Neutral Citation Number [2023] EWHC 1982 (Ch)

Claim: PT-2021-BRS-000087

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

Before HHJ Berkley Sitting as a Judge of the High Court

IN THE MATTER OF THE ESTATE OF JOANNA LOUISE ABRAHAM (DECEASED)

B E T W E E N:

(1) HENRIETTA INGRAM (formerly Henrietta Abraham)
(2) TOM WHITFIELD

Claimants

- and –

(1) SIMON TIMOTHY ABRAHAM
(as executor of the estate of Jo Louise Abraham (deceased))

(2) HILARY LYNDA ABRAHAM
(as a legatee of the estate of Jo Louise Abraham (deceased))

Defendants

JUDGMENT

Summary

1. On 2 February 2021, Joanne Abraham died after a battle with cancer aged 58, having been diagnosed first with breast cancer in 2000 and in early 2017 with terminal bone cancer (although this is also referred to as a return of the breast cancer). She elected to cease treatment for the cancer in early 2019 which resulted in a capacity assessment. This concluded that she had capacity for that decision in April 2019. She left two adult children, the Claimants (now aged 26 and 36 respectively) and two brothers: Nicholas, her twin, and Simon (the First Defendant) her younger brother. In 2008 she had executed a will which provided for a 50/50 split between her two children (then aged 12 and 22) ("the 2008 Will"). In 2019, the First Defendant, acting he says on the Deceased's instructions, drafted a new will which left her residuary estate wholly to the First Defendant ("the 2019 Will") after providing for her book collection to be left to the Second Defendant. The Deceased executed the 2019 Will at home, duly witnessed, and it is not (now) disputed that the Deceased validly executed the 2019 Will with due

testamentary capacity. The Claimants accept that the signature on the 2019 Will is that of the Deceased, but they challenge the initialling which appears at the foot of each page (which they say is in stark contrast to her usual way of initialling things): either the authenticity is in doubt, they say, or they reflect a state of mind/health which casts doubt on the Deceased's ability to have understood or approved the will and/or its effect.

2. The Deceased raised the Claimants (who are half-siblings) as a single mother. It is common ground that she worked extremely hard during her life and at one time owned two houses (albeit subject to mortgages) and was proud of her financial achievements. She advanced substantial sums of money to each of her children during her life, including gifting £90,000 to the First Claimant to enable her to pay a deposit on a house in 2018. It seems common ground that she had advanced approximately £12,000 to the Second Claimant to assist with day to day living expenses over a period of time. The residuary estate is worth approximately £389,000.

3. The Claimants' claim was issued on 18 August 2021 and was initially formulated solely as a challenge to the Deceased's mental capacity at the time of drafting the 2019 Will. On 17 March 2022, a challenge to the Deceased's knowledge and approval of the 2019 Will was added and is now, following the abandonment of the challenge to capacity in January 2023, the sole challenge to the 2019 Will. No allegation of undue influence is advanced.

4. By way of introduction, a summary of the parties' positions is as follows. The Claimants say that the circumstances of the execution of the 2019 are highly suspicious, particularly in light of the history of the Deceased's relationship with the Defendants. They say that the Deceased not only always intended to leave her estate to them, but she often talked about it, and was adamant, too, that she wanted to correct the imbalance in their lifetime gifts in the division of her estate. This, they say, is reflected in a number of recorded conversations between the Claimants and the Deceased, the last one being just three weeks before the 2019 Will was executed. They also say that in general terms the Deceased, by August 2019, was drinking regularly and heavily, and was on medication which might have affected her ability to concentrate.

5. The First Defendant's position is that this is a perfectly straightforward case of the Deceased changing her mind about who she wanted to benefit in her will, which she was

entitled to do. She had good reason for doing so in respect of each Claimant, and the First Defendant was simply carrying out her instructions by drafting a very clear and straightforward will which the Deceased signed, initialled, read and had read to her, and which she cannot have failed to have understood. I note here that the Second Defendant has always taken the position that she will not participate in the proceedings, and will simply abide by the decision of the Court.

6. The Claimants were represented by Mr Dickinson of Counsel, and the Defendants were represented by Mr Waistell of Counsel. I am grateful to both for their industry and assistance, both in their written submissions and orally at the trial.

The 2019 Will

7. The First Defendant's evidence, which in this respect is not seriously challenged, was that he drafted the 2019 Will using a template from the internet. I was shown an example of such a template, but heard no evidence on whether it was the one used by the First Defendant. What might be termed the boiler-plate clauses in it appear, however, to be identical to those used in the 2019 Will. I can take judicial notice of the way that these templates tend to work is that the "draftsman" (i.e. the person filling in the blanks in the template) would enter the testator's name once, which name would be used to populate all of the places in the will in which the name appears. One feature of the 2019 Will is that the Deceased's name is misspelled throughout as "Jo Lousie [instead of Louise] Abraham", including where it appears immediately above the Deceased's signature - no doubt because the First Defendant mis-typed her name when initially entering it.

8. The 2019 Will uses the 'boiler-plate' terms (subject to simple insertion of names) to deal over two pages with the preliminary matters such as revoking previous wills etc. and the appointment and powers of the executor. Under the heading "*DISPOSITON OF ESTATE*", clause 9 of the 2019 Will provided (after leaving a single specific bequest of the Deceased's books to the Second Defendant under clause 7) a single instruction for the disposal of the estate:

> *"8. To receive any gift or property under this Will a beneficiary must survive me for thirty (30) days. Beneficiaries of my estate residue will receive and share all of my property and assets not specifically bequeathed or otherwise required for the*

payment of any debts owed, including but not limited to, expenses associated with the probate of my Will, the payment of taxes, funeral expenses or any other expense resulting from the administration of my Will. The entire estate residue is to be divided between my designated beneficiaries with the beneficiaries receiving a share of the entire estate residue. All property given under this Will is subject to any encumbrances or liens attached to the property.

9 . I direct my Executor to distribute the residue of my estate as follows ("Share Allocations"):

a. All of the residue of my estate to Simon Timothy Abraham of Southampton, England, for their own use absolutely. If Simon Timothy Abraham does not survive me then I leave this share of my estate to Hilary Lynda Abraham of Southampton, England."

9. There follows a "Wipeout Provision" in which it is provided that if the testator left no children, child, grandchildren or grandchild, who survived her or died before they were entitled to the estate, the residue would be divided into 100 shares, all of which were to be paid and transferred to the Second Defendant. Four further 'boiler-plate' clauses appear before the space for the testator's signature.

Preliminary Legal Observations

10. Before turning to the evidence, a brief overview of the law is instructive to properly garner the evidence that I have heard.

11. The sole question for the Court in this trial is: did the Deceased know and approve the content of the 2019 Will when she executed it? That apparently simple question has been the subject of much authority, although both Counsel agreed that the leading one is *Gill v Woodall* [2011] Ch 280. Before turning to that, however, Mr Waistell reminded this Court that probate disputes are emotive cases in which allegations and evidence often range beyond the realm of relevant matters, and he cited Norris J in *Wharton v Bancroft* [2011] EWHC 3250 (Ch) who reminded himself of the need to focus on the ambit, role, and purpose of a probate court:

"*9. The task of the probate court is to ascertain what (if anything) was the last true will of a free and capable testator. The focus of the enquiry is upon the process by*

which the document which it is sought to admit to proof was produced. Other matters are relevant only insofar as they illuminate some material part of that process. Probate actions become unnecessarily discursive and expensive and absorb disproportionate resources if this focus is lost."

12. In *Gill v Woodall* [2011] Ch 380 the Court of Appeal confirmed that the correct approach to considering knowledge and approval was to ask a single question, namely had the testator understood: (a) what was in the will when she signed it; and (b) what its effect would be. This is a single issue to be determined by reference to all the relevant evidence, and the appropriate inferences to be drawn from the totality of the evidence available.

13. At paragraphs 14-17 and paragraph 22 of *Gill*, Lord Neuberger made some observations on the basic principles of the test of knowledge and approval:

> *"14. Knowing and approving of the contents of one's will is traditional language for saying that the will "represented [one's] testamentary intentions" see per Chadwick LJ in* Fuller v Strum *[2002] 1 WLR 1097 , para 59. The proposition that Mrs Gill knew and approved of the contents of the will appears, at first sight, very hard indeed to resist. As a matter of common sense and authority, the fact that a will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it represents the testatrix's intentions at the relevant time, namely the moment she executes the will.*
>
> *15. In* Fulton v Andrew *(1875) LR 7 HL 448 , 469, Lord Hatherley said that*
>
> *"*when you are once satisfied that a testator of a competent mind has had his will read over to him, and has thereupon executed it … those circumstances afford very grave and strong presumption that the will has been duly and properly executed by the testator …*"*
>
> *This view was effectively repeated and followed by Hill J in* Gregson v Taylor *[1917] P 256 , 261, whose approach was referred to with approval by Latey J in* In re Morris, decd. *[1971] P 62 , 77 f —78 b . Hill J said that "*when it is proved that a will has been read over to or by a capable testator, and he then executes it*", the "*grave and strong presumption*" of knowledge and approval "*can be rebutted only by the clearest evidence*". This approach was adopted in this court in* Fuller v Strum *[2002] 1 WLR 1097 , para 33 and in* Perrins v Holland *[2011] Ch 270 , para 28.*

16. There is also a policy argument, rightly mentioned by Mrs Talbot Rice, which reinforces the proposition that a court should be very cautious about accepting a contention that a will executed in such circumstances is open to challenge. Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.

17. Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second hand way, and where much of the useful potential second hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in In the Estate of Fuld, decd *(No 3) [1968] P 675 , 714 e : "*When all is dark, it is dangerous for a court to claim that it can see the light.*" That observation applies with almost equal force when all is murky and uncertain.*

[…]

22… In my view, the approach which it would, at least generally, be better to adopt is that summarised by Sachs J in In re Crerar *(unreported) but see (1956) 106 LJ 694 , 695, cited and followed by Latey J in* In re Morris, decd *[1971] P 62 , 78, namely that the court should*

> "consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the burden of establishing that the testatrix knew and approved the contents of the document which is put forward as a valid testamentary disposition. The fact that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption.""

<u>WhatsApp and Recorded Evidence</u>

14. As is adverted to in the authorities, probate actions are unique in that the main protagonist is absent from the trial. As times move on, communications and expressions of opinion are increasingly recorded electronically. This case is a paradigm of that development. A significant amount of the evidence at trial was contained in WhatsApp messages and recordings of conversations (recorded exclusively by the Second Claimant) between the Claimants and the Deceased, and one or two between him and the First Defendant, the transcripts of which were in the Trial Bundle, but which were also available as WMV files. I emphasise that it is imperative to listen to the sound recordings in order to understand the transcripts: conversation, particularly between close family members, and particularly in my judgment, with the Deceased, is nuanced, and in terms of interpretation, much depends on such things as intonation; interruption; pauses and laughter.

15. There are many more WhatsApp and Facebook exchanges between Jo and Henrietta than between Jo and Tom. In cross-examination, Tom said that this was because he used to call her on the telephone more than using messages. I accept that explanation.

16. The WhatsApp messages are uncontroversial (in the sense of their authenticity) save, of course, for their interpretation. The recorded conversations were the subject of severe criticism by Mr Waistell on behalf of the First Defendant on the basis that it was said that they had been obtained without the participants' consent and, linked to that, were conversations, he said, which were deliberately manipulated to evince favourable responses from the Deceased. In particular, Mr Waistell submitted that one important conversation (that of the 18 July 2019) amounted to an ambush on the Deceased. The Second Claimant vehemently denied the lack of knowledge and consent on the part of the Deceased regarding the recordings; and the allegation of ambush and manipulation were denied in like measure by both Claimants.

17. There were two mobile phones that were missing from the evidence in terms of their call history and messaging. They were those of the Deceased and the First Defendant. In view of the ownership and control of these phones, and for reasons that will become apparent, these absences were unsatisfactory, to say the least.

The Deceased – Jo Abraham

18. I shall from hereon-in refer to the Deceased as Jo (she was also referred to as Joanne by some family members, but her friends seem to have called her Jo); the First and Second Claimants as Henrietta and Tom respectively; Mr Kane Ingram (Henrietta's then boyfriend, now husband) as Kane; the First Defendant and the Second Defendant as Simon and Hilary respectively; the Deceased's twin brother as Nick, and Mr Raymond Edwards, the Deceased's one-time partner and long-term lodger as Ray. This was how they were all known to each other, and is to assist in understanding the myriad WhatsApp messages and transcripts of recorded conversations, and to avoid confusion. No disrespect is intended.

19. Jo was by all accounts an engaging, mercurial, lively, social and intelligent woman. She clearly had a very good sense of humour, and indeed, of fun. This is apparent, not only from the witness testimony, but from the recordings. Most witnesses said that she spoke her mind and was not shy of controversy. It was also almost universally acknowledged that she could flare up in anger or irritation rather quickly, but was equally prone to recover at the same speed, preferring to forget about arguments and move on. On the other hand, there is evidence that she had a long, if deeply buried, emotional memory and could be hurt quite deeply by remarks or actions from the past.

20. Another universally acknowledged trait of Jo's was her work ethic and her devotion to accumulating a financially secure position, despite having a modest background and having been in the position of raising her two children as a sole parent, albeit that she was on good terms with the Claimants' respective fathers, though Tom's in particular. Through her hard work and thrift, she was financially successful and, as stated above, she at one time owned two houses, the sale of one of which enabled her to provide an advance of £90,000 to the First Claimant in 2018 in order to enable her to purchase her first house with her now husband, Kane. Similarly acknowledged by the witnesses was the importance to which Jo attached home ownership: it was clearly an aspiration to which she attached great weight. There is no doubt in my mind from the evidence that I heard and saw, that she was extremely proud of having achieved what she had; and extremely proud that Henrietta had got herself into a position that she was able to service a mortgage, once Jo had provided the deposit. Similarly, she was disappointed that Tom had not established himself in sufficiently secure employment to be in the same position. However, that disappointment was felt for Tom and not for herself. She was not, in my

judgment, despite being suggested by some, angry with him for this. I shall return to this aspect below.

