

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

VICTORIA ELIZABETH COPLEY

Claimant/Part 20 Defendant

and

DANIEL BRENT WINTER

Defendant/Part 20 Claimant

Mr Sam Healy (instructed by **Elmhirst Parker LLP**) for the **Claimant**

Ms Fay Collinson instructed by **Thornton Jones**) for the **Defendant**

Hearing dates: 25, 26, 27 April 2023

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Thursday 6th July 2023.

INTRODUCTION

1. This claim relates to the will of Elaine Doris Lodge (hereafter "Elaine¹"). She was born on 22 June 1944 and died on 22 February 2019 at a care home, Victoria House which is in Ryhill, Wakefield ("Victoria House"). During her life she lived for more than 50 years with Brenda Stephenson ("Brenda"). Brenda died on 16 February 2018.
2. Other family and friends particularly relevant to this claim include:
 - 2.1. Tina Rowley ("Tina"), daughter of Brenda and mother of the Claimant and Andrew (known as "Andy") Stephenson;

¹ I mean no discourtesy through that and other informalities recorded below.

- 2.2. The Claimant, as indicated, a granddaughter of Brenda, daughter of Tina and sister of Andy;
 - 2.3. Kerry Stephenson (“Kerry”), the wife of Andy and therefore sister in law of the Claimant.
 - 2.4. Josephine (known as “Josie”) Winter, a good friend of Elaine, and the mother of the Defendant;
 - 2.5. The Defendant, the daughter of Josie and himself a friend of Elaine.
 - 2.6. Adele Atkins (“Adele”), niece of Elaine;
 - 2.7. Rachel Ruston (“Rachel”), niece of Elaine.
3. At the time of her death, Elaine owned a house known as the Rowans at 1 Tun Lane, South Hiendley². She also owned land on Lund Hill Lane and Church Lane³, Havercroft⁴, on which she kept horses. That land is held under a single title number and it is convenient to call this land collectively “the Havercroft land.” A copy of the plan in her will of 17 January 2019 appears at Appendix 1 to this judgment. Church Lane runs approximately North West to South East across the top of the plan and Lund Hill Lane runs North East to South West on the left hand side. Though the land is essentially two discrete plots, it is joined by a lane. Since one part borders Church Lane and the other Lund Hill Lane, it has been convenient to call the two parcels by the name of the adjacent lane. The plan is annotated to show four relevant features.
- 3.1. A – the Defendant’s house;
 - 3.2. B – the Church Lane Land;
 - 3.3. C – the Lund Hill Lane land;
 - 3.4. D – the lane joining the Church Lane land and the Lund Hill Lane land.
4. Elaine had previously executed wills in 1992; on 25 March 2011 (“the 2011 Will”); and on 21 January 2017 (“the 2017 Will”). Shortly before her death, she gave instructions to a solicitor, Ms Amanda Fletcher, for a new will to be prepared. Those instructions led to a draft being sent to her on 11 January 2019 (“the Draft 2019 Will”). That draft was in turn revised and a new will was executed on 17 January 2019 (“the 2019 Will”).

² South Hiendley is in the City of Wakefield, though it is marginally closer to Barnsley than Wakefield. It is close to Ryhill, where Victoria House is situated.

³ The land is described in Elaine’s will as being on “Church Hill Lane” and it was so named by some witnesses, though both the plan on the Land Register and Google Maps call it “Church Lane.” It was also on occasion called “Chant’s” apparently on account of the surname of a previous occupier.

⁴ Havercroft is not far from South Hiendley, a little closer to the centre of Wakefield.

By this time, Elaine was living at Victoria House, a care home where, amongst other people, the Claimant, Tina, Kerry and a witness called Jane Brear all worked.

5. The similarities and differences between the 2011 Will, the 2017 Will, the Draft 2019 Will and the 2019 Will are set out Appendix 2 to this judgment. The significant difference between the 2017 Will and the 2019 Will is that, whilst the earlier will gave the Church Lane land to the Defendant (if Brenda predeceased Elaine, as was in fact the case), the latter gave the land to the Claimant with the expression of a wish that the Claimant offer it to the Defendant at market value if she should choose to sell. The intervening draft 2019 Will mirrored the 2019 Will in giving the Defendant a right to buy at market value, but included an overage provision in the Claimant's favour.

THE LITIGATION

6. Given the dispute that had arisen as to the validity of the 2019 Will, the Claimant issued a claim form, on 14 October 2021 seeking a pronouncement of its validity. The Defendant defended and counterclaimed, inviting the court to pronounce against the 2019 Will and in favour of the 2017 Will.
7. The matter proceeded through directions to a trial in front of me in April 2023. During the trial, I heard from the following witnesses:
 - 7.1. The Claimant – by statement dated 9 August 2022 and oral evidence;
 - 7.2. Amanda Fletcher, a solicitor and member of Bury & Walkers LLP (“Bury & Walkers”) – by statement dated 9 August 2022 and oral evidence;
 - 7.3. Kerry Stephenson, the Claimant's sister-in-law - by statement dated 22 July 2022 and oral evidence;
 - 7.4. Jane Brear, a senior care assistant at Victoria House – by statement dated 5 August 2022 and oral evidence;
 - 7.5. The Defendant – by statement dated 12 August 2022 and oral evidence;
 - 7.6. Sarah Steel by witness statement dated 10 August 2022 and oral evidence;
 - 7.7. Anna Steel by witness statement dated 11 August 2022 and oral evidence;
 - 7.8. Adele Atkins by witness summary dated 11 August 2022, based on a discussion with the Defendant's solicitor, Ms Elizabeth Fyfe, and by oral evidence.
8. At the conclusion of the trial, I reserved judgment.

THE ISSUES IN SUMMARY

9. The Defendant contends that the 2019 Will is invalid for the following reasons:
 - 9.1. that Elaine lacked testamentary capacity at the time of execution of the will;
 - 9.2. that it is invalid for lack of knowledge and approval on Elaine's part;
 - 9.3. that it was procured by the assertion of undue influence by the Claimant.
10. The second of these, the lack of knowledge and approval was sensibly not pursued by the Defendant in closing submissions. It is not necessary to deal with it further.

THE LAW

Testamentary capacity

11. The test of testamentary capacity was set out by Cockburn CJ in Banks v Goodfellow (1869-70) LR 5 QB. 549 at 565,

“It is essential ... that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties—that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”

12. Briggs J, as he then was, said in Key v Key [2013] EWHC 408 (Ch):

‘The burden of proof in relation to testamentary capacity is subject to the following rules.

- i. *While the burden starts with the propounder of a will to establish capacity, where it is duly executed and appears rational on its face, then the court will presume capacity.*
 - ii. *In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity.*
 - iii. *If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity none the less’*
13. In Hughes v Pritchard [2022] EWCA Civ 386, the Court of Appeal considered the so-called “Golden Rule” that a medical practitioner should be asked to consider the

capacity of a testator who is aged or suffers serious illness. Asplin LJ, with whom the remainder of the Court of Appeal agreed, said:

“84. It is well known that a rule of practice has long been established that when making the will of an aged testator or a testator who has suffered a serious illness, it should be witnessed and approved by a medical practitioner who satisfies himself of the capacity and understanding of the testator and records and preserves his findings. That has become known as the “golden rule” which was explained in Kenward v Adams (Times Law Reports, 29 November 1975).

85. The Court of Appeal considered the status of such medical assessment in Sharp v Adam. May LJ who gave the judgment of the court, stated as follows, at [27]

“. . . [Counsel] on behalf of the Appellants, came quite close to submitting that such meticulous compliance with the golden rule should in principle be determinative. In our view, this would go too far. The opinion of a general practitioner, unimpeachable in itself and supported by that of one or more solicitors, may nevertheless very occasionally be shown by other evidence to be wrong. The golden rule is a rule of solicitors’ good practice, not a rule of law giving conclusive status to evidence obtained in compliance with the rule.”

Briggs J also observed in Key v Key at [8] that compliance with the golden rule does not operate as a “touchstone” of the validity of the will, nor does non-compliance demonstrate its invalidity.”

14. At paragraph 80 of her judgment in Hughes v Pritchard, Asplin J noted the position where a solicitor gave evidence as to the capacity of the testator but that evidence was contradicted by other material before the court:

“the Judge must evaluate all of the relevant evidence in relation to capacity. There may be clear evidence contrary to that of the solicitor. Furthermore, it should be borne in mind that the weight to be given to conclusions reached by the lawyer drafting the will depends on the circumstances. As Christopher Pymont QC, sitting as a deputy High Court Judge, quite properly pointed out in Ashkettle v Gwinnett [2013] EWHC 2125 (Ch) at [43]: “Any view a solicitor may have formed as to the testator’s capacity must be shown to be based on a proper assessment and accurate information or it is worthless”. There may be good reason to place less reliance on the solicitor’s evidence, depending on the circumstances.”

Undue Influence

15. The principles relating to the allegation of undue influence of a testator were summarised by Lewison J in Edwards v Edwards [2007] WTLR 1387:

“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;*
- vii) 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. "

16. In Schrader v Schrader [2013] EWHC 466 (Ch), Mann J considered the evidential issues that can arise in cases of undue influence:

“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. The present case has those characteristics. The allegation is a serious one, so the evidence necessary to make out the case has to be commensurately stronger, on normal principles.”

THE EVIDENCE

17. In dealing with the evidence, it is helpful to start by looking at some of what was said as to the character of Elaine and her relationships with the Claimant and the Defendant both before and after Brenda’s death before turning to look in more detail at events following Brenda’s death in February 2018. In so doing, I shall seek to limit my summary of the evidence to that which is arguably relevant to the issues in hand.
18. All witnesses agree that Elaine was passionate about horses. She had operated a riding school at some point and was very involved with the Pony Club (through which she was friendly with some of the witnesses). She owned many horses over the years. She also worked as a blacksmith, by all accounts an unusual trade for a woman during her working life. Various witnesses, including the Claimant, spoke of the fact that she would not have sold or otherwise disposed of horses unless she really had to. The horses were, according to the Claimant, *“akin to her children.”*
19. Elaine clearly had a strong relationship with Brenda who had been married to a gentleman who was the Claimant’s grandfather, though he had left Brenda before the Claimant was born. According to the Claimant, Elaine purchased her grandfather’s half share of The Rowans, which thereafter was Brenda and Elaine’s joint home for over 50 years⁵.
20. Generally speaking, witnesses described Elaine as being not particularly demonstrative (seemingly in comparison to Brenda). For example, Sarah Steel considered her to be *“a*

⁵ None of the witnesses is precise as to the length of relationship, but Elaine herself is reported as having told Dr Crosse on 25 October 2018 that they had been together for 58 years.

very private person” who was *“quite shy.”* Anna Steel spoke of her as having *“no self-confidence.”* Jane Brear described her as *“a very private person.”*

21. Another feature of Elaine’s character on which witnesses comment is her fear of death. The Defendant describes her as having reacted badly to an occasion when a horse drawn hearse came through the village. Sarah Steel describes what seems to have been a phobia of health issues more generally, referring to an occasion when she broke a finger but refused to go to hospital, suffering a permanent deformity as a result. She also said that, *“once she knew she was dying, Elaine was terrified.”* Anna Steel said that, after Brenda’s death, Elaine would sleep downstairs – *“Vicky told me this was because she was scared of Brenda’s son Michael’s ashes that were upstairs in the bedroom.”*
22. The Claimant described how, from an early age (five years old) she was involved on a daily basis with horses at The Rowans or the Havercroft land. She would ride horses as well as assisting with mucking out. She started to attend the Pony Club at the age of seven or eight, for which purpose, Elaine and Brenda got her a games pony.
23. The Claimant worked as a care assistant at Victoria House from 1999 to 2009, moving from there to Pinderfields Hospital in Wakefield for a year or so before starting university in 2010. There followed what seems to have been a very unpleasant period for the Claimant in which her then husband was involved in a robbery which led to him being sentenced to a period of five years in custody. She had young children and was helped financially through this difficult period by Elaine and Brenda.
24. The Claimant explains how she graduated as a nurse in 2015 and how proud Brenda and Elaine were of her. Her children treated them as grandparents and she describes her own relationship with Brenda and Elaine as *“unchanging.”* Indeed, the Defendant accepted that the Claimant had done a lot for Elaine, especially in the final months of her life. He accepted that Elaine was positive about the Claimant’s second husband, Martin.
25. As noted above, the Defendant lives next to the Church Lane Land. The house and land had previously belonged to British Coal. When they sold it, the house was parcelled separately from the land, the former being purchased by the Leeds Housing Association and the latter by Elaine, apparently for nominal consideration. Later, the Defendant bought the house from the Housing Association.

