family house in Sussex. It follows that there was no question of the family being committed to a move which there would be much difficulty in reversing if things did not turn out in the way they hoped or expected.

469. Taking all of these factors into account, I do not think that considerable personal expense to Leigh is the right way of describing the position. A balanced family decision was made, which had some disadvantages and some advantages, but importantly I do not think that any of what occurred was a necessary response by Leigh to anything that David had said to her. It was driven in substantial part by extraneous considerations and, to the extent that it was driven by Leigh's commitment to the extra tasks that were anticipated as she took on a larger role at Wotton, that was a decision she made for herself, was not at David's request and was not a matter of necessity. Taken in itself, it does not amount to substantial detriment.

470. The third of the pleaded particulars of detriment is that:

> "[Leigh] wound down her legal practice in 2017 in order to take on the full time role of managing Wotton for which she was paid nothing to start with and did not expect to charge until the discussion with Colin Gray in December 2018 referred

> to above. She received £28,000 in the tax year ending April 2019 (not paid until January 2020) and £57,000 in August 2020 for work April 2019 to April 2020 and April 2020 to August 2020. Those sums were taken by [Leigh] so that they could be claimed against income tax but she only accepted sums which [David] could afford at anytime. This involved a significant risk both to her career and her financial security for her and her family.

471. As I have already explained earlier in this judgment, I do not think it is right that Leigh wound down her legal practice in 2017. She did not do so until the summer of 2018 at about the time she ascertained from Ms Hassall that she could charge for her services. I agree with Ms Angus's submission that, in the light of the very limited role that Leigh had at Wotton at any time prior to the summer of 2018 when David fractured his back and spent time in hospital (as to which see my conclusions in relation to the first particular of detriment above), there was no Wotton-related reason why she should have done so.

472. The significance of this allegation of detriment has to be set in the context of the level of profit Leigh was accustomed to make on her practice in any event. The evidence demonstrated that it was in the region of £7,500 to £8,000 per annum during the period prior to April 2017. There was then a year during which Leigh's focus was on keeping herself positioned as a lower rate taxpayer for Bond-related reasons. Indeed, at one stage during the course of her cross examination, Leigh appeared to be asserting that she had suffered a detriment on receipt of the Bonds. She seemed to be suggesting that she was unable to go out and earn more money because she would then have no longer been a lower rate tax payer and the advantages of the transfer to her would be lost. Not surprisingly this way of looking at matters was not pleaded or advanced in argument. If it had been, I would have rejected it as a very clear example of an unbalanced approach to detriment which failed to take account of the benefit to her of receiving the Bonds in the first place.

473. By June 2018, which was the time that David's health deteriorated with the fracturing of his spine and Leigh's role at Wotton started to increase, she had decided to raise the question of charging for her services with Ms Hassall, and in respect of the periods thereafter that is what she did. She was only paid substantially in arrears, but it is clear to me that that is what she expected to happen after the time she stopped practice. On the information available to me it is not possible to say that the amount she charged was an inappropriate figure for the service she actually provided, but she said that she only ever charged David what was capable of being tax deductible from his rental income from Wotton and the London properties.

474. There is insufficient evidence for me to reach a view one way or the other on the question of deductibility and I do not need to do so. However, I am not satisfied that Leigh has established that what occurred after she wound down her practice involved a significant risk to her career or the financial security for her and her family. While I do not make a finding that Leigh's charges were excessive for the work that she carried out, it remains a possibility that they were, not least because the detail on her 2019/2020 bill included pages of charging for everything that she did, some of which it is surprising to see as chargeable items. However, what matters for present purposes is whether Leigh incurred the financial risks that she said she did in winding down her practice as a result of anything that David said to her. I do not think that she did. She was earning material sums of money from the work she was doing for David

in respect of the period after the summer of 2018, and it was not suggested that she would not be able to pick up with her legal practice where she left off, if things did not turn out as she expected at Wotton. In my judgment, Leigh has not established that this amounted to substantial detriment.

475. The fourth of the pleaded particulars of detriment is that:

> "[Leigh] was further heavily involved in the management of the London properties including dealing with tenants"

476. I can deal with this alleged detriment very shortly. There is no dispute that it was only at the end of 2018 that Leigh took over management of the London properties. She was paid remuneration out of the rental account which was by then under her control at a rate that was said to be based on 10% of the rental stream. In my judgment it is clear that there was no established financial detriment to Leigh in taking on this task. Whether there was any further arguable detriment as a consequence of doing this work is a point to which I will return briefly when considering the allegation that from 2007 Leigh positioned her entire life on the basis that she was going to inherit Wotton.

477. It is more convenient to deal with the fifth and sixth of the pleaded particulars of detriment together. The fifth is that:

> "[Leigh] became a part of [David]'s family life and in particular provided care and assistance to April, Patrick and Perdita as well as [David]. That often involved unpleasant tasks such as clearing a squalid flat in which Patrick was living and ensuring he had support from her when social services had failed to provide for him adequately. She sorted out all of Perdita's affairs including continual trouble she had with bailiffs and moved her to Islington where she was in a safer and more secure environment as well as taking Perdita to numerous medical appointments (which she continues to do). In short she provided both Patrick and Perdita with whatever support they needed."