Other Prominent Individuals

21. In terms of more general uncontroversial family background, Henrietta and Tom state that they were very close to their mother all of their lives, particularly in the context of her being a sole parent, though Tom's father, Bob, remained good friends with Jo, and Henrietta considered him part of her family, spending each Christmas day at Jo's house with Tom and Henrietta.

22. Ray's relationship with Jo was unusual and not without controversy. He at one point had a relationship with her, but according to Tom and Henrietta, this was really quite short-lived, and when it was over (in about 2001), Ray stayed on as nothing more than a friend and lodger, and, according to them, continued to hold a candle for Jo which she found rather sad, even pitiable. Ray described Jo as "the love of his life". Henrietta said that Jo did not think a great deal of Ray's opinions, though it is universally acknowledged that he was very helpful around the house and in his assistance with the children (e.g. meals and school). Tom and Henrietta's evidence was that Ray and Jo were something of "drinking buddies" which was a relationship they did not like because Jo was a heavy drinker, which was encouraged by Ray. Henrietta stated that she got on well with Ray (until this dispute arose).

23. However, it is abundantly clear that Ray holds Tom in very low esteem, even contempt because, he says, of the way that Tom treated Jo. This was because he considered that Tom was very rude to his mother; that he took advantage of her to obtain financial support and generally being a 'ne'er-do-well' (my expression). Ray said that at times, Jo would fear Tom visiting because she thought he was a bully. Ray made his feelings about Tom well known, and Tom had a similarly low opinion of Ray: in short, there was no love lost between them. Tom and Ray appear to have avoided each other where possible. I am not sure whether, and if so how much, Ray worked during the time that he lived at Jo's house, though there is some reference to him having done so.

24. Nick was Jo's twin brother. He had a decidedly rocky relationship with Jo, at least until her final diagnosis. He appears to have been largely absent from her adult life, (and I will return to the detail below). He stated, however, that following Jo's diagnosis of terminal cancer, there was something of a rapprochement between them, and thus he was able to assist with Jo's decision-making in the last years of her life.

25. Simon, Jo's younger brother, lived and worked in Bahrain from 2011 to 2016, and elsewhere abroad for several years prior to that, though I am not sure for exactly how long. He claims to have kept in contact with Jo remotely and, via Christmas cards, said that he always informed her of his contact details when moving house or jobs (and hence mobile phones). Once back in the UK, there was certainly more contact between him and Hilary, and Jo. He had a daughter that lived in the Bristol area. It is common ground that the three of them (Simon, his wife and Jo) went some (disputed) way to developing a plan to buy a property together near Simon's daughter. The envisaged terms on which that purchase may have been planned formed a part of the dispute before me, and I will return to it below. It is common ground that the joint purchase idea emerged in around early 2019 and petered out in around April 2019. The reasons for not progressing it are in dispute.

26. There is conflicting evidence of how Jo felt about Simon's greater presence in her life. Tom, Henrietta and Bob state that Jo was suspicious of his reappearance, particularly because, they say, Jo had often complained that Simon had had virtually no contact with her when abroad; had had sporadic contact with her on his return, and only really showed interest once her terminal cancer diagnosis had been made. Simon on the other hand states that Jo and he had grown closer upon his return, and natural sibling love grew as her health deteriorated. He says that Jo had expressed concern about both of her children: that Tom took advantage of her, always asking for money; and she was afraid of him as he was violent. There was an incident on Christmas day in 2018 when there had been a huge argument and she had thrown Tom out (some of this is disputed). She never forgot this, he says, and was the cause of her change of mind. As regards Henrietta, Simon says that Jo thought that she had been ungrateful for the £90,000 gifted to her, manifested by Henrietta refusing to talk to Jo for several months. Clearly, these matters go to the heart of the dispute because Simon puts them forward as the explanation for Jo changing her mind about the beneficiaries of her will.

Further Chronology

27. In October 2018 Jo developed an abscess and was advised that she might have to have surgery to remove her lower jaw. It seems that during the surgery this turned out not to be the case, but the whole episode was traumatic and Henrietta views this as the beginning of a downturn in Jo's mental health; certainly Jo wrote a message to her as long after as July 2019 in which she reported that her GP had told her that she was suffering from "*post traumatic stress syndrome*" after "*they had said about removing my lower jaw*". In March 2019, Jo had reported that she was sleeping 18 hours a day which her GP had suggested was a strong sign of depression. From the evidence that I have heard and read, it is clear that from about that time, Jo was drinking heavily, sleeping at unusual and irregular hours of the day (together with the corollary of being awake at unusual hours of the night) and there is some evidence from Henrietta and Tom that she was taking opiate drugs for pain relief.

28. In June 2019, Henrietta secured a good job at Bristol University where she works in the Human Resources Department. This was a source of great pride for Jo.

29. The Claimants' case is that there is a great deal of material prior to August 2019 to indicate that Jo had a clear and fixed intention to leave the whole of her estate to her two children. This is contained, it is said, in the recorded messages and conversations, as well as statements made by Jo herself. In those circumstances, there is more relevance in the communications made in the months (and to some extent, years) leading up to the execution of the 2019 Will than might usually be the case in a 'want of knowledge and approval' claim. The evidence of people's behaviour in the period after Jo's death is of much less probative value given the inevitable grief, and the tensions that would have ensued on the 2019 Will having been revealed to the Claimants and others.

The Framework of the Genesis of the 2019 Will

30. It is common ground that in around mid-2019 Jo had indicated that she wanted to alter her will and appoint someone to have power of attorney over her affairs ("POA"). There is a short series of messages between Henrietta and Jo to that effect on 12 July 2019, in

which it is clear that the subject had been discussed before, and that Jo had asked Henrietta to assist her. Henrietta had offered to arrange for a solicitor to visit.

31. In chronological terms, the next event was the visit by Tom and Henrietta to Jo on 18 July 2019 in the relatively late evening. This visit was recorded by Tom and is, in my judgment, an important event, but does not strictly form part of the making of the 2019 Will and so I will pass over it for now. However, as part of that conversation, Jo states that she wishes to amend the will to ensure that Tom and Henrietta end up as equals overall: i.e. there was a need to take account of Henrietta's £90,000 gift and assistance to Tom of £20,000 by weighting the will £70,000 in Tom's favour.

32. There are follow-up WhatsApp messages between Henrietta and Jo on 19 July 2019. Henrietta's evidence is that she was having difficulty with the POA forms, and this is reflected in the messages (including the ones in August). Jo was urging her to get assistance from a particular woman at The Macmillan Trust.

33. There is then a series of messages in a WhatsApp group called "Abraham's" [sic] between 4 and 8 August 2019. Both parties referred extensively to these exchanges, so it is more convenient to set them out almost in full than try to paraphrase them. This WhatsApp group included Jo, Henrietta, Simon, and Hilary. Tom may have had access to it, but took no active part in the messages that I have been referred to (consistent with his evidence about texting generally referred to earlier). I will refer to each contributor as "H" for Henrietta; "Jo" for Jo and "Hilary" in full.

4 August 2019

"***Jo***: *Hey hil … How do you fancy taking over my book biz? Me and Si have been talking about it. Also buying this house with my equity in place*

5 August 2019

Jo: *Speaketh please*

Hilary: *Hellooooo! How are you? I really like the idea of doing a book biz as it is something I can do without having to actually hear what anyone is saying!* □😂 [this is a reference to Hilary's profound deafness]

House wise it is a lovely idea and I can see it solves lots of problems with the excess mortgage and everything and we would have a property in Bristol and investment. But I don't think it is something that can be legally done???? Or if it is would have a huge tax penalty???? Don't have to answer that here if Si already knows. Xx

By the way, Si's in a bad mood this morning. He is either on his way to you??? Or gone to work wearing shorts????? [+ emojis]

***Jo**: What??? Of course it's legal. Where is he??? The mortgage excess will be my probs … not yours*

***Hilary**: I'm not sure. As I say either gone to work or coming to you. You can call* [some missing text]

***Jo**: I'd like to keep this house in the family…*

***Hilary**: Yes I realise that. Obviously you and Si have discussed this yesterday. If you want to keep the house for the family for the future I guess it needs to be discussed with a solicitor or someone. I just don't think it is straightforward. Xx* 😘😘

***H**: Sorry to interrupt your conversation lol, has anyone spoken to Tom? I know it's not his place and it's your choice mum but don't think he'll be too happy seeing as he wants to live there…… just a thought… keeping the peace and all that x*

***Hilary**: Yes H this is the type of thing I'm talking about.* 😘😘

The real practicalities is money and Bill's [sic]. *Sorry to have to say this Jo this way but your estate will be put in probate probably four months if* [text missing] *Eeeek! I'm trying to scare or upset anyone but sadly all this stuff is out of our control.. Xx* 😘 😘😘□□□

***H**: I understand all of that* 👍 *and that's why the will needs specifics… x*

Is Simon definitely happy to be power of attorney? I only ask as it's been difficult to liaise with him as he works full time quite a way away… I can only think it's going to be difficult to manage everything if the circumstances are still the same… I just think maybe it's worth having someone else as well? X

Sorry to talk like this mum x

I'm not sure how it works but I imagine if the house was to be sold and he was taking care of it then he would get compassionate leave?

Sorry to be annoying. My main point is that the reason I was given the responsibility to sort these things out was because Simon is very busy with work doesn't work or live locally… But when the time comes there will be lots more to sort out and he will still

have the same work pattern etc I'm not saying it should be me but think it should be thought about?! x

***Hilary**: "Power of attorney is only to help your mum while is … here (sorry Jo I hate this conversation) it is the executor of the will who deals with everything afterwards. And no it can go on for months / years , so there is no compassionate leave! Xx*

***Henrietta** "OK I see! From talks I've had with mum it didn't seem like that. In that case the executors in the current will seriously need to be addressed . I think mum was under the impression that having Simon as POA would overrule the executors in the will.*

> *Mum – did you discuss your will yesterday with Simon? Do you know who you want your executors to be? …*
>
> *Just let me know if you need my help. I'm still happy to go and see a solicitor re Will amendments, however if Macmillan will do it for free then we should arrange that. I'm happy to sort out the new POA tonight with Ray as the new certificate provider if you want me to? Just let me know mum x*

34. **Hilary** then replies stating that she and Simon have POA for her parents, and: "*Then in their will we are named as executors*"

35. **Henrietta** explains that there are two intended POA's: (i) finance and (ii) health and wellbeing, and she indicates that Ray can certify, and Simon "*is down for both*" (referring to attorney). She continues:

"*And then we just need to change the executors of the will, whoever you want that to be mum x*"

36. Jo then joins the conversation and the following exchange occurs:

"***Jo***: *This isn't about money … it's about my wish… I've loved Simon for ever and I trust him.*

***H**: What you mean?*

***Jo**: I mean I can't bear to see this house go*

***H**: We know it's not about money*

> *We can make sure that whatever you want to happen, happens but it needs to be done properly x's*

***Jo**: I cancelled Tom coming over yesterday… I wanted you both to listen to my wishes… I'm doing it my way now*

***H**: That's all I want anyway…*

Whose way were you doing it before?

If you need my help just let me know x

37. Simon then returns from work according to Hilary, and then uses her phone to contribute to the conversation:

"***Simon**: If H can change the name of the certificate provider Hilary can bring the original back on Wednesday and H can send it off to be notarized. From Simon*

> *What you need is a revised will with new executor or executors. There's always probate with estates a clear will does of course help.*
>
> *Executor is legally and in some cases financial damages if they have not apportioned the estate correctly. Simply put All liabilities must be paid up before anything else is distributed to beneficiaries. During probate Bill's [sic] need paying the.the [sic] executor and beneficiaries are often the same persons in a simple will I hope this is clear. From Simon*

***H**: I understand. 👍 will get POA done tonight.*

38. Simon's evidence (much of which is contested and which must be resolved) is that he received a phone call from Jo on 5 or 6 August 2019 (the subject of some controversy) whilst he was driving, during which Jo gave him the instructions for the new will. He downloaded a template from the internet and completed it according to the instructions he had received from Jo. He then emailed her a copy at 18:05 on 6 August (documented) and posted a copy to her. There is some inconsistency as to whether it was posted on 6 or 7 August. Simon served a second witness statement dated 16 January 2023 (his first was dated 2 November 2022) which was adduced late (with permission granted at the PTR) to "clarify" the first statement and confirm the contents of the Amended Defence. In it, he states that he read the will over to Jo on the telephone immediately after he had drafted it. This is strongly challenged by the Claimants, as is the remainder of this summary of the Defendants' version of events. Simon says that he was then asked to obtain a bound copy of the will which he did, and brought that to Jo's house on 8 August 2019. Jo read the

will and had it read over to her, he says, and she signed it before two witnesses (without Simon being present) and initialled the individual pages. Although it does not appear in the pre-action correspondence or the pleadings, Simon's witness statement is evidence that after the will had been executed, Jo put the 2008 and 2019 Wills side by side on the dining room table. She then tried to tear up the 2008 Will but was unable to do so, and instead asked Simon to do it for her. She then told Simon to burn it, which he did by lighting it with a match and putting it into the fireplace to burn. Simon's evidence is that he left the 2019 Will with Jo who did not die until February 2021, and so she had plenty of time to reconsider its contents.

The Witness Evidence

Bob Whitfield

39. I first heard from Bob Whitfield whose witness statement dealt with Jo's volatility, particularly later in life and her increased drinking. He described her devotion to her children which was in contrast to her oft-referred to (by her) isolation from her parents. He said that throughout everything, Jo had always regarded her children as the only positive things in her life, and the one thing she had been successful with. He stated that Simon had appeared in 2000 and Jo had remarked that he was "sniffing around". In his oral evidence he confirmed his understanding of this phrase as being that Jo believed that Simon was the sort of person who could inveigle themselves into someone's life. He said that Simon only reappeared on the scene after Jo's hospitalisation in 2018, after which he became increasingly involved. He dismissed Nick's involvement in Jo's life as being negligible.