26. Elaine would, according to the Defendant, regularly come to the Defendant's house, combining looking after the horses on the Church Lane Land with having a meal with the Defendant and his wife. The Defendant also describes how as an adult he used to assist Elaine with feeding the horses and retrieving them when they escaped as well as breaking in new horses.
27. One particular feature of the Defendant's relationship with Elaine was that she could not bear to let go when the animals were dying. The result was that, if, for example, a horse needed to be put down, it was the Defendant who would do this. He recounts one incident at paragraph 16 of his witness statement which seems to have been a cause of some ill feeling though it did not form part of the submissions at trial and it is not necessary to explore it further.
28. The Defendant equally describes Elaine as been having been a "*constant*" in his life. He describes by way of example how he used to go with Elaine to shoe horses when he was a child and how positive Elaine was towards his second wife, Becci, even though her only interest in horses was in respect of riding attire. He said in cross examination that he visited The Rowans more often after Brenda died. He would call in when passing by and try to see Elaine at least once per week.
29. He describes an incident which came to the attention of other witnesses when he had gone to The Rowans shortly after he became aware of Elaine's cancer diagnosis. He had burst into tears, to which Elaine had responded "*don't you fucking start.*" This was striking because he had never heard her swear before.
30. He also accepted that Elaine may not have wished to see him in her deteriorating condition leading up to her death, both while she was still at the Rowans and when she was at Victoria House. For example, he accepted that he may have attended the Rowans but she had not come to the door because she did not want to see him.
31. The Claimant was rather less positive about the Defendant's involvement in Elaine's life than he was about her. She had described him as the "*blue eyed boy*" in a text message to Rachael about Elaine and Brenda in 2015, but she said that he rarely went to The Rowans. She denied disliking either the Defendant or his mother, Josie, and accepted that the Defendant had done things for Elaine. However, she said that Elaine was annoyed with the Defendant over the incident when he had burst into tears, this was, she said in cross examination, "*because she wanted to be positive but was faced with someone who was negative.*"

32. The Claimant's statement describes this incident as one of several that caused Elaine to have what she described as a "grudge" against the Defendant. Another involved his having brought food to her house. At paragraph 19 of the statement, the Claimant describes it thus: "*the Defendant had gone to her house with a meal of (I think) pie and chips. I only know this because Elaine told me but he had gone into the house and they'd had coffee. He'd given her the food, and she didn't eat much at all in any event at that time, but she said to us that she'd remarked to him that she couldn't eat a meal that size even when she was working, let alone currently when she was virtually immobile. She made a comment that sticks in my mind and she said that 'it should have had a flag stuck in the top of it with 'Chants' written on it.'* It was absolutely clear that she saw from the Defendant's conduct and this offer of a huge meal of pie and chips as a sweetener so that he would get her field (known as 'Chants') in her Will." She mentioned other matters that had caused Elaine to be negative towards the Defendant, including her becoming aware that he had been cultivating cannabis and an occasion of her Land Rover being stolen when he said he knew where the vehicle was and could get it back for a sum of money.
33. She concluded at paragraph 18 of her witness statement in talking of the incident when the Defendant burst into tears, "*I know for a fact that she held that as a grudge against him until the day she died.*" In interesting contrast, her oral evidence was more measured, stating that she had "*no particular knowledge of their relationship.*"
34. Following Brenda's death on 16 February 2018, witnesses speak of how much Elaine was affected, requiring support with both emotional and practical matters. It is common ground that the Claimant in particular was very involved in providing care and companionship, even if her motive for doing this is disputed. However, Elaine's recovery was complicated by two matters.
35. First, she started to suffer episodes when she was described as being vacant. There was also some report of her making odd noises and smacking her lips. This led to her being seen by Dr Pritesh Pranay at Pinderfields Hospital on 19 July 2018. No neurological abnormality was found and a CT brain scan showed no evidence of any intercranial abnormality. An EEG was within normal limits. Nevertheless the episodes continued and were noted by Dr Barbara Crosse, an oncologist who saw Elaine at Pinderfields on 25 October 2018. On that occasion, Dr Crosse recorded "*at the end of the consultation Ms Lodge had an episode similar to the ones she has had before and she became very vacant, distant and no longer conversing, and demonstrated some facial contortion, lip*

smacking, slight restlessness with handwringing which lasted for about two minutes. Clinically this seemed most likely to be some sort of partial seizure. She fully recovered and was able to leave the clinic without complication.”

36. Witnesses variously describe the episodes:

36.1. The Claimant spoke of her smacking her lips and talking as if she were talking to Brenda. She said that she was not aware of any such incidents whilst Elaine was living with her or was at Victoria House. The latter is corroborated by the lack of reference to any such incident in the Victoria House records. Elaine had told her that she was aware of these episodes and that *“It’s when I can’t be bothered listening to people.”* The Claimant described them as *“anxiety symptoms.”*

36.2. Kerry said she had witnessed episodes that *“lasted only a minute or so and she’d smack her lips as she was doing it but she was perfectly okay immediately after the episode had ended.”*

36.3. Jane Brear said there were incidents of her being deep in thought but she did not consider these to be vacant episodes, and she was not aware of facial contortions, lip smacking or unusual speech.

36.4. Sarah Steel described, at paragraph 11 of her statement, an incident after Elaine’s driving licence was revoked when she was driving Elaine and her caravan back from a Pony Club event at Cholmondeley Castle in Cheshire. *“As we were driving along the motorway chatting, Elaine suddenly took a deep breath, her eyes rolled and she slumped over onto me. I was shouting her name and pulled over onto the hard shoulder. Elaine was unconscious for a minute or two before she started to make grunting noises and then eventually, slowly, began to come round. I asked if she was alright and she said she was fine. It was like Elaine either did not know it had happened or chose to ignore it...”* She mentioned other incidents when Elaine had *“passed out.”*

36.5. Anna Steel described Elaine collapsing and said, at paragraph 6 of her statement, *“Often there were signs that Elaine was about to collapse, such as strange mouth movement and lip smacking and when she came to she would say things like ‘alright love’ in a very strange voice.”*

37. Dr Bukhari, a neurophysiologist, reported on the EEG in August 2018 saying that it was “*within acceptable limits., there are no epileptiform abnormalities, either focal or generalised.*” The comment of Dr Crosse as to her suffering partial seizures comes the closest to any firm medical diagnosis that was made (at least from what one can see in the selected records that are before the court). In any event, they seem to have led to Elaine either being advised not to drive or having her licence suspended. The Claimant describes what happened thus at paragraph 14 of her witness statement:

“Elaine recounted to me (and to Kerry and Martin, and anyone else who she spoke to) that she was aware that Josephine had gone behind her back (as she saw it) and interfered in her private life by telling Rachel about her ‘vacant episodes.’ Rachel then spoke to Elaine’s GP about the vacant episodes that she started to have and the fact that in their opinion, she was a risk to herself and others whilst driving. Rachel then, without Elaine knowing, set up an appointment with Elaine’s GP and Josephine took Elaine to the appointment, not telling her in advance what it was for. I know this because Elaine, Josephine and Rachel all told me what had happened. This directly resulted in her GP revoking her driving licence and there by taking away the vast proportion of her newly found independence. This was probably May or June 2018, but will be recorded in Elaine’s medical records. Elaine was absolutely fuming about it. I was also told by Carolyn and Louise Exley and Anna Steel shortly afterwards there was a blazing row between Elaine and Josephine at the Pony Club about this matter. I am aware first hand that Elaine despised Josephine for doing this (and Rachel) as much for interfering in her private life and discussing it with others, as for causing the revocation of her driving licence and the removal of her independence. Elaine never forgot this and although she continued to interact with Josephine thereafter, she used to tell me (and others) that she was ‘only using them’ when she needed them...”

38. The suggestion is that Elaine was annoyed with Josie because of the loss of her driving licence and that this may have caused her to change her attitude to the Defendant, Josie’s son. The Defendant himself did not accept this. He said, “*my relationship with Elaine existed separately of her relationship with my mum.*” Moreover, Anna Steel said that Elaine was “*cross with the world about her losing her licence. She blamed all of us because we all thought she should stop driving.*”
39. Adele was aware of this “*fallout*” as she described it at paragraph 3 of her witness statement. In oral evidence, she explained that the Claimant, Elaine and Josie did not get along, and that the removal of the driving licence was one of the causes.

40. Second, in October 2018 she was given a diagnosis of sarcomatoid tumour of the uterus. This was an aggressive tumour that was to lead to a rapid deterioration in her health and to cause her death around 4 months later. At a clinic on 26 November 2018, Dr Jeffrey, a clinical oncologist, records that she told Elaine that the only treatment options were palliative. Elaine was said to be clear that she did not want to discuss specifics about prognosis.
41. Following the loss of her driving licence and what must have been a devastating diagnosis, there are descriptions of Elaine's behaviour that suggest a change in attitude towards the Defendant. For example:
 - 41.1. Kerry records an occasion shortly before Christmas 2018 when Elaine said that the Defendant had come to her house but that she had refused to open the door to him even though he said that he needed to see her.
 - 41.2. Kerry records another occasion when it would seem Daniel attended Elaine's house with food (a pie and chips) but when Elaine said that she had refused to take the food and that the defendant had left crying. Ms Stevenson says that Elaine said, "*I can't deal with this*" and that she had "*sent him packing.*"
 - 41.3. Kerry also spoke of Elaine declining to take phone calls from the Defendant, stating at paragraph 21 of her statement. "*I recall her specifically saying 'they're nobody of importance – I've got everybody I need right here' i.e. Andy and me and Vicky and her family. Elaine never did explain to me why she did not want to speak to Daniel but she was very firm about not wanting to speak to him she also did not want Daniel or his mother to visit her at the care home and only wanted her immediate family i.e. her niece, Rachel, Andy and me, Vicky and Martin and our children.*"
 - 41.4. The Claimant's description of Elaine developing '*grudges*' towards the Defendant coincides with the episode relating to Elaine's driving licence, as well as the "pie and chips" incident referred to above and therefore her evidence too is consistent with a cooling off of the relationship of Elaine and the Defendant at this time.
42. These descriptions of Elaine's attitude to the Defendant differ markedly from Anna Steele's recollection. She said, at paragraph 22 of her statement, "*Elaine loved Dan like a son and at no point did she ever fall out with him or appear to be displeased with him in any way. The only time I ever witnessed Elaine say anything even remotely negative*

about him bringing her food was on one occasion after she became unwell. Dan turned up with a large pie and chips and Elaine said to me “why has he brought all that, the silly boy.” Elaine said it in a very affectionate manner, and it was clear to me that she was happy that Dan was thinking about her and I believe she saw it as him trying to look after in his own way. I do not think for one minute that Elaine would have ever viewed the food as some sort of bribe for the land. Firstly, Elaine wouldn’t ever think of Dan like that and secondly, Elaine had already told me and other people on multiple occasions that Dan was getting the land. I think she viewed it as the correct thing to do and as proper recompense for all the work and support he had shown her over the years.”

43. Bury & Walkers, of which Ms Amanda Fletcher is a member, had acted for Elaine as Personal Representative following the death of Brenda. Ms Fletcher had previously acted for Elaine in private client matters relating to her will (and that of Brenda) in 2011.
44. It is of some note to see what Elaine was recorded as saying at the time of execution of the 2011 Will. The file note relating deals with Brenda’s instructions first, then goes on to deal with Elaine’s. It covers the consequence of the death of Elaine’s sister and the fact that she wanted to substitute her nieces, Adele and Rachel, for her sister in terms of share in the residue of her estate. It goes on:

“[Elaine] also told me that she has a piece of land at New Monkton at Royston⁶ that she uses for pony grazing. She wants this land to be available to her estate so that if necessary it could be sold to provide extra cash for the estate she said that she does want to make some provision for her friend Daniel Winters. Mr Winters property adjoins the land at Royston and he has been offering much assistance to Elaine in dealing with the grazing land and dealing with the ponies. She feels that she ought to include some sort of thank you for him. She had hit a dilemma here because she didn’t know how to achieve that while making sure that the land was available to the estate. She wants to know that if Brenda survives her Brenda has enough money for whatever she needs and therefore she doesn’t want to give the land to Daniel. We discussed the possibility of including an option for Daniel to purchase that piece of land and it could be an option to purchase at a reduced price thereby giving Daniel some benefit as a thank you for the help that he has offered over the years. Elaine liked this idea and

⁶ Another description of the Church Lane land.

asked that we draft the Will to include an option at half of market value for Daniel to purchase that land from the estate... ”

A right for the Defendant to purchase the Church Lane land at 50% of market value was included in the 2011 Will as well as in the 2017 Will, as can be seen from Appendix 2 to the judgment.

