Neutral Citation Number: **[2026] EWHC 2440 (Ch)**

Case No: PT-2024-BRS-000158
and PT-2024-BRS-000159

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUST AND PROBATE LIST (ChD)

IN THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

In the Estate of Mark Briant, Deceased

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 23 September 2026

Before :

HHJ MICHAEL BERKLEY
(sitting as a Judge of the High Court)

- -

Between :

ROSEMARY ANNE DAVINA ELLIOTT
(by her litigation friend,
JAMES EDWARD ELLIOTT) **Claimant**

- and -

(1) VANESSA ANNE BATESON
(in her capacity as executrix to the estate of Mark Briant and in her own capacity) **Defendants**

(2) IAN BATESON
(in his capacity as executor to the estate of Mark Briant and in his own capacity)

- -
- -

Joss Knight (instructed by **Mogers Drewitt LLP**) for the **Claimant**
Julian Reed (instructed by **Jasper Vincent Solicitors**) for the **Defendants**

Hearing dates: 8, 9, 10 April 2026

- -

JUDGMENT

This judgment was handed down at 10am on 23 September 2026 in Court 12 at the Bristol Civil Justice Centre and by release to the National Archives.

HHJ Michael Berkley:

1. This was a consolidated hearing of two claims between the same parties. The first is a Part 7 claim in which the Claimant, by her son and Litigation Friend, James Elliott (known as Jim), claims that the will executed by her late husband in 2022 whilst living with his daughter and son-in-law ("the 2022 Will") is invalid because he did not know and approve its contents, alternatively that it was procured by undue influence. The second claim is a claim under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") claiming that the 2022 Will failed to make reasonable financial provision for her.

2. The Claimant was represented by Mr Joss Knight of Counsel; the Defendant by Mr Julian Reed of Counsel. I am grateful to them both for their assistance.

3. I shall refer to the parties by their first names for ease of reference as was done at trial. No disrespect is intended.

Background

4. Mark and Rosemary were neighbours on Eliotts Drive in Yeovil, living at No. 77 and No. 110 respectively. There is a dispute about when their relationship commenced and when they began cohabiting. Rosemary says it was 1981 and 1988 respectively; the Defendants say that there was no cohabitation until 1994 when Rosemary sold her house to move into No.77 which was put into joint names. The proceeds of sale of No. 110 were put into a joint account.

5. Rosemary and Mark were married in 2011. This was a second marriage for both of them. Rosemary has three children, Jim Elliott, Tracey (known as Deborah) and

Victoria; Mark had three children, Vanessa Bateson (the First Defendant), Adrian and Richard, all of whom are adult.

6. Jim lives at No. 18 Shadrach Burton Bradstock, Bridport, Dorset with his long-term partner, Sharon Beare, whom he married shortly before trial. In 2012, the bungalow next door at No. 15 came up for sale. Jim and Sharon purchased it for Rosemary and Mark to live in which they did until the events at the centre of this claim occurred from 2022 onwards.

7. In 2019, both Mark and Rosemary executed registered lasting powers of attorney ("LPAs") for Property and Financial Affairs and Health and Welfare, appointing Jim as attorney (Rosemary was a co-attorney for Mark's H&W LPA), although Mark subsequently revoked his in 2022.

8. Mark was diagnosed with Parkinson's Disease many years ago. His physical health began deteriorating in 2017 and it is common ground that he was able to continue living at home, with Rosemary providing much of his care with support from Jim and Sharon as necessary. Rosemary was diagnosed with dementia in May 2022.

9. Describing the events as neutrally as possible for the moment, in January 2022, Mark had a series of falls and was admitted to Dorchester Hospital. He was moved to Bridport Community Hospital on 5 January 2022. Mark was unable to return home without a package of care and Jim and Sharon say that they set about trying to identify suitable carers. A month later, on 5 February 2022 (no care package having yet been found) he was moved to Weymouth Care Home in order to free up hospital space.

10. On 21 February 2022, a Strength and Needs Assessment was carried out by Dorset Council outlining Mark as requiring a care support package of four visits per day and it was noted that he already had a "downstairs micro-climate" at home in order to access washing and toilet facilities. In that assessment, Mark made clear his desire to return home, whilst Rosemary was described as having 'periods of forgetfulness'.

11. Jim and Sharon had arranged a care package, but unfortunately this fell through on or around the 28 February 2022. As such, on 7 March 2022 it was agreed by all parties that Mark would move to the Defendants' house whilst a care package was sought to allow him to return home. This move took place on 10 March 2022.

12. Jim and Sharon say that they and Rosemary found it increasingly difficult to maintain communication with Mark thereafter. There were only two visits for birthday lunches on 30 March (Rosemary's) and 1 May (Mark's). On these occasions, both sides of the family came together, but they do not appear to have been particularly merry affairs.

13. On 11 May 2022 (unbeknownst to Rosemary, Jim or Sharon) a solicitor attended the Defendant' house to discuss LPAs and a new will. The instructions were given by Mark in the presence of both Defendants. The 2022 Will was executed at the solicitor's offices on 20 May 2022, the terms of which I shall come to.

14. Jim and Sharon say that they were trying to ensure that Mark was moved to a care home near Rosemary, but in the meanwhile, in June 2022, Ian and Vanessa moved Mark into Oaklands Care Home in Marchwood – a few miles from the Defendants. This followed an Adult Services Personal Assessment by Hampshire County Council Rosemary in which he was recorded as having been able to communicate clearly, and also that he was "*estranged from his stepson [Jim] and does not want contact with him*". Jim and Sharon were neither consulted nor notified of this move.

15. In August 2022, Mark was moved from Oaklands to West Cliff Hall Care Home in Hythe - seemingly on the basis the Second Defendant's mother was resident there. It was even closer to the Defendants. Again Rosemary, Jim and Sharon were not informed and later visited Oaklands to find him gone.

16. Mark had a fall on 25 August 2022 and was hospitalised. He was admitted to hospital again on 14 September 2022 and passed away on 3 October 2022.

The Estate

17. According to Ian Bateson's second witness statement, the estate is made up entirely of cash or similar and totalled £248,367.37 if the proceeds of a fund referred to as a 'bare trust' (apparently paid to Dorset County Council presumably on account of care fees but which has not been used up) is repaid.

The Wills

18. Mark and Rosemary had executed what had been intended to have been mirror wills a year after they had been married. However, these were drafted by a family friend and

have a number of would-be questions of their construction. The principal clauses are as follows:

- Clause 2: appointed Rosemary as 'trustee' of the will, and in the alternative, Jim.
- Clause 4: under the heading 'BENEFICIARIES' gave 'the property' (not defined) to Jim, the First Defendant, Victoria Elliott and Deborah Elliott in four equal shares, subject to Rosemary having a right to reside for the remainder of her life.
- Clause 5: under the heading 'MONETARY LEGACIES' gave 'all my monetary legacies subject to tax to be divided at the discretion of my Trustees between my named beneficiaries THE PDSA and the RNLI.'
- Clause 6: gave all personal chattels to Rosemary.

19. There is no application in relation to this will and so its interpretation is not a matter for this court. Mark did not, of course, have any real property as at the date of his death.

20. The 2022 Will left a life interest in 50% of Mark's estate to Rosemary but, subject to that, absolutely to Vanessa. The other 50% was divided up between Vanessa and her children and grandchildren.

The Issues

21. As Mr Reed was keen to emphasise, there is no allegation in this case that Mark did not have capacity to make the 2022 Will. Mr Reed complained that the witnesses called for the Claimant made comment in their witness statements which could be read as making such allegations, and warned the court to ignore them as irrelevant, suggesting that they should be redacted. Mr Knight submitted that they were relevant, not to suggest that Mark did not have capacity, but in order to demonstrate that Mark was not only more vulnerable to undue influence, but that they were part of the surrounding circumstances which could give rise to the arousal of the court's suspicions in the context of knowledge and approval (or otherwise) of the contents of the 2022 Will.