40. Bob described how Jo had made several references over the years to her children being left everything equally, which he thought was the natural thing. As regards the 2019 Will, Jo had said nothing until she told him that Simon was going to be the executor of her will. He was shocked to later learn of its contents.

41. In cross-examination, Bob was asked about Tom's relationship with Simon. He said that they had a fiery relationship and did not get on, and that Tom had let himself down by saying how much he disliked him.

42. As regards the events of Christmas day 2018 (he had been there), Bob's evidence was that Jo had not thrown Tom out as such. He said that he had begged Jo not to have Ray there because he always aggravated the inevitable squabbles which were always fuelled by drink in any event. On the day, a lot of drinking had been going on and Jo had been very drunk and a small argument with Tom had been stoked by Ray, and Jo had become "*very, very angry*" and had gone upstairs. Tom had decided it was best to leave. He had not heard Tom remark to Jo that she was unfit to be a mother, but emphasised that Jo could get extremely angry, and then calm down. Although she would argue with Tom more than Henrietta, Bob stated that they would also make up very quickly. He said that to categorise Tom being "nasty" to Jo "the whole time" was simply not true.

43. When asked about Simon's evidence that Jo was intending to purchase a house together as joint tenants (i.e. Jo's share would pass to Simon and Hilary by survivorship), Bob stated that there was "*certainly no way that Jo would leave it to Simon and Hil*". He was shown a Facebook message from 3 January 2019 in which Jo wrote, "*Please ask Tom to stop sending me so many unpleasant messages. I am selling this house and buying one with Si and Hil near Hen and Fern* [the latter referring to Henrietta and Simon's daughter] .. *the kids will get their inheritance upon our deaths*." Bob was clear that his interpretation was that this was to reassure him that Tom and Henrietta would still get their inheritance even if the house purchase went ahead.

44. Bob said that he had been concerned that, because Simon was to be executor, that might cause difficulties for Tom given their relationship. He gave clear evidence that Jo had said that she "*did not want to talk about the money; she had said over and over again that it was going to the kids, and Simon as executor was to help Tom and Hen out*".

45. Bob denied that Tom thought he could and should inherit, no matter how he treated his mother. He accepted that, because he himself could not provide Tom with a deposit for a flat, the 2008 Will was Tom's only chance, and that, as Tom's father he "obviously" wanted to support his son in these proceedings but denied that that tainted his evidence.

46. In answer to questions in re-examination and from me, Bob said that Jo had always been very open with him. Jo had repeatedly volunteered to him that the children would be getting everything, although she didn't want to dwell on it. That dwindled in 2019

because she felt increasingly uncomfortable thinking about what she thought was her impending death.

47. I found Bob Whitfield to be a truthful witness. He gave calm and measured answers which were tempered with concessions and did not mindlessly support the Claimants' case, evincing an intention to assist the Court the best he could. I accept that he retained a close and ongoing relationship with Jo after their separation evidenced not least by his spending each Christmas day with the family.

48. I next heard from three witness to whom I shall refer as "Friendship Witnesses".

Mrs Margaret Hurley

49. Mrs Hurley had been a close friend of Jo. She described her as an outgoing person, always wearing her heart on her sleeve and not being at all bothered about upsetting people or telling them that they had upset her. She referred to Jo's heavy drinking and described her as a "happy drunk", though she could get argumentative in that state, including with her children, but that it would always blow over the next day.

50. She said that Jo had worked very hard to provide for her children, which was always her main focus. Jo had been enormously proud of her children and loved them very much.

51. Although she had moved away in about 2018 she had remained in touch by phone and Jo still confided in her. Jo was always a little worried about leaving a lump sum to Tom, but she nevertheless wanted him to get a property for security. She knew that Simon was helping Jo with her affairs and acknowledged that they must have been getting closer.

52. When she heard about the 2019 Will, Mrs Hurley was shocked and said it was completely out of Jo's character. She was positive that, had Jo changed her mind, she would have told either her or Bob. She said that Jo did not keep secrets in that way and she would always be open, particularly "*after a few drinks*", and she felt that she would have wanted to explain to her children why she had changed her mind if she had done so.

53. In cross-examination she was asked about the nature of Ray's relationship, and she said if it had been romantic, it would have been for a "*very, very brief time*". Jo was like a butterfly, she said. She continued that Ray did a lot for Jo, helping around the house and with the children, but that Jo did not have much respect for Ray and, although she needed him, she did not really like him.

54. She stated that throughout her relationship with Jo, Jo had expressed her intention to leave everything to the children equally. She was adamant that Jo would "never" have kept the effect of the 2019 Will a secret: she was open and would have told those close to her, and explained to Henrietta at least.

Mrs Caroline Bowler

55. Mrs Bowler is Henrietta's Godmother, and knew Jo for about 30 years. She gave similar evidence about Jo's love for, and devotion to, her children. And that she was very open and could be tempestuous. Her evidence was that Jo used to be very ordered and habitual, but in later years, due she thought to "brutal" pain, alcohol and opiate drugs, this changed to being asleep or awake at unusual times of the day or night, often texting or leaving messages. She felt that she had days where she was just not making much sense. She acknowledged Simon's increasing involvement, but was under the impression that this was to assist Jo in leaving her estate to the children. She thought Jo's attachment to the security of property ownership was due to the instability of her early life; she was very keen to put them into the position she had secured for herself at 21. When asked if Jo had been disappointed that Tom was not ready to own property, she replied that Jo was not disappointed, but just she hoped that Tom would be in the right place to take responsibility for a mortgage.

Ms Sharon Lowick

56. Ms Lowick described Jo as her best friend. They'd met 20 years ago. She said she was struck by Jo's compassion and love for her children and when diagnosed in 2017 with cancer she said that she would be alright so long as the children were "sorted", which her will had done. In 2019, she said that Jo had mentioned that her brother was looking after things and that "*everything would be sorted*."

57. Ms Lowick confirmed that Jo had regarded Simon as something of a stranger whilst abroad, and that she never heard from him.

58. I found each of these Friendship Witnesses to be truthful and straightforward. Save somewhat obliquely for Mrs Bowler (as Henrietta's Godmother), they have no axe to grind. But in any event, they gave their evidence dispassionately, in the sense of there being no obvious prejudice against either Defendant, but compassionately in the sense of their obvious feelings for Jo. They limited their evidence to their personal knowledge and did not try to embellish or exaggerate for effect. The relevance of their evidence is limited, of course, to background, but the consistency of it from unconnected sources (other than Jo) renders that background information of interest to the Court when evaluating its level of suspicion aroused by the change of testamentary intention represented by the 2019 Will.

Mr Kane Ingram

59. Kane's statement commenced by stating that he got on very well with Jo because he was her opposite, i.e. he was "*a very placid person*". This was certainly how he presented when giving evidence. He met Henrietta, and thence Jo, in October 2014.

60. He referred to the fact that Jo had made sure that the £90,000 advanced to them to purchase the house would be solely Henrietta's should they split up which evidenced her competence with matters of finance. He witnessed many conversations between Jo and Henrietta and Tom separately, in which she opined about how they should invest their inheritance when it came. This increased after the 2017 diagnosis, he said.

61. He stated that he had spent very many evenings with Henrietta and Jo and that they were all close. He noticed Jo's deterioration as time progressed, in the sense that she drank more, took more prescription drugs and her mood became more volatile, getting angry at trivial things. He said that her anger was not out of malice, and relations always resumed the next day as if nothing had happened.

62. A central strand of Simon's case is that Jo changed her will to exclude Henrietta because Jo had felt that Henrietta was not sufficiently grateful for the £90,000 which led to a

period of several months during which Jo and Henrietta did not speak. Kane denied this in his witness statement, citing the fact that Jo had come to stay several times during that period, both alone and with friends, and to look after their cats whilst they were away on holiday. He did, however, recall a time in 2016 when Jo had asked Henrietta to leave after an extended argument (when Jo was in unusual pain). Jo had asked her to return after a few days but Henrietta had refused (being, Kane said, stubborn) and would not speak to her mother. Over a few months, they reconciled, but Kane and Henrietta had by then begun renting a flat together and so Henrietta never returned to live with Jo, but normal close relations were resumed, he said.

63. Kane was witness to Tom's poor relations with Ray which he attributed to Ray stirring matters by criticising Tom. Kane stated that Jo was very irritated by Ray's criticism of her son, and that Jo would always fiercely defend him, stating that she loved him.

64. Kane gave evidence that Henrietta had struggled with Jo's request to create a POA, and that Jo had suggested that she would ask Simon to assist. That did not cause any friction, he said, and there was nothing in the summer of 2019 that affected Henrietta's (or his) relationship with Jo in any way.

65. Kane's understanding about the proposed changes to the will in 2019 were limited to a change of executors plus the need to reflect the £90,000 that Henrietta had been advanced. He did not participate in any such conversations as he did not feel it his place, but witnessed them and was clear that Jo felt strongly that that gift needed to be reflected in any amended will.

66. In cross-examination, Kane firmly maintained his evidence. He was asked whether Jo loved Tom "*despite his faults*", to which he responded that Jo was very proud of her children and would "*defend them to the hilt*". It was put to him that Henrietta had found Jo's request to change the will (not the POA) stressful, to which Kane answered yes, and that he understood that Simon had been asked to assist. Kane did not think that Jo had been disappointed with Henrietta's difficulties: it was not her area of work, and she had never dealt with such things before.

67. As regards Christmas 2018, Kane said that he had been present but only had a very sketchy memory. He said that there was always a lot of drink taken at Christmas at Jo's house, and there were always lots of arguments. He was shown text messages from Christmas 2017 (the year of the terminal diagnosis) which made reference to an argument between Tom and Jo. He replied that that was simply how the family was over Christmas. He denied that Henrietta got involved, and said that Tom was more similar to Jo, hence the arguments. He denied that there had been any argument between Jo and Tom over the £90,000.

68. He was taken to a series of texts between Henrietta and Tom which took place on 2 January 2019 – a few days after the Christmas day argument. Tom is criticising Henrietta for not supporting him and Henrietta is essentially saying that he should stand on his own two feet at his age, and that Jo was happier (for reasons I shall come to below) that he had moved out of her house, and that things should improve. The conversation continues:

> T: "*You've got your tens of thousands of pounds from her. And your fucking blinds*"
>
> H: *What has that have to do with anything?*
>
> T: *It's why you don't give a shit Henrietta. You've got what you want*.
>
> H: *I'm not arguing with you over text*
>
> T: *The shit I had to put up with when you wouldn't talk to her for 4 months. It's not about my age Henrietta, it's about giving a shit that counts. You've got what you want, you have no interest in my perspective nor any interest in trying to find a resolve, you'd rather we all just be distant and broken*

It was put to Kane that this meant that Tom was describing the general family relationship, or even as between he and Jo, as then being "*distant and broken*". I say here that I do not read that message in that way. It was a throw-away comment in the midst of a text argument when Tom was clearly in an emotional state. Having heard and seen Tom and Henrietta, I take it to have meant that it was Tom's emotive way of pleading for support.

69. More importantly, it was put to Kane that it would have been unlikely for Tom to have veered from the subject of the £90,000 gift in 2018 to a 4-month dispute with Jo in 2016.

In reply, Kane said that people bring things up from the past when they are very upset. And he confirmed that there was no falling out between Henrietta and Jo in 2018, and that "*I would know*". He was pressed as to whether Jo could have interpreted the situation like that, or that she had taken a view. Kane was firm that that was not the case.

70. When taken to a text exchange on 7 November 2019 between Jo and Tom about a falling out between Jo and Henrietta, Kane said that this was typical of the sort of minor fallings out that Jo at that time had. I note that the texts were at 23:08 and Tom was trying to assure Jo and calm her down.

71. In re-examination, Kane was taken to a series of friendly Facebook messages which suggested that Jo had been staying at his and Henrietta's house in late April 2018, which Kane confirmed was the case, and that it had been a successful visit. He was next taken to some Facebook messages on 29 May 2018 which was an exchange between Jo and Henrietta as to whether Jo should visit Henrietta or vice versa in which Jo says "*Come to me babe ... xxxx*". Referring back to the suggestion that Jo may have *perceived* Henrietta was not talking to her as put to him by Mr Waistell, Kane confirmed that these messages tied in with his answers in cross-examination, and said that, had Jo been of that opinion she would definitely have let Henrietta know about it, and Henrietta would have mentioned it to him.

72. I found Kane Ingram to be the most impressive witness that I heard, particularly in the context of his contested evidence. He was, as he said, placid; but he was also precise and thoughtful in his answers without being hesitant or evasive. He was calm and measured. He evinced no malice or stubbornness. He acknowledged the limitations of his direct involvement in events, but explained convincingly about his source of knowledge where he was giving evidence where he had no direct involvement, or where it had been limited. He was also clearly honest when, for example, he stated that he could not remember Christmas 2018 very clearly, when he could easily have made up a story which could not have been gain-said. He was unusually consistent as a witness. Of course, he has an interest in the outcome of these proceedings, and I take that into account. But that does not detract from the quality of his evidence as I perceived it.

Elizabeth Lewis

73. Mrs Lewis is one of the witnesses to the 2019 Will. She did not know Jo well: she described knowing her "*a bit*", but she described Jo as "*a lovely person*". She was aware that Jo was concerned that Tom did not have "*a stable place*".

74. Her recollection was purely of the execution of the 2019 Will. She was not sure which brother answered the door when she was telephoned by Jo to come round (in fact it seems clear that it was Ray). Jo explained to her that it was just a case of watching her sign the will, which she did, and then signed herself. She does not recall seeing anyone else signing the will or who else was in the room at the time. She confirmed that the will was not read to Jo in her presence as she has no idea of its content. She was unable to say whether Jo was inebriated at the time, but stated that she did drink a lot as her way of coping with the cancer.