The sixth is that:

> "[Leigh] provided support to [David] when April was suffering from dementia and later assisted in arranging care for [David]."

478. Both of these particulars of detriment go to the core of David's and April's relationship with Leigh and the way in which Leigh responded to that relationship in her support for members of the Gladstone family including David himself. However, in general terms I am not satisfied that the way Leigh responded in the assistance she gave, which was undoubtedly considerable, can properly be characterised as a significant detriment flowing from anything she was told by David in relation to Wotton.

479. As to April, there is no evidence that Leigh provided any personal care, but it is clear that she provided much practical support. The evidence disclosed as an example the clearing out of her wardrobes on one occasion. It also appears that this support increased as April's condition deteriorated. Other examples given in the evidence included the fact that Leigh found Debbie as April's carer in November 2011 and that

she visited April three times a day when she was in respite care for two weeks at Burrswood, a few miles down the road from Leigh's home in Sussex. There is no real doubt that Leigh provided considerable emotional and practical support to David during the period in which April was suffering from dementia. The position so far as April was concerned was reflected in Leigh's own evidence, when she said that "David was humbled at my devotion to her, but my view was always that that was what you did if you loved someone, and I knew that David needed support".

480. So far as Patrick was concerned, there is no real evidence that Leigh provided any significant care or assistance to him prior to February 2015, when she suggested to David that she could act as Patrick's attorney. As she explained in her evidence, the reason that she volunteered was because she was very close to Patrick, whom she had been seeing and supporting from the moment she met him over 20 years earlier. I accept this evidence which rang true. It is clear that, although Patrick was much troubled, Leigh was very fond of him and the affection she had for him was what incentivised her to offer her services in the way that she did.

481. The principal example of support on which Leigh relied was the work she did and arranged to be done on clearing out and redecorating Patrick's "squalid" flat. This occurred at or very shortly before the time that she was appointed Patrick's attorney and seems to have been wrapped up with it in the sense that, shortly afterwards, money from Patrick's trust was authorised to be paid for the redecoration and re-equipping work organised by Leigh. This all illustrates the two main reasons why I do not think that the work Leigh did for Patrick can properly be described as a relevant or substantial detriment such as to give rise to an equity based on an allegation of proprietary estoppel.

482. The first is that Leigh did what she did for Patrick not because of what David had said to her about the future at Wotton, but because she was very fond of him. He was ill and living in sheltered accommodation, but as with much of what Leigh had to say about her relationship with the Gladstone family, the time that she spent with him and the things that he did with and for him were the kinds of thing which a close family friend would do.

483. The second is that, once Leigh took on a more formal role in his life as his attorney, such that she might have started to incur expenses on his behalf, she was reimbursed from Patrick's trust and was paid by way of recompense for her time. I have identified the amounts earlier in this judgment. While it may be said that she spent more time on non-social practical work for Patrick than was reflected in the payments she received, this was more than made up for by her receipt of the proceeds of Patrick's trust after he had died. This was given to her by David, who would otherwise have been entitled to its proceeds on a winding up, as a gift which was intended to reflect the assistance she had given to Patrick.

484. The position in relation to Perdita is even more tenuous. Leigh gave as examples the fact that Perdita came to stay with her just after she and Robert moved to Lye Green in August 2007 (about the time of the NLC lunch) and there seem to have been other occasions on which Perdita and her daughter Natasha went to stay with Leigh. She also attended Perdita's final divorce hearing at David's request. In my view there was no evidence from these early years that Leigh was anything other than a good and supportive friend with a close familial relationship.

485. There was then a period of time during the course of 2013 when Leigh helped in sorting out Perdita's overdue bills, and communicated with the bailiffs on behalf of David, but this was the only example of activity pleaded as "[Leigh] sorted out all of Perdita's affairs including continual trouble she had with bailiffs". At the same time, Leigh was given power of attorney by Perdita, but there was no real evidence that Leigh did anything very much in that capacity apart from sending some unspecified letters to creditors in 2014 and setting up a bank account in 2015. The reality is, as Leigh accepted in her evidence, that for periods after Perdita's marriage had broken down, she did a number of things which can only properly be characterised as attributable to her friendship or bond with Perdita. They involved Leigh giving Perdita a lot of moral support, but the actual evidence in support of the pleaded allegation is sparse in the extreme. I think that the way in which Leigh pleaded what she had done by way of actual practical assistance for Perdita in sorting out all of her affairs was exaggerated. I do not think that any of it was capable of amounting to substantial detriment, even if it was done (which I do not think it was) in response to what David told Leigh about the future of Wotton.

486. There was then slightly more activity after David had moved to Cumbria at the start of the national lockdown. She became Perdita's attorney under an LPA and she gave some practical assistance to Perdita at a time when she became very ill. In light of the fact that doing things for Perdita appeared in more than one place on Leigh's £30,000 (unpaid) invoice covering work for David during the period August 2020 to March 2021, it is difficult to conclude that Leigh was doing anything for Perdita in reliance on anything she had been told by David about the future of Wotton. She did it in part out of longstanding affection and in part in the knowledge and belief that she would be paid for her time in due course.