The Law

Want of Knowledge and Approval

22. The relevant law is not in issue, and I can take it quite shortly. A party who is propounding a will must prove that the testator knew and approved its contents at the time he signed it. In the ordinary case, knowledge and approval will be inferred from the facts that the testator had testamentary capacity and that the will was duly executed. In other cases, however, something in the circumstances will raise a suspicion in the mind of the court and more will be required before the burden is held to be discharged. In *Fuller v Strum* [2001] EWCA Civ 1879, [2002] 1 WLR 1097, Peter Gibson LJ referred to circumstances in which the court's suspicions might be aroused by the nature of the testamentary provisions and continued at [33]:

> "*What is involved is simply the satisfaction of the test of knowledge and approval, but the court insists that, given that suspicion, it must be the more clearly shown that the deceased knew and approved the contents of the will so that the suspicion is dispelled. Suspicion may be aroused in varying degrees, depending on the circumstances, and what is needed to dispel the suspicion will vary accordingly. In the ordinary probate case knowledge and approval are established by the propounder of the will proving the testamentary capacity of the deceased and the due execution of the will, from which the court will infer that knowledge and approval. But in a case where the circumstances are such as to arouse the suspicion of the court the propounder must prove affirmatively that knowledge and approval so as to satisfy the court that the will represents the wishes of the deceased. All the relevant circumstances will be scrutinised by the court which will be 'vigilant and jealous' in examining the evidence in support of the will* (Barry v Butlin (1838) 11 Moo PC 480 at p. 483 per Parke B.)."

In the same case, Chadwick LJ summed the matter up at [65]: "The question is whether the court is satisfied that the contents do truly represent the testator's testamentary intentions." (Cf. his detailed analysis of this question at [66]-[72].)

23. In *Hawes v Burgess* [2013] EWCA Civ 74, Mummery LJ, with whom Patten LJ and Sir Scott Baker agreed, commented as follows in the circumstances of the case before the court:

> *"12. As for want of knowledge and approval of the contents of the 2007 Will, the scope of the inquiry indicated by a long line of authorities gives rise to other*

> *questions distinct from lack of mental capacity to make the will: Wintle v Nye [1959] 1 WLR 284; Fuller v Strum [2001] 1 WLR 1097; Gill v. Woodall [2011] WTLR 251. The relevant questions to ask in this case are-*
>
> > *i) Do the circumstances of the 2007 Will arouse the suspicions of the Court as to whether its contents represent the wishes and intentions of the Deceased as known to and approved by her? The judge said 'Yes.'*
> >
> > *ii) Has scrutiny of those circumstances by the court dispelled those suspicions? The judge said 'No.'*
>
> *13. In answering those questions in a particular case the court has to consider and evaluate the totality of the relevant evidence, from which it may make inferences on the balance of probabilities. Although talk of presumptions and their rebuttal is not regarded as specially helpful nowadays, the courts realistically recognise that, for example, if a properly executed will has been professionally prepared on instructions and then explained by an independent and experienced solicitor to the maker of the will, it will be markedly more difficult to challenge its validity on the grounds of either lack of mental capacity or want of knowledge and approval than in a case where those prudent procedures have not been followed.*
>
> *14. I should add a statement of the obvious in order to dispel any notion that some mysterious wisdom is at work in this area of the law: the freedom of testation allowed by English Law means that people can make a valid will, even if they are old or infirm or in receipt of help from those whom they wish to benefit, and even if the terms of the will are hurtful, ungrateful or unfair to those whose legitimate expectations of testamentary benefit are disappointed. The basic legal requirements for validity are that people are mentally capable of understanding what they are doing when they make their will and that what is in the will truly reflects what they freely wish to be done with their estate on their death."*

24. It will suffice, I think, to confine further references to remarks in the judgment of Lord Neuberger MR (with which Jackson LJ agreed and Lloyd LJ concurred) in *Gill v Woodall [2010] EWCA Civ 1430, [2011] Ch 380* :

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

> *15. In Fulton v Andrew (1875) LR 7 HL 448, 469, Lord Hatherley said that*
>
> > *'When you are once satisfied that a testator of a competent mind has had his will read over to him, and has thereupon executed it, ... those circumstances afford very grave and strong presumption that the will has been duly and properly executed by the testator'.*
>
> *This view was effectively repeated and followed by Hill J in Gregson v Taylor [1917] P 256, 261 , whose approach was referred to with approval by Latey J in In re Morris deceased [1971] P 62 , 77F-78B Hill J said that 'when it is proved that a will has been read over to or by a capable testator, and he then executes it', the 'grave and strong presumption' of knowledge and approval 'can be rebutted only by the clearest evidence.' This approach was adopted in this court in Fuller [2002] 1 WLR 1097, para 33 and in Perrins v Holland [2010] EWCA Civ 840, para 28 .*
>
> *16. There is also a policy argument, rightly mentioned by Mrs Talbot Rice, which reinforces the proposition that a court should be very cautious about accepting a contention that a will executed in such circumstances is open to challenge. Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.*
>
> *17. Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second-hand way, and where much of the useful potential second hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in In the Estate of Fuld, deceased (No 3) [1968] P 675 , 714E; 'when all is dark, it is dangerous for a court to claim that it can see the light.' That observation applies with almost equal force when all is murky and uncertain."*

25. In the present case, no question arises as to the testator's testamentary capacity. And, as I deal with more fully below, the 2022 Will was prepared by a firm of solicitors

following the receipt of instructions from Mark, and although it was not read over to Mark by the solicitor before it was signed, it was duly executed. The basic questions on this issue are, therefore, (1) whether there are circumstances that nevertheless give rise to suspicions that the testator may not have known and approved the contents of the 2022 Will and, if there are, (2) whether a consideration of the entirety of the evidence dispels those suspicions.

26. A distinct matter of law, concerning the court's powers where knowledge and approval are lacking in respect of only part of a will, is conveniently dealt with after I have made relevant findings of fact.

27. I shall deal with this issue of a want of knowledge and approval before going on to consider the others.

The Evidence

28. I heard first (he was interposed for logistical reasons) from Mr Matthew Knight, the solicitor from the Waring Partnership engaged on Mark's behalf by the Defendants (although formally instructed by Mark) to take instructions on, and draft, the new will and LPA. Mr Matthew Knight is not related to Mr Knight, Counsel for the Claimant, and I will refer to the latter by reference to him being Counsel where I need to differentiate him. For the same reason, in the section below where I address Counsel's submissions, I refer to Mr Knight the solicitor as 'Matthew Knight'.

Mr Knight (Solicitor)

29. Mr Knight confirmed that the will file had been disclosed in its entirety.

30. After being referred to correspondence, Mr Knight recalled that it had been Mr Bateson who had made the initial appointment, although it was not in his witness statement. He denied having any knowledge of Mr Bateson before then.

31. Mr Knight recalled visiting Mark at the Defendants' house; he recalled the weather, that there had been a dog and that Mark had been in a wheelchair, although the latter had not been recorded in his initial attendance note recording the visit. When asked

why there was no record in it of how Mark had presented, Mr Knight stated that he would have been looking out for issues of mental capacity, applying the *Banks v Goodfellow* [(1870) LR 5 QB 549] test of the fact that Mark knew that he was making a will; that he knew what his assets were, and that he was aware of competing claims against his bounty. He accepted that there was nothing about how Mark struggled with speech or that he was in a wheelchair or that he was 92 (which he accepted were relevant to capacity) that gave him cause for concern, nor was there any record of making a capacity assessment. As to the latter point, Mr Knight said that he had been taught to record facts and not opinions in his attendance notes.

32. In respect of a lack of reasoning as to his capacity assessment, Mr Knight said that he did not need to set out the test but he discussed the relevant topics with Mark and he was satisfied that Mark had capacity to make a will. The attendance note recorded that the assets were cash in an ISA and another pot. Mr Knight accepted that he had not recorded any figures and could not remember who had told him about the assets. He accepted that he had not asked to see a copy of the existing will but felt it unnecessary because Mark had passed the *Banks v Goodfellow* test which, he said, was self-evident because he was willing to continue taking instructions for the new will which he would not have done if his assessment had been that he had doubts about a lack of capacity.

33. In terms of the Golden Rule, Mr Knight thought that that was a rule from the 1970s and was outdated; and in any event professional assessments were difficult to obtain because GPs were so busy, and he repeated that his lack of a specific reference to making an assessment was negatived by the fact that he continued to take instructions.

34. Mr Knight agreed that it was important to encourage the testator to give the details of the estate etc. himself. He was taken to his attendance note and he conceded that that the entirety of the background (paragraphs 2-7) was provided by Vanessa (who is elsewhere recorded as being hostile to Jim). When he was asked why he had allowed her to provide that information when Mark was sitting there, he said that in terms of capacity, the background information had not needed to come from him. He was taken to a document headed "Notes for my solicitor visit on 11th May 2022" (to which I shall refer as "the Note") which it was agreed had been typed by one or other Defendant, but they said that it had been taken down as dictated by Mark. Mr Knight said he had only

seen that on the day, but it showed that there were competing moral claims. He was asked whether he felt uncomfortable that he was supposed to be taking instructions from Mark for a new will and new LPAs, and Mark was just sat there silent, aged 92 and in a wheelchair. Mr Knight responded that although Mark was quiet, the fact that the instructions were not "give it all to Vanessa" and that the competing claims were acknowledged reassured him.