75. She was clearly surprised that Jo left nothing to her children because she loved them "*very much*".

76. In cross-examination, Mrs Lewis accepted that Ray may have been in the room when she signed. It was put to her that she left fairly soon after the signing and she said: "*possibly*".

The Claimants

77. Both Claimants made brief statements in support of the Claim Form. They both made longer substantive statements dated 9 November 2022.

Henrietta Ingram

78. Her witness statement covered the family background, stating that Jo was never close to her family. She had been disappointed with Simon disappearing from her life after about 2002 and how badly Nick had treated Jo and over the years, and how Nick had abused her hospitality and acted inappropriately to Henrietta when he had stayed there (see below).

79. Her evidence about Ray was positive in the early years, in that he contributed greatly around the house, though she doubted very much that any romantic relationship between

Jo and Ray was anything other than fleeting and near the beginning. She felt that Ray wanted more from Jo than Jo was willing to give him. In re-examination she made it clear that she did not regard Ray as 'part of the family' as he was never included in family events, birthdays etc.

80. She sets out the very good ("*wonderful*") relationship that she said she had with her mother, and refers to a large number of WhatsApp and Facebook exchanges.

81. Henrietta goes on to describe her mother's reaction to the 2017 diagnosis of terminal cancer and how her decision to refuse treatment in around February 2018 was based on the fact that she had fought the original (2000) cancer because she had young children, but felt she could not face a second battle now that the children were grown up. She describes her and Tom's reaction to that as of course being upset, but she recalled that Jo had been adamant. She also refers to Jo's assurances that they should not worry because they would be secure financially. Once that decision to refuse treatment was made, Henrietta said that Jo became increasingly sad and dependent on alcohol and morphine to cope.

82. Ray became a sort of carer for her, helping out in many ways, and Henrietta was grateful for that. However, his heavy drinking did not help, she said, particularly as he became argumentative and even aggressive when in drink, describing incidents of violence towards Henrietta.

83. Henrietta describes Jo's admission to hospital in September 2018 as being the beginning of a serious deterioration in her mood, leading to further reliance on alcohol. She describes how Simon appeared on the scene about then, and started to make more frequent contact with Jo, phoning and turning up at the house with gifts of hampers and flowers. This led to long bouts of drinking, she said, and Henrietta cites a time when she called in after work to spend time with Jo to find she and Simon were already drunk at 5pm and Simon demanding that she go and purchase vodka for them, which she refused to do.

84. She describes her relationship with Simon as confusing: disliking the fact that he had turned up out of the blue, and was encouraging Jo's drinking, but knowing that Jo wanted the support from her brother. He would, she said, boss her around and belittle her career.

85. Henrietta stated that from 2019, Jo was beginning to drink at erratic times of the day, and at times from morning to evening, which is reflected in the random timing of her texting. She said that throughout 2019, Jo was depressed, frequently drunk and taking strong opiates for pain relief. She never left the house and was reliant on Ray and her children. She often had difficulty concentrating and making decisions, she said.

86. In 2019, she accepts that Jo, Simon and Hilary had been discussing pooling resources to enable Simon and Hilary to move nearer their daughter and to live with Jo. She states that it didn't go far because of Jo's concerns about their inheritance. She also states that Simon sought to borrow £30,000 to buy a house in his own right which Jo ultimately refused because she was worried about the inheritance.

87. Henrietta states that in around mid-2019, Jo asked her to assist in re-writing her will for the reasons I have already set out. As part of that conversation, Jo had said that Tom would need to be compensated for the imbalance between the £90,000 advanced to Henrietta and the approximately £20,000 Tom had received in assistance to date. She was instructed by Jo that that meant that Tom would receive the first £70,000 and the balance would be split equally.

88. Henrietta then moves onto the visit on 18 July 2019 between she, Jo and Tom. I will deal with this visit separately. She then deals with the messages in August that I have set out above.

89. In her statement, Henrietta goes on to say that Jo's assurances regarding the children's inheritance continued from 2019 until her death. There are a series of post-2019 August messages and texts between Jo and either Henrietta or Tom. Henrietta quotes one from October 2020 from Jo to Henrietta in which she says "*I feel peaceful that I am doing the best I can for my children*". I consider this to be an important (though not, of course, decisive) piece of evidence, although it is but one piece of many.

90. In February 2020, there was a payment made by Simon (now with a POA) to Tom who had asked for £3,500 (from Jo) to help him out. Simon agreed and paid the money to Tom, it seems from his own account. Ray had told Jo that Simon had given Tom £3,500 to help him out and Jo queried with Henrietta whether it had come from hers or Simon's account. Henrietta queried whether Simon should be making such payments without clearing it with Jo. Jo replied: "*No … I've told him what you've both had … and he works it out from there*". Henrietta interprets this as evidence that Jo wanted to ensure that Simon knew how to balance out the payments under her will. I agree with that interpretation.

91. Henrietta's statement goes on to deal with some difficult scenarios and encounters with Simon and Ray following Jo's death, which are generally irrelevant, the interpretation of which must be done in the context of grief and shock from the Claimants.

92. Finally, Henrietta deals with the anomalies in the 2019 Will as a document. It is common ground that Jo's name is misspelt throughout. Henrietta states that Jo was a stickler for grammatical errors, spelling mistakes and the incorrect use of words, and would have insisted that these were corrected had she read and taken any notice of the document. Henrietta also observes that the initials added at the foot of each page do not match Jo's historically consistent method of providing her initials: Jo did not cross her J's and always used a lower case "a", as per the 2008 Will. This is reflected in her signature, too: "Abraham" was always spelt "abraham". In the 2019 Will, the initials have a crossed "J" and capital "A". Henrietta is of the opinion that the initials were either not written by Jo or they indicate an altered state of mind, which may have affected Jo's knowledge and understanding of the document. Henrietta found it very surprising that her mother would have executed a new will without the involvement of a solicitor given her general predilection for wanting things to be done properly and "*legally*".

93. Much of Henrietta's cross-examination was aimed at undermining Tom. For example, she was asked whether Jo was proud of her and Kane and their achievements, and then whether she had a high expectation of people, and did not like people who took "*handouts*". In response, Henrietta at first said she didn't understand the question, but then replied that although she worked hard because she had never been given anything, she was not averse to assisting her children. She confirmed that Jo thought that getting on

the ‘property ladder’ was important, and was asked whether Jo was disappointed that Tom was not in a position to do so. She replied that “disappointed” was not the right word; rather that Jo wanted him to be in that position but there was no pressure, she said: it was just what Jo wanted. She was then referred to the assistance Jo had given Tom in the form of cash for various debts and other matters, which Henrietta confirmed.

94. As regards Ray, Henrietta said it was fair to say that he was devoted to Jo, and that they had once had a close relationship but it had deteriorated over the years. She confirmed that she was too young to be able to comment about Simon’s involvement and assistance given to Jo when the first cancer diagnosis was made in 2000.

95. As regards Nick, Henrietta was of the view that Jo felt let down by him.

96. So far as Simon was concerned, once he was back in Jo’s life, Henrietta stated that she “*got on with him for mum’s sake*”.

97. When asked about an exchange of messages regarding Jo’s book collection in the Abraham group chat on 5 August 2019 (partially set out above), Henrietta said that it was unclear whether Jo was referring to her personal, valuable, book collection, or those forming the stock of her online second-hand books business. She accepted that she knew that Jo wanted Hilary to have the business-related books, but conceded that she did not know of the claim that Jo had told Tom he would have the collection. She also said that Jo had offered the books to numerous people. It was suggested that one message from Jo meant that she did not trust Tom with her books, but Henrietta considered that the message was merely Jo emphasising how Tom would need to learn how to look after them.

98. In cross-examination, Henrietta confirmed that she was asked by Jo to assist with the new will and the POA. It was not put to her that she had taken this task (or either of them) upon herself without being asked. When asked whether she was surprised that Tom had not been asked, she replied that it was not surprising. She said that Jo knew that she (Henrietta) was “*more capable at that sort of thing – I had a good job in HR and was good at organising things*”. Henrietta said that the problem was that she was worried and nervous, and didn’t have time to deal with these matters, all of which were new to her.

99. Henrietta was then taken to the Abraham WhatsApp group chat in August 2019 (set out at length above). She accepted that Jo had not responded to her offer of help made at that stage. She accepted that the messages indicated that Jo had cancelled Tom coming over and that from then on, they had had no more to do with the new will. When questioned about her assertion that no further discussion about wills took place because she and Tom knew what was in the new will, Henrietta stated that Jo had referred to clearing debts so that they wouldn't have to inherit those, and making sure that all of the money was 'in the house', because prices were only going to increase. Henrietta said that all concerned knew that the house would in all probability have to be sold. On being questioned as to why Jo had not shown her the 2019 Will whereas she had done so with the 2008 Will, Henrietta answered that she felt that they had only been shown the 2008 Will so that they knew there was a will and where to find it; it was Simon's job with the 2019 Will, she said. She did not know where the 2019 Will was kept, but knew that Jo by then had nothing to do with day-to-day paperwork (amongst which it has been said that the 2019 Will was kept): that was all done for her by others.

100. Henrietta stood by her observation that her mother was unlikely to have asked her to assist with the new will if her intention had been to exclude them. However, she was also adamant that Jo was very open and would have explained to them if she'd made such a big decision to change her mind. I do not consider this to be as contradictory as might first appear: it is one thing to inform a person of such a decision, but quite another to ask them to add insult to injury by assisting in carrying that decision into effect. Henrietta denied that Jo kept the contents of the 2019 Will from her and Tom because it would be unpleasant. She pointed out that she had often told Jo not to worry about her money and just to spend it (an example is during the July 2019 visit). She accepted that Tom would have been upset, but only because it went against everything she'd always said and he would need an explanation. He would have been confused and could be rather dramatic, she said.

101. When asked whether, if Jo had read or been read paragraph 9 of the 2019 Will (the residuary disposition), she would have understood, Henrietta said "*probably, if she'd been in the right state of mind*". She said that by this stage, Jo most of the time had a drink and was using opiates a lot. In an answer to a later question from me, Henrietta said that there were very few hours in the day when Jo had not had a drink at this stage. Her

memory was bad anyway, and it didn't take much of a drink before she became muddled. That is why Henrietta had wanted to involve a solicitor, which would have involved some sort of check as to her state of mind. She said that she always ensured Jo had not been drinking when she needed to discuss important things, hence the row that had ensued when she had checked with Ray in advance of her visiting Jo with POA material, and Jo had found out about it and become indignant.

102. Regarding the possibility of the house passing to Simon, Henrietta said there had been some talk of pooling resources but it had never come to anything, and she did not recognise the possibility of any jointly owned house passing to Simon, nor for that matter, Jo's house. She said that there had been various reasons discussed as to why Simon and Jo might buy a house together, and one of those was that the value would increase which it had been said would increase the value of Tom and Henrietta's inheritance. That was what was meant by "*the kids will get their inheritance upon our deaths*" (as set out above), she said, and "*the kids*" meant she and Tom.

103. Turning to the anomalies with the 2019 Will, it was suggested to Henrietta that it had not been her that had noticed the initials, and that she had not considered that their form was an anomaly. She replied firmly that it *had* been her who had noticed, and that she and Tom both agreed that they did not look like Jo's initials and they were both suspicious. As regards the misspelling, Henrietta was certain that if Jo had read the document page by page she would have noticed and insisted on a correction, although she accepted that one misspelling was within millimetres of her valid signature.

104. Henrietta was asked whether her perceptions of Simon and Ray's behaviour since Jo's death (particularly at the funeral when she alleges Ray and Simon would not meet her eye) was affected by grief and hurt, which she denied. She said she didn't even know the terms of the 2019 Will at that point. She also denied that there was any way that Jo could have possibly perceived her behaviour from April-July 2018 as not wanting to speak to her.

105. I found Henrietta to be a careful and straightforward witness. My perception was that she is slightly suggestible, but she was firm in her answers in cross examination. She was ready and willing to make concessions where appropriate, but the main thread of her

evidence was maintained in a consistent and calm manner. She was precise with her phraseology and wording, clarifying and questioning when unclear, and I am of the firm impression that she does not say things that she does not mean or believe. Her descriptions of the undulating relationships between herself, Ray and Simon demonstrated a truthful and candid approach to her evidence. Her explanations of texts and exchanges with all involved in this matter were lucid and convincing, and did not seem at all rehearsed.

Tom Whitfield

106. To a large extent on the core issues before the Court, Tom's evidence mirrored Henrietta's, though he had a much worse relationships with Simon and Ray, the former going back to a feeling that he was bullied by him and was resented by Simon (because of his father) from childhood.

107. Tom accepts that he was more like Jo than Henrietta. He refers to conversations they had had about them both being sentimental.

108. One important part of Tom's evidence was the recordings he made of conversations between him and his mother once they knew that the prognosis was terminal. Tom was firm that he had obtained his mother's consent for the recordings which he wanted to make to preserve the memory of her voice and of those conversations. He said that "*I recorded every conversation to the last days that she was on this earth … it was all about sentimentality and not about money … I wanted to preserve my mother's character to the end of my days*". Henrietta has accepted that she did not know that any conversations were recorded but, on Tom's assurance that Jo had consented, Henrietta was mollified, and understood that this reflected Tom's sentimentality. As I have indicated, the recordings were the subject of much criticism by Mr Waistell who accused Tom of covertly carrying out the conversations and using them as a form of entrapment by coaxing Jo into saying certain things which would support his position. This was based on the fact that Tom knew that the 2008 Will was going to be changed and he wanted to coax or 'honey-trap' his mother into making assurances that he would later be able to point to. In respect of the July 2019 recording, Mr Waistell relied on the testimony of Nick and Simon which was that Jo had regarded this visit as an ambush by virtue of their

unannounced visit, and that she felt pressured into discussing financial and testamentary matters.