487. As to support for David himself, I think it is clear that Leigh's support to David when April was suffering from dementia had nothing to do with any assurance. It was largely because Leigh was as fond of David and April as they were of her (as was reflected in their relationship before the NLC lunch) and she wanted to help. Even if it were right to conclude that her preparedness to help was influenced by considerations other than affection, there is no evidence that it was in any sense caused by an expectation that she might inherit their property in due course, let alone an assurance that that would happen.

488. The seventh of the pleaded particulars of detriment is that:

> "From 2007 [Leigh] positioned her entire life on the basis that she was going to inherit Wotton."

489. The way that this category of detriment was approached by Leigh, and then by Ms Reed on her behalf, can helpfully be divided into two parts. The first is what was said to be a specific detriment, arising out of the impact which the assurances she says were made to her had on her professional career. The second is the slightly more amorphous impact that what was said to Leigh by David had on the positioning of her entire life. Ms Reed described this as being that Leigh gave up so much of her time and her family life for David and Wotton.

490. I think that the first way of approaching this point falls down on the evidence. Earlier in this judgment, I explained how Leigh's career path was set on a particular course

even before the NLC lunch, which was the first occasion on which she says that any form of assurance was given to her. There is no evidence that the NLC lunch in 2007 or indeed what was said to Leigh at the Islington dinner in 2011 had any discernible impact on her career. As Ms Angus submitted in closing, Leigh continued to pursue the twin tracks of seeking to obtain domestic and international consultancy opportunities, regardless of any heightened expectations she might have had from what she was told by David. There is no evidence to support a conclusion that her prospects at Wotton affected matters in any way.

491. I think it is clear that this carried on being the position for many years after the NLC lunch. Leigh asserted in her oral evidence that she was unable properly to pursue her international consultancy aspirations because of her commitments to her family, which for these purposes included David because she was the only person who was rolling up her sleeves on his behalf. I do not think that is right. Leigh set up her own sole practice in 2008 / 2009 and she was still aspiring to do international consultancy work as late as 2013, which from the tone of the correspondence she would have jumped at if it had been available. Indeed there is correspondence which makes clear that in mid 2013 she regarded herself as having been freed up to return to this sort of work by reason of the fact that Edward was going to prep school. The domestic work which she was able to acquire did not generate a significant income for her, but there is no contemporaneous material to indicate that she was being restricted in her career development by reliance on anything that she had been told by David, or by her relationship with the Gladstone family more generally. In short, if Leigh was less successful in developing her career than she might have wished, I am not satisfied that the detrimental impact which this may have had on her professional aspirations had anything to do with what she was told about Wotton. I accept Ms Angus' submission that Leigh was not and did not see herself as being fettered by any perceived or actual responsibilities to Wotton.

492. The second and broader part of this question requires the court to look at what happened in the round. The court needs to assess whether, as time went by, anything that David may have said to Leigh in amplification of the expectation she may have derived from the description of what would have been her future role under David's 2015 will and letter of wishes had it not been revoked by his 2020 will, made any difference to the way that she ordered her life. This need not be financial, but it must have been a substantial difference and it must have been detrimental to her.

493. If Leigh would have ordered her life in the same way on the back of her affection for the family, her present enjoyment of doing what she did for David and her participation in life at Wotton while he was still alive, the way that this particular of detriment is pleaded would not be made out. In other words she would not have shown that a promise to inherit Wotton was the basis of the positioning of her life.

494. In my view, even if Leigh had been assured by David that she would inherit Wotton in any event, and even if it had been reasonable for her to rely on any such assurance, I do not consider that she has proved that such reordering of life as may have occurred by reason of the further time and effort she put into the affairs of Wotton and the Gladstone family, can properly be characterised as a substantial detriment. As I have explained, Leigh has not shown that her career suffered as a result, but nor has she shown that the efforts she put in on David's behalf, and any burdensome impact on

her that may be capable of characterisation as a detriment, were not outweighed by considerable countervailing benefits.

495. I accept that there were times when she was under great strain. I have described those on which reliance was placed and from time to time they made her life stressful and difficult. But she was also able to enjoy the time that she and her family spent at Wotton, her association with David and all the interesting activities which went on there. These are things she would not have received if, as became her case in closing, she would have walked away from Wotton and the Gladstone family if she had not received the assurances she says she was given. She had the counterweight to any detriment in the form of receiving payment of significant sums by way of remuneration and gift as recompense for what she had done and was doing. Although I have concluded that she obtained no enforceable proprietary rights, she also had the benefit of being within a discretionary class with the possibility that she would, on David's death, enjoy the benefits of being a trustee and the occupant of Wotton, if that were to be so decided by the trustees.

496. In all these circumstances, I think that even if Leigh had been assured by David that she would inherit Wotton in any event, and even if it had been reasonable for her to rely on any such assurance, she would not have established the necessary substantial detriment to complete her cause of action. In these circumstances, even if the assurances had taken the form alleged by Leigh, I am not satisfied that it would have been unconscionable for David to change his mind as to the identity of the person he wished to take on the running of Wotton for the next generation, with a promise of inheritance.