45. The changes in the 2017 Will followed instructions given by Elaine on 5 June 2017. Ms Fletcher recorded the instructions in a hand written note, though there is no typed version. The significant changes were the provisions leaving the livestock and Lund Hill Lane land to the Claimant. Ms Fletcher said of these changes that, as with the change in the Defendant’s favour in the 2011 Will, Elaine told her that she wished to reflect the assistance that the Claimant had provided. Ms Fletcher acknowledged that this reasoning was not recorded in the note. She could not explain why there was no typed note of this attendance.
46. Turning to the attendance on 29 November 2018, Ms Fletcher said this was her first interaction with Elaine about the proposal to execute a lasting power of attorney (“LPA”) and changes to the will. The records show that the Claimant had made the appointment (a detail that would always be recorded since it might be relevant to any suggestion that a prospective testator and/or donor of a LPA was being unduly influenced). She said that she was unaware that Elaine had terminal cancer and equally was unaware that treatment options were limited to palliative care. The meeting was attended by the Claimant and her mother, Tina, as well as Elaine. The first part of the meeting related to the appointment of the Claimant and Tina as Health and Welfare attorneys. Ms Fletcher explained to the three of them the nature of a Health and Welfare LPA and explained that, to proceed with this, she would need to see Elaine alone with her certificate provider to discuss the LPA before signing. Ms Fletcher say she was satisfied that Elaine fully understood the advice.
47. Ms Fletcher’s handwritten notes of this part of the meeting referred to there being some difficulties with Elaine’s niece, Rachel. In particular, it is recorded, “*Rachel expresses different wishes than Elaine. Seems to favour getting rid of livestock.*” In addition, Rachel is recorded as having said to Vicky, the Claimant, “*I’m blood I can overrule you.*” In cross-examination, Ms Fletcher said that she could not recall whether that alleged comment from Rachel was reported to her by the Claimant herself or by Elaine.

48. Ms Fletcher was pushed on whether she felt professionally uncomfortable about the Claimant being in the room during this meeting. She said that she did not. My note⁷ of this part of her evidence reads, “*nothing made me professionally uncomfortable. Elaine was speaking openly about what she was thinking of doing. She was explaining her intention to appoint Tina and Victoria as her welfare attorneys. When it came to discussing a prospect of a property and finance power, she openly said that she did not feel she wants to pursue that and Victoria would not be a candidate for it. It was a criticism of Victoria and she was happy to say that. My recollection is that she did not deem a finance power to be necessary. She expressed that if you were to do one, it would not be Victoria, it would be Rachel. Rachel was a bank manager and is financially astute.*” This account is consistent with her contemporaneous written note.
49. Ms Fletcher was asked about the proposed certificate provider. The possibility of it being Elaine’s general practitioner was discussed, though the relevant person was not agreed at this meeting. It was left with Elaine to propose someone suitable, but at this stage Ms Fletcher said that the ultimate provider, Jane Brear was not suggested.
50. As to the discussion relating to proposed changes to the 2017 Will on 29 November 2018, Ms Fletcher said that this proceeded in the absence of the Claimant and Tina, even though Elaine said she was happy for them to be in the room. At paragraph 3 of her witness statement, Ms Fletcher says this of that meeting:
- “All of the instructions given to me at that stage were Elaine’s. I was not aware of any signs of Elaine acting under influence. She was entirely lucid, coherent and firm in her instructions during this meeting and gave me no cause whatsoever to have any doubt about her capacity to make a Will or grant a Power of Attorney. During this meeting Elaine gave me instructions to prepare a new draft Will which included a right for the Defendant in this case to purchase some of her land, with basically a clawback provision should he purchase that land and subsequently develop an area of it upon which a derelict bungalow remained. Elaine was aware of the possibility of development, hence her instructions in this regard. I was aware at this stage that it would be a complicated Will but she had had options to purchase in previous Wills, although not to my knowledge any clawback provisions. In short, nothing that had been done or said up to that point excited any suspicions in my mind about capacity or undue influence...”*

⁷ This and other passages that I include from my notes do not purport to be verbatim, notwithstanding the use of inverted commas. The passages are as I recorded them, sometime simplified at the time to catch the essence of what the witness was saying.

51. During cross examination, Ms Fletcher said of this discussion that Elaine was “*focussed on the animals and what would happen to them.*” She also said this meeting was the first time that she had understood that Elaine considered the Church Lane land to be valuable, seemingly on account of the development potential for the derelict bungalow.
52. On 8 December 2018, Elaine signed a client declaration instructing Bury & Walkers to proceed with work relating to the LPA and the proposed new will. Ms Fletcher said that thereafter Elaine did not chase things up, so on 24 December 2019, she wrote to Elaine about the identity of the Certificate provider for the purpose of the LPA.
53. On or around 28 December 2018, Elaine moved to live with the Claimant. The Claimant’s evidence was that this was on 28 December and followed a fall that Elaine had had at her own home.
54. On 4 January 2019, the Claimant called Bury & Walkers, stating that Elaine had now identified Jane Brear as certificate provider. The Claimant was also reported as saying “*Miss Lodge is not very well at the moment so would like her Will dealing with as soon as possible.*” Later on the same day, the Claimant called back with Ms Brear’s details. The Claimant’s evidence was that she did not know how Ms Brear had come to be asked to be the certificate provider but that it had not been due to her input.
55. On 11 January 2019, Ms Fletcher sent two letters, The first was to Elaine about the draft 2019 Will. The letter sets out an explanation of the draft, describing it as “*lengthy and in places quite complex.*” This was a consequence of the overage provision. The second letter was to Ms Brear and related to her acting as certificate provider.
56. In her statement, Kerry speaks of a conversation with Elaine about a letter from solicitors. Kerry says that Elaine said that the solicitors “*had got it wrong.*” Elaine then handed over a letter and said, “*This has got to go back to the solicitors today.*” Kerry said that she paid a recorded delivery fee and posted the letter to the solicitors. In cross-examination, Kerry said this incident occurred before Elaine had moved to Victoria House, while she was still living at The Rowans – indeed, she volunteered that the envelope had been handed over in the kitchen. Elaine did not mention her will in this conversation and specifically did not say that her draft will was wrong. She simply said that whatever was in the envelope was wrong. Kerry did not know what was in the envelope.

57. This incident might appear to be relevant as showing an independent expression by Elaine that she was not happy with the terms of the Draft 2019 Will. However there are two difficulties with this. The first is that the timing does not make sense as is explored further below. The second is that Ms Fletcher said that there was no evidence on the Bury & Walkers file of such a letter having been received at the solicitors. In particular, there is no evidence of any written response to the letter of 11 January 2019 from Ms Fletcher.
58. On 14 January 2019, Jane Brear called Bury & Walker and spoke to a secretary. She is recorded as stating that she was happy to act as the Certificate Provider. Ms Brear said that she had been asked to be the certificate provider, but not by the Claimant.
59. On 15 January 2019, the Claimant phoned Bury & Walker. It would seem that she spoke to a secretary, Jane Adam, who recorded as follows in a file note:

“Vicky Stevenson calling regarding the Will of Elaine Lodge. She said that Miss Lodge had received her draft Will yesterday in the post and it was all wrong. Vicky said that Ms Lodge was stressing over the Will being wrong and that she was worried that if anything happened to her the previous Will would take effect and that is also wrong. Explaining to Vicky that AF not arrived into the office yet and that our systems were currently down so therefore I could not access AF calendar. Vicky asked whether AF would be able to come out and see Miss Lodge to go through her Will with her and change it and sign it all in one day, saying I would not be able to give her an answer as I do not know what the changes would be and it would be Miss Lodge who gives AF the changes. Vicky understood this. Vicky also told me that she was moving Miss Lodge into Victoria House nursing home... today (15 January 2019) (where Vicky and Jane both work) due to Miss Lodge being unwell. Vicky also asked about signing the LPA?s on the same day as Jane Brear would be there who is acting as certificate provider. Vicky also said that we could invoice Vicky for the call out, she is happy to pay the invoice for AF to go out and discuss the Will with her and change it and sign it. Vicky said she would not want Miss Lodge to know that she is paying for the call out fee as she does not want Ms Lodge to worry about money.

After speaking with AF I gave Vicky a call back to arrange an appointment for AF to meet with Miss Lodge at the nursing home on Thursday between 9.45 ? 10.00. Vicky was happy with this. Specifically saying to Vicky that AF would need a private room organising for AF to discuss with Miss Lodge. Vicky said this could be arranged. Vicky then asking whether the will could be changed and signed on the same day. I said I did

not know what the changes would be and whether it would be complex or not. Vicky replied with ?it will not be complex after she has done with it on Thursday, she?s had enough of it?. Saying I would not be to say whether it can be changed and signed there and then. Vicky asked about the LPA?s again, saying something has arisen but AF will discuss it with Miss Lodge on Thursday but they will not be able to sign them. saying I could not give any more information on this. Vicky asked about the fees saying the travel fee is £50 plus VAT, Vicky asked if she could be invoiced for this. Vicky made it clear that the other fees quoted for the Will etc Miss Lodge would be paying. Saying an appointment had been made for Thursday but just to be aware that AF will be leaving straight from the school run through the morning traffic. Vicky was happy with this.”⁸

60. The Claimant essentially accepted the accuracy of this note. She said that the complaints about the complexity of matters and the need to bring things to a conclusion came from Elaine. She made the call at Elaine’s request.
61. In cross examination, Ms Fletcher said that she was aware of this call. She agreed that a call from a beneficiary to a will in which the beneficiary raised a proposed change of the testator’s intention in her favour together with the apparent urgency of the situation, the fact that Elaine was living in a care home where the beneficiary worked and the offer by the beneficiary to pay the solicitor’s costs associated with travel to the care home for the meeting to deal proposed change were all “*red flags*”. She states that she emphasised to her staff the need for them to take instructions only from Elaine herself and not from anyone else, because of the risk that undue influence was being exercised.
62. Later on the same day, 15 January 2019, Ms Fletcher says that she phoned Elaine. Her witness statement says of this conversation at paragraph 7:

“... I telephoned Elaine and spoke with her directly. I had no reason to conclude that anyone was with her as we were talking. It was during this conversation that Elaine told me that she had been having ‘lady problems’ but she didn’t elaborate so far as I recall. She told me that her stay at Victoria House was for respite care and that she would then return home. There was no sense of any medical urgency to complete the Will, but I was conscious that my office had been told earlier that day that the unresolved Will was causing Elaine some stress. We did discuss the certificate provider for Power of Attorney and I explained that, given that the proposed certificate provider worked at Victoria House, she is barred from being a certificate provider on

⁸ This note is reproduced as typed. There are some obvious typographical errors. In addition it would seem that the note recorded certain punctuation marks, both quotation/apostrophe marks and on one occasion a dash, as question marks.

the grounds that she was an employee of the care home that Elaine was then living in, albeit at this point I was being told by Elaine that the placement was only temporary for a couple of weeks. Once again, I can confirm that during this conversation, although I was certainly alive to the possibility of undue influence, I did not get any indication that there had been any... I never had any cause to doubt Elaine's mental capacity throughout this entire episode. During this discussion, I discussed her wishes in detail. I got the impression from Elaine that although she was not unfamiliar with options to purchase and that these were reasonably complicated, when she actually saw the draft Will she realised that it was too complex for her liking. She actually said (and I wasn't surprised when she said this) that she hadn't thought it would be as complicated as it was and, although in my opinion it encapsulated the instructions that she had given me in November, she firmly instructed me that she wanted the land now to be an outright gift to Vicky. She said she would need it for the horses (she was concerned about this) without any options to purchase or clawback provisions. She clearly now instructed me that the gift to Vicky was to be outright and unconditional, but that she would only want Vicky to offer it for sale to the Defendant should she ever wish to sell it. Elaine clearly and unequivocally told me this was a wish and nothing more, and it was clear that in Elaine's mind, it was up to Vicky what she did with the land once she had inherited it. She said she hoped that Vicky would keep the land in any case."

63. Ms Fletcher's account in her witness statement is a slightly expanded version of her account in a contemporaneous file note. The file note includes reference to a comment from Elaine that "*she thought that I may have misinterpreted her instructions.*" Again, in cross examination, Ms Fletcher referred to Elaine apparently believing that Ms Fletcher had misunderstood her instructions at the earlier meeting. Throughout her evidence, both written and oral, Ms Fletcher was clear that she had correctly understood what Elaine had had to say about the intended change to the Will relating to the Church Lane land in the meeting on 29 November 2018.
64. In cross examination, Ms Fletcher said that she could not recall whether she had spoken to someone else in this telephone call before speaking to Elaine. She accepted that there are risks in taking instructions about changes to a Will over the telephone and that indeed this was rare prior to the COVID 19 pandemic - of course, this conversation preceded the pandemic. Nothing in the phone call gave Ms Fletcher any concern either about Elaine's capacity or about whether she was being influenced.