109. Whilst I shall deal with the July 2019 visit and transcript in a different section of this judgment, I will indicate here that I found Tom's explanation for these recordings entirely truthful. He is undoubtedly a very sensitive and sentimental person, and the recordings started as early as March 2017, about two years before Jo had started talking about changing her will. In my judgment it is inconceivable that Tom could have anticipated these events as long ago as March 2017 to start making these recordings for nefarious purposes. I find that he started recording his mother to preserve the sound of her voice for posterity.

110. Far from supporting the Defendants' case, I find that the allegations raised against Tom in respect of these recordings go to discredit both Nick and Simon. They would have been unaware of their existence when the critical events occurred, and I find that Simon (backed by Nick) have concocted the reasons advanced for Tom making these recordings to discredit him (unjustifiably) in an attempt to bolster Simon's underlying reason advanced for Jo changing her mind about her testamentary intentions.

111. I find that Jo probably knew about the recordings, although I would not alter my conclusions if she did not. I emphasised earlier in this judgment that the recordings need to be listened to in order to properly evaluate them. I have no doubt at all that in each of them Jo (and the other participants) were relaxed, talking freely and openly and in the context of family discussions. From what I have heard and understood about Jo's character, she would not have cared about being recorded. However, there is no suggestion in my judgment that anything said in any of the recordings was said "for the tape", to use a familiar phrase to court users.

112. For the avoidance of doubt, I also accept Tom's explanation for the partial transcribing of the recordings available to him. This only became an issue late in Tom's evidence when it emerged that he had listened to many hours of these recordings, and only sent to his solicitors those that were potentially relevant. It was those excerpts that were transcribed. It had been perfectly clear to me that the transcripts were part only of the relevant conversations, and it should have been obvious to the Defendants or their solicitors, too.

If the Defendants were suspicious of the limited nature of the disclosure, they could have sought the disclosure of the balance of the recordings which could not have realistically been resisted. At no point was the issue raised by the Defendants, and it was too late to raise it at trial with any conviction. I fully accept that there were probably other recordings which were genuinely felt by Tom to have been wholly irrelevant.

113. Returning to Tom's live evidence, he was taken through incidents in the past. One involved him having called the police which had resulted in his mother having to spend the night in police cells. He explained that he had been a teenager and that he had called the police because his mother had been very drunk and angry, and he had not known what else to do. He regretted the outcome but not his decision. He had explanations for the other incidents to which he was referred. Mr Waistell was trying to create a tapestry of bullying, disrespectful and callous behaviour on Tom's part. I reject that overall picture. I accept Tom's explanations, and that all incidents were taken by the family (by which I mean the immediate family of Jo, Tom and Henrietta) in its stride, moving on swiftly and without grudge. It was put to Tom that he and his mother had "blazing rows", to which he replied that they were "*no more than average*" as between mother and teenage/young adult son. He said that the rows were "*infrequent*" and that some were mild and some were "*more aggravated*". Taking into account an average teenager's perspective, Tom may not have appreciated some of the intensity of the arguments, but I accept that his evidence was honest and largely accurate.

114. Christmas Day 2018 was the pivotal incident upon which Simon relied to explain Jo's change of mind regarding the inheritance. It was put to Tom that he had told Jo on that day that she was "*not fit to be a mother*". Tom accepted that that was not a normal thing to say to your mother, but did not recall saying it. However, given subsequent references by Jo in texts and conversation, I find that Tom did say that during the course of an argument in which Bob had described her as being "*very, very angry*". It did upset Jo, and it remained with her as an accusation (for example, it is recorded that she asked Henrietta whether she was a "bad mother" when she was feeling vulnerable), but that reflected Jo's vulnerability overall rather than a grudge she held against Tom for saying it in the heat of what was an example of obviously regular alcohol-induced Christmas Day arguments, albeit that it culminated in an unusual outcome. That outcome was, however, a result of a unique set of circumstances as described below.

115. Tom's description of Christmas 2018 was similar to that of Kane, and I accept that, whilst the comment was more deeply cutting than most, it was part of a pattern of arguments, particularly on occasions like Christmas when drink was being taken in larger than usual quantities. Furthermore, it had been simmering because Tom had earlier moved in to Jo's house with his then girlfriend. This was because they had been evicted from their rental accommodation and could not find anywhere that would accept them with their cats. Jo had been reluctant but, reflecting her love for her son, had taken them in. Tom was insistent, however, that it had been Jo's idea.

116. That move had not been successful. As referred to in the July 2019 transcript and other evidence, because Tom and his girlfriend had been used to living together, they sought privacy in their room whilst at Jo's house, which in turn made Jo feel more lonely than she had been before they arrived: she felt excluded. She addressed this by late-night visits to Tom's room to talk (fuelled, according to Tom (and I accept), by alcohol) which caused more friction because, perhaps understandably, Tom would tell her to go away, perhaps in strong terms. Jo referred to it in the July transcript as like having two children living there. When this was put to Tom, he suggested that this was because they would often spend a long time playing on their Playstation.

117. Tom denied that Christmas Day argument had been about money. He accepted that it had been partly his fault ("*I cannot absolve myself*"); that he had been trying to be sensitive but that a "third party" (i.e. Ray) had exacerbated the situation and caused the extent of Jo's anger.

118. I find that the argument of Christmas Day 2018 was a culmination of these tensions, and did not reflect any deep-seated or even growing disapproval by Jo of Tom. Tom and Henrietta's evidence was that Jo and Tom moved on from this incident fairly shortly afterwards, which I accept. It took longer than the usual next-day rapprochement because Tom had moved out as a result, but it came to be something of a family joke, as can be heard in the July 2019 recording.

119. Referred to the WhatsApp exchange with Henrietta in January 2019 about the argument, Tom said that he was merely seeking some moral support from her. He was adamant that his reference there to the "*months*" of Henrietta not speaking to Jo was definitely 2016,

and that he had brought it up at that point simply in the heat of the text argument. He was also clear that, as far as he was concerned, Jo did not consider Henrietta to have been ungrateful for the £90,000.

120. Mr Waistell put it to Tom that, according to Simon, the combination of the past incidents, including the police, meant that Jo was scared of him. Tom replied that he and his mother were "*very, very similar: volatile; sensitive and emotional, so she was perhaps a bit fearful*". That is one illustration of what I find was Tom's candid and straightforward evidence. Another was his acceptance of the fact that Jo had "*bailed [him] out*" "*a number of times*". He said that the real reason that Jo did not like doing so was because she hated giving money to landlords.

121. In 2020, Tom approached Simon to borrow £3,500 for financial support due to the effects of Covid on his business. He said in evidence that he had approached Simon because by then he had a POA and Tom was working on the basis that it was coming out of his inheritance.

122. Mr Waistell took several examples over a period of 3-4 years in which Jo had mentioned that Tom was immature, and in respect of each, Tom said that this referred to financial matters and job security. He said that he had been "*wiped out*" by Covid (by which I take it he meant his small businesses), and he was not in a position to get a mortgage. He denied that Jo would have been disappointed in *him* as such, but acknowledged that she would have liked him to have been in such a position. At the time, he said he preferred that sort of life, but that, ironically, he had now ended up with job security.

123. Tom was taken to a number of examples of WhatsApp messages from Jo which appear to have gone unanswered, and it was suggested that this was indicative of his uncaring approach to his mother unless money was involved. Tom's replies were that he would prefer to phone his mother rather than text her which, as I have indicated, I accept.

124. Dealing with the purpose of the July 2019 visit, Tom accepted that he knew vaguely that Henrietta was dealing with the POA, but he denied that the purpose of the visit was anything to do with financial matters. It was put to him that the intention was to put questions to Jo to elicit the correct answers for his purposes. Tom agreed that there were

questions he wanted to put, but that they related to Jo's "bucket list". He said "*Mum had been taken to hospital, the main purpose was to ask how much time she had left and what were her wishes … it was about the bucket list and I had the bucket list. Jo brought up her intentions and will. I was working in Patchway at the time; mum had been to hospital, and I was worried about how much time she had left. It was about a bucket list*". This evidence was given in a particularly convincing way and I accept it.

125. It was suggested to Tom that he would not have reacted well if Jo had told him about her changed intentions. Whilst denying that those intentions had changed, he accepted that he would have had "*an emotional reaction*". It was suggested that, if the 2019 Will had been in his favour, Jo would have made him aware, and that the reason he had not been shown the will was because he had been cut out, to which he replied that he had been criticised for asking about the will and it was now being suggested that he should have asked Jo about the will.

126. He was questioned about paragraph 65 of his statement which stated that he did not believe that his mother would have lied to him for over a year regarding the children's inheritance, and that this contradicted Henrietta's evidence that Jo did not speak about her will after August 2019. Tom said that his impression had been gained in ongoing general conversations with his mother in which her intentions had been mentioned in a more general way rather than in reference to the will as such. From the evidence that I have seen and heard in relation to Jo's discomfort when speaking of and dealing with the formal will as such, I accept that she might well have continued to make such general references and given her usual reassurances after August 2019 without discussing the 2019 Will itself. I accept Tom's evidence in this regard.

127. Tom also reminded the court in evidence that from March 2020, there were significant periods of lockdown and that Jo was a vulnerable person, so opportunities for one-to-one meetings were limited.

128. Turning to the 2019 Will, Tom accepted that Clause 9 of the document was clear to anyone who had read it, and that Jo would have understood the clause if she had read the content. However, Tom was very certain that Jo would never have used capitals for her initials, and that she would have insisted on having her misspelt name corrected if she

had noticed it: she would not have wanted to have a mistake like that in such an important document, he said.

129. Mr Waistell summarised the Defendants' case in his two last questions to Tom. He suggested that Tom had treated his mother disgracefully and that she had thrown good money after bad, so she had cut him out of the will, to which Tom simply said "No". He was then asked whether he believed he was "*entitled*", to which he also answered "No".

The July 2019 Visit and Transcript

130. As I have already indicated, it is imperative for anyone assessing this evidence that they listen to the recording rather than simply read the transcript, which can be misleading in places.

131. Both Henrietta's and Toms' evidence was that Tom had realised that he was working in Bristol on that day, and he had thought it a good opportunity to have a family get-together about Jo's condition following recent medical developments and, connected to that, what her wishes were going forward. There was some urgency in Tom's mind to have the visit which is clear from his pressing of Jo about the nature of her wishes, not only in terms of the "bucket list", but in terms of to what extent Jo wanted the children to visit, and what should happen for Christmas. It is clear that either Tom or Henrietta had let Ray know earlier in the day that they were coming to visit after work, and had asked him to pass this on. There was nothing particularly unusual about the lateness of the hour for Jo – the only concern expressed was in relation to Henrietta because of her work commitments the following day.

132. The available recording does not start at the beginning of the visit. Tom's evidence was that he had arrived before Henrietta, and had obtained his mother's agreement to make the recording. It is not clear how long had passed by the time the available recording was started. However the four participants (Tom's then girlfriend was there) were clearly well settled and Jo was in the midst of a story about her feeling embarrassed when she had been taken out to an ambulance in her nightwear. But the atmosphere was entirely humorous and good-natured. This continues throughout the visit, interspersed with some passages of poignancy, intimacy and reflection. There is absolutely no sense of an

"ambush", or discomfort, or pressure being brought to bear by anyone against anyone else.

133. As a result of listening to this recording, and in the context of the other evidence proximate in time that I have heard and seen, I find it inconceivable that Jo would have considered this visit to have been an ambush, still less that it was intended to be one by Tom and Henrietta.

134. Some passages of the transcript featured in both parties' cases, and I shall deal with them here.

135. Beginning at page 5, Tom begins to press Jo about the current situation and her wishes going forward, as alluded to above. I find that these were wholly genuine enquiries made out of concern for Jo, and with Tom's deep desire to be given an idea of how long Jo had left before she died. Jo did not want to face these matters. It can be seen and heard that Tom is trying to be serious and make plans whereas Jo is making light of things. She does, however, say:

"All I'm doing is everything possible to make it as easy for you and [Henrietta] as I possibly can, alright? The money's left to you; got Simon having POA you know what more do you want."

136. She goes on to quip about a funeral plan that Henrietta (she may have meant Hilary) had brought over, but Tom presses on to ask about her wishes. Jo mentions riding in an open-topped Beetle car and it is all very light-hearted.

137. Tom presses again on the subject of how much Jo wants to see them, and then Jo raises the subject of his and Kirstie's time living with her, where she explains about the irony of her added loneliness as a result of their being there. Jo states she does not want them to be serious, and they all agree that the children should visit more, but they should "*have a laugh*" and not be too serious.

138. Henrietta raises the issue of what the family intend to do at Christmas. Jo states "*Don't mention Christmas please, you know I don't want to talk about it*", but critically that is

said with laughter – it is another passage which needs to be heard rather than simply read. The family have clearly come to regard Christmas 2018 as a family joke. Jo then states that she would like to spend Christmas on a beach house in Cornwall close to a pub and shops (for the sake of others, Jo states, because she would not want to leave the house save to sit on a chair on the beach). Quite clearly the family are looking forward to Christmas together again, with no qualms being expressed, and it could not possibly reflect a "*distant and broken*" relationship between the family as was alleged to have been the case.

139. The conversation continues. It would not be proportionate to attempt to summarise the 68 pages of transcript.

140. The passage about Christmas 2018 demonstrates to me that all had put it behind them. Both Jo and Tom acknowledged that each had said cruel or unkind things, but the tenor of the conversation is one that suggests an element of humour now attached to the memory.

The Defendants rely on a passage at pages 19-20 of the transcript in which Tom asks [emphasis added]:

"T: What do you want to do with this house? Are we just gonna sh- should we just – is it just gonna go?

Jo: You can't afford it, it'll have to be sold and it – and – you know and I think I think – I'll leave it – ***I'll leave it t - to Simon but you know*** *...*

T: Is the inheritance in the value of this house?

H: Yeah

Jo: Well it'll be enough for you to equal Henrietta with the 70 grand.

T: Yeah

Jo ... and there'll be whatever's left over is gonna be divided 50/50 yeah?