497. I have therefore concluded that David is entitled to an order for possession of Wotton. In the end, it was accepted at the trial that there was no defence to this claim as David is still alive. In the light of that concession, possession should be given up forthwith. I have also concluded that Leigh is not entitled to any of the other relief sought in her counterclaim. She has failed to establish the estoppel she relies on and she has no equity in Wotton as claimed.

The London properties: a postscript

498. It was said in Leigh's letter of claim that the transfer of the London properties in December 2018 reflected a repeated assurance by David that Leigh would take over the maintenance of Wotton. This was reiterated in her Defence and Part 20 claim in which she also said that she had been assured by David that "he would provide for her out of the rest of his estate with sufficient assets to maintain Wotton including the use of the two London properties". She said that when David promised Wotton to her, it was clear to both of them that his promise carried with it sufficient other provision to enable Leigh to fund Wotton and that because they both understood that Wotton was funded by the income from the London properties, the promise carried with it a promise in relation to the London properties themselves. She also relied on the fact that, about the same time as the properties were transferred into their joint names, David also transferred one of his NatWest bank accounts into which the London properties' rents were paid (and from which some of the expenses of Wotton were paid) into the joint names of himself and Leigh.

499. Based on these circumstances, Leigh alleged that the equity which had arisen in her favour extended to her right to inherit the London properties to provide a fund for the maintenance of Wotton. I do not think that is right. So far as the transfers are concerned, what occurred at the time they were made was that David and Leigh declared that they held the London properties on trust for David absolutely. This is much more consistent with Ms Hassall's suggestion at the time, viz. an intention that David wanted to make it easier for Leigh to manage them by putting her in a position of greater authority in relation to the London properties and giving her greater freedom of action to manage matters if anything happened to David than they are of an intention that she should be their sole beneficial owner in due course.

500. More generally, the transfers are all consistent with the conclusions I have drawn on the intended dispositions of both the London properties themselves and Wotton. In 2012 they were clearly destined for Perdita. Later on, i.e., well after the two assurances on which Leigh particularly relies were given, the evidence establishes that David intended that they would fall into the residuary trust fund held on the discretionary trust established by David's 2015 will. This will have meant that income deriving from them and their proceeds if sold would have been available to his trustees for application at their discretion. I think that if there had been any intention that their income or proceeds were to be made available to Leigh as absolute owner for the purpose of enabling her to fund Wotton it would have been identified in a much more specific manner. There is no evidence that the London properties were ever explicitly mentioned for that purpose in this context.

501. It follows that, in the light of my conclusions on the proprietary estoppel claim in relation to Wotton, I do not consider that a separate issue arises in relation to the London properties. The pleaded understanding is based on the existence of an assurance which I have found not to have been made, and the failure of the claim in relation to Wotton means that for that reason alone the claim in relation to the London properties fails as well.

Conclusions: David's undue influence claim

502. As Ms Reed submitted, there is no evidence to suggest that David was subjected to any overt acts of improper pressure or threats in relation to the transfer of the Bonds. The issue is whether David has established a case of undue influence arising out of the relationship between him and Leigh which causes the court to draw the necessary inferences based on a balanced consideration of the whole of the evidence at trial. As Lord Nicholls explained in *Etridge* at [8] the question for the court is whether Leigh had acquired a measure of influence over David of which she as the ascendant person had then taken advantage.

503. In approaching that exercise the court must first consider whether there was a relationship of trust and confidence between the parties, and as appears from [14] in *Etridge*, the focus is on proof that David placed trust and confidence in Leigh in relation to the management of his financial affairs. That is an assessment which must be made as at the time the Bonds were assigned to Leigh, which is the impugned transaction sought to be set aside.

504. In my view, there was such a relationship. While Ms Reed is correct to place reliance on the fact that David was an older man – wealthy and urbane - to whom in some respects Leigh looked up as a father-figure, that would be an incomplete description of the nature of the relationship by the time of the assignments. By then, it had become well-established that, in this context, David trusted Leigh and had confidence in her ability to manage his finances both for his own benefit and for the achievement of what he himself held dear, most particularly Wotton and the principles which underpinned the Wotton Charter. There were a number of aspects of their relationship which support this conclusion.

505. The first is that, although the relationship was in many respects one in which Leigh and David had a close and affectionate personal bond, Leigh was also a solicitor and for David this was an important aspect of why he trusted her to help him in the way that she did. It is not said by Ms Angus, rightly in my view, that the relationship between David and Leigh fell into the special class, described by Lord Nicholls in *Etridge* at [18] as being relationships towards which the law has adopted a sternly protective attitude, which includes solicitor and client. Although Leigh was a solicitor, David was never her client and the legal advice she gave was as a close friend akin to being a member of the family.

506. For that reason, Ms Angus did not argue that the irrebuttable presumption of influence referred to by Lord Nicholls arose. Nonetheless, it is clear that one of the reasons that David relied on Leigh as much as he did was because she was a solicitor. One small illustration of this was David's reference to Leigh as his in-house legal team, but there were many other occasions on which it was obvious that her legal training was an important aspect of what she was able to do for him. Indeed, Leigh's use of a solicitor's signature block on her e-mails to others well into 2018 reflected a recognition by her that this was the way she thought about herself as well. Her professional expertise was relevant both to the role that she fulfilled and the confidence that David had in her views and her competence to get things done. He trusted and had confidence in her as a person who understood financial matters, and he often relied on her assistance when a crisis arose, most particularly where there were legal issues involved.