65. Thereafter, Ms Fletcher redrafted the Will in accordance with Elaine's revised instructions. She was adamant in her evidence that she would not have redrafted the will in advance of a face-to-face meeting unless she had been satisfied that Elaine was not acting under the influence of another when she had given her instructions in the telephone call on 15 January.
66. As was foreshadowed in the Claimant's call to Bury & Walkers on 15 February 2019, Elaine moved into Victoria House on that day. The Claimant refers to Elaine having fallen twice prior to her move to the Claimant's house. It would seem that Elaine had expressed an interest in moving to Victoria House if the Claimant and her mother, Tina, would care for her and hence it was arranged for her to move there. The Claimant denied that the decision to move to Victoria House was influenced by either Tina or herself. She said that it was coincidental that she had only herself started to work at Victoria House the previous month⁹.
67. The move to Victoria House appears to have been funded by NHS Continuing Healthcare. Elaine was assessed for this by Dr Cooper, a General Practitioner, on 14 January 2019. The doctor certified that she had capacity to consent to the assessment. On admission to Victoria House, she was assessed by Tina who stated that she had no brain impairment and had "*full capacity.*"
68. The summary in the Victoria House records relating to Elaine's admission states, "*Elaine's request to come to Victoria House.*" The note records seven areas of care that need assessment but adds, "*Palliative Care required – short life expectancy ? weeks.*" That note was, according to the Claimant, written by her mother, Tina. The Claimant was listed as next of kin and also the person providing support for "*access*" in relation to financial affairs. The Claimant said her mother had recorded this.
69. Once at Victoria House, one of the members of staff with whom it would seem Elaine developed a reasonably close relationship was Jane Brear. Ms Brear says in her statement that it was obvious that Elaine had a close relationship with the Claimant, her brother, Andy, and her sister-in-law, Kerry. In contrast, she said that Elaine was negative about the Defendant. At paragraph 6 of the statement, she says "*I don't recall her speaking to me about him except on one occasion. I remember her screwing up her face in distaste and saying she didn't like him.*"

⁹ Whilst a long time earlier, the Claimant had worked at Victoria House as a carer, she had not worked there since she had qualified as a nurse. She said that she simply took the job that came up in December 2018, since it fitted in with her child care demands.

70. Ms Brear said Elaine was “*extremely strong willed.*” She would refuse to see people she did not like, including the Defendant and Josie – Ms Brear said she directly witnessed Elaine saying she did not want visits from them, although she would also refuse visits from former friends at the Pony Club – Ms Brear believed that this was “*because she didn’t want them seeing her in such a bad state and then going back and telling other people at the club.*” Sarah Steel confirmed that she and her mother had been turned away from Victoria House by Tina. She said that she was told to call ahead on future occasions.
71. Ms Brear recalls an occasion when Elaine spoke of changing her will at paragraph 13 of her statement. “*One day whilst I was bathing her, she told me that she had decided to change her Will. I did not prompt this conversation, it was Elaine who brought it up. I am aware that whilst she was at the home, Elaine changed her will. When she told me about her decision to change her Will there was no indication that anyone else was influencing her. I told her that it was up to her and she should do whatever she wanted.*”
72. In cross examination, Ms Brear was challenged on this account. The staff rota shows her working in the kitchen on 15 and 16 January 2019 and although there is reference to Elaine having a bath on 17 January 2019 which is consistent with Ms Brear having been involved, the entry is timed at 3.30 which would have been after the attendance to change the will referred to below such that any attendance then would have been after the new will was executed. On the first point, Ms Blair said that even if she was on the rota to work in the kitchen, she might in fact have been involved in providing care. On the second issue, she said that the conversation might have occurred when she was giving Elaine a bed bath.
73. On 16 January 2019, a doctor saw Elaine. She was prescribed Oramorph¹⁰ as well as other anticipatory medication. The oramorph was dispensed on that day. The only Medical Administration Record (“MAR”) for Oramorph at this time does not record that the drug was administered but it has written on it, “*See new MAR chart.*” No other chart with the date January 2019 has been disclosed.
74. There is an MAR chart for Elaine which does disclose that Oramorph was given on 15th to 19th of an unstated month. The Defendant suspects that this may evidence Oramorph being dispensed in January 2019. However, as the Claimant points out, a drug record shows oramorph being received on 16 January 2019 (consistent with the date it was

¹⁰ Oramorph is an opioid analgesic in oral preparation.

dispensed) but given on 15 – 19 February 2019. In accordance with records for controlled drugs, the table shows the balance left in stock. It is signed by various nurses. The last administration is said to be on 19 February 2019 leaving a balance of 70ml. That was recorded as being destroyed on 1 March 2019.

75. Of the drug record referred to in the previous paragraph, the Claimant accepted in cross examination that it had not been provided as a part of the initial disclosure. She said that it had been stored separately from Elaine's records.
76. On 17 January 2019, the 2019 Will was signed. Before turning to the circumstances in which this took place, it is relevant to note the nursing records for that day. An entry timed at 4 a.m. states "*medication given as prescribed with good effect. Appears comfortable with no obvious signs of pain.*" For reasons considered below, the Defendant relies on this entry as evidence that the Claimant was given Oramorph on the day of signing the will. The Claimant¹¹ accepted that euphoria or sleepiness can be side effects of taking Oramorph, though she said that she had not experienced anyone on a small dose being made drowsy by it.
77. Ms Fletcher attended Victoria House with her assistant, Margo, for the purpose of considering and potentially executing the new draft. The proposed certificate provider, Anna Steele, was present. Ms Fletcher dealt with the Power of Attorney first. Of this, she says at paragraph 11 of her witness statement, "*it is my standard practice, and one that I followed meticulously on this occasion, to go through the Power of Attorney document in detail, page by page, particularly regarding declarations and certifications, so that both the donor and the certificate provider are fully aware of all the responsibilities and confirmations, particularly that the certificate provider is aware of what he/she is certifying. I (as usual) took care to go through Section 10 on the document (signature of certificate provider) with family so that she had no doubt what she was certifying. I particularly drew her attention to the fact that she was certifying that the donor 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 Elaine to create the LPA.*"
78. Ms Fletcher states that Ms Steel then left the room and she started to discuss the draft will with Elaine. Margo remained present. She says that she carefully went through the document. At paragraph 12 of her statement, Ms Fletcher states that Elaine "*showed no*

¹¹ She was not of course called as an expert witness but as a nurse will have some experience of this drug.

signs of any confusion or memory problem. We discussed even the extent of the lands mentioned in the Will and the fact that the land may be a significant financial proportion of her estate. Elaine then seemed to take pleasure in recounting to me how she had effectively got the land for nothing and this is covered in my related file note. She was clearly financially astute at that stage. We discussed the possibility that Vicky would stop looking after the horses and just sell the land. Elaine fully understood this but basically said that would be Vicky's choice. She was alert and responded appropriately toward my comments. I was entirely satisfied she understood, agreed and confirmed all of it. I had absolutely no doubt whatsoever following the review of her draft that these were her instructions."

79. Ms Fletcher was clear in her statement that she did not make Elaine aware that she had a draft will ready to be signed in her possession until after Elaine had confirmed her instructions.
80. In cross-examination, Ms Fletcher said of the meeting on 17 January 2019 that it had lasted about two hours. She saw no evidence that Elaine was physically unwell (though she was sitting upon a "doughnut ring"). There were no signs of discomfort or agitation. She noted no signs of breathlessness. She described the conversation with Elaine as "*fluid*," both in the part where Ms Steel was present to discuss the LPA and, after she left, when the will was discussed.
81. In terms of the confirmation of the instructions relating to the will, Ms Fletcher said words to this effect according to my note: "*The approach I take is that the will is handed over – the client has the will in front of them. We review the provisions of the will together. I explain what the clauses mean. I ask if that is what they intended and whether there was anything else they wanted in the will that has not been included. The conversations happen in an open way for the client to be able to challenge what appears and for me to know that an adequate explanation has been provided and the client appears to understand.*"
82. Ms Fletcher said that she could not recall what question she had asked during this meeting. She accepted that the use of open questions to test the understanding of a testator were recommended in Law Society Guidance¹². Ms Fletcher said that Elaine was adamant that she wanted the change in the will to give the land to the Claimant.

¹² The use of open questioning is referred to at paragraph 2.7.3(a) of the Law Society Wills and Inheritance Protocol dated 3 July 2013, where it speaks in the context of a solicitor seeking to assess testamentary capacity without having a medical opinion of the need to "*Ask the client open questions to establish whether, on the balance of probabilities, the client fulfills (sic) the test of testamentary capacity as set out in Banks v. Goodfellow.*"

She accepted that she had not asked why Elaine was changing her will from giving the right to buy to the Defendant but Elaine was emphasising the need for the Claimant to have the land so that she could care for the horses. She said (according to my notes) that, *“When I put it to her that Victoria could get rid of the animals and sell the land, she did not regard that as remotely likely and her focus was that Victoria would look after the animals and she would need the land to look after the animals. She acknowledged that Victoria could get rid of the animals and sell the land, but she did not think that was a realistic possibility.”*

83. Ms Fletcher was asked about what she would have said had she been aware of the alleged incident when the Claimant had shouted at Elaine. Her response, again according to my note, was *“I would have said that was not appropriate and I would have said I am not able to prepare a will if you are giving instructions based on that conversation.”*

84. While Ms Fletcher said that she had not discussed the Claimant’s call to her firm on 15 January 2019 during her return call to Elaine on that day, she had discussed it on 17 January 2019. Elaine said she was not aware that the Claimant had telephoned Bury and Walkers on 15 January 2019. She accepted that any professional would be concerned to find that a beneficiary had made call of this nature which had not been authorised by the testator. She accepted that this was not recorded in the attendance note of the meeting on this day but should have been.

85. Notwithstanding robust cross examination, Ms Fletcher maintained that she understood that Elaine was acting freely. She denied attending Victoria House with the fixed intention that Elaine would sign the will as drafted and she did not accept that her approach to the issues of capacity and/or undue influence were *“woefully inadequate.”*

86. Anna Steel spoke in her witness statement of her involvement as certificate provider:

“I...I was asked to be a certificate provider for Elaine’s Health and Welfare Power of Attorney, by Vicky and I agreed. Admittedly, I did not really know a great deal about the process; I got a phone call from someone a few days before, I do not remember who made the call and I was not aware at the time who the person was, but I assumed it was the solicitor. I was given a time to be at the care home and I believe I arrived first. I went and saw Elaine for a short while in the dining room, she seemed to understand why I was there. I had never seen the documents before that day. Elaine told me it made sense to have Tina and Vicky as they were there. I had never been a certificate provider before, and I was not sure what was involved. In fact, looking back

I do not think that I really understood what was being asked of me, it was never explained to me by the solicitor. It wasn't explained to me about why I was being a certificate provider, I didn't do anything to check that Elaine had capacity to sign and very little was done to explain the consequences.

*12. We were in the care home's dining room sitting at a round table. Initially there was Elaine and a lady (I think the solicitor) and myself and at some point, Vicky and her mother, Tina called in and signed the document. I 100% do not think Elaine was *compus mentus* (sic) to change her Will, but I think she understood the health stuff, saying yes, when needed. Elaine's health was not discussed while I was there. I remember the solicitor explaining to Elaine that Tina and Vicky could make decisions, however Elaine was not asked to repeat back to her what she understood the health and welfare meant and Elaine was very good at trying to hide her illness. Elaine just agreed and signed when asked. She seemed a bit *dopy*. I recall Vicky once had told me at some point that I shouldn't worry they had enough drugs to make Elaine *comfy*. Looking back now, I do not think that the solicitor was aware of Elaine's condition and how poorly she was. The solicitor never asked Elaine about her mental health or medication, or asked same of Tina or Vicky. I think Elaine was definitely on pain medication, I could have said that she was happier in her demeanour as if some pain had been taken away. She was not 100% there, in her mind, in that she was so frightened of everything. She just wasn't herself."*

87. The Claimant agreed that she had asked Ms Steel to be the certificate provider. She said that this was at Elaine's request and was not her own initiative.
88. In cross examination, Ms Steel said that she had spent about 20 minutes with Elaine before they had gone through the power of attorney. She thought Elaine was "*dopey*" from the moment she saw her on that day and, because she was not saying she was in pain, she assumed she was on pain medication. Asked about Elaine's capacity, she said, "*I cannot say whether she was *compos mentis* to change her will – if I had been asked her about doing financial issues, I would have said no. I believe she was not herself, but she understood enough for the health and wellbeing had someone said they were going to do financial things, I would not have thought she was up to that.*" Ms Steel was clear that, had she thought that Elaine was being mistreated or was under pressure when the solicitor attended Victoria House, she would have said something.