35. Mr Knight was taken to the eighth paragraph of the attendance note which reads:

> *"To cut a long story short, what Mr Briant is concerned about or maybe his daughter and her husband are concerned about is that James the son in law will invoke the Health & Welfare LPA again to get her dad moved back down to Dorset which he does not want to happen. He said he is content living in this part of the world as opposed to going back there."*

The reference to Jim using the LPA "again" is a reference to the preceding paragraph in which it was alleged by Vanessa that she had been prevented by hospital staff from speaking to Mark because they had insisted on only talking to the attorney. I note that this allegation is not contained in the witness statements. As a result, I find that that had not happened.

36. It was suggested to Mr Knight that this eighth paragraph made it clear that all the information was coming from Vanessa and Ian, which he accepted that it could be read that way, but he was sure that it had not all come from them. It was suggested that the Defendants were the drivers in all of this and Mark the passenger. Mr Knight disagreed – he felt that whilst Mark may have not been concerned about the use of the LPA as such, his concern was about being moved back to Dorset.

37. Regarding the Note, Mr Knight said that he had "presumed" that it had all been agreed and typed by Ian, and that Mark had seen it and was happy with what was there.

38. Turning to what the Note said about the 2022 Will, Mr Knight emphasised that the reference to the anticipated 50/50 split between Rosemary and Vanessa's family was to be "confirmed with the *solicitor*" and not Vanessa (although the Note does not say who was going to be doing the confirming (i.e. Mark or one of the Defendants)).

39. Counsel then took Mr Knight to the attendance note and it was suggested that, given Vanessa's significant role in the meeting thus far it could have been her rather than Mark who informed him of Rosemary being in the early stages of dementia, which Mr Knight accepted.

40. Mr Knight accepted that Mark had said that he wanted to gift his wife 50% of his estate, and that he (Mr Knight) knew the estate was a cash estate. He had in mind that there could be a 1975 Act claim and a 50% gift rendered that less likely to succeed.

41. Mr Knight was asked at length about his decision to suggest (he accepted that it had been him who had made the suggestion) that Rosemary's share might be put into a trust to prevent the local authority having access to it in case she needed to go into a care home. Mr Knight said that he often made such a suggestion when property was involved. When asked why Rosemary should not use her inheritance to pay for care in a home of her choice, Mr Knight said that that was "a fair point", but if it was left to another then it would disappear on care fees. He gave the example of severing a joint tenancy on jointly owned property which he said often found favour with clients. He then acknowledged that this was a cash case, but felt one could still ring-fence money. He also "saw the point" when put to him that it was not a case of the local authority using the money; it was Rosemary using the money for her own care.

42. Mr Knight accepted that he had not discussed the option with Mark that Rosemary could use the money for her own care. He said "*I explained that we can prevent the money being used by the Local Authority*" but said that he had not explained that the trust would prevent her from using it for her own care. He accepted, however, that that was the *effect* of the trust. Asked what an appropriate thing for Rosemary to spend the money on, he said "*Yes, well you could say that you can't take a holiday to* Barbados". But when it was suggested that elderly people have needs, he then said that there would be "*nothing to stop her using it to maintain a better standard of living*", although it did not seem to occur to Mr Knight that using it in a care home of her choice would be doing just that, nor how she would access the capital to achieve "a better standard of living".

43. At this point I should note that the attendance note records Mr Knight's advice, thus:

> "*I said to Mr Briant that it might be an idea to consider placing the funds for his wife in some sort of life interest trust* ***so that she could have access to them*** *but they could not for example be used for care home fees and Mr Briant was happy to go along with that idea. The trustees would be Vanessa and Ian.*" [emphasis added]

44. Mr Knight explained that this was him saying that these funds cannot be that person's as of right, she has to ask for it. He was asked whether that meant he was trying to communicate to Mark that if Rosemary needed access to the capital, that could happen. He replied, "*Yes, for the standard of living*".

45. He was then asked whether that was the effect of the will he had drafted. He replied "*There isn't a clause there specifically allowing for the advancement* [sic] *of capital. It was a small trust fund. There was always the rule in Saunders v Vautier*" where it could be decided that some of the money "*was not part of the trust and so capital could be advanced – if the life trustee and the remaindermen agree, that is Saunders v Vautier*" (though in fact the trustee has no say). He was asked whether he had explained *Saunders v Vautier* to Mark, to which he replied "*No*".

46. Mr Knight was asked whether it was satisfactory from Rosemary's and Mark's perspective that Rosemary would have to go and ask Vanessa for money and that was entirely within her gift. Mr Knight said that he relied on Vanessa's duty as trustee to act in the best interests of the beneficiary, but accepted that there was a strong conflict of interest. He accepted there was no direct power in the will trust to encroach on the capital and that it created no interest for Rosemary in any of the capital; that Rosemary was entitled to income only and that Rosemary in effect needed Vanessa to make her a gift of any capital she sought which would come directly out of Vanessa's inheritance.

47. Counsel then asked Mr Knight whether the thrust of the communication had been that Rosemary would have access to the funds, but it was protected from the LA. Mr Knight answered, "*Yes, if everyone thought it was a good idea*". It was pointed out that that was not recorded in the attendance note, to which he replied that it was not a verbatim note. It was pointed out that nowhere in his witness statement did he say words to the effect that "the attendance note was misleading by omitting the full explanation that I gave to Mark that the only access would be by way of gift from Vanessa", which Mr Knight had to accept.

48. Mr Knight said that he did not think that the use of the words he'd used of "able to" have access to the funds meant she "had a right to do so", (though I note that the words he in fact used in the attendance note were that "*she could have access to them*"). It was suggested that the message that had been conveyed to Mark would have been that Rosemary could spend on whatever she wanted except for giving it to the Council for care homes. He said, "*I suppose that's one interpretation, but what else would she need?*". I pause there to observe that one obvious answer that occurs to me is somewhere of her choice to live.

49. Mr Knight was asked what would happen if Rosemary needed money to buy a wheelchair or a stairlift, to which he replied she could access the trust, and gave the same answer to me when I asked about care. Mr Knight was asked what would happen if Vanessa said no, to which he replied "*I took it that Vanessa would not say no."* He then accepted that he was not able to tell that far ahead; he accepted that Vanessa might have her own needs, to which he replied that he was relying on goodwill. Mr Knight was asked whether he explained all of this: that Rosemary would be entirely reliant on Vanessa's generosity, to which he replied "*No*". He could not recall explaining to Mark that Rosemary would not be entitled to access the funds as of right.

50. He was then asked whether he knew that Vanessa as *beneficiary* would have had no duty to Rosemary to agree to anything, to which he agreed. He agreed that Vanessa and Ian as the trustees were given no power of appointment. Referring to §14 of his witness statement in which he suggested that the capital could be used to purchase a property for Rosemary to live in, he was asked whether he knew that she already had a property at her disposal, to which he replied, "*Yes, but further on I say that there was the possibility of adapting the property*". He was asked whether he explained to Mark that the money could be used in that way, and he said that that "*goes back to how access could be got. I didn't tell him explicitly*".

51. In his witness statement, Mr Knight had also stated that the only difference between the trust that was in the 2022 Will and the absolute gift Mark had originally wanted was that it would not form part of Rosemary's estate. He confirmed that opinion in the witness box and confirmed that the 'conversation' he'd just had with Counsel had not changed his mind. He accepted that there were other far-reaching consequences for

Rosemary, to which he replied that it was not her will: if it was used to buy a house for her, it would be the same house but owned by the trust and simply would not form part of her estate.

52. The attendance note records Mark's reaction to the idea as being "happy to go along with that", and Mr Knight was asked whether that was a passive acceptance with no enthusiasm, to which he replied that he would not express an opinion in an attendance note. He accepted that he had not asked any follow-up questions and could not recall whether he had gone into further detail. He said there had been no questions from Mark about the life interest trust, but he said that one could be overtechnical and people wanted practicalities.

53. Mr Knight was asked whether he had explained to Mark that the ultimate beneficiary was going to be Vanessa, and he pointed to the letter enclosing the draft will. But he accepted that there was nothing in the attendance note or the manuscript attendance note to suggest he had explained this.

54. It was suggested to Mr Knight that he had included provisions in the will that had not been in his instructions, and then failed to flag up the fact that he had done so, to which he replied "*OK*".