507. The second aspect is that, Leigh had been one of the named attorneys under David's 2007 EPA for many years. The EPA gave her and Mr Frostick authority to act jointly and severally in relation to all of David's property and affairs and he had consented to its activation with effect from 19 April 2017, even though his medical practitioner had not then determined that he was unable to manage his own affairs. This consent was given before Mr Cameron Taylor and Leigh finally agreed on the steps required to implement the assignments. Furthermore, by the time the assignment of the Bonds had been completed, Leigh had become David's sole attorney for his property and financial affairs in accordance with the terms of the 2017 LPA.

508. Again, Ms Angus did not submit that this status put Leigh in Lord Nicholls' special class, but she said that it was a factor which was relevant to the nature of the relationship which existed. I agree. In that capacity she was a fiduciary for David (c.f., *Hodson v Hodson* [2006] EWHC 2878 (Ch) at [32] to [34]), and although she did not use the power to execute transfers of the Bonds which is what occurred with some of the impugned transactions in *Hodson*, the fact that she was granted the powers she was is a clear reflection of the trust and confidence that David had in her

in relation to his property and affairs. I also consider that David's choice of Leigh to replace April as trustee of the old WEMF reflected his confidence and trust in her management and financial abilities.

509. Thirdly, I think that Leigh's status as someone in whom David had trust and confidence of the quality contemplated by Lord Nicholls at [14] of his speech in *Etridge* is supported by the fact that she was treated and accepted by him in his relationships with third parties as a person with whom and through whom discussions about his affairs could be conducted. This does not of itself mean that the relationship was one of ascendancy in the sense that he felt that he had to do what Leigh wanted, but he undoubtedly relied on her as a competent professional and the person to whom he hoped to entrust the management of Wotton in due course. I have identified many examples of this throughout the evidence, but there is a consistent theme from at least the time that April's EPA was registered in 2011, when Leigh started to attend meetings in her capacity as April's attorney. Thereafter, it was commonplace for Leigh to be involved in discussions about the future of Wotton with Mr Frostick, Mrs Barrett and Ms Hassall. In the same vein, Mr Cameron Taylor had much more contact with Leigh than he did with David about what to do with the Bonds.

510. I do not think that the submission made on behalf of Leigh that, by 2017, she had been accustomed to do David's bidding for many years is an accurate reflection of the position. By then David had grown to trust her to such an extent that she was regarded by many as somebody with whom they could communicate about matters relating to his finances without needing to consult him direct. His state of mind was that he was unlikely to adopt a critical approach to suggestions she made as to his financial affairs, both because he found it wearing to argue with her and because ultimately he had confidence in her judgment.

511. Fourthly, I think that Ms Angus was correct to submit that, by the time of the assignment of the Bonds, David's age and mental and physical frailty were a factor which rendered him more susceptible to the influence of Leigh, in whom he had confidence, than was the case when he was a younger and fitter man. The trust was not just limited to a belief that Leigh was competent; it was the case that he was more likely simply to go with what she suggested than had been the case when he was younger. In my judgment, Patrick's death had a subtle impact on this aspect of the relationship. Expressed colloquially, the stuffing had been knocked out of David, and his ability to concentrate on and look after his own best interests was impaired.

512. The most obvious reflection of the impact this had on the extent to which he increased his reliance on Leigh was what she told Mr Cameron Taylor on 16 November 2016. She said that she and David had agreed that it was sensible for her to take over the brunt of day to day administration at Wotton. By this stage, David had lost a lot of his energy, particularly in relation to matters on which he had come to rely on Leigh by which he was in any event bored. In my judgment this made him very much more susceptible to the suggestions she initiated in relation to his affairs. This continued to be the case up until the time of the assignment of the Bonds.

513. Not everyone recognised the diminution in David's cognitive stamina, and I have well in mind the evidence adduced on behalf of Leigh to the effect that in many respects David gave the appearance of carrying on normally. In several aspects of his life, and more particularly those which he enjoyed such as the social events, the regular

activity at Wotton, attending the HHA AGM with Leigh and other projects such as working on his Sri Lankan memoirs, that was plainly the case. I have explained some of this in more detail earlier in this judgment.

514. But the evidence also showed that by mid-2017, David's health and his mental and cognitive stamina was beginning to deteriorate (albeit not as significantly as it did in 2018) and this impaired amongst other things his ability to concentrate. This was clear to those closest to him, most particularly Leigh. She recorded as much in the manuscript note dating from the time of the assignments in which she described David's cognitive functions as slowing down and that he was getting older by the minute, while Mary's evidence was to the same effect. In short, I am satisfied that the original case advanced by Leigh in the letter of claim written by her solicitors, that there was a sharp decline in David's physical strength and cognitive stamina after Patrick died, was a reflection of the true position. Her later attempts to row back from the accuracy of that particular statement do her no credit.

515. The next question is whether the transaction calls for explanation. This requires an assessment of whether the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship. As with other aspects of the claim, it is important to set the transaction in its proper context.