89. Kerry said in her statement that she and Andy had attended Victoria House to see Elaine on the day that the “two legal representatives”¹³ had attended. She had waited outside whilst they were talking to Elaine. After they had left, “Elaine was her usual self, showing no signs of any mental issues.” She described Elaine on this day as being “mentally absolutely fine. She knew everything that was going on. There was no sign of forgetfulness and no lack of understanding that I could detect.” It was put to Kerry in cross examination that she was not at work on 17 January 2019 and further the visitors log did not record her attending. Kerry replied that she and Andy definitely had attended and that “it slipped my mind to sign it.”
90. Ms Brear also said she witnessed the visit by two people from the solicitors’ office, presumably to deal with changes to the will. She said that the two people had seen Elaine privately in the dining room. She was not aware that anyone else went into the room during the meeting, although (as she put it in her statement) “I wasn’t particularly keeping track.”
91. More generally, Kerry and Ms Brear both said in their statements that they were not aware of anyone putting pressure on Elaine prior to her death. Kerry said that, had they done so, Elaine “would have given them short shrift.” Ms Brear said, “it was clear to me that she knew what she was doing when she changed her Will and that it was her own decision rather than anyone else’s. I am not aware of her being put under any pressure to change her Will and I strongly believe that even if anyone did try to influence in this regard, she would have instantly rejected it.”
92. Of Elaine’s capacity, Ms Brear said, “I have no doubt at all that Elaine was fully in control of all her faculties right to her passing. Nothing she ever said or did in my presence gave me reason to doubt her memory, understanding and resolution, once she had made a decision...There was not a time in my presence when she ever showed any signs of confusion or memory loss or susceptibility to influence from anyone or anything about any subject. It was clear to me that she knew what she was doing when she changed her Will and that it was her own decision rather than anyone else’s. I am not aware of her being under any pressure to change her Will and I strongly believe that even if anyone did try to influence her in this regard, she would instantly have rejected it.”
93. In Adele’s evidence, she made reference to several matters of significance:

¹³ Presumably, Ms Fletcher and Margo.

- 93.1. Elaine thought that Tina had arranged for her to live in the nursing home for free, though she never said or suggested that the Claimant was paying her care fees.
- 93.2. At no stage did she see anyone putting pressure on Elaine, whether before or after she went into the care home.
- 93.3. However, Vicky had described to her the incident referred to thus at paragraph 16 of the witness summary: *“I remember being in Auntie Elaine’s room with Vicky and Vicky said that she had had a right shouting at, Auntie Elaine. She said tht if she didn’t have the land then she couldn’t look after the horses. Auntie Elaine wasn’t there at the time, but I recall this conversation was within the nursing home.”* In cross examination, she said, *“I was stood in the room and Vicky told me she had had a screaming match with my Auntie Elaine and she had told her that if she did not leave her the land she wouldn’t look after the animals. I understood that this had been the day before. Elaine was not bed ridden then so I believed it would have been early in the four week period¹⁴.”*
- 93.4. She said of the effect of this, *“I think that Auntie Elaine was left under no choice from what happened. From what Victoria told me, she had screamed and shouted at Elaine and said that if she did not change the will, she would not look after the animals. I could see that my Auntie Elaine would change the will because they were her life.”*
- 93.5. However, Adele made clear that she had not discussed this incident with Elaine. *“This was Elaine’s personal business. I believed at the time that Vicky did need the land to look after the horses.”*
- 93.6. Elaine had not been secretive about the will and indeed had wanted Adele to read one version of it, though she did not.
- 93.7. She felt that when she visited Victoria house to see her Aunt,, she was not left alone. In the witness summary, reference is made to *“being supervised by Vicky, Tina and Vicky’s brother’s wife, Kerry.”*
94. Adele’s account of being told by the Claimant that she and Elaine had had some disagreement about the need for the land to be left to her with the horses would most naturally seem to have taken place between Elaine’s arrival at Victoria House on 15

¹⁴ Meaning Elaine’s period at Victoria House.

January and the changed instructions and execution of the will on 17 January. Given that Adele said she was being told about something that had happened the previous day, it would seem that the conversation must have been on 16, 17 or 18 January. However, there is no entry in the visitor's log showing that Adele attended on one of those days to match this.

95. The Claimant denied that any such incident had taken place. She did not identify any other conversation that she had had with Adele that might have explained Adele's account of such a discussion. On the other hand, she said that, had Elaine been told that her animals would only have been looked after if she gave the land to the person she expected to look after the animals, she conceded Elaine would probably have gone along with that.
96. Adele's experience of feeling that she was not being left alone with Elaine was corroborated by Sarah Steel who spoke of being in the communal area with Elaine at Victoria House and both the Claimant and Tina repeatedly speaking to Elaine, interrupting their visit. Sarah Steel also formed the impression that Tina and/or the Claimant were trying to stop Josie from seeing Elaine. She speaks at paragraph 25 of her statement of "*one occasion when I had been permitted to see Elaine, we were sitting in the sitting area and I was sat to Elaine's left, Tina came up to Elaine, leaned in again and said, 'that Winter woman has rung again. I've told her that you're not up for a visit and Elaine replied 'okay right, oh right, if that's what you think best'.*" Anna Steel also described how Vicky or Tina were always there when she visited Victoria House to see Elaine.
97. In contrast, the Claimant said that, though she had gone beyond the call of duty in taking Elaine's laundry home to wash, her interaction with Elaine was otherwise the normal for someone working as part of a team of nurses caring for the 30 or so residents at Victoria House. She had not taken any part in vetting who visited Elaine, though she had had to tell people who wished to visit her that they needed to contact Victoria House direct rather than texting the Claimant herself.
98. I have noted above that there is evidence of Elaine being administered Oramorph from 15 February 2019. Other medicine that had been prescribed on an anticipatory basis, namely Haloperidol, Midazolam and Diamorphine were given thereafter. She sadly died on 22 February 2019, aged 74.
99. Following Elaine's death, the terms of her will became known. In cross examination, the Claimant said that this was the first she knew of the contents of the will, other than

that the house and horses were to be left to her. At points in her statement (paragraphs 10 and 37) she refers to being aware that Elaine was bequeathing land to her. In later cross examination, she said that she was told after the execution of the 2017 Will by Elaine that she had bequeathed some land at Lund Hill Lane to her, in addition to the animals. In contrast, the Particulars of Claim state that after the meeting on 29 November 2018, Elaine told her *“that in her new will she gave the Claimant her horses, dogs and land at Lund Lane.”* But as the Claimant herself said, these were given to her in the 2017 Will so there was nothing new in the proposed provision. These inconsistencies were not explained.

100. Sarah Steel said that she was surprised because, *“Elaine had always said that the field¹⁵ belonged to the house, meaning Dan’s house. I believe that Elaine was impressionable and vulnerable whilst she was in the care home. I also admit that I worried that the change came about as a result of Vicky’s and Tina’s spite towards Dan and Josie.”* Anna Steel also said that she could not understand why the terms of the will would have been changed to the disadvantage of the Defendant. At paragraph 20 of her statement she says, *“Given the number of times that Elaine had said that the land belonged to Dan’s house, it does not feel right to me that Elaine’s Will does not leave the land to Dan. It was not a secret; it was well known. Elaine had been telling me and others on numerous occasions for many years that she had left the land to Dan. I have been told that Elaine’s previous Will did allow Dan to have the land and the new one does not. I cannot understand what could have changed Elaine’s mind on this point, given how adamant she had been about where the land would go after she died. I do not believe for one minute that Elaine would have chosen to change her Will, willingly. Elaine would not have changed her mind on that. I don’t think she would have done that to Dan, she adored him. She was in such a vulnerable state whilst she was in the care home. I think she would have jumped off a cliff if Tina or Vicky asked her to.”*

101. The Defendant said at paragraph 34 of his statement, *“I don’t want to criticise the Claimant for the time she spent with Elaine towards the end of her life. I know she did some things for Elaine that she needed help with, but I do feel that it was done in a calculated way. Elaine was the sort of person who could never be bothered to change things, she always felt that leaving things as they were was fine. She would have never changed her Will on her own and she certainly wouldn’t change her mind about something she had decided so many years ago. I believe that Vicky used her position at the care home to isolate Elaine, shutting out my mum and me and using Elaine’s illness*

¹⁵ That is to say the Church Lane land.

and vulnerability to get her to change her will.” In cross examination, he spoke of his belief that undue influence was applied in the build up to the execution of the 2019 Will.

102. It should be noted that there is no evidence that the Claimant specially needed the Church Lane land to house the horses. The Defendant said that the Lund Hill land was better for the horses than the Church Lane land. Whilst the horses had historically been alternated between the two parts of the title, it was the Lund Hill Lane land that produced the better hay. Further, he said that there was enough land at Lund Hill Lane to house them.
103. The Claimant said in cross examination that horses need about 1 acre of land each. The Church Lane land was about 36 acres (including as I understand it, a low lying part that would be unfit for the horses); Lund Hill Lane was suggested to be of similar size, though the Claimant was unsure whether that was so. Certainly, the map would suggest them to be of similar acreage. At the time of Elaine’s death she had 7 horses; of these, 5 survive. So the Claimant’s evidence also supports the conclusion that the Lund Hill Lane land would have sufficed.

SUBMISSIONS

(i) Lack of testamentary capacity

104. I have noted above the presumption of capacity where a will is duly executed and appears rational on its face. The Defendant concedes that he bears an evidential burden in terms of raising evidence to displace that presumption. He contends that he does so by establishing that, on the balance of probabilities, Elaine had taken Oramorph on the day that she signed the will.
105. He acknowledges that the controlled drugs records point towards the conclusion that Oramorph was not first administered until February. However, he makes four points in support of his argument that that record is probably misleading:
 - 105.1. The document was only produced late in the day; if it was genuine, one would expect it to have been disclosed at the same time as other documents.
 - 105.2. In the Reply, the Claimant puts her case in respect of the administration of Oramorph, Diamorphine, Midazolam, Haloperidol and Hyoscine. The Statement of Case goes on to say when each of Diamorphine, Midazolam, Haloperidol and Hyoscine were first administered (in the case of Hyoscine, not at all, in respect of the other drugs, not until February 2019). The failure

to mention when Oramorph was first given suggests that it was in fact being given in January 2019.

- 105.3. The entry on 17 January 2019 (“medication given to good effect”) comments on the effect of medication. The Claimant agreed during cross examination that one would not record the effect of the administration of routine day-to-day progress. This suggests that something other than a routine drug was given, Oramorph being an obvious example.
- 105.4. The reference in the MAR, following the dispensing of morphine on 16 January 2019, to “see new MAR chart” suggests that there is another chart showing when Oramorph was dispensed.. This has never been produced probably because it would show the administration of Oramorph in January 2019.
106. If the court finds that Oramorph was in fact given on the morning of 17 January 2019, this would be consistent with Elaine being under its influence when the Will was executed. This raises a doubt on capacity which, on the Defendant’s case, would be sufficient to shift the burden of proving capacity onto the Claimant. However, there is no evidence of anybody considering her testamentary capacity, beyond Ms Fletcher’s account. That however is to be criticised for reasons set out above. The court cannot place any weight on it and therefore the Claimant fails to discharge the burden of proving capacity.
107. The Claimant’s case is that it is clear from the medical and drug charts that Oramorph was not given on 17 January 2019. Even if it was, the Claimant does not accept that this would shift the burden of proof.

(ii) Undue Influence

108. The Defendant puts this as being at the heart of his case. He acknowledges that he bears the burden of proof. He accepts that the court is not concerned with the fairness of the 2019 Will, since a testator can of course dispose of their estate as they wish. However the question is: did Elaine act as a free agent?
109. It is of course the case that where undue influence is exercised, it is likely to be done secretly. The court may have relatively little direct evidence of the application of undue pressure on a testator. Rather, it will be asked to draw inferences from surrounding evidence.

110. The Defendant contends that the alleged conversation between the Claimant and Elaine is of considerable significance. There is no reason for Adele to have lied about this. If she is telling the truth then the Claimant's credibility is damaged but more importantly there is direct evidence of an incident in which influence may have been applied to Elaine.
111. If indeed such a statement was made, the Defendant points to the Claimant's evidence that, had someone said that they would only look after the horses if she gave the land to that person, Elaine probably would have gone along with the condition and left the land to that person. He notes the evidence of Ms Fletcher that, had she been aware that a conversation of this nature had taken place, she would not have proceeded to invite Elaine to execute the Will.
112. Further, the Church Lane land appears to have significant value from its development potential. It is therefore significantly to the Claimant's benefit if the 2019 Will is found to be valid. Of course the contrary point can be made against the Defendant – if the 2017 Will is valid, he comes into an asset of some significant value.
113. The Defendant accepts that the evidence shows historically that Elaine was strong willed. But by January 2019, she was very unwell with terminal cancer. The evidence suggests that she was scared of death. She was likely to be comforted by the belief that leaving the land to the Claimant would secure the position for the horses.
114. The Defendant draws attention to the evidence that the Lund Hill Lane land should have been sufficient for the horses. This seems to have been the view that Elaine took when she made the 2017 Will, since she left that land and the horses but not the Church Lane land to the Claimant. This is indicative of a change in attitude by Elaine at the time of executing the 2019 Will, consistent with her being pressured to make the change.
115. The Defendant contends that Elaine had shown a settled intention to give the land to him. The 2011 Will file contains evidence that she was appreciative of the assistance he had provided with horses and the disposition was repeated in the 2017 Will. The evidence does not suggest that the relationship between Elaine and him petered out in a way that might mean she would change her will. Indeed, even in 2019, Elaine expressed the wish that the Claimant give him first option if he sold the land, suggesting that she remained well disposed towards the Defendant.