55. Turning to the letter enclosing the draft 2022 Will dated 17 May 2022, Counsel asked whether this was the first mention of "income" in his explanations to Mark. He said that life interest trust is shorthand for that. He accepted that the letter had not explained Rosemary's non-entitlement to capital, and that it did not explain the rule in *Saunders v Vautier* or even its effect as understood by Mr Knight.

56. In §18 of his witness statement Mr Knight said that he did not consider that the trust he wrote in the 2022 Will was a "*sea-change from that which I discussed with the Deceased when I first met him*". He accepted that he had taken the expression "sea change" from the Particulars of Claim. He accepted that there was a difference, but felt that a "sea-change" would be leaving Rosemary's half to a cat's home. It was suggested that it was a "significant change", to which he simply said it was from an absolute interest to a life interest, but did accept that it was a significant change from Rosemary's

perspective, and that it was a change from that first discussed at the meeting, but he referred back to *Saunders v Vautier*.

57. The 2022 Will was executed on the 20 May 2022 at the solicitors' offices. The attendance note for that meeting was little over 1 page long. It records the fact that Ian had explained everything to Mark that morning, but that Ian understood that Mr Knight needed to satisfy himself that Mark agreed with the LPAs and that "*he had capacity etc*." There are two lines dealing directly with the will:

> "*We then looked at the Will. I said to him that it was the same as we had spoken about previously so that half of the residuary estate was in the life interest trust for his wife.*"

It is true that there is a paragraph dealing with the accrual clause in which Mr Knight noted that he had explained the concept by way of examples which and that "*they were happy with that*".

58. Counsel covered much of the same ground with Mr Knight in relation to this meeting: that Mr Knight had not explained about the trust allowing for income only with no power to appoint; that he had not explained about the lack of access to the capital and it being in Vanessa's gift. Mr Knight again relied on *Saunders v Vautier* and said that "*no-one was going to kick up*" if capital was appointed without a specific power because Vanessa was the remainderman. It was put to him that it was simply wrong to say that this was the same as what they had spoken about because there was no access for Rosemary to the c.£135,000, and again Mr Knight referred back to trust law rather than there being an express power.

59. It was suggested to Mr Knight by Counsel that although there is reference to explanations about the LPAs, there was only a record of Mark simply agreeing to things, and there was no record of Mr Knight testing Mark's understanding, to which Mr Knight had to agree. He also agreed that there was no record of Mark asking questions or discussing anything to demonstrate his understanding of the trust or its consequences.

60. Mr Knight's witness statement had stated that he had no reason to think that Mark had not read the will, and he was asked about that. He replied that Mark had told him that he had read it that morning. However, the attendance note states that only Ian had read it to which Mr Knight replied "*OK*". He was asked whether it was incumbent upon Mark to raise the issue of having read the will, to which Mr Knight said that, "*If he'd turned around and said that he had not read it, I'd have made sure he did*". It was not his usual practice to go through a will clause by clause, he said. Mr Knight relied on Ian having asked questions about the accrual clause to indicate that Mark had read the will. He said that it had suggested that there had been an earlier conversation about the clause.

61. He was then taken back to the first meeting, and was asked whether the Defendants had been in the room for the whole of the meeting, to which he replied that one of them had been out looking after the dogs intermittently, which he agreed must have been Ian because so much of the history had been relayed by Vanessa. He was asked whether this was the case in both meetings. Mr Knight confirmed that he had not seen Mark alone except in the street outside his office. He was content that there was no undue influence being exerted because there were competing claims: had Mark said that he wanted to leave everything to Vanessa, he would have asked to see him alone.

62. In response to being asked whether he had any concerns about Mark having been with the Defendants in their house in a wheelchair, with a list pre-typed by the Defendants, Mr Knight said that there was a whole body of law about the elderly receiving advice at home; he was always going to go to visit him at the house and that did not suggest undue influence. He accepted that he had not seen a copy of the 2012 Will but said he knew that the LPAs were replacing ones naming Jim as attorney. Mr Knight said that he was always alive to the possibility of undue influence, but he was happy here, because he had the Note and Mark had given "fair" instructions for the 2022 Will and the division of the estate. Mr Knight could not recall whether Mark had positively asserted that the Defendants should stay or whether it was passive, but he had a vague memory of asking him.

63. It was suggested to Mr Knight that on the one hand he was satisfied that there was no undue influence because not everything had gone to his daughter, whereas in fact

everything was, in effect, going to his daughter. He denied that and said that the most she would get would be 70% and that it was normal in second marriage situations that the money reverted to the testator's side of the family.

64. Mr Knight was then asked about Mark's other children. He said that he did not ask Mark whether he had any other children or how many of them there were. I have to say that I found those answers quite surprising.

65. In re-examination, Mr Knight emphasised that he could hear Mark and he was cogently giving instructions and taking advice. His practice was to start with the statutory presumption of capacity and then go on to discuss assets and where they were intended to go. He recalled two cases in which he had refused to continue to act because of concerns over capacity. Here, however, he had no concerns at all, he said.

66. Referred back to the expression he used in his 11 May 2022 attendance note when noting that it had been his idea about the life-interest trust, in which he had said Rosemary would have "access to" the funds, Mr Knight was asked what he meant by that: whether he was referring to capital or interest, and he replied, "the capital". He also confirmed that this had been entirely his idea. He said, though, that there was nothing Mark had said that suggested that he had not understood.

67. I shall turn to the evidence from the Defendants on this issue.

Ian Bateson

68. Regarding the Note, Ian said that he had sat with Mark and Mark had asked him to make a note and so he picked up his laptop and typed into it as Mark spoke: it was Mark who first mentioned a 50/50 split between Rosemary and Vanessa's family. He said that he had told Mark that he and Vanessa did not need money and it would be better going to the grandchildren. Ian said that he had felt obliged to accept £7,000 in a bank transfer that Mark had insisted upon, and it would have upset Mark if he had refused. This was not in his witness statement but Ian said that he had not considered it important enough to include.

69. In terms of the first meeting, Ian said that he and Vanessa would have been quite happy not to be in the meeting but Mark had specifically asked that they be there, and both he and Mr Knight were keen not to follow Mark's wishes.

70. Ian was quite critical of Mr Knight's attendance note, stating that any offer to leave not having been recorded was not of his doing. He had never seen the attendance note until these proceedings and he had issues with what was recorded and not recorded.

71. It was suggested that Ian's statement that "Mark led the meeting" was completely contradicted by the attendance note, which Ian denied: they had just done the introductions and "*the nitty gritty was Mark*". Mark decided what he wanted and told Mr Knight what that was.

72. Ian accepted that the trust had been Mr Knight's idea. He agreed that there were no discussions about care home fees at that point because Mr Knight knew that Rosemary had money at that time. He said that Mark hated the idea of his money going to care homes and that anything left over should go to the family. He had been horrified by the cost of care home fees, he said.

73. Ian was adamant that Mark had read the draft 2022 Will on his own whilst "*we might have walked the dogs*" to give him the opportunity to do so: they had ensured that he had been given new glasses and so he was newly able to read clearly.

74. Ian's witness statement claimed that Mark had re-read the will in the second meeting. When the Defence was put to him which admitted that he had not done so, Ian claimed that the Defence was wrong; that it was an error because his solicitor had signed it, but had to accept that he had given his solicitor those instructions. He was taken to paragraph 17(f)(i) of the Defence which referred to the meeting, but only that Mark had read the will in advance. Ian insisted that Mark had done so.

75. Regarding the questions about the accrual clause, Ian suggested that it might have been he and Vanessa who had raised them because they were due to be the executors and needed to know. The Defence had suggested that it had been Mark who raised these, but Ian said that they had had a discussion at home, but the important thing was that

they had raised the issue with Mr Knight because of their concerns. It was suggested to Ian that he was rowing back from the Defence on this issue, which he denied, repeating that they had had a general discussion about this clause with Mr Knight.

76. At the end of his evidence, upon it being suggested that Mark just went along with things, as he had done with the suggestions about the 2022 Will, Ian volunteered the following evidence. He said that Mr Knight had made a note, but he didn't mention other things in that note. He had not mentioned that "capital was available" (I assume that he is here referring to the "access to" capital in the attendance note): he didn't mention that at all, he said. The letter accompanying that, Ian said, Mark had read and it didn't mention it at all. He said, "*when I read the will it did not mention about capital withdrawals at all. I would have queried it if I had seen it*", he said and concluded, "*The first time I understood that trust was here in court*."