516. Ms Angus relied on the value of the Bonds being transferred. She said that in this context size matters and the value was substantial as compared to the remainder of David's liquid wealth. They were also very substantial from Leigh's perspective. But Ms Reed said that the Bonds were in fact a very small part of David's total wealth, and the mere fact that most of it was tied up in capital (the value of Wotton and the London properties in particular) was not a particularly relevant consideration. She pointed out that David had shown himself to be willing to sell real property when the need arose or when he was considering the need for cash to maintain Wotton; there were a number of examples of this in the period 2012 to 2014, during the time that April was very ill and immediately after her death.

517. I think that the value of the Bonds is very material. The evidence points to David being concerned to retain his capital for the purpose of generating more income, most particularly for the continuing preservation and maintenance of Wotton. This was intimately wrapped up with his intentions for the future as reflected in the terms of the Wotton Charter, but was a free-standing concern as reflected in the discussions he had with Mr Cameron Taylor in 2014 and 2015 in relation to the way in which the £250,000 cash deposits he had inherited from April's estate ought to be invested.

518. When it came to the Bonds, there had always been two aims. The first was to increase David's general level of spendable income and the second was to reduce the effect of eventual IHT on his estate. The importance of income generation for David was highlighted during the discussions with Mrs Barrett, but the focus was how the income which would be lost to him by the assignment of the Bonds could be replaced from his investment portfolio. This was of no immediate benefit to David, because on any view the assignment of the Bonds to Leigh meant that his ability to continue to make withdrawals from them was no longer available to him. As matters stood before the assignments he was able to make tax free withdrawals at £37,500 per annum from the Bonds until 2020 and the assignments deprived him of that opportunity. As was recognised to be the case by Mrs Barrett, any use of the Bonds for his benefit after the

assignments would cut across what was thought by Mr Cameron Taylor to be the whole purpose of the transaction, because it would be treated as a gift with reservation of benefit for IHT purposes.

519. It was said by Ms Reed that, as Leigh had been promised Wotton and the funds for its upkeep, the transfer of the Bonds was an advance to her for that purpose. This meant that it was not a transaction which called for explanation because that was where the benefit arose. It was submitted that, even on David's best case, he intended that Leigh would be responsible for maintaining Wotton after his death, and that when David died, Leigh would be able to use the funds from the Bonds for that purpose. It was said that it was part of a sensible tax planning exercise of a type in which wealthy families engage all the time and as such it did not call out for explanation.

520. The difficulty with this submission is that it proceeds on the basis of a hypothesis which I do not accept. Leigh has not established that the promise on which she relies was made to her in a form which contemplated that she would be the ultimate and absolute owner of Wotton, nor that the funds from which that would be made possible would be hers to do with as she saw fit. True it is that David had it in mind that Leigh would fulfil the managerial and leading trustee and beneficiary functions outlined in his letter of wishes, including living there if appropriate for fulfilling those functions, but all of this was to be implemented and controlled through the mechanism of the discretionary trust to be established in accordance with the terms of David's 2015 will. It was not a question of Leigh being required to maintain Wotton in the future. As was clear from the terms of David's 2015 will and letter of wishes there was nothing that required or anticipated that Leigh would or might have to put her hand in her own pocket to fund the maintenance of Wotton. That was a matter for the trustees to whom Wotton was to be given on David's death.

521. It is also a submission which I do not accept because there was nothing in the terms of the assignments which imposed any restrictions on Leigh to use the Bonds or their proceeds for the benefit of Wotton which was clearly what David intended. In the absence of any trust structure, the Bonds were subject to what Ms Angus called the vulnerabilities of Leigh's personal ownership, including but not limited to divorce and bankruptcy. This was not a risk which was considered by Mr Cameron Taylor, who said that he was not concerned with everything that could go wrong and there is no evidence or indication that it was a matter to which David gave any thought at all, apart from to assume that what would happen was that they would be used for Wotton.

522. Ms Angus also submitted that the decision to transfer the residue of Patrick's trust to Leigh, which was made shortly before the assignment of the Bonds, was another part of what she called the pattern of Leigh being closely involved in decisions made by David which benefited her. It was accepted by David that the decision to benefit Leigh's family by giving them Patrick's trust was made in recognition of all that Leigh had done for Patrick over the years and the transfer was not challenged in these proceedings. But the change of mind so that Leigh received the fund in her own right was never very satisfactorily explained. Leigh suggested that it was because David had said "no more trusts", which does not seem very likely as this comment had nothing to do with trusts within Leigh's family. Ms Reed suggested another explanation in her closing submissions based on some evidence given by Ms Barrett to the effect that a discretionary trust for Leigh's children would have incurred a

lifetime IHT charge, which may have been the case, but there is no direct evidence that it was.

523. I agree with Ms Reed that the point being pursued in some of the cross-examination on this point was never very clear, and I do not place very much weight on it in reaching my conclusions. However, I think that the decision to make this gift of a very significant amount (£97,795 eventually received by Leigh in December 2017) at the same time as the assignment of the Bonds, is part of the factual context relevant to the undue influence claim. In my view, even though this gift is not subject to challenge, the fact that it was made (or at least decided on) at the same time as one that is, increases the need for careful scrutiny of whether the challenged transaction calls for explanation.