H: Mmm

Jo: So you know you might come out with 150 each? I don't know …

141. They go on to discuss the possibility of Jo investing £30,000 in a house with Simon and Hilary near to their daughter, but Jo says:

"*and then that 30,000 would be invested in your and Henrietta's name, there's all sorts of things I'm sorting out alright, you're not going to be left destitute Tom, you won't. Entirely up to you how you spend it …*"

142. Having listened to the recording, I have no hesitation in making a finding that when Jo referred to "*leaving it to Simon*", she was referring to leaving it to Simon to sell the house and deal with the proceeds. It could not have meant that Jo was intending to leave the house to Simon. This is absolutely clear from the recording (and accords with how Tom and Henrietta interpreted it though that is not, perhaps, surprising) and the surrounding subject matter of the conversation. There is a good deal of evidence (including in the following few pages of the transcript) that Tom wanted to take on Jo's house and mortgage, but that it was clear to Jo (and Tom, if he was pressed) that Tom could not secure a mortgage to replace Jo's mortgage. Tom (at least initially) rather naively thought that he could simply step into his mother's shoes and move in to the house with the existing mortgage. Jo was realistic that this could not happen, but she sounds like she would very much like that to have happened if it had been.

143. Another interesting passage is at pages 26-27 of the transcript. Henrietta brings up the subject of needing to "*re-sort*" Jo's will to which Jo replies that she is "*pretty sad*" because it was by then clear that the house could not be kept, whereas it might have been possible had Jo only had one child. Tom asks whether Simon could buy it, to which Jo replies that he did not have enough money. Tom replies (reflecting his financial inexperience perhaps) that *"if he did buy it, then we'd pay him the mortgage*". Jo was clear that Simon would not buy the house referring to the intended purchase near their daughter.

144. There are several more references to such things as Jo having only bought the house for the sake of the children so that they would ultimately benefit. During one of these passages, Henrietta says that she keeps telling Jo to spend all her money on herself, and

Jo replies that she has a choice either to spend the money on herself or on Tom and Henrietta, and she chooses to do the latter.

145. Finally, there is a conversation about the books. At one point Jo says that she will leave the books to Tom, and there is a long passage in which his knowledge (or lack of knowledge) of the value of the books is discussed. Mr Waistell suggested that this passage demonstrated how little Jo trusted Tom to be reliable and responsible, which reflected her general opinion of him as a waster or idler (my words). I do not accept that submission. My interpretation of that passage is Jo urging upon Tom that her personal book collection was a valuable thing and not just sentimental. I agree with Tom and Henrietta that it is reasonably apparent that here Jo was referring to the personal collection and not the stock-in-trade of the book business.

146. In summary, I find that the recording of this visit reflects a clear and fixed intention on Jo's part to balance out the children's inheritance to take account of the *inter vivos* gifts, and then to divide the balance equally between the children. It demonstrates, contrary to Mr Waistell's submissions, a deep and lasting love for both children, and there is no hint of the alleged underlying disquiet, mistrust or malaise in either of the relationships between Jo and the children. In my judgment, it is entirely inconsistent with, and seriously undermines, the reasons advanced by Simon for Jo's change in her testamentary intention.

The Defendants' Evidence

Ray Edwards

147. Ray was one of the witnesses to the 2019 Will.

148. In his witness statement, he said that he was Jo's partner for "many years", having lived with her in the house since 2001 until her death, and that he knew the children well because of that. He states that he looked after Jo when she became ill, giving up his part-time job in order to do so.

149. Dealing with the 2019 Will, Ray states that he was aware that Simon had been asked to draft a new will for Jo, and that he was there when the draft arrived in the post, which he then proceeded to read to her. He said that Jo approved the draft and asked Simon to prepare a bound copy which he brought to Jo's house on 8 August. Jo read that bound copy in front of him and Simon, he said, but no-one spotted the spelling mistake, and Jo wanted to sign the will straight away, to which end she called Mrs Lewis to come round and be the second witness. Ray states that upon her arrival Simon left them alone in the room and they all signed the will, after which Jo appeared pleased and relieved. She kept the signed will "*with her other papers in the house*" which meant that she could have looked at the will at any time thereafter.

150. Ray is convinced that Jo was of sound mind when she gave instructions and executed the 2019 Will, pointing to her continuing love of, and excellence at, word puzzles.

151. Turning to the contents of the 2019 Will, Ray says that he was not at all surprised that Jo had left her estate to Simon and Hilary and not to the children, because she had told him as much "on several occasions". He said that Jo would often complain about her children, Tom in particular, with whom she had a "*very difficult relationship*", and that she "*dreaded*" his visits which would almost always involve requests for money. He recalls Jo remarking "*how much does he want this time*?", and was "*tired of giving Tom financial help*". He refers to a number of occasions that Jo had helped Tom out, and to the fact that Jo would have assisted Tom with buying a house had he got himself into a stable enough position to obtain a mortgage which he failed to do by the time she died. Ray also recalls "*a few blazing rows*" when she had asked him to leave "*on a couple of occasions around Christmas time*".

152. As regards Henrietta, Ray says that Jo had felt that she had been ungrateful for the £90,000 deposit, and that she had not spoken to Jo "*for several months*" after the gift had been made. Ray went on that Jo had declined Henrietta's offer to assist with drafting the new will.

153. Ray denied that Simon had offered him a Harley Davidson as a bribe for assisting the Defendants, stating that he had had one until 2020 but had sold it as he didn't use it any longer; and that he would not have wanted another.

154. In cross-examination, Ray stood by his assertion that he had been in a relationship with Jo "*for years*". He suggested that Mr Dickinson (Counsel) had been "*misinformed*" – that they had merely had a couple of "*ups and downs*" and he had moved out on a couple of occasions. He accepted that Jo had had relationships with other men during their time, but they were short-lived, he said. He accepted that he had paid rent and that he and Jo had separate rooms. It was suggested to him that this was wishful thinking and that he wanted a full relationship. He replied that "*we had a full relationship up to a certain point, but I can't remember what year it was*". He accepted that he was infatuated with Jo, and that he thought her beautiful, clever and witty and that she was the "*love of [his] life*". He also accepted that he was useful around the house and with the children, but denied that that was the reason that he had been kept on; he said that the "*relationship was fine*" apart form the couple of times he had moved out.

155. He was unsure whether Jo had lost contact with Simon, stating that he thought he might have been working abroad. He was unsure when Simon started visiting Jo again, although he remembered him visiting with hampers which he said made her pleased.

156. Ray accepted that Jo loved her children but denied that he resented that, but he felt sad that the children treated her the way that they did.

157. Along with other witnesses, Ray agreed that Jo was "*always*" quick to forgive, save for the time when Henrietta had not spoken to her after the deposit had been paid.

158. Ray was taken through a number of alleged incidents between Jo and Henrietta, and Ray was unable to be specific about most of them. He was unsure of dates, even years, and seemed to be rather repetitive about events, e.g. periods when Jo and Henrietta were not speaking for several weeks or months. In relation to the house deposit issue, he said it was 3-4 months of not speaking; then it was "*2-3 months, I don't know how long it was*". It was put to him that it was not true that Henrietta had been ungrateful, and he replied "*I don't know. But she stopped speaking – I don't know why … but Jo told me she was ungrateful*". It was put to him that that was untrue and he replied, "*It was a few months or some time before the will. Jo told me that she had told her kids. I said how did Tom take it? I can't recall the answer*". When pointed out that this (rather important piece of evidence) was not in his witness statement, he said, "*It's true, I remember it*". When

asked when this was, he replied "*a couple of months before … some time before*" and he volunteered, "*Henrietta offered to organise the will and Jo declined the offer because she wasn't included in the will.*"

159. After confirming his evidence about the four months of not speaking from Henrietta, Ray was taken through messages between Jo and Henrietta from April, May and June 2018 (pp270 - 272 of the Trial Bundle). The first series suggested that Jo was staying with Henrietta at the time; the second were clearly friendly, and Ray responded that "*I don't know; I remember that they were not speaking*", and in respect of the latter, he was asked that there appeared to be a loving and friendly relationship, to which Ray replied "*It does seem to be*". Ray accepted that it would have been him who would have taken Jo to the stay with Henrietta, but then said that Jo had subsequently asked him that she be brought home.

160. Mr Dickinson then turned to the subject of Tom, and asked Ray whether he loathed him. Ray replied that he loathed the way that Tom treated his mother. It was put to him that from the moment they met, things had not been good, and that he had hit Tom whilst drunk at that time. Ray denied this, saying that they had first met during the day and he did not ever drink before 9pm. He accepted that his character changes when drunk. He accepted that he didn't like Tom or his father. He said that he and Tom "*didn't get on at any level*". He was taken to a number of messages sent by Jo suggesting that he and she had a rather drink-related tempestuous relationship, which Ray denied. He accepted that Jo felt that he criticised her children and she did not like it – she would always defend her children, he said.

161. There were two specific issues involving Ray, one involving cards sent to Tom's then girlfriend purporting to be from a man called Matt, and the other a very distressing incident in which Jo's cat had been killed rather violently. Ray had denied being involved in the cat's death but had later confessed to Jo that he had killed it. Ray denied that the cards were from him, though seemed to accept that they had been purchased from a shop very local to Jo's house and was certainly uncomfortable being cross-examined about them. It seems clear that "Matt" never existed as a real person. Ray said that he had confessed about the cat to "*shut Jo up*" because she was wearing him down. It was put to him that he had done these things because he hated Tom, to which he replied that the

feeling was mutual. I make no finding about the cat because of the paucity of evidence, but I find on the balance of probabilities (albeit that the evidence is somewhat circumstantial) that Ray did send the cards to Tom's then girlfriend.

162. Turning to the contents of the 2019 Will, Ray was asked when Jo had first told him about her intentions, and he replied that it was about the same time as she had told them: two months before the will was signed. He was asked whether this had been on several occasions to which he replied "*Not several occasions*". He was referred to his statement which used those words, and he hesitated and said, "*Maybe more than once*". He put this dichotomy down to a bad memory.

163. When Ray was asked about the fact that no-one else had mentioned the children knowing about Jo having told them about the change in the will, and that this was not in his witness statement. Ray simply said that it was something Jo had mentioned to him and he had not thought of everything to put in his statement. He accepted that Tom and Henrietta were the centre of Jo's life, and that he had found it surprising when told about the 2019 Will. When asked whether he had asked her why, he said that he did not have to ask: Jo had said that they had received enough. These answers contradict earlier answers in which he had said that he did not know who the beneficiaries of the 2019 Will were and he was not interested.

164. As regards the July 2019 visit, Ray accepted that Tom, Kirstie and Henrietta had not come unannounced; that the children had their own keys. He stated in terms that Jo had not complained about the visit. He then volunteered that Jo had made him change the locks to prevent Tom coming in and taking things. This is not mentioned anywhere else, and may have been a reference to Simon's instructions after Jo had died.

165. Ray was then asked about the execution of the 2019 Will and the days leading up to it. Regarding his statement in which he said that he had read the will to her, it was suggested that she could have read it herself once the envelope had been opened. He replied that he had handed it to her, but she had said, "*Read it to me, I want to know what it sounds like*". Ray then said: "*Then she read it herself*", which was not in his statement. When asked why it was not, he said that there was quite a lot not there, and when it was pointed out that this was a key point, he said "*O.K. Sorry*".

166. Ray stated that he put the draft will in a pile of papers – a small plastic rack with bills. He could not remember what happened after that, save that he said that "*maybe*" Jo had texted Simon. His statement was put to him in which he positively states that Jo had at that point asked Simon to prepare a bound copy, and whether he remembered that. He said "*She often texted Simon. She wanted one with a proper binding on it or something*". He was challenged that he had not mentioned that before, and he simply stated that "*It happened*".

167. Mr Dickinson then put it to Ray squarely that these inconsistencies were because Ray was being told what to say, to which Ray replied "*I'm telling the truth*". Pressed on the text message, Ray replied, "*I'm saying <u>perhaps</u> she did. I don't know when she phoned Simon and asked for a proper one*". Ray was then taken to Simon's solicitor's letter of 6 December 2021 (paragraphs 11-12) in which it was stated that Jo had asked for the bound copy after having had the draft read over to her by Simon on the phone. It was put to Ray that he had no idea whether or when Jo asked for a bound copy because he was being told what to say. Ray replied that that was completely untrue. It was suggested that if that was the case, he would not be in this difficulty, to which Ray responded that it was a long time ago and he could not remember.

168. When it was pointed out to Ray that Simon had not mentioned Jo reading the 2019 Will on 8 August 2019, and whether he had misremembered, Ray replied "*I would have thought she would read it through. I am sure she would.*" He was asked whether he actually recalled that happening, and he said: "*Of course she would have read through it – I would have thought. I don't recall seeing her read through it*". It was put to him that therefore he must have known that his witness statement was not true when he signed it, and Ray suggested that that was explicable by his memory having been much fresher when he signed the statement. It was pointed out that the statement was signed in June 2022, to which Ray replied, "*I'm afraid to say that I don't recall where I was when I made this statement … It's detail I forget. It's all true*".

169. As regards the misspelling of Jo's name, Ray thought that she <u>had</u> noticed it, and that she had pointed it out. When asked what words she used, Ray said that he did not know. He was reminded that this recurred four times, and was asked again whether Jo noticed it. Ray replied "*I don't know. Is it important. She mentioned it; not that she was pointing it*

out. Maybe she mentioned it on the day she read it". He was then taken to paragraph 4 of his statement: "… *neither she nor I noticed it*", and he replied "*She told me there was a misspelling. I don't know why I didn't mention it*". It was pointed out that this was the opposite of what he had said in his statement, and Ray said, "*I don't know when she spotted it. But I remember her telling me*."

170. During the course of his cross-examination, Ray was repeatedly asked where the relevant events took place, and he repeatedly answered "*in the dining room*" and words to the effect that Jo was always on the rocking chair there. He could not explain, however, why his witness statement stated these events occurred in the sitting room; he stated that he had made a mistake: Jo hardly ever went into the sitting room.