77. Mrs Bateson had not put in a substantive witness statement, having merely put in a statement concurring with her husband's, but she did give live evidence. She accepted that she had been an important player in 2022 and was a party to the proceedings, but justified her decision about the witness statement on the basis that she and her husband discussed everything; that he was used to meetings, and was more articulate. She said that "*everything in Ian's is right*". It was suggested that there were parts of their evidence which were mutually exclusive, such as when she had had telephone conversations with Sharon. Vanessa accepted this.

78. Vanessa was then taken to the attendance note at [500]. It was suggested that Mark was not taking the lead in respect of 6 of the first 7 paragraphs. She accepted that she was doing the talking because of Mark's jaw problem. She had been there to assist with the background: the fall; not liking the care home that Jim had put him in; his move to be with them; the LPA, his wife, etc. She said that she did not know how Jim and Sharon were using the LPAs because of the lack of care Mark had received. She said "*That was that. I left the room because the dogs were driving us mad*". She said Mark had said some things but they were not recorded. She was asked how she could say that Mark was leading the meeting, and she repeated that he was, but when she was asked how she could have known if she had not been there, she said that that is what Ian had said. It was suggested that this was supposed to be *her* evidence, but she replied that the

solicitor had had input. Asked whether she wished to change her evidence about Mark leading the meeting, to which she replied that she didn't think so. She was referred back to the attendance note and taken through it, and she conceded that, "*going on that, it doesn't look like he was [leading the meeting]. But he was there*".

79. Regarding the Note, Vanessa stated that she thought Mark had dictated it to Ian, and that they had been shocked that he had wanted to change his will. She denied that it was their decision and that it was in effect their will. She said that, if they (Jim and Sharon) had sorted care, nothing would have changed. She denied that Mark had just been a passenger in the whole experience.

80. That was the evidence on the issue of knowledge and approval and the life interest trust.

Submissions on the Issue

Mr Knight (Counsel)

81. Mr Knight began by submitting that the circumstances here *should* arouse the Court's suspicion, repeating the oft-repeated citation that the court should be "vigilant and jealous" in examining the evidence of a testator's knowledge and approval of a will in such circumstances.

82. Mark's condition was, he said, important: he was 92 years old with Parkinson's disease and had been described as at 5 April 2022 as being in a state of "severe frailty". As such, he may not have been able to follow explanations unless repeated and confirmed. He had difficulty speaking which meant that he had difficulty in asking questions; he had difficulty reading and required explanations, Mr Knight submitted. This was not a plea of a lack of capacity by the back door, he said, but more needs to be done for people in those circumstances to ensure that they do know and understand, and the court needs to have cogent evidence to ensure that this part of the 2022 Will really represented Mark's intentions. That was quite obviously lacking looking at the documents in the will file which Mr Knight described as the "*most calamitous professional will file that [he'd] ever seen*".

83. Mr Knight took me through the Note and the attendance notes which appeared to suggest prior thought and considered intention. The only equivocation was whether the initial split of 50/50 was to be maintained. It was Mr Matthew Knight who, "*out of nowhere*" suggested the life interest trust, and all the attendance note says is that Mark was "*happy to go along with that idea*". He submitted that there was nothing in Matthew Knight's oral evidence that suggested that there had been any more substantive explanation than that: there had been no mention of capital or income. This was not a case of this being a short attendance note: there was simply no mention of anything more and it was just wrong. There was no suggestion of Mark asking any questions regarding the proposal simply thrown at him: there was nothing done to go through this proposal which he had never contemplated before. And neither of the Defendants had ever heard of a life interest trust before, either.

84. The next document was the solicitors' letter which Mr Knight described as "*woefully insufficient*" regarding this new proposal. There was nothing to flag it up for Mark's attention; nothing regarding income or to correct the impression given at the meeting that Rosemary would have access to the funds and nothing to explain the concept of a remainderman.

85. Finally, Mr Knight said, there was the second meeting at which Matthew Knight did not bother to read the will through to Mark (he would only do so if the testator was blind, he said). He only stated blandly that the final will was "the same as we discussed previously" which was simply a false statement of fact.

86. Matthew Knight's explanation that the location for the second meeting was unsatisfactory was irrelevant, Mr Knight submitted: he owed Mark a duty to explain the will.

87. Mr Knight went on to examine whether the oral evidence had improved on the picture provided by the documentary evidence. He started with paragraph 13 of Matthew Knight's witness statement which was wrong in law, he submitted:

> "*I also say that if an income beneficiary requires capital then it can be given to a beneficiary, subject to the approval of the trustees*."

Here, this was an income-only trust, and the trustee didn't have the express power of appointment (often termed encroachment on capital) that Matthew Knight had suggested. Thus, Matthew Knight did not even understand the effect of the will he produced, Mr Knight submitted.

88. However, even if the trustee had had the power, this was far from Rosemary having "access to the funds" Mr Knight submitted: it was "*very, very far*" from what Mark was told which had been that there was some form of protection from a Local Authority 'smash and grab' operation. If Matthew Knight did not understand, Counsel asked rhetorically, how was a 92-year old non-lawyer going to?

89. Matthew Knight had failed to think through his initial suggestion, Counsel said: he had merely transplanted a tool used for an estate of real property and used for a cash estate. The explanation proffered by Matthew Knight in the witness box was wholly different to that in his witness statement, which relied on *Saunders v Vautier*, but that required beneficiaries to be of capacity *and* agree: this was certainly not explained to Mark who was acutely aware that Rosemary was already diagnosed with dementia.

90. Mr Knight emphasised Ian's closing words of his evidence about only understanding the life interest trust for the first time in this court.

91. Mr Knight took me through a section of the cross-examination of Matthew Knight dealing with the need for Vanessa's goodwill for the possibility of encroaching on any capital, submitting that Matthew Knight's own confused understanding as to the effect of the trust was very telling.

92. It was submitted by Mr Knight that the Defence was heavily reliant on this issue of the questions raised by Ian in relation to the accrual clause in the will, and this was unwarranted. That clause was nothing to do with the life interest trust and it was Ian who seems to have raised the questions – a proposition Matthew Knight seemed not to disagree with. The suggestion that Mark led the discussions was absurd and untrue, Mr Knight said, and the suggestion that Mark had read the will in the foyer was first raised in Ian's witness statement: it had not been in the response to the letter of claim nor in the Defence.

93. All of the oral evidence had the hall-marks of shoring up a weak documentary case, Mr Knight said, and he proceeded to carry out a critique of Mr Reed's skeleton argument on this issue.

94. Mr Knight relied in particular on *Mundil-Williams v Williams* [2021] EWHC 586 (Ch), pointing out that in that case, despite HHJ Keyser QC having listed a number of positive matters at §50 that are not present in this case, HHJ Keyser nevertheless found that the testator in that case had not had knowledge and approval of the contents of the will there under consideration. He referred me to §54 in which HHJ Keyser listed what he described as different but similar considerations which led him to that conclusion. This was authority for the proposition that it was incumbent upon those proposing something radically different from the original instructions to ensure that the testator understood it by a competent explanation in the initial meeting. He referred in similar terms to §§61 and 63.

Mr Reed

95. Mr Reed analysed the evidence of the meetings and was dismissive of the Claimant's case on knowledge and approval. He submitted that the 2012 Will had to be seen in the context of the circumstances in 2022: there was no longer any property; he was always going to leave some of his property to Vanessa and, given that he had clearly changed his views on Jim as a result of his treatment of him following his falls, it was likely that he would want to do something about his bequest. Mark's physical health was in decline, although Parkinson's Disease does not affect cognitive ability, Mr Reed submitted. In addition, Rosemary's cognitive function was declining: she had been referred to a memory clinic in March and been diagnosed with dementia in May. It was almost inevitable that she would end up in a care home which can be seen from the Note, he said. Furthermore, Mark had been living with the Defendants since March, and it was natural that they would assist him in making the solicitor's appointment once he had expressed his wish to make a new will. To label that as undue influence was "perverse", he submitted: the law is not at a stage where loved ones cannot assist an elderly family member. The phone call and arranging the home visit was common courtesy, Mr Reed said. Similarly, assisting Mark to write the Note was common

decency. There was not a jot of evidence regarding undue influence – not even an overheard conversation, he observed.

96. Mr Reed pointed out that there were no other witnesses to suggest undue influence; no members of care homes had been called upon. The police had had no concerns even when there were concerns expressed over money transfers and both Dorset and Hants Social Services had no concerns. Mr Reed submitted that there no witnesses of undue influence at all, let alone independent ones.