116. Anna Steel is described by Ms Collinson as being “*a very impressive witness.*” she had a close relationship with Elaine. She was clear that Elaine had always been clear in wishing that the land go with the Defendant’s house.
117. On the other hand, the Defendant contends that adverse inferences can be drawn from the Claimant’s evidence.
- 117.1. Her credibility is damaged because she lied in denying having told Adele of the argument with Elaine.
- 117.2. Her attempts to paint the Defendant in a negative light indicate that she is motivated to harm him, as necessary to get the result she seeks in respect of the determination of the will issue.
- 117.3. She refused to address what was said in the meeting relating to the Lasting Power of Attorney, presumably because the reference to Elaine not wanting her to be a financial attorney is inconsistent with the narrative that the Claimant wishes to promote that Elaine was unequivocally positive about her.
- 117.4. The Claimant was inconsistent in her account as to the terms of the proposed will. Whilst at one point she denied knowing what was in the will, at another point she accepted that she did know.
- 117.5. It is apparent that, after the meeting on 29 November 2018 Elaine did not chase up the redrafted Will. This would indicate that it was not high in terms of her priorities. Yet the Claimant did pursue the change, suggesting that she was eager to ensure that the change which was favourable to her should be executed as soon as possible.
- 117.6. When the Draft 2019 Will was sent, it was the Claimant who contacted the solicitors on 15 January 2019; and equally it was the Claimant who said that Elaine was not happy with the draft will and would put it right and that there was urgency. Given that Elaine was living with the Claimant by this time, she had the obvious opportunity (as well as motive) to see the draft and to try to manipulate the matter so as to change the Will urgently.
- 117.7. Furthermore, the Claimant was inquiring of the solicitors whether Ms Fletcher could take instructions on the will and it be executed on the same day. She was willing to pay the travel costs to permit this. This is indicative of the Claimant being in control of the process, being aware of what changes Elaine was going to make and that she was clear about those changes. This is

consistent with there having been the argument described by Adele and indicative that the Claimant is controlling the process by influencing Elaine.

- 117.8. It is obvious that it was the Claimant rather than Elaine who asked Jane Brear to be the certificate provider. The Claimant had contact with Ms Brear through working at Victoria House, whereas there is no evidence of any contact between Elaine and Ms Brear when the request could have been made. Again this is suggestive of the Claimant tried to manipulate matters to achieve the end that she wished.
118. The Defendant contends that what Kerry said about being asked by Elaine to return what was presumably the Draft 2019 Will to the solicitors is wrong and is an attempt to bolster the Claimant's case. If, as Kerry said, this incident took place when Elaine was still living at The Rowans, the letter she was handed cannot have contained the 2019 Will since that was not sent out by the solicitors until after Elaine had gone to live with the Claimant. There is no other suggestion of any other document being sent out that the solicitor might have "*got wrong.*" In any event, there is no evidence on the solicitor's file of the draft 2019 Will (or indeed any other document) having been returned. The Defendant contends that this is an untrue account from Kerry.
119. Equally, the Defendant contends that Ms Brear's account of her conversation with Elaine about changing the Will whilst she was having a bath is incorrect. The records show that her first bath was after the execution of the 2019 Will. It would make no sense for Elaine and Ms Brear to have a conversation about changing the Will if it had already been changed. Two other points are made: first, Ms Brear was rostered to be in the kitchen on 15 and 16 February 2019 – it must have been on one of those days but it is inherently unlikely that, when voted to work in the kitchen, Ms Brear would in fact have been assisting with a bath; second, the evidence is that Elaine was a private person. It is unlikely that she would have had a conversation like this with a stranger.
120. Against the suggestion that Elaine was not happy with the draft 2019 Will and that she changed it of her own free will can be balanced not only the fact that she was clearly not as ill disposed to the Defendant as the Claimant's evidence suggests but more importantly perhaps that, on the first occasion of giving instructions about her will, she indicated a clear intention to continue to benefit the Defendant but with overage provisions that would prevent him making a windfall from any development value. This was a perfectly rational approach from Elaine, consistent with previous expressions of her testamentary intention in which she carefully limited the benefit that

people might achieve, so as to balance the interests of beneficiaries. An example of this can be seen in her various creations of rights to buy at 50% of market value.

121. Ms Fletcher said that Elaine's intentions as expressed in December 2018 were clear, even if the expression of those intentions in the draft 2019 Will were complex. However, the apparent change of course in the meeting with Ms Fletcher on 17 January 2019, from a qualified bequest to the Defendant to an absolute bequest to the Claimant, is unexplained. The fact that it is unexplained is, on the Defendant's case, strongly suggestive that it was due to the application of influence.
122. More generally, the Defendant is critical of the approach taken by Ms Fletcher. It is asserted that she was an unimpressive witness whose questioning of Elaine was superficial, using closed rather than open questions. When one comes to the crucial meeting on 17 January 2019, Ms Collinson contends that there were several probing questions that Ms Fletcher should have asked: Why had Elaine changed her instructions? Why was Elaine no longer concerned about the Claimant potentially disposing of the horses and the Church Hill land? Why was the Lund Hill lane land no longer considered sufficient for the Claimant to stable the horses? Had she fallen out with the Defendant? Why was it the Claimant, rather than Elaine herself, who was contacting the solicitors in respect of the draft 2019 Will?
123. Had such questions been asked, it would have given Ms Fletcher a much better picture by which to judge whether Elaine was acting under the Claimant's influence. Since Ms Fletcher had accepted that the circumstances were raising warning flags as to what was going on, it was incumbent upon her to do that; her failure to do so deprived her and ultimately the court of the ability to judge how robust her evidence was on the issue of capacity or on whether Elaine was being subject to influence.
124. The Claimant's position is to place great weight on the evidence of Ms Fletcher. She is genuinely independent and says that she had no doubt that Elaine knew precisely what she was doing in the meeting on 17 January 2019. She saw no evidence to indicate that Elaine was under any pressure. Ms Fletcher pressed Elaine on her proposed bequest to the Claimant and her reason for it, making the obvious point that, once the bequest had taken place, there was nothing to stop the Claimant disposing of the horses and taking advantage of the land that had been left to her. Ms Fletcher said that Elaine understood this and accepted that it was a risk.
125. The Claimant also places reliance on the fact that Anna Steel was willing to sign the power of attorney. Whilst of course Ms Steel's witness statement was to the effect that

she did not understand what was required of her, it was not adequately explained and that she did not do anything to check that Elaine had capacity to sign the Lasting Power of Attorney, she accepted in cross examination that she considered Elaine to have the capacity relevant to health and welfare issues.

126. The Claimant contends that the picture of Elaine on 17 January 2019 is of someone who was reasonably well, not someone who was likely to be influenced to change her will. The Claimant was not present during the discussions about the will between Elaine and the solicitor. It is therefore not clear how she could have exercised the influence alleged. Moreover, Elaine was able to explain rationally to Ms Fletcher the reasons for the change of mind, namely that the will was too complex.
127. The Claimant invites me to consider whether it is plausible that, were the Claimant to have intended to pressure Elaine into changing the will, she would have focused on the Church Lane land. It would have been far more obvious to pressure Elaine to change the disposition relating to The Rowans, creating an outright gift, rather than a right to buy. Moreover, my attention is drawn to several aspects of the Claimant's evidence that are said to be indicative of her being an honest and straightforward witness. In particular, she did not seek to go behind the note from the secretary at Bury & Walkers, Jane Adam, on 15 January 2019. It would have been the easiest thing in the world for the Claimant to say that the note was not entirely accurate and had got slightly the wrong flavour, given that Ms Adam was not called to give evidence. She did not do this, rather she accepted what the note said on its face.

DISCUSSION

(i) General matters

128. As is typical in cases involving challenged variations to a will, a great deal of the witness evidence, especially in the statements, centres upon identifying which potential beneficiary is considered by the witness to be more deserving and/or why another potential beneficiary behaved in a way which might have led the testator to take a different view of them. The former issue is always irrelevant; the latter may have some relevance (and there is clearly an argument here that certain events may have led Elaine to be less well disposed to the Defendant in the period shortly before her death) but even then I am cautious in placing weight on the evidence of witnesses who almost certainly prefer the cause of one party or the other, even if they themselves do not benefit from the will either in its original form or as varied.

129. It has been observed that the evidence of a witness as to their own beliefs and attitudes is prone to be unreliable. The evidence of witnesses as to somebody else's beliefs or attitudes is even more problematic. Humans naturally seem to believe that they understand other people; real life experience suggests that they are often wrong.
130. This case has the added complication of touching on issues relating to animals, with some question about their welfare. There were various references both in oral and written evidence to the approaches taken both by the Claimant and the Defendant to the welfare of horses. It would seem that each considers that they have some cause to be critical of the other in this regard. Fortunately, it is not necessary to explore those issues in this judgment..
131. The Claimant was clearly a witness of whom it might be said that she had a motive to lie. In fact, she made some concessions during her evidence that suggest that she was seeking to assist the court rather than to mislead it. But in several respects, I am troubled by her evidence.
- 131.1. The Claimant has repeatedly sought to paint herself in a good light. By way of example:
- (a) at paragraph 7 of her witness statement she says, "*Needless to say, I had very close relationships with both Brenda and Elaine...*" Notwithstanding the opening words, it is not obvious why this would be so.
 - (b) At paragraph 9 witness statement, she describes her relationship with Elaine and Brenda as "*excellent*" - this seems an odd word to choose.
 - (c) At paragraph 10 she says the closeness of her relationship with Elaine and Brenda was "*difficult to describe*" – is not obvious what that difficulty it said to be.
 - (d) At paragraph 21 of the statement she says that "*obviously*" she was supporting Elaine to the full extent that she could - again it is not clear why that is said to obvious.
 - (e) More generally, the claimants repeated reference to the many tasks that she did for Elaine appears designed to elicit sympathy in the reader of the statement

- 131.2. In contrast, the Claimant's evidence, particularly in her witness statement, is very negative about the Defendant. Her reference to Elaine having 'grudges' against him is unconvincing. Many of the incidents of which she speaks either seem to be utterly trivial or to be capable of bearing alternative interpretations. Her evidence sounds as if she is trying to use any material that she can dredge up to persuade the reader that Elaine was ill disposed to the Defendant.
- 131.3. At frequent points in her evidence, the Claimant was eager to express her opinion about medical matters relating to Elaine and/or about Elaine's views more generally. On the former issue, I accept that, as a nurse, the Claimant was probably more knowledgeable than most people in the court room on medical matters. However her eagerness to impart her view may be concerned that she was seeking to advance her case rather than dispassionately commenting upon the evidence. This impression was very much strengthened by her enthusiasm to tell the court what Elaine thought on a whole variety of issues. Whilst I accept that the Claimant believes that she knew Elaine well, I am extremely cautious in accepting that she was able reliably to impart Elaine's true thoughts and feelings.
- 131.4. For reasons identified below, I reject the Claimant's denial of her having had an argument with Elaine around the time of the change in the will. I can see no reasonable alternative explanation than that that she has lied about this. While she may have lied because the incident might be thought to cast her in a bad light, rather than for the more sinister purpose of covering up the exercise of undue influence, her lie on this issue taints her evidence on other matters where what she says is not supported by independent evidence.
132. I found Ms Brear's evidence in respect of the incident said to have taken place while she was bathing Elaine to be unconvincing. The fact that this incident is said to have happened when she was giving Elaine a bath was put forward in the witness statement as though to explain how she remembered particular features of what had happened. It seems to me unlikely that one would misremember someone having a bath in the conventional sense of the word with on the other hand someone having a bed bath. It was not Ms Brear's evidence that she had meant a "bed bath" when she used the word "bath." Rather she accepted that she may have made a mistake in this regard. But if she is mistaken in this regard, one must wonder whether she is mistaken more generally

about the incident, including as to what was said. I conclude that her evidence on this issue is unreliable.

133. It is possible that this was part of a concerted attempt to mislead the court, consistent with my finding that the Claimant has lied. It is also possible that Ms Brear has misremembered an event that happened later, though I see force in the argument advanced by Ms Collinson that it is improbable that Elaine would have discussed such a personal matter with a carer at all.
134. The starting position in analysing what is alleged to be a lie is the fact that most people do not lie most of the time. A finding that someone has lied is a relatively serious matter and calls for reasonably compelling evidence, even where the standard of proof is, as here, the balance of probabilities. On balance, I am not persuaded that it is more probable than not that Ms Brear was lying.
135. In general terms, I found Kerry to be a plausible witness. In particular, her evidence as to Elaine having handed a document to her to post back to the solicitor was convincing. It is difficult to think that this account could be anything other than broadly true or an invention. If it was an invention, one would have expected Kerry to add to her account that it was the Will that Elaine was returning to the solicitor. However, Kerry was clear that she did not know what was in the envelope. Furthermore, her account is of course consistent with Elaine being dissatisfied with the draft will.
136. On the other hand, there are two distinctly puzzling features of her account. The first is that it was clear in her recollection that she was handed the envelope by Elaine whilst they were in the kitchen at The Rowans. If such an incident took place, it must have been before the draft 2019 Will was sent out, since Elaine was living at the Claimant's house, then Victoria House, from just after Christmas 2018 yet the draft 2019 Will was not sent out until January 2019. Second, it is a distinct puzzle as to why there is no record of this communication on the solicitor's file.
137. I accept that Kerry is broadly accurate about this episode and I certainly consider that she is trying her best to assist the court as to what she recalled. However it is probable that she has misremembered when this happened; and even if she is correct, it could be that the document being referred to was something other than the will (even though it is not clear what it might have been). In any event, there is persuasive evidence from Ms Fletcher that Elaine was dissatisfied with the draft will. But as a result of the application of undue influence by the Claimant, such influence could as well have been exercised before as after the incident described by Kerry (even if, for example, the

explanation of the apparent inconsistency as to where Elaine was living is because Kerry has forgotten that it took place after her move to the Claimant's house) and therefore, assuming for the moment that the document in the envelope that Elaine wished to be posted was the draft 2019 Will, I do not consider that Kerry's account of this incident materially helps me on the issues that I have to decide.