524. I also think that there was another significant consideration which relates both to the question of whether the assignments called for an explanation and the question of whether Leigh has established that David entered into the assignments of his own free will. Depending on the circumstances, advice from an independent third party is capable of having what Lord Nicholls called an emancipating effect on what might otherwise be a vulnerable transaction. I shall deal below with the significance of what David was told by those to whom he did speak about the assignments, but one of the most striking aspects of this case is the one person to whom he did not: Ms Hassall or indeed anyone else at Boodle Hatfield.

525. In my view this omission goes primarily to why it is that the assignment of the Bonds called for an explanation. Ms Hassall had been involved in advising David on tax planning since late 2013, she had been responsible for David's 2015 will and letter of wishes and she had developed an intimate understanding of the relatively complex issues which arose in relation to the devolution of Wotton and the operation of the old WEMF. She was still instructed, because, at the same time as the assignments of the Bonds were being implemented, Ms Hassall was giving advice in relation to the establishment of the new WEMF. This was of obvious relevance to the proposals relating to the assignment of the Bonds both because the old WEMF had been one of the sources of funding for the grounds at Wotton and because placing the Bonds in the old WEMF (or a new HPMF for Wotton House) might have been able to mitigate the IHT while at the same time providing a high level of assurance that valuable funds would continue to be available to support Wotton.

526. In summary, while Leigh was within the discretionary class of beneficiaries under David's will, the effect of the assignment was to give her a distribution from David's free assets prior to his death outside the careful structure which had been designed by Ms Hassall to reflect his wishes. The value was very substantial and there were no restrictions on the use to which the income or proceeds of the Bonds could have been put. In my judgment, these factors, taken together, are compelling reasons why the assignments of the Bonds were transactions which called for explanation.

527. In these circumstances I am satisfied that the evidential burden shifted to Leigh to demonstrate that there was a satisfactory explanation for the assignments (per Mummery LJ in *Niersmans v Pesticcio* [2004] EWCA Civ 372 at [18(2)] and [23]). I approach this part of the analysis on the basis, as Lord Nicholls emphasised in *Etridge* at [16], that the use of the forensic tool of a shift in the evidential burden of proof should not be permitted to obscure the overall position.

528. Outside advice can, but will not always, have an emancipating effect so as to establish that completion of the relevant transaction was not brought about by the exercise of undue influence, but its weight will depend on all the circumstances (*Etridge* at [20]). It must be both independent and sufficient. In the present case, Ms Reed relied on the role played by, and the advice given by Mr Cameron Taylor and Mrs Barrett.

529. As to Mr Cameron Taylor, the difficulty with this submission is that Mr Cameron Taylor was neither sufficiently independent, nor sufficiently well informed to give advice which went very far in satisfying the requirements identified by Lord Nicholls in *Etridge* at [20]. The lack of independence is reflected partially in the fact that Leigh was also his client, but it is also reflected in the fact that most of the discussions in relation to the Bonds were between Mr Cameron Taylor and Leigh without David present, and, on the occasions on which there were meetings at which David was present, the court is not in a position to make detailed findings as to what he was told, because there was no proper note of the meeting and no independent recollection of what occurred. Given the size of the transaction, it is very striking that there is no written confirmation or record that Mr Cameron Taylor, or indeed any other advisor, took David through the pros and cons of what was proposed and the potential consequences of the fact that the Bonds were to be transferred to Leigh rather than to trustees to be utilised for the benefit of Wotton, and with no other strings attached.

530. The most detailed evidence is the PQR standard form of personal financial details questionnaire which was signed by Mr Cameron Taylor and David dated 15 December 2016 and which refers to an assignment to Leigh. However it suffers from the problems I identified earlier in this judgment and gives no indication that there was any explanation given to David about the nature of the assignment, or that it was intended to have no strings attached. Indeed, it is improbable that there was a full explanation for David of how the assignments fitted in the context of his estate planning as a whole in circumstances in which Mr Cameron Taylor said that he had not seen David's 2015 will and was clear that he was not looking at the issue in a holistic estate planning sense or considering the risks attendant on the transaction in the round. Given that the justification for the assignments was sensible estate planning, it is particularly surprising that Mr Cameron Taylor was not told anything about the importance to David of ensuring that the Bonds and the income from them were used on Wotton or that David had had (and was continuing to have) detailed expert advice from Ms Hassall.

531. Ms Angus went a little further. She said that it would have been obvious to any well-informed advisor that one of the solutions on which David should have been advised was for the Bonds to be put into an HPMF for Wotton which could also have held part of the assets at Wotton, such as the Clock Pavilion. I cannot be sure that this would have worked, but I agree that there are good prospects that it would have, and importantly, it was a potential solution on which Ms Hassall had advised in December 2013, but which was not drawn to Mr Cameron Taylor's attention whether by Leigh or anybody else. I am satisfied that the fact that he did not consider this point and did not know about it as a possibility meant that any advice he was able to give would necessarily have been incomplete. It was incomplete to the same extent that, through Leigh's omission to inform him that her position under David's 2015 will was as a trustee intended to have management functions at Wotton and a member of a class of

discretionary beneficiaries, she fell some way short of being a legatee with any form of absolute entitlement.