97. As regards the Note, Mr Reed submitted that, had there been any sort of coercion, greater provision would have been made for Vanessa. In fact it reflects Mark's initial thoughts that half of his estate would be gifted to Rosemary absolutely.

98. Turning to the first attendance note, it was important to bear in mind that it was not a verbatim note; it may not even have been typed in chronological order, he said: it was written in a way so as to make sense. To treat it as a verbatim note would be completely wrong; as it would be to expect a complete explanation, Mr Reed submitted. To suggest that the Defendants dominated the meeting was "*bizarre*", he said: Mr Knight had not even been asked the question. Beyond the background supplied by Vanessa, it was clear from the note that Mark had given most of the instructions. Mr Reed submitted that it was "customary" for a family member of a 92-year-old in a wheelchair to answer the door, make the introductions and give the background. It was important to remember that Vanessa left after a while, he said.

99. Mr Reed submitted that the subject of care homes had been brought up as regards Rosemary and so Mr Knight gave relevant advice: there was nothing unusual about that – it was the whole purpose of seeking advice. This was Mr Knight advising his client and quite rightly raising the issue of a trust, he said. If he hadn't done so, he would have been negligent.

100. Mr Reed accepted that the note of the explanation given to Mark in his attendance note (set out at §43 above) "*could have been fuller*", but that does not mean that bad or wrong advice was given, he said. The purpose of the attendance note was to record the outcome, not the whole conversation. The reference to "access to" the funds did not

necessarily mean access to all of them, and it is known that a trust was discussed: Mark was "happy to go along" with the idea and the trustees were identified, Mr Reed said. The whole attendance note made it clear that Mark had input into the conversations and was not sat there being domineered, Mr Reed submitted. The attendance note was shorthand of what was said and done over an hour-long meeting at which the Defendants needed to be present because of the LPAs, he said.

101. Mr Reed emphasised Mr Knight's long experience and his evidence that he had had no concerns over Mark's demeanour or suspicion that he was being unduly influenced by either Defendant. He had made proper notes; noted Mark's date of birth (so knew his age) and the short-form notes recorded the 50% gift to Rosemary subject to the life interest trust which (a) was the correct form and (b) Mark left the meeting knowing about. The only thing missing is the lack of a comprehensive paragraph that a counsel of perfection might require, Mr Reed submitted. The attendance note was written up on the same day and it was followed up by further good practice of a letter addressed to Mark written in constructive, layman's terms, sufficient for a 92-year-old lay-person to understand. The reference in the letter to their discussions would have been fresh in Mr Knight's mind. The address was where Mark was living and any suggestion that he did not receive the letter must be wrong, Mr Reed said. Ian was a balanced, thorough, conscientious, calm and comprehensive witness, he added, and it is "*absurd*" to think that he would have not given it to Mark. The reference to "*their discussions*" proved, Mr Reed said, that they had discussed the interest-only trust.

102. The Defendants attended the second meeting with Mark, which was required because of the LPAs, Mr Reed observed. Again, Mr Reed accepted that "*the will stuff*" could have been fuller in the attendance note, but his confirmation that the will was "*the same as we had spoken about previously*" was a clear reference to the discussion about the life interest trust, he submitted. At no point did Mark say that he did not understand, or did not know what he was doing or the like. Although it was not clear who had raised the issue of the accrual clause, but it had been raised.

103. In short, Mr Reed, concluded, Mr Knight had assessed Mark as knowing what was going on. He went with the idea and accepted and consented to the 2022 Will on that basis. He was sent a draft and an explanation, and he voluntarily attended Mr Knight's

offices to execute it. It was quite clear that he did have knowledge of and did approve of the contents of the 2022 Will, he said.

104. In relation to *Mundil-Williams*, Mr Reed submitted that it was more nuanced than Mr Knight had suggested, but also that §54 (where the method of suggesting a change to instructions (telephone) was held by the judge in that case as being extremely inappropriate) is especially important when compared to the careful steps taken by Mr Knight. Mr Reed also referred the court to §§50*ff* of his skeleton argument, dealing with the law, and citing *Cowdery v Cranfield* [2011] EWHC 1616; *Gill v Woodall* and *Hawes v Burgess* @ 13 (set out above).

105. Paragraph 65 of Mr Reed's skeleton summarised the Defendants' position, thus:

> *65. Several factors already mentioned weigh powerfully in favour of the conclusion that the 2022 Will did represent the Deceased's intentions. The same include inter alia:*
>
> *i. The Deceased retained testamentary capacity.*
>
> *ii. The 2022 Will was prepared by a firm of solicitors, as opposed to a being a homemade Will. Thus care was taken to ensure that the Will was properly prepared.*
>
> *iii. An experienced solicitor, who specialised in this area of law (almost twenty-four years at the time of preparing the 2022 Will), acted for the Deceased. That is clearly different from cases in which paralegals or trainees have been instructed.*
>
> *iv. The solicitor, Mr Knight, took detailed instructions, provided advice and drafted the 2022 Will in accordance with his instructions.*
>
> *v. The Deceased read the 2022 Will carefully when the draft arrived in the post, before attending the solicitors to execute the Will on 20th May 2022 and whilst waiting in the foyer of the solicitors' office (Ian's statement at [40] and [41] – CB p332/333).*
>
> *vi. The Waring Partnership received confirmation in a face-to-face meeting that the Deceased understood the 2022 Will's provisions and was content with them.*
>
> *vii. Prior to executing the 2022 Will the Deceased asked a question about the Will, which caused Mr Knight to state at [22] (CB p 490) that: "*That question about a detailed aspect of the Will signalled to me that the deceased must have read the draft Will to be in a position to ask that question at all.*" On the balance of probabilities, the Deceased must have read the 2022 Will to be able to ask his question about it.*
>
> *viii. The 2022 Will, which is uncomplicated, is clear and unambiguous on its face. It was also explained in the letter dated 17th ay 2022.*
>
> *ix. The remarks of Lord Neuberger MR in* **Gill v Woodall**.

x. There is no evidence that the Deceased misunderstood the provisions of the 2022 Will.

Discussion and Conclusion on Knowledge and Approval

106. I accept that Mr Knight was an experienced, honest and truthful witness doing his best to assist the court. I accept that he intended to give Mark accurate and appropriate advice.

107. The 2022 Will was prepared by an experienced solicitor and duly executed. In those circumstances, the propounder of a will usually find it relatively easy to discharge the burden of showing that the testator knew and approved of the contents of the will.

108. I accept Ian's evidence that he typed the Note in accordance with what Mark had told him, albeit that I suspect that he had input into it by virtue of his own knowledge of what had occurred, seen through the prism of his opinion of Jim.

109. Mark's position had changed since 2012 when he and Rosemary had executed their intended mirror wills, not least that he had sold his property and his entire estate was in electronic forms of cash or investments and he had become resigned to no longer living with Rosemary due to a combination of their respective illnesses. Whatever their previous relationship, Mark had in recent months spent a great deal of time with Ian and Vanessa, and he was clearly happy there and grateful for his care. This is clear from the contemporaneous assessment carried out by Hampshire County Council in July 2022.

110. I accept that Mark initially wished to reduce his gift to Rosemary to 50% of his estate in accordance with the Note. That is a reasonable position to have taken given the changes that had occurred in his life.

111. However, I am not satisfied that he knew and approved of the effect of the life interest trust that Mr Knight suggested. There are a number of reasons for this.

112. First and foremost, Mr Knight has changed his own explanation of how the trust would work between how he advised Mark at the time; the signing of his witness statement and his oral evidence.

113. The extract from his attendance note set out above is important, and I set it out here again for ease of reference:

> "*I said to Briant that it might be a good idea to consider placing the funds for his wife in some sort of life interest trust so that she could have access to them but they could not for example be used for care home fees and Mr Briant was happy to go along with that idea. The trustees would be Vanessa and Ian.*"

114. I do not accept Mr Reed's characterisation of the phrase "*she could have access to [the funds]*" as referring to only part of them (by which I take it he meant the income). The word "funds" can only logically refer to the funds from 50% of his estate which formed the trust fund from which the income to be paid to Rosemary was to be derived. I find on the balance of probabilities that Mark was told that Rosemary would have "access to" the funds. I also find that he could only have understood it to mean that Rosemary would have had a regular income from the trust but could call upon the capital should she want or need to, and yet from what Mr Knight also said, the local authority would not have access to the capital to pay for care home fees. Of course, this would not have been possible to achieve, but Mark would not have known that.