171. Ray was clear that he had been in the room with Elizabeth Lewis (she could not remember anyone else having been there), but did not recall any discussion with her. He was asked what had happened after she and Jo had signed and he said she had left after 10-15 minutes and Simon had come back in after she had left. He was asked what happened to the will, and he said "*I put it aside with the rest of Jo's documents – on top of the small rack. Simon left fairly soon to go home. I would have stayed with Jo and Simon would have gone*". He was asked about the 2008 Will to which he had been a witness. He denied having been a witness and when shown that he had been, he stated that he had thought Counsel was talking about a much older one. He was then asked whether, on 8 August 2019, he recalled any events relating to the 2008 Will, to which he replied "*I don't recall any events relating to the old will*." He was then asked whether he recalled it being torn up and being burnt, and he said "*That rings a bell. I'd forgotten about it*". He was asked whether he'd read it somewhere, to which he replied no, and that he didn't really recall it after all. He denied having seen Simon's statement, and then went on, "*Now you mention it – there was something about a ceremony about disposing of the old will. Maybe he did it when I wasn't in the dining room*", and he was reminded that his evidence was that he had been there when Simon had left to go home, to which he remained silent.

172. He was questioned further about whether the 2019 Will was taken away by Simon, and his answers were couched in terms of phrases such as "*it would have been* [left with Jo]"; "*there would have been no reason for Simon to take it*."

173. Ray was then taken to the handwriting on the 2019 Will. He confirmed that he was familiar with Jo's handwriting, and the uncrossed "J" and lower case "a" in her signature. He was shown the 2008 Will and confirmed the initials there used the same "J" and "a". He answered "*That's how she signed everything*". He also agreed with the proposition that the 2019 Will had the same signature but very different initials. He tentatively suggested that "*maybe*" Jo changed how she initialled things, but couldn't otherwise explain it. He was asked whether the initials did not look like Jo's normal handwriting and he said they didn't. It was then suggested that he did not recall the initials being placed on the will, and he then said "*It is Jo's writing. She didn't often initial things.*"

174. Turning to Jo's mobile phone, Ray confirmed that Henrietta had given it to him for safekeeping in February 2021, and that he still had it in a drawer. He confirmed that he had told Simon that he had it in August 2021 when the house was being cleared, and that Simon had told him to "*hang on to it*". When asked why he had texted Henrietta in April 2021 that Simon had the phone, he said he was fobbing her off so that she didn't give him (Ray) "*a hard time about giving the phone back*." When asked why he didn't want to give the phone back, Ray said that he was interested in reading the text messages between Tom and his mother. When asked whether he was aware that the phone was relevant to the case, he stated that he had been thinking about bringing the phone, but was not sure. He said "*I told Simon that I had the phone*". He confirmed that the phone still had its messages intact.

175. When asked about Nick, Ray seems to have changed his views from clearly not trusting him when texting Henrietta in July 2019 that she should hide Jo's card and chequebook when it was known that Nick was coming to visit. In his oral evidence he stated that he did not have an opinion about him, and stating that he did not know why he didn't trust him in 2019 – suggesting that he was a bad judge of character. He confirmed, however, that he knew about the incidents that rendered Jo suspicious of Nick.

176. I regret to say that I found Ray to be an unsatisfactory witness. I have highlighted above some of the obvious discrepancies and somewhat glaring inconsistencies in his evidence. He had a tendency to give evidence in relation to an issue, but when confronted with inconsistencies in the Defendants' case, he sought to "correct" them; the issue of the disposal of the 2008 Will and the initials on the 2019 Will not being Jo's handwriting are

two significant examples, but there were others. Similarly, he was often confronted with documentary evidence which contradicted his oral evidence, and he would seek to retract or alter his oral evidence. Some examples are also set out above, but it was a theme of his evidence.

177. Ray's witness statement is clearly misleading, even on his own oral evidence. I find that he was not Jo's partner for very long. I accept that they had some form of sexual relationship for a time, but that he quite quickly moved to being a lodger. He overstates his role as a member of the family.

178. In relation to Jo's request for a bound copy of the will, Ray could not get his evidence straight, eventually saying that he could not remember. This does suggest, as Mr Dickinson submitted, that he was not giving his own evidence. If he could not remember, why give the evidence in the first place? Ray's evidence about whether Jo spotted the misspelling of her name was glaringly inconsistent, and his evidence about Jo's love of word puzzles suggests that she would have noticed the misspelling if she had read it. His evidence regarding Jo staying with Henrietta in her new house, once confronted with the text evidence that it had occurred, was an attempt to tailor it to the Defendants' case when he said that Jo had called him asking to be taken home. Either that was not true (she was house-sitting and would not have abandoned the house) or it was when Henrietta had returned, in which case it was disingenuous. Ray's oral evidence that Jo had told Tom and Henrietta about the change in the will could be termed (mildly) as an outlier and a rather serious omission from his statement given the live issues in this trial. His suggestion that Jo had positively refused Henrietta's offer to assist with changing Jo's will is not in his witness statement and is over-egging the pudding to support the Defendants' case. It is clear that Jo had asked Henrietta to assist with the POA and probably the will, before the offer that Ray is probably referring to i.e. that in the WhatsApp messages. This seems to me likely reflecting Simon's perspective on the chronology.

179. Some credit might be given for Ray accepting that he has a dislike for Tom, but even then, I consider that he underplayed it, and he clearly in my judgment exaggerated the friction between Jo and Tom. This is apparent from the various recordings and the messages that passed between them, and from Ray's own evidence that Jo would always

step in and vociferously protect her children if they were criticised. His evidence that Jo was tired of helping Tom out financially is contradicted by his evidence that Jo wanted to assist Tom to buy a house to the end of her days, if only he had been responsible enough to get himself into a position to obtain a mortgage.

180. Not all of Ray's evidence was unreliable or untruthful, but where it is not corroborated by documentation or other credible witness evidence, I reject it.

Nick Abraham

181. Jo had an inconsistent relationship with her brothers. Her twin brother, Nick, was not someone that Jo trusted, and they had been distant for a long time. There had been incidents in the past involving money. In cross-examination, Nick refused to explain why he had borrowed £3,000 from Jo but never paid her back. He denied that he had told her that it was to replace funds he had "borrowed" from his employer's client account which Henrietta said Jo had told her about, but would not otherwise elaborate. There is good evidence in the recordings, and from Ray, as well as Tom and Henrietta, that Jo did not trust Nick and did not want to have ongoing contact with him until, perhaps, towards the end of her life. That is also evidence that the events described did happen, and that Nick was dishonest either to his employer or to Jo. Jo had also been insulted by Nick's wife. He had at one point in 2014 turned up out of the blue, ostensibly for a visit, but ended up staying for two to three months, taking over the sitting room and, according to Henrietta, making inappropriate comments about her body at the time. Nick had fallen out with Simon, which might suggest that Nick's support for Simon is more credible, but not necessarily. Mr Dickinson suggested that Nick's "repeated unprompted assertions" that he had no interest in the outcome of the case suggested that that was not the case. Ray described Nick as being almost unknown to him. Given Ray's almost continuous presence in Jo's house, this suggests that Nick and Jo did not have the sort of rapprochement that Nick said had occurred following her second diagnosis.

182. Nick's witness statement states that Jo contacted him in late 2018 or early 2019 to discuss the prospect of she and Simon buying a house together. It was put to Nick that this conversation never took place, and that his version of the conversation was inconsistent with the text message set out above, in relation to the children getting their

inheritance in due course. Nick stood by his statement, suggesting that the texts could have been referring to Simon and Hilary's children. I find Nick's evidence about this conversation difficult to believe. Given the historical emotional distance between Nick and Jo, his dissociation from Simon, and Ray's evidence that he hardly knew Nick, as well as the evidence from Tom and Henrietta, I find on the balance of probabilities that Jo would not have contacted him in late 2018, even if she knew where or how to contact him. No satisfactory explanation is given by Nick at all as to why Jo would suddenly do this.

183. Nick made the oft-repeated allegation that Henrietta did not speak to Jo in the months after the gift of the house deposit which, in my judgment, for the reasons already given, has been clearly disproved by the WhatsApp messages and recorded conversations as well as the oral testimony. This reinforces Mr Dickinson's allegation of a collation of evidence. The same observations apply to Nick's allegation that Jo had considered and asserted that the July 2019 gathering as an "ambush".

184. Nick also gave some evidence about his sister, whom he did not know well, that was at odds with all other witnesses, but which serves the Defendants' case, namely that Jo had a "*long, long memory*" and would bear a grudge "*back to the playground*"; that she "*could be complex and secretive*"; that although Jo wanted to be honest, if she chose to deceive, others would not find out, which I take to be an implication that Jo was not as honest and open as she had made out to the world at large. These characterisations of Jo have no corroboration and no stated basis. I reject them.

185. Finally, the clear implication in Nick's witness statement is that Jo had impliedly, if not explicitly, given reasons for her decision to change her beneficiaries as she did (chiming with Simon's), and yet in cross-examination he stated that those reasons were taken by Jo "*to the grave*".

186. It will be clear from the foregoing that I do not accept Nick's evidence save where it is independently corroborated or unchallenged.

Simon Abraham

187. In his witness statement, Simon stated that he lived in Bahrain between 2011 and 2016 but kept in touch with Jo during that period by way of phone calls. He said that they began to see more of each other from 2016 visiting her from Southampton. After her second cancer diagnosis, he stated that he looked after Jo emotionally and physically.

188. Simon went on to state that it was impractical to drive between Southampton and Bristol and so he and his wife and Jo decided to buy a house together as joint tenants, and that in pursuance of that intention, Jo put her house on the market. They only abandoned the idea, he said, when Jo decided in April 2019 to refuse further treatment for cancer and so it was though that she would not have long to live. Other evidence, including from Simon, suggests that the idea of buying a house together only formed in early 2019, so it was not a long-lived one. It also counters the implication in Simon's witness statement that it was from early on that they had sought to purchase together.

189. Simon described the relationship between Jo and her children as volatile, and sets out what he says Jo told him after giving Henrietta the £90,000: that Henrietta "*barely spoke to Jo for some time … and Jo was quite upset by that*". He said that Jo's relationship with Tom was always difficult, and she resented his constant demands for money, especially for rent, although she remained willing to assist him in buying a house if he got himself into a position to do so.

190. Simon identified Christmas as a flashpoint and referred to texts from Tom in which strong language is used and demonstrate the "*poor state of their relationship*" and which demonstrate that Henrietta and Tom "*paint a much rosier picture of their relationship with their mother than was the case*". He referred to the July 2019 visit which he stated "*was clearly not a normal social gathering as the conversation quickly turned to money and inheritance*". He goes on to state that Jo had considered this to be a very unfair ambush so late at night. Interestingly, in his section advocating for Jo's capacity at the time, Simon goes on to state that the transcript of that same visit shows that Jo was very talkative, and she was quick-witted and humorous, lucid and was laughing frequently, which does not to my mind accord with a woman irritated at being ambushed.

191. He stated that Jo "*firmly declined*" the offer of help from Henrietta, although he does not say where that was expressed, because elsewhere he refers to Jo not responding to that offer.

192. In his statement, Simon did not accept that the Jo's intention was always to have left the children everything, but conceded that she had at times said that, though he was clear that she had changed her mind, citing the Christmas 2018 argument in support. He again referred to Henrietta being ungrateful and Jo being frightened of Tom such that she didn't want him in her house. It was immediately after that event, in early 2019, that he said Jo had approached him to move in together. He even said that Jo had told the children that she was going to leave the house to him, and cited the "*I'll leave it to Simon*" phrase from the July 2019 transcript. This is possibly where Ray got the idea that Jo had told the children about the contents of the new will. As I have found, that phrase did not mean that at all – it meant that Jo was expecting Simon to sort things out for her.

193. Simon also said this at paragraph 21 of his statement:

"*Tom and Henrietta had been pressuring Jo about her will, and she had resolved to do things "her way", as can be seen from the WhatsApp exchange. Jo said "I cancelled Tom coming over yesterday . . . I wanted you both to listen to my wishes . . . I'm doing it my way now." She did not give any details, but the clear implication is that this was something different to what she had discussed with Tom and Henrietta previously*."

194. As for the process of creating and executing the 2019 Will, Simon's witness statement contained this paragraph:

"*Jo did not respond to Henrietta's offer of help, and as far as I know she never discussed the provisions of the 2019 Will with either Tom or Henrietta. She told me what she wanted the new will to do, and I downloaded a template from the internet to work from. I emailed and posted the draft to her on 6 August 2019.*"

195. In his supplemental witness statement, Simon said:

"*3. Immediately after I drafted the will, I read it to Jo over the telephone, and she was happy with the content. Again, the provisions were so simple it would be difficult for her to misunderstand what the effect of the will would be.*
4. I have admitted that I was in Jo's house at the time the will was executed, but I was not in the same room at the time it was signed and witnessed …

5. I have also admitted that I mis-spelt Louise as "Lousie" in the will. I am dyslexic and prone to making spelling mistakes. Jo's name is not part of the operative wording of the will and would not necessarily have been spotted by her when she read it through."

196. In cross-examination, Simon was taken to a transcript from a 2017 conversation in which Jo had said to Tom:

"*I need to work out sensibly what we are going to do, how we're gonna work out what to do with the money I've got, because I don't want any other fucker to have it other than you two, alright? …"*

197. Instead of accepting that that was expressing Jo's intent to leave everything to the children at that time (which it seems to me is inescapable), Simon suggested that this was referring to Jo's dislike for paying rent, which is a sense I cannot decipher from those words. This reflects Simon's tendency boldly to say anything to bolster his position.

198. Similarly, Simon was taken to the passage I have referred to at paragraph144 above at (referring to Jo's choice to spend her money on Tom and Henrietta (p.30 of the July 2019 transcript)**)** and it was suggested that, as at 18 July 2019 Jo was intending to leave everything to the children, and Simon said that she was there referring to the 2008 Will. That is a fanciful interpretation of that passage, in my judgment.