532. I can take the position of Mrs Barrett more shortly. In my judgment, there was never any sense in which Mrs Barrett put herself forward to advise in relation to the assignments and nor could it reasonably have been thought that she was doing so. Mrs Barrett's views in relation to reservation of benefit were more in the form of a warning than advice, and I accept her clear evidence that she did not advise on whether David could manage with the reduction of income contemplated by the transaction under discussion between Mr Cameron Taylor and Leigh in April 2017. The furthest she was prepared to go was her view that the amount of income to be generated from the J M Finn portfolio if the proposal were implemented would be "workable". In my judgment her role in advising on the wisdom or risks of the proposal was no more emancipating in its effect than the advice given by Mr Cameron Taylor.

533. Ms Reed submitted that the most striking feature of this case is that this was a transaction which Leigh did not promote, in the sense that it was a transaction on which Mr Cameron Taylor had been working for some time. He was seeking to manage David's exit from the Bonds, which Leigh's status as a lower rate taxpayer gave the opportunity to achieve, in circumstances in which he understood from David that Leigh was the heir to his estate. To achieve a potentially exempt lifetime transfer to Leigh as his heir was conventional estate planning, explicable by the ordinary motives by which people in their position act. It was submitted that this is incompatible with the transaction having been procured by Leigh's undue influence.

534. I agree that Mr Cameron Taylor treated the assignments of the Bonds as an ordinary estate planning exercise, but I do not accept that this means that they cannot have been procured by Leigh's undue influence for that reason. Although Mr Cameron Taylor was the source of the original suggestion, he did not himself appreciate the nature of Leigh's potential interest in David's estate as a discretionary beneficiary. That was the context in which he first raised the question of the Bonds being assigned to Leigh outright at a meeting (or in a telephone call) in August 2016 in which David did not participate. His suggestions came in the light of the explanation Leigh gave as to the situation, including her take on the problems in David's family and her future role. Later on, Mr Cameron Taylor's understanding of the significance to David of the need for the Bonds and/or their income to be made available for the purpose of maintaining Wotton was limited to the question of whether they were already allocated to the maintenance of Wotton and whether there would be enough income for David after the Bonds had been assigned to Leigh. In particular, Mr Cameron Taylor did not engage with the issue of whether the fact that the Bond income was not specifically allocated to Wotton by David meant that he was happy for Leigh to proceed on the same basis. The mere fact that they would have been available at Leigh's discretion for expenditure on Wotton (anyway after David's death in the light of the reservation of benefit issue identified by Mrs Barrett) does not address that issue.

535. Against that background, I do not think that it is right to say that Leigh was not the promoter of the transaction. Although Mr Cameron Taylor did not know the terms of David's 2015 will and had no understanding of the importance to David of the Wotton Charter and the issues which were being considered at the same time by Ms Hassall in

relation to the old WEMF, Leigh knew all of those things. While it is plainly the case that the idea of a transfer of the Bonds to Leigh as a lower rate tax payer came from him, there were a number of occasions after the suggestion was first made in which Leigh, with her much fuller understanding of the full picture, including the continuing instruction of Ms Hassall, encouraged progress to be made in giving effect to the assignment.

536. There was a suggestion that David had said that he did not want any further legal advice on the Bonds, but I do not accept that this was the case, anyway in a sense on which it was reasonable for Leigh to rely. In particular I do not think that he would have expressed that view if he had appreciated that the structure suggested sometime after the meeting with Mr Hutton was an absolute assignment to Leigh with no protections as to how the Bonds were to be used.

537. Stepping back, I have reached the conclusion that Leigh's relationship with David in relation to his financial affairs had by then developed into one of ascendency and that the influence she had on David in continuing to suggest that the assignment of the Bonds should be made to her was undue. It was undue because she knew that there had been no proper explanation to David that there was no enforceable basis on which she could be required to use the Bonds in maintaining Wotton, it was undue because she knew that maintenance of sufficient cash was important to him, it was undue because she knew that there was legal advice available to him (from Ms Hassall in particular, but Mr Frostick as well) which could have put this transaction in its proper context and she knew that he had not taken it. She also knew that she had had a number of meetings with Mr Cameron Taylor without his involvement and that he was in a state of vulnerability. Regrettably, I also think that, anyway later on when first challenged by Ms Hassall as to what had happened to the Bonds, she knew that she was on shaky ground, and that is why she was not frank and open about what had happened to them.

538. I have therefore concluded that David has established that the assignments of the Bonds were procured by Leigh's undue influence and must be set aside. I invite the parties to agree on the consequential relief to be granted in the light of this conclusion.

Conclusions on the claim to remove Leigh as a trustee of the new WEMF

539. Ms Reed made clear in her skeleton argument that the claim to remove Leigh as a trustee of the new WEMF would have to stand or fall in light of the conclusions I reach on her proprietary estoppel claim. I agree. In light of the fact that Leigh has failed to establish the rights she seeks in her proprietary estoppel claim, I am satisfied that it is in the best interests of the beneficiaries of the new WEMF for her to be removed. Nobody has suggested that Ms Hassall is not an appropriate replacement for Leigh as trustee and I am satisfied that she is. The parties should take steps to agree a form of order to reflect these conclusions.