115. Another curiosity which suggests that the trust was not explored or explained properly was that there does not even seem to have been any discussion about the level of income that the trust fund would have generated: this should have been quite a fundamental issue if Mark was to assess and understand whether Rosemary was to be getting something of any meaningful value to her if the income was all that she was going to be entitled to.

116. Another indication of the lack of discussion was Ian's comment in the witness box that he had not understood how the trust was intended to have worked until he heard Mr Knight give evidence at trial.

117. I turn to Mr Knight's witness statement, paragraph 13 of which reads as follows:

> *13. I frequently advise clients about the advantage of including a life interest trust in a Will because it can be used to ring-fence assets from the local authority. I also say that if an income beneficiary requires capital, then it can be given to a beneficiary, subject to the approval of the trustees. In most of the Wills that I write, the asset that is the subject of the trust fund is part of the matrimonial home, so the issue of applying capital does not arise.*

118. As Mr Knight of Counsel pointed out, the instant trust had no power of appointment and, of course, s32 of the Trustee Act does not apply. Mr Knight was used to dealing with real property as being the subject of the life interest trust which, of course, achieves the purpose of essentially allowing the beneficiary to have the entire benefit of the trust fund whilst willing and able to live in it, without the need to provide for a power of appointment. He cannot have applied his mind to the difference between such a trust and one which has money or investments as its sole subject matter. What Mr Knight does not say in his witness statement is how Rosemary could have gained access to the capital.

119. In the witness box, Mr Knight seemed unsure of the mechanism that he had envisaged (and I refer back to his evidence that no-one would kick up a fuss if Vanessa wanted to gift some of the capital to Rosemary). He did finally refer to the rule in *Saunders v Vautier* as set out above. Mr Knight admitted that he had not explained to Mark how the rule worked.

120. Furthermore, Mr Knight does not seem to have considered the conditions that need to be satisfied for the rule to be implemented: it requires all beneficiaries to have capacity to consent. To Mr Knight's knowledge at the time of Mark making the 2022 Will, Rosemary had been diagnosed with dementia, and it must have been doubtful at least that the rule would have been available to her to seek a payment from capital, but this does not seemed to have occurred to Mr Knight at the time, and there was certainly no suggestion that it was explained to Mark. Recourse might have been had to the Variation of Trusts Act 1958, but that process is a far cry from the impression given to Mark as to how the trust would work.

121. A further difficulty is that Vanessa was the remainderman. So, for the rule to operate, she would have had to have been willing to gift what was one day going to be hers to Rosemary, a woman with whom she had little or no connection and quite possibly felt

an element of animosity towards as his father's second wife. Ian's reaction in the witness box to the possibility of advancing capital suggests that he would not have been willing to encourage her and she would probably have had the same understanding and/or the same attitude to the idea, quite apart from the human nature aspect which would work against gifting away her inheritance.

122. It is important that the idea for the change in provision for Rosemary came from Mr Knight and not Mark: Mark's instructions were for an outright gift to Rosemary to do what she wanted with. It is a radically different thing to give her just the income from it and then gift the capital to his daughter. By Ian's own evidence, he and Vanessa did not need the money whereas Rosemary was likely to do so. Mark clearly felt that Rosemary should be the principal beneficiary of his will. In those circumstances and given Mark's frailty and inexperience in these matters (as the 2012 Will attests to), it was necessary for Mr Knight to carefully explain to Mark the implications of this fundamental change in the gift and to make sure that that explanation was noted. From the evidence that I have seen and read he simply did not do so, and from what he did explain, Mark would have been misled. For the avoidance of doubt, I am not suggesting for a moment that Mr Knight was trying to hide those implications deliberately, but he seems either to have assumed a level of knowledge and experience that Mark did not have, or did not think through the implications of his suggested alteration to the gift.

123. After having given a careful explanation at the first meeting, it was also necessary in the follow-up advice letter to (a) flag up that there had been an important departure from the Mark's initial instructions and (b) explain the nature and effect of that departure including in particular how it was going to affect the donee of the gift.

124. From Jim's evidence, I find that Mark and Rosemary had a long and happy relationship/marriage. This is reflected, too, in Mark's repeatedly expressed feelings of guilt about not being able to return to live with his wife and his keenness not to hurt her feelings. He had fallen out with Jim but not Rosemary. They had had mirror wills and Mark clearly wanted to benefit his wife in a substantive and substantial way as evidenced by the Note.

125. Both the letter and the second attendance note concentrate far more on the LPAs than on the will. This must have reflected the relative emphasis on the respective subjects at the meeting. I find on the balance of probabilities that it was Ian who raised a question about the accrual clause. As he accepted, he and Vanessa were the putative executors and would have been more concerned to understand how it was intended to operate. Ian was, of course, younger and almost certainly more alert than Mark. Further, the preponderance of evidence suggests that Mark was an easy-going man who 'went along with things'. That combination leads me to find that Ian asked the questions about the accrual clause.

126. The evidence about Mark having read the 2022 Will is not strong and it was not consistent. If he was "happy to have gone along with" Mr Knight's suggested change to his instructions, it seems to me that he was content to place reliance on Mr Knight (and possibly Ian) to draft the will as he had explained it. I therefore find on the balance of probabilities that Mark did not read the will or, if he did, it would have been a cursory inspection. Even if Mark had read it (and I accept that it was relatively short and largely in plain language), there was nothing that to a non-lawyer would have suggested that Mr Knight's advice that Rosemary would have access to the funds was not correct. Mr Knight's evidence was that life interest trusts are not widely known about by the general public, and even Mr Knight did not seem to think through its full implications.

127. Mr Knight was experienced, but that does not, as Mr Knight of Counsel submitted, excuse his omission. The will was not as per their "discussions" at the first meeting, nor did it reflect what they "had talked about" because it did not give Rosemary "access" to the capital.

128. As I have indicated, I find on the balance of probabilities that Mark did not know and approve of the contents of the 2022 Will because he had not had it explained to him sufficiently clearly that the change proposed by Mr Knight meant that Rosemary would not benefit from a substantial and substantive gift of money should she want or need to have access to the capital fund, nor that any access to that fund would depend entirely on Vanessa's bounty in giving away some of her own putative inheritance. The Defendants have failed to satisfy the court that the 2022 Will reflects Mark's testamentary intentions.

129. In coming to this conclusion, I have firmly in mind Lord Neuburger's words in *Gill v Woodall* at §14-17 as well as those of Mummery LJ in *Hawes v Burgess* at §13.

130. I must now proceed to the relief to be granted in respect of the 2022 Will.

131. Mr Knight submitted that, in accordance with *Mundil-Williams*, the court might blue-pencil the 2022 Will to remove the life interest trust, either by striking out the whole of the gift to Rosemary so that that 50% falls into intestacy or by simply striking through the words creating the trust, rendering the gift absolute. He did raise a question as to whether the court has that power, citing *Fuller v Strum* [2001] EWCA Civ 1879 as authority for the proposition that it does not, and *Mundil-Williams* and *Richefond v Dillon* [2023] EWHC 3593 as authorities for the proposition that it does.

132. I don't read *Fuller v Strum* in the way Mr Knight suggested. At §59, Chadwick LJ held:

> *"… Nor is it in dispute that, if satisfied that the testator knew and approved of part only of the contents of the document, the judge was bound, before admitting the document to probate, to require that those parts with respect to which he was not so satisfied be struck out. If he were right to take the view that there was serious doubt whether parts of the document did truly represent the testator's testamentary intentions, then he cannot be criticised for taking the course that he did."*

133. Mr Reed did not address the court on the issue of remedy.

134. HHJ Keyser QC in *Mundil-Williams* considered the law in this regard in some detail at §§70-75 over four pages. The most pertinent (and authoritative) authority HHJ Keyser cited was *Marley v Rawlings* [2014] UKSC 2, where Lord Neuburger dealt with the question with his usual clarity and conciseness:

> *"44. The second proposition invoked in the present connection is that, where the testator did not know or approve of only part of a will, that part can be notionally excised by the court, with the remainder being valid and admitted to probate as described in the last sentence quoted from Fuller's case in para 16 above. Examples of such cases are cited in Theobald on Wills, 17th ed, para 3-028.*
>
> *45. On this basis, Mr Ham ingeniously argued that the will can be validated by deleting (i) the opening sentence, (ii) clause 2, (iii) the first phrase of clause 3,*