138. As to whether Kerry was present in the care home on 17 January 2019, I have noted above that she accepts that her name and that of her husband do not feature in the visitor's log. Her account that it had slipped her mind to sign in sounds like a late rationalisation of the absence of a signature rather than a true recollection. However her account of being present at the care home on 17 January 2019 had the ring of truth about it and did not involve the kind of embellishment that one might have expected had the account been invented. On balance, I accept that she was present in the care home on that day and saw nothing to cause her concern as to Elaine's capacity. This of course is consistent with Ms Fletcher's description on the same day.

139. As to Kerry's more general evidence about Elaine being relatively ill disposed to the Defendant in the period before her death, I consider this to be of relatively little weight.

139.1. I have noted above the tendency for witnesses in cases of this nature to seek to express views about the testator's state of mind which might reflect the witnesses own view of what was going on rather than that of the testator.

139.2. Whilst I accept that the incident in respect of the driving licence gave Elaine some cause to think negatively about those she considered responsible, I do not accept that the Defendant fell into that category (because nobody has suggested that he was the cause of the driving licence being revoked, whether directly or indirectly) and because, in any event, whilst there is evidence of Elaine having felt ill will towards people because of the incident, specifically in respect of her niece, Rachel, it is clear that she nevertheless maintained a balanced view, continuing to accept Rachel's suitability if she were to need a financial attorney and not changing the will to Rachel's disadvantage, by altering her share in the residue. If Elaine did not take steps to change Rachel's beneficial entitlement on account of this episode, it is very unlikely that it would have motivated her to change the Defendant's entitlement, given that he bore no responsibility for what had happened and there is no evidence that Elaine irrationally blamed him for it.

- 139.3. The incident in respect of the Defendant bursting into tears and Elaine's negativity to him because of this is clearly consistent with her being a matter-of-fact person who did not want to be reminded of imminent death by the emotions of people around her. Again, I consider that the evidence suggests that Elaine was rational. Whilst the Defendant's behaviour may have caused her not to want to have contact with him in her remaining days, I see no reason to think that it would cause her to change the will to his disadvantage.
140. Thus, even if Kerry's evidence is right about a change in attitudes towards the Defendant in late 2018, I do not consider that this bears in any material way on the issues that I have to determine.
141. I am conscious that I have found reason to disbelieve aspects of the Claimant's evidence. It might be suggested that Kerry too has deliberately misstated matters in order to support the Claimant's case. However on balance I do not consider that to be the case. The mere fact that one witness for a party may tell lies does not mean that others are lying even if their own evidence is mistaken. Clearly, the greater the number of witnesses who give mistaken evidence, the more the court might be drawn to the conclusion that the mistakes are not coincidental but rather are part of a concerted attempt to mislead. But, as I have indicated, I found Kerry to be plausible and probably right on some significant issues. In those circumstances I do not draw the conclusion that she and/or Ms Brear have deliberately lied.
142. In the case of Ms Fletcher, another issue arose. Whilst I saw no reason to think that she was acting otherwise than in an appropriately independent fashion, the Defendant raises an issue as to whether in fact her mode on interviewing Elaine was sufficient to elicit reliable material from which to judge Elaine's capacity. In particular, although Law Society guidance (and indeed common sense) would have a solicitor use open questions to explore changes in testamentary dispositions, the Defendant contends that she was unable to give examples of open questions that she had asked.
143. I have some concerns from Ms Fletcher's evidence that the questioning was not sufficiently open. I would have expected her to start the meeting on 17 January 2019 with asking again what testamentary dispositions Elaine wished to make. Given that Ms Fletcher had received instructions in December 2018 which she considered to be clear giving the right to buy the Church Lane land to the Defendant and have then received instructions January 2019 to say that she had misunderstood what Elaine wanted, it would obviously have been sensible to start with an open-ended discussion

with a view to establishing varied instructions. Further, I would have expected Ms Fletcher expressly to have explored with Elaine why the Defendant was no longer to be a beneficiary. Whilst of course it would be wrong for a solicitor to place any pressure upon the testator not to change their will, open questions about why a testator is changing her will is likely to be of assistance to the solicitor who is seeking to assess testamentary capacity whilst at the same time seeking to satisfy themselves that the change in the will is as a result of the true wishes of the testator rather than the exercise of undue influence upon them.

144. That is not to say that I agree with the suggestion that Ms Fletcher's approach to this case as "*woefully inadequate*." It is true that she accepted some criticism of her notes, perhaps most significantly by failing to mention in the note of 17 January 2019 that Elaine said the Claimant had contacted Bury & Walkers on 15 January 2019 without her knowledge. But the mere failure properly to make notes does not of itself make out the Defendant's case. I have no reason to doubt Ms Fletcher's evidence that Elaine had indeed made that comment on 17 January 2019 – since it simply added to the warning signals, it was clearly a statement "against interest" in the sense that it was overly likely to add to the Defendant's argument that her assessment was inaccurate. In such circumstances, it is highly unlikely that a witness would invent an incident that was not true. Correspondingly, the fact that she referred to this incident can be taken in support of an argument that Ms Fletcher was trying to assist the court by providing her best recollection. Other criticisms of Ms Fletcher's note keeping similarly fail to cause me concern about the accuracy of her evidence. Whilst it may be that further information on some of her notes could have given greater assistance to the court or anyone else seeking retrospectively to assess the position in respect of Elaine's capacity, I do not consider that the failure to include such details is because in fact the further detail would not support Ms Fletcher's conclusion that Elaine had capacity, since Ms Fletcher on several occasions included within her notes references to matters which were undoubtedly capable of being of concern.

145. Whether "*woefully inadequate*" is a correct description of her note keeping is not primarily a matter for me though I would consider it to be something of an overstatement of the deficiencies. If it is meant to be a descriptor of her approach to the case generally, I reject it. Ms Fletcher gave clear evidence, consistent with that of other witnesses, that Elaine was capable of giving clear and direct instructions. Further, she elicited explanations for those instructions, even if (as noted above) she might have explored the reasoning further and in a more open fashion.

146. The Claimant did not call her mother, Tina, to give evidence. In other circumstances that might cause me to consider whether to draw an adverse inference from the failure to call a witness who is central to the issues before the court. It is in fact likely that her evidence would have assisted in this case. But the directions order limited the parties to calling four witnesses of fact. Each of the other witnesses called on the Claimant side had relevant matters to deal with and accordingly she had to be selective as to who gave evidence. In those circumstances I cannot draw any adverse inference from the failure to call Tina.
147. On the Defendant's side, the Defendant himself gave his evidence in a straightforward fashion. He did not have direct knowledge of most of the key issues in the case but I found no reason to reject his account. I also considered Adele Atkins to be a plainly honest witness doing her best to assist the court. I deal with the specific and important issue on which she gave evidence below.
148. Sarah Steel's evidence was of peripheral value though I did not doubt the accuracy of the overall tenor of what she had to say. However, she did express views that were strongly favourable to the Defendant and correspondingly negative about the Claimant in a manner that concerned me that she had lost objectivity. Her apparently verbatim account of a conversation between Tina and Elaine at paragraph 25 of her statement is unconvincing, given that one would not expect her to be able to recall exactly what had been said. On the other hand, in cross examination, she made reasonable concessions and (as is so often the case) the tone of her evidence was less negative to the Claimant.
149. I found Anna Steel to be dogmatic in her witness statement. Her explanation of how she came to sign the Lasting Power of Attorney as Certificate Provider in spite of "100%" thinking that Elaine was not fit to change her will was somewhat odd. Whilst of course a concern about a person's capacity in health and welfare matters is very different from a concern about capacity in finance matters, I would expect anyone taking their role as certificate provider seriously to have in mind some of the same issues. Ms Steel gave her evidence in very forthright and frank terms. If she had had any concern over Elaine's capacity, she would probably have mentioned it at the time. The fact that she did not do suggests that her statement is written to reflect what she thinks of events that have taken place rather than as an accurate account of what she thought at the time. However, as with her daughter, Anna, she made concessions in cross examination suggesting that, when in the witness box, she was seeking to assist the court and to give a true account of matters. An obvious example is her retreat from

the statement noted above about Elaine's capacity to change her will from expressing certainty that she did not have such capacity in her statement to a much more cautious position.

150. In the case of both Anna and Sarah Steel, their concessions in the witness box do them credit, but the more dogmatic assertions in their witness statements cause me to be cautious about their evidence, in particular where it relates to matters such as the nature of Elaine's relationship with other people, where such evidence is inevitably impressionistic in nature.

(ii) Lack of testamentary capacity

151. If the court were persuaded that Oramorph had been given on the morning of 17 January 2019, the Claimant would have difficulty in proving that Elaine in fact had testamentary capacity. There is no evidence that Ms Fletcher knew or suspected that Elaine was under the influence of pain relief medication. If in fact she was, Ms Fletcher's ignorance of that fact deprived her of relevant material to assess Elaine's capacity. In any event, there are criticisms of Ms Fletcher's approach to capacity, as set out above.
152. However, in my judgment the evidence points strongly against the conclusion that Elaine had in fact taken Oramorph on that day. The controlled drugs records are entirely consistent with prescription of the drug in January 2019 but no administration until the following month. That is what is recorded on the face of the record. Moreover the various entries as to the original quantity of the drug, decreasing balance and the ultimate amount disposed of is entirely consistent with the drug having first been given in February. That is a document written apparently in several hands with a variety of staff having signed for the drug. If in fact the drug was given in January, it would have to be a very elaborate forgery. Had a person gone to the trouble to forge that document, it is improbable that they would have left the trail of suspicion that arises from Elaine's records including an MAR chart dated January 2019 that refers to "*See new MAR chart*".
153. The prime suspect for any such forgery must, on the Defendant's case, be the Claimant. Whilst I have identified concerns about her evidence and I have rejected it on one material point, I do not consider it at all likely that the Claimant would engage in an elaborate forgery of this kind. Of course, someone else might have been the forger. The Defendant's arguments appeared to point in the direction that Tina might have helped the Claimant in changing the Will. I have not heard from Tina (see above) but there is

no material in front of me to make me think that she is any more likely than the Claimant to have forged a document of this nature.

154. Furthermore, the evidence of Ms Fletcher does not suggest that Elaine was under the influence of opioid analgesia of this kind. I have not heard detailed evidence on the effect of Oramorph. However, if Elaine had taken the drug in a dosage sufficient to have any effect on her pain, one might expect there to have been some consequences apparent, especially if this was the first occasion on which she had taken the drug. The fact that there were not any such signs might raise a question as to the adequacy of Ms Fletcher's assessment if it were proved that Oramorph had in fact been administered; conversely the absence of such signs tends to weaken the argument that Elaine had in fact taken Oramorph on that day.
155. For these reasons, I am not persuaded that it is more likely than not that Oramorph was given to Elaine on 17 January 2019. As I have indicated, this is the only basis that the Defendant contends that the court might find lack of testamentary capacity. It follows that I reject the Defendant's case that the will was invalid because Elaine lacked such capacity.

(iii) Undue Influence

156. I accept the Defendant's argument that, where undue influence occurs, it may be difficult to find direct evidence. That has two obvious consequences: first, it may be difficult for a person suspecting undue influence to prove that it has occurred; second, where there is material that might suggest it has occurred, the court should look very carefully at all the circumstances to see what inferences can properly be drawn.
157. In this case, there is one striking piece of evidence upon which the Defendant relies, namely Adele's evidence of an occasion where the Claimant spoke of having had an argument with Elaine. Adele's evidence on this issue was clear. There would appear to be only two explanations for why she says that such a conversation took place: either she is correct and the conversation did take place with the Claimant; or she is lying.
158. As to Adele's motive to lie, her interest in the residuary estate means that the 2017 Will was more favourable to her than the 2019 Will on account of the provision for purchase of the Church Lane land by the Defendant at market value but only if Brenda outlived Elaine. Since she did not, the Church Lane land would go outright to the defendant under the 2017 Will and outright to the Claimant under the 2019 Will. Neither will favours Adele.