> *and (iv) the reference to Mrs Rawlings at the end of the will. If this were permissible, it would simply leave the will as stating that the signatory, Mr Rawlings, revokes his previous wills and leaves his entire estate to the appellant.*
>
> *46. In my view, this argument must be rejected. The most typical case where only part of a will is rejected on the ground that it was not known and approved by the testator, is where that part is self-contained—e.g. a particular clause or subclause. One such example is in In the Goods of Oswald (1874) LR 3P & D 162, 164, per Sir James Hannen. However, it is also true that, in some cases, a simple word or expression can be deleted 'if shewn to have been inserted by mistake'—per Jeune J in In the Goods of Boehm [1891] P 247, 250 .*
>
> *47. However, it is quite inappropriate to invoke this principle in order to justify selecting phrases and provisions for deletion from a will intended to be signed by someone else, to enable the will, effectively by happenstance, to comply with the testator's intentions. I note that Sir James Hannen and Barnes P took the same view in, respectively, In the Goods of Hunt (1875) LR 3P & D 250, 252, and In the Estate of Meyer [1908] P 353, 354 . Further, as Jeune J pointed out in the Boehm case [1891] P 247, 251 , there is obvious 'difficulty [in] rejecting words where their rejection alters the sense of those which remain'.*
>
> *48. The appellant's proposed exercise in deletion summarised in para 45 above would involve converting what is a simple and beneficial principle of severance into what is almost a word game with haphazard outcomes. That is well illustrated by the fact that, in this case, the suggested deletions from the will only achieve the intended result because Mrs Rawlings pre-deceased her husband, because clause 2 is deleted: therefore, if Mr Rawlings had pre-deceased his wife, this argument would not work.*
>
> *49. I would accordingly reject the argument that the will can be treated as a valid will by making the deletions suggested on behalf of the appellant."*

135. In my judgment, what I am invited to do by Mr Knight falls into the category of case referred to in §44 of that judgment. In clause 2(b)(i), the words "*to pay its income*" should be struck out along with all of the rest of the clause which follows Rosemary's name.

Undue Influence

136. The law is well settled. As Mr Reed set out in his skeleton argument, the following authorities are helpful.

137. In *Hubbard and another v Scott and others* [2011] EWHC 2750 (Ch) Proudman J (quoting *Williams on Wills*, 9th Ed*)* held that:

> *"[45] ... Undue influence means coercion to make a will in particular terms . . . . The proof of motive and opportunity for the exercise of such influence is required but the existence of such coupled with the fact that the person who has such motive and opportunity has benefited by the will to the exclusion of others is not sufficient proof of undue influence. There must be positive proof of coercion overpowering the volition of the testator."*
>
> *"Victimisation", "domination" and "coercion" are the words used in the authorities."*

138. The current summary most frequently relied upon is that in *Edwards v Edwards* [2007] EWHC 1119 (Ch) in which Lewison J held:

> *"47. There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:*
>
> *i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;*
>
> *ii) Whether undue influence has procured the execution of a will is therefore a question of fact;*
>
> *iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;*
>
> *iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.*
>
> *v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;*
>
> *vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;*

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

139. However, as Mr Knight observed, circumstantial evidence can be used, and often is.

140. *In Rea v Rea* [2024] EWCA Civ 169, Newey LJ said:

> *"I would accept that undue influence can be proved without demonstrating that the circumstances are necessarily inconsistent with any alternative hypothesis. On the other hand, the circumstances must be such that undue influence is more probable than any other hypothesis. If another possibility is just as likely, undue influence will not have been established. When making that assessment, moreover, it may well be appropriate to proceed on the basis that undue influence is inherently improbable.*"

141. In Schrader v Schrader [2013] WTLR 701, Mann J said:

> "*It will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no-one is looking. That does not stop its being proved. The proof has to come, if at all, from more circumstantial evidence …*"

142. I will deal with the evidence on this issue in much shorter order for reasons that will become apparent.

143. Jim's suspicions were, perhaps understandably, raised by the way that Mark was transported down to live with Ian and Vanessa, supposedly temporarily, and the fact that he appeared to have, in short order, changed his mind from wanting to return home to live with Rosemary once a suitable care package could be organised to wanting to remain in Hampshire. Furthermore, the fact that Mark turned against Jim after years of having lived happily with his mother and next door to Jim and Sharon was both rapid and, to Jim, unexplained. In addition, these matters coincided with the re-drawing of

Mark's will to favour Vanessa and her and Ian's children when the earlier will had not.

144. A significant reason that I can deal with this issue in shorter order is that I found Ian and Vanessa to be generally honest and truthful witnesses, albeit it is clear that Vanessa does not care for Jim. They gave their evidence in a calm and thoughtful, though not hesitant, way. They did make concessions when appropriate and were clear when they did not know the answer to a question. They gave the clear impression of genuinely wanting to do the best for Mark and felt that he had been a little neglected, or at least allowed himself to go a little, whilst living with Rosemary. They gave examples of things they did to assist such as getting a new pair of glasses for him and having his ears syringed which were apparently seriously blocked. And they ensured that his gait was corrected. I accept their evidence about Mark's use of his telephone and his wish to avoid calls from Rosemary which he found distressing and repetitive.

145. Just as important, however, is the contemporaneous documentary evidence corroborates what they said about Mark's ability to make his own decisions and latterly his changes of position: he was saying the same things to several different agencies and when he was in Hampshire doing so without Ian and Vanessa being there. I do not need to set out the individual notes or records: Mr Reed drew attention to them and they are compelling, particularly the 30 May 2022 call to Zoe George at MASH and the full July 2022 assessment in respect of which, as Mr Reed points out, should be noted to have been two months after the will was executed and one would expect deterioration in an elderly person's cognitive or borne-upon position rather than any improvement.

146. Mark was convinced that Jim had put him into a poor-quality care home that felt like prison to him, even though the truth was that the local authority had moved him there because they needed to free up the hospital bed and Jim and Sharon had done their very best to obtain a suitable care plan (and I accept that they worked very hard to do this). There is a lack of complaint or hint of coercion in the social service records. Both the earlier (February 2022, Dorset) and the July assessments as well as the May phone call record consistently assess Mark's ability to speak for himself and consistently say that he was able to do so, and then go on to record his views. The latter states quite clearly that (a) he accepted that he was unable to go home because of the combination of his

and Rosemary's needs and limitations; (b) he was very conscious of not wishing to upset Rosemary and instead chose to lie to her (or at least not tell her the whole truth) to save her feelings; (c) he had decided that he did not like Jim anymore. This latter expression is surprising to say the least and no doubt extremely hurtful to Jim after all of this time.

147. This brings me to the one aspect of Ian and Vanessa's evidence which I did not find palatable. This was their failure to correct Mark's misunderstandings and mistaken beliefs. These took several forms: that Jim had put him into a prison-like care home as a deliberate choice and failed to try and bring him home; that Jim had prevented him from being able to access his bank account online; telling Mr Knight that Jim had used the LPA to prevent Vanessa's hospital visit; that he and Sharon had persuaded Mark to give them £60,000 to look after the car and to pay for his funeral, still less to tell Mr Knight that that was what had happened. Ian seemed to admit in his evidence that he knew that the £60,000 had been used to purchase ISAs. I do not know the motivation for this rather callous behaviour, but it may be what caused Mark to fall out with Ian which is a great pity and I deprecate it. In respect of this evidence, I do bear in mind that, although by the new will Jim lost his gift of a 25% interest in the value of the "Property" he would have received under the 2012 Will, causing or allowing Mark's opinion of *Jim* to deteriorate could not be said to have led to the changing of the will in respect of *Rosemary's* gift and this is, of course, Rosemary's claim.

148. Here, Mr Knight's experience is relevant because he, too, did not feel any level of concern when he met Mark, albeit that it was within Ian and Venassa's presence. There was good reason for them to be in with Mr Knight and I accept that Mark asked for them to be there and to accompany him to Mr Knight's office.

149. In addition to the foregoing, I find that there is force in Mr Reed's submission that there were good reasons for Mark to reconsider his will at that point in his life, which I have set out above. That, coupled with the balanced adjustments provided for in the Note, tends to suggest that Mark was acting of his own free will when he decided to change his will as he did.

150. The hurdle for establishing undue influence in testamentary cases is a high one. The evidence, even if circumstantial, must be convincing. Here, there is some circumstantial evidence which might support the claim, but there were other reasonable explanations for the coincidental behaviour. I found Ian and Vanessa to be generally honest witnesses and that, coupled with Mr Knight's evidence and the documentary evidence leads me to conclude that the claim for undue influence must fail.

Inheritance Act

151. Having decided as I have in relation to the knowledge and approval, then Rosemary has achieved all that she could have achieved in a claim under the 1975 Act, and I do not award her anything under its provisions.

152. I will hear from Counsel on the form of the Order and costs.