159. On the other hand, the Claimant has an obvious motive to lie on this issue. Even if she was not in fact attempting to exercise influence over Elaine, the very fact of her having had such an argument is likely to cause others to suspect that she was trying to exercise influence over her.
160. I accept that it is more probable than not that the Claimant did indeed tell her of such an argument having taken place. I say so for the following reasons:
- 160.1. Adele's account was, as I have indicated, clear.
- 160.2. Her conduct during this case does not suggest that she has sought to take sides in this dispute nor sought to support the 2017 will.
- 160.3. On the other hand, for reasons identified, I am concerned that in other respects the Claimant has sought to portray the evidence in ways that favour her case that the 2019 Will is valid.
161. Having accepted Adele's account on this, I consider where that leaves the Claimant's evidence. It is obviously implausible that she would have spoken of this incident with Elaine unless it had taken place. It is also implausible that she has forgotten about this incident. I can safely reject either possibility. The only alternative is that she is lying in saying that it did not take place. Regrettably, that is the conclusion which I reach. As noted above, that causes me to be cautious about her evidence in other respects. Furthermore it is a potential basis from which the court might infer the exercise of undue influence.
162. The other factual findings that I need to make based on direct evidence can be summarised as follows:
- 162.1. I do not accept that Elaine's attitude to the Defendant changed markedly after Brenda's death. Whilst I accept that the incident relating to the loss of her driving license caused Elaine some upset and annoyance, I do not accept that either that or any of the "*grudges*" that have been referred to were more than Elaine expressing her views on particular issues, rather than reflecting a change in attitude to the Defendant.
- 162.2. I accept that, towards the end of her life, Elaine was selective about who she wanted to see and that, for example the emotion on hearing of her cancer diagnosis that the Defendant had shown made her less disposed to have contact with him.

- 162.3. I do not accept the suggestion that, if Kerry was asked by Elaine to return a document to the solicitors, this reflected dissatisfaction on Elaine's part about the Draft 2019 Will, for the simple reason that I do not accept that, if Kerry did return a document as she describes, it was that document. I have given my reasons above.
- 162.4. I do not accept that Elaine told Ms Brear that she was planning to change her will, again for reasons I have given already.
- 162.5. I accept that Kerry was present at Victoria House on 17 January 2019 around the time the 2019 Will was executed.
- 162.6. I accept that, once Elaine was admitted to Victoria House, the Claimant was protective of her, including seeking to prevent her having visitors when she did not want them. However, I reject the suggestion that this was an attempt to isolate Elaine from people who might influence her, seek to persuade her not to change her will or "*shine a light on* [the Claimant's] *conduct*" as it is put in the opening submissions of the Defendant. The very fact that she told Adele about the argument with Elaine indicates that the Claimant was not being secretive about this issue. I think it considerably more likely that the Claimant was reflecting Elaine's wishes, referred to by several witnesses, that her friends do not see her in her declining condition in her final days.
163. Taking these matters on which I received direct evidence, I turn to what inferences can be drawn from the evidence as to Elaine's intentions and whether she acted as a free agent in execution the 2019 Will. To do so, it is helpful to balance the factors for and against the argument that she was acting as a free agent.
164. Given my factual findings, the matters that most obviously support the contention that no undue influence was exercised are:
- 164.1. The evidence that Elaine had previously thought through carefully changes in her will to reflect what she wanted to achieve.
- 164.2. The Claimant's evidence that she did not exercise undue influence.
- 164.3. The evidence of several witnesses including Ms Fletcher, that Elaine appeared to be in control of her faculties and that there was no indication of the exercise of undue influence;

- 164.4. The evidence that a General Practitioner in assessing the funding position on 14 January 2019 and Tina on the admission to Victoria House on 15 January 2019 considered her to have relevant capacity¹⁶.
165. The factors that most obviously point in favour of a finding of undue influence are:
- 165.1. Elaine’s vulnerability in light of her deteriorating health and her recent bereavement;
 - 165.2. The closeness of Elaine and Claimant – especially with the Claimant and Tina as carers;
 - 165.3. The Claimant taking a lead in making appointments and in particular in communicating that the draft 2019 Will was wrong;
 - 165.4. The argument between Claimant and Elaine;
 - 165.5. The Claimant’s lies about that argument;
 - 165.6. The fact that Elaine and Defendant had been close and (on my finding) remained on good terms but that the changed will meant that he would not be left anything.
166. In my judgment, these arguments are finely balanced. The Defendant’s case is certainly “*consistent with the hypothesis of undue influence*” and might in some ways point positively to that conclusion. It may be that the Claimant’s denial of the incident involving shouting at Elaine raises a suspicion that this may not have been the only occasion on which she sought to apply pressure. But the striking point about that incident is that, though she now denies it, she told Adele of it at the time. If in fact that was part of a series of occasions when the Claimant was seeking to apply pressure to Elaine to change her will, it is surprising that she should be so open about it with Adele.
167. But ultimately I am persuaded by the evidence of Ms Fletcher that it is more probable than not that Elaine was exercising her own free will rather than acting under influence. Whilst the argument between the Claimant and Elaine would undoubtedly have created pressure on Elaine to change the will in the Claimant’s favour, I accept that it was not that pressure as such which caused her to change the will but rather the rational conclusion that it was more likely that the Claimant would care for the horses if she

¹⁶ These are both relatively weak pieces of evidence – the General Practitioner was not concerned with testamentary capacity; Tina is not well qualified to make such a capacity even if she was purporting to do so on 15 January 2019 (which I doubt) and in any event clearly could be seen as partisan.

was left the Church Hill Lane land. If Elaine had in fact made her decision because of the pressure she was under, it is more probable than not that this pressure would have been apparent to Ms Fletcher, either through Elaine directly referring to it or through it becoming apparent that the changed instructions did not reflect her true wishes. I accept Ms Fletcher's evidence that there was no appearance of pressure in the meeting on 17 January 2019. Even if a rather more careful series of questions might have been more likely to uncover the existence of pressure that had overborne Elaine's will, it is more likely than not that it would have come to light in any event. Since it did not, I conclude that it is more likely than not that no undue influence was brought to bear.

168. Since the Lund Hill Lane Land on its own was sufficient to accommodate the horses, one might consider that a decision to leave the Church Lane land in addition was not rational. I disagree for two reasons.

168.1. First, the horses had for a long time used both areas of land. It is easy to see why in that situation Elaine may have considered that the horses' future was most likely to be secured by the status quo being preserved.

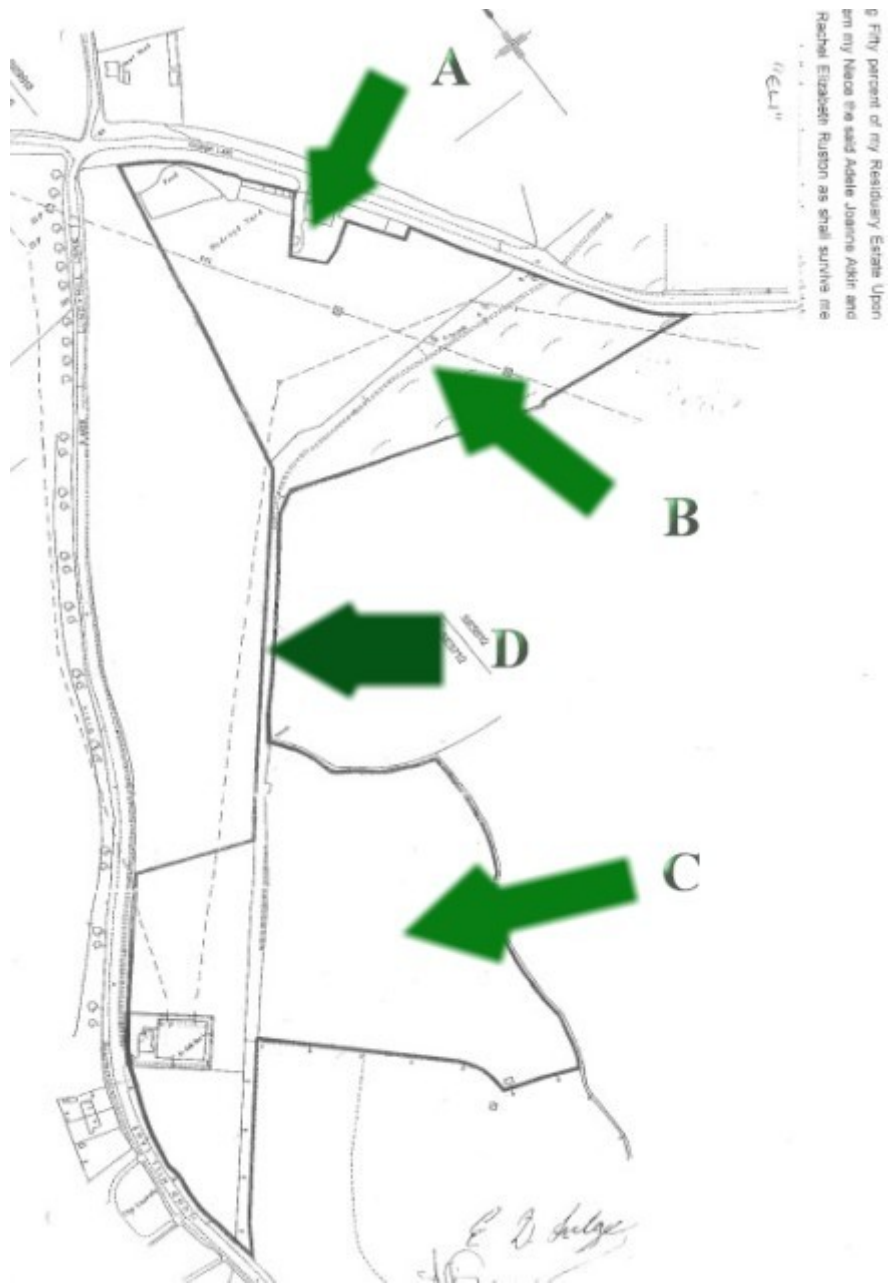
168.2. Second, since the Church Lane land had seemingly been acquired by Elaine for nominal consideration but now appeared to have some potential value, she was left with something of a quandary as to how that windfall was to be distributed. The draft 2019 Will had created a scheme which divided that potential value between the Claimant and the Defendant by leaving the land to the Claimant with the overage provision, but this was very clumsy. It is easy to see why Elaine may have wanted a more straightforward bequest. But once she had rejected a bequest of that complexity, she was probably left with the fairly stark choice of leaving the whole of the Church Lane land to one rather than the other. The Defendant had a claim based upon his long standing assistance with the horses as well as the fact that his house bordered the land and she considered the land to attach to the house. The Claimant had a claim based upon her undoubted care for Elaine over many years, but in particular since Brenda had died. I do not see that it was irrational to choose the latter option.

CONCLUSION

169. For these reasons, I am satisfied that Elaine executed the 2019 Will whilst she had testamentary capacity and without undue influence on the part of the Claimant. It

follows that the Claimant is entitled to the relief she seeks in principle at paragraph (1) of the prayer and the Counterclaim must be dismissed.

APPENDIX 1 – THE RELEVANT LAND



APPENDIX 2 – THE RELEVANT PROVISIONS IN WILLS/DRAFT WILLS

	Will of 25.3.11 (the 2011 Will)	Will of 21.1.17 (the 2017 Will)	Draft sent on 11.1.19 (the Draft 2019 Will)	Will of 17.1.19 (the 2019 Will)
Elaine's share in The Rowans	Right of occupancy to Brenda during her lifetime then to Rachel and Adele in equal shares.	Right of occupancy to Brenda during her lifetime; right to purchase by Claimant at market rate following her death, with 50% of the proceeds to the Claimant and 50% to Rachel and Adele in equal shares.	Right to Claimant to buy at £162,500, with 50% of the proceeds to Victoria and 50% to Rachel and Adele in equal shares.	Right to Claimant to buy at £162,500, with 50% of the proceeds to Victoria and 50% to Rachel and Adele in equal shares.
The horses	Part of residue	To the Claimant	To the Claimant	To the Claimant
Church Lane land	Right to Defendant to buy at 50% of market value, unless Brenda had predeceased, in which case outright gift to Defendant	Right to Defendant to buy at 50% of market value, unless Brenda had predeceased, in which case outright gift to Defendant	Right to Defendant to buy at market value; proceeds of sale to the Claimant; provision of an overage payment from Defendant to Claimant in the event of development.	To the Claimant, with the wish but no obligation to offer to Defendant at market value if she chooses to sell
Lund Hill Lane land	Part of residue	To the Claimant	To the Claimant	To the Claimant
Residue	To Brenda, unless Brenda predeceased Elaine in which case 50% to Brenda's Grandchildren in equal shares and 50% to Rachel and Adele in equal shares	To Brenda, unless Brenda predeceased Elaine in which case 50% to the Claimant and Andrew in equal shares and 50% to Rachel and Adele in equal shares	50% to the Claimant and Andrew in equal shares and 50% to Rachel and Adele in equal shares	50% to the Claimant and Andrew in equal shares and 50% to Rachel and Adele in equal shares