199. Simon denied that he had not been in contact with Jo over the years 2000-2018, stating that he had been abroad in many countries, having had about seven mobile phones; they had had phone calls, he said, and he and Hilary had sent Christmas cards with updated contact details. He was taken to a part of a transcript dated 4 April 2017 in which Jo had stated that she had not spoken to him; didn't know what his number was, and thought he was probably still in Bahrain. She also said that she'd emailed him a number

of times, but had not received a reply. Simon said that he had not seen any emails from her, nor seen any in Jo's Hotmail account as executor.

200. Simon was asked why his wife, Hilary, had not been called as a witness as she could obviously have given relevant evidence noting that she had been named in the Directions Questionnaire ("DQ") as a proposed witness. Simon replied that she was not a witness because she was profoundly deaf and only uses texts. It was suggested that she had withdrawn her support after the transcripts had emerged, but Simon said that the decision not to involve her had been made at the time of the Defence (though I note that that pre-dates the DQ).

201. It was put to Simon that his attention to Jo grew only after October 2018 when Jo had had her scare regarding her jaw and was in hospital. He said that the support had been there before, and Hilary had begun to support Ray's efforts in cooking and cleaning. He denied being Jo's 'drinking buddy' and that he would go out to get alcohol for Jo; he stated that Henrietta and Tom could not give any significant evidence because they were hardly ever at their mother's house.

202. Simon was asked whether he persuaded Jo to consider buying a property together in October 2018, and he replied that it was the opposite – it was Jo's idea to buy a house together. She had texted him, a text which he said he had disclosed to his lawyers (but which does not feature in the disclosure lists or the trial bundle – as I have already noted, Simon has disclosed neither his own nor Jo's phones). This October text does not chime with the rest of Simon's evidence that the joint-purchase idea came in early 2019 after the Christmas Day argument.

203. It was suggested that, because he thought (as per his statement) that the joint purchase of property would be as joint tenants, he must have known as early as January 2019 that the estate was going to him, but he said that he did not know at the time. However, he confirmed that Jo had told him that the property would pass by survivorship. Those two concepts are inconsistent. Simon was referred to the text between Jo and Bob set out at paragraph 43 above ("*the kids will get their inheritance upon our deaths*" etc.), and he said that that was not the "*important bit*" but he thought that it referred to all four children. Asked by me how that could work, he said that it would have included an

element of trust, which he would have abided by. That not appearing in the witness statement, Simon said that it was because discretion being what it is, it was left to him and Hilary, and he had expected it to be a will.

204. Simon then *did* accept that, as at 18 July 2019, Jo's intention was to leave everything to the children, divided as discussed in the recording. He was asked whether he accepted that it had been Jo who first brought up the question of money or inheritance at that visit (which is palpably true), and Simon answered, somewhat obliquely, that he hadn't denied that conversation. I note here, however, that his earlier position had been different, not only in the oral evidence, but the solicitors' correspondence asserted on Simon's behalf that this had been "*a long time brewing*", presumably on the basis that the reasons given by Simon for the change pre-dated the new will by 8 months in respect of Tom, and 15 months for Henrietta.

205. Next, Simon was taken to the passage at the gathering which includes the phrase "*I'll leave it to Simon*" (set out above), and it was put to him that that referred to his role as POA – that Jo was relying on him to sort things out. He said that he totally disagreed. There were other communications, he said, "*which supported Jo's idea about buying a house together, "I think I will leave it to Simon"*". I observed that in that part of the conversation, Jo had immediately gone on to discuss the money being left to the children, and that this was a fast-moving conversation which was all part of the same passage. Simon said "*I accept that*". It was then suggested by Mr Dickinson that, if Simon's was an honest interpretation, and if the Court concluded that that was not what Jo had meant, it was quite possible that Simon had misunderstood Jo's instructions. Simon denied that, and said it was a matter of contextualisation: this had to be interpreted in light of the other communication from Jo. He was then challenged that paragraph 19 of his statement expressly relies on this phrase alone to suggest that Tom and Henrietta knew that Jo was intending to leave the house to him. He said "*OK, but I wrote this bit after the rest of the material and so I have hindsight from other things and so tailored my thinking and understanding*".

206. As regards the reason for the joint-purchase not proceeding, Simon confirmed his position that it was because Jo had become too frail by April 2019. It was suggested to him that the real reason was how complicated it transpired it would be to protect Tom

and Henrietta's inheritance, to which Simon replied that there was no correspondence to that effect. He was referred to the passage at page 20 of the July 2018 transcript set out at paragraph 141 above referring to the £30,000 investment being in the children's names. Simon first denied that the house was for them stating that they had no intention of moving to Bristol. When pressed as to why the house was expressed to be near to Ferne (Simon's daughter), Simon said that the house was for Hilary, not him. He at first stated that they did not need Jo's help, but when pressed in the context of this passage, he said "*Maybe we did.*"

207. Simon was taken to his solicitor's letter of 11 January 2022 answering queries raised by the Claimants' solicitors. In it, they say that Simon was the "*only source of family support due to the deterioration in Jo's relationship with Henrietta and Tom*", and it was pointed out that that assertion and its justification was not in his witness statement. Simon was asked whether that was because it was untrue. Simon said it was about context, and referred to the screenshot of the text between Tom and Henrietta sent after Christmas 2018 set out above which was pasted into that letter referring to the "*distant and broken relationship*". Asked whether that was his only basis for that assertion in the solicitor's letter, Simon said "*No – I think Jo was already very, very hurt by the lack of gratitude regarding the house*". When pressed about its absence from the witness statement, Simon said "*I don't know*".

208. Simon was then asked how he came by the "*distant and broken*" screenshot, he thought that Jo might have sent it to Hilary, and that Henrietta might have sent it to Jo. It was suggested that Simon had had Jo's phone, which he denied. Ray's evidence about Jo's phone was put to Simon, and he said it was not impossible that Ray had said that to him. He accepted that he knew Ray had the phone. He accepted that the Claimants had been asking for the phone via their solicitors, in which his solicitors were asked specifically whether he "*had access to*" the phone. The reply from Simon's solicitors had been "*our client does not have access to it.*" Simon denied that that was untrue. It was pointed out that he was executor of the will and could have got the phone from Ray. He said "*I live in Southampton. I didn't give the phone to Ray. I didn't want the phone.*" He was pressed whether Ray being in Bristol was his honest reason for those instructions to his solicitor, and he confirmed that it was. He confirmed that he did not even ask Ray for the phone because, he said, he did not understand the importance of it.

He said that he did not know whether the phone may have relevant messages on it. When pressed, he accepted that it was "a possibility". This evidence regarding Jo's phone is manifestly unbelievable, and undermines Simon's credibility.

209. Moving on, Simon was taken to paragraph 11(j) of the Amended Defence which pleaded that Jo had told Henrietta and Simon that she was planning on making a new will, but "*firmly declined*" the assistance of Henrietta. It was put to him that Jo had asked for Henrietta to assist, which Simon denied, stating that that only related to the POA. He was referred to Henrietta's witness statement in which she referred to Jo discussing the appropriate split, at which point Simon revealed that he had had a meeting with Jo and Henrietta in early July 2019 at which "*a lot of things were discussed. POA. Jo definitely discussed the new will and definitely said that she did not want Tom as an executor. We did not discuss the split and didn't say who was going to do it.*" It was pointed out to Simon that he had never mentioned this meeting before, and he replied that nothing concrete had come from it, the implication being that it had not been worth mentioning.

210. Simon was shown a WhatsApp exchange between Jo and Henrietta dated 12 July 2019, in which Henrietta had said they must sort out the POA; that there was a solicitor at Barclays Bank on the Gloucester Road that could do it; and that they could "*update your will as well*", to which Jo had replied "*OK xx*". Simon denied that this was a positive response, and the only reason that Henrietta knew about the change of will was the meeting in early July. Upon being challenged that it was not a firmly negative response (as alleged), Simon said that Jo had not asked Henrietta to attend to the new will two weeks before (at the meeting), and doesn't ask her here.

211. Simon was then referred to the passage of texts in which Jo said that she had "*cancelled Tom coming over yesterday*" and was "*doing it my way now*". It was suggested that the comment about doing it Jo's way referred to the POA and the executorship. He said no because he had been told three weeks after the initial meeting that he was going to be the executor, and that Jo was telling Henrietta and Hilary that she had changed her mind about her testamentary intent, and this reference to Tom referred to the early July meeting "*when Tom was supposed to come*". This does not make sense because that meeting, according to Simon, went ahead, so there was no reason for Jo to have cancelled

him going over. It would also mean that Jo was telling Henrietta by text about her will in the absence of Tom, which is highly unlikely in my judgment. Simon went on to say that "*Jo had not told me yet*", by which he was referring to the change in Jo's testamentary intentions. He was asked when he was told, and he said it was in the car between East Sussex (where he was working) and home. There followed some intricate forensic cross-examination about times, dates and WhatsApp messages as referred to in paragraphs 4, 9, 11 and 12 of Simon's solicitors' letter of 6 December 2021, his witness statement, an email of 6 August 2019 (p.410 of the Bundle) and the Amended Defence. These concerned the detail of the time and manner of receipt of instructions; the precise sequence of events regarding phone calls, approval, posting and request for the bound copy to be produced. It would be disproportionate to record that careful and extensive cross-examination in detail here.

212. In summary, I find that Simon's history of when and how he took the instructions for the new will, when he is said to have read over the will to Jo remotely, when it was posted and when it arrived, and when and how the request for a bound copy occurred, are all confused and inconsistent. Some examples are as follows. The email enclosing the draft will makes no reference at all to having just spoken to Jo or having read it out to her over the phone, which is an unnatural thing to omit from an email of this sort. The Defendants' solicitors' letter of 6 December at paragraph 12 makes no mention at all of emailing or posting a draft to Jo – quite an important omission in my judgment. Why post and email a draft copy of the will if Simon had already been asked to produce a bound copy to present to Jo to sign? There are inconsistencies between the timings of the text messages and Simon's oral evidence. The fact that Simon has not disclosed the posted draft will from Jo's papers is unsatisfactory, but also that he swore a witness statement which stated that he had not seen one.

213. I accept that in some contexts, these may have been regarded as innocuous events at the time, but not, in my judgment, here, given the importance of the events that were taking place. Simon was well aware that he was preparing a will which left everything to himself and Hilary and which, as I find, he knew was cutting out Jo's children who had been the beneficiaries of her existing will and which had been her stated intent for many years. Any reasonable person in that position would be very careful to make sure that

they took appropriate steps to record the sequence of events. I shall return to this aspect below.

214. Simon was asked about his intervention in the Abraham WhatsApp group in which he states *inter alia* that executors and beneficiaries are often the same in a simple will. It was put to him that that was designed to confuse. Simon said that he was simply doing his best, but to my mind it does serve to confuse. As I set out below, I find there to have been a serious misunderstanding in Jo's, and to a similar extent, Henrietta's minds as to the role of an executor and the role of a person granted a POA.

215. Turning to the events of 8 August 2019 itself, Simon was again asked some detailed forensic question about the series of events. Some of his answers puzzled me. He had been clear that he wanted to absent himself from the dining room when the will was being signed. He first said that that was because there had not been enough room which is clearly incorrect given that this was a dining room, but then he said, "*You know that I knew what's in there and so did not want to be accused of anything. Anyway, it was not the reason that I went up* [to Bristol]". It was suggested to him that the reason he didn't want to be accused of anything was because he knew the 2019 Will did not reflect Jo's wishes. Simon was clear that the will reflected her wishes and he had simply printed off the instructions for executing the will.

216. Some of Ray's evidence was put to Simon, and he rather resignedly but politely accepted that, whilst some of Ray's evidence was accurate, his memory was not reliable. Simon added detail to the post-signing events: he said that Jo had sat in her chair and physically compared the 2008 Will with the 2019 Will before trying to tear up the former. When asked why this had not been in Ray's witness statement, he replied that it had all happened in seconds implying that Ray may have missed it.

217. Mr Dickinson then took Simon back to the solicitors' pre-action correspondence in 2021-2022 in which the Defendants' solicitors had been asked what reasons Jo had given for the "dramatic departure" from the 2008 Will, and whether these had been enquired about, and they had answered,

"*Our client reports that Jo did not offer any reasons for the change of beneficiaries. She was succinct, concise and articulate about her choice of beneficiaries and executor.*

Our client did of course ask for the reasons behind Jo's decision, and she simply replied that it was her wish. There was no discussion."

Simon confirmed that these answers were correct "*more or less. She never gave me any kind of answer or reason*"

218. Simon was then taken to the Claimants' solicitors response dated 11 January 2022 which was incredulous about the lack of discussion and reason, and his own solicitors' response. This stated that Simon was "*keen not to air the family's dirty laundry in public*", and that,

"*with great reluctance that in order to provide the explanation sought he should raise distasteful matters which he would rather have remained unsaid.*

It seems likely that the catalyst for Jo's decision to disinherit Henrietta was because of her perceived ingratitude for a substantial cash gift …Henrietta did not speak to her for several months following the making of the gift. [It goes on to cite, in relation to Tom, the Christmas 2018 argument; Jo's supposed fear of him, and his relentless demands for money].

There was no sudden change of wishes; the situation had been brewing for some time. Jo had told at least one third party more than once that she did not like her children and that she did not plan to leave them anything. Tom himself described the family relationship as being 'distant and broken' in an exchange of texts with Henrietta in January 2019."

219. When asked which answer (relating to Jo's provision of reasons or otherwise) was true, Simon stated,

"*It was true that Jo never gave me an explanation. I did come across information in the course of time and would have had more information by then. In terms of the truth, when she asked me to do the will I pressed for discussion and she was very reluctant to spell out things.*"

Simon denied that he was just looking for an excuse. Jo, he said, had not done this in a hurry and it was the only thing that she had control over.

220. As regards the burning of the original 2008 Will, Simon confirmed that his second (main) witness statement was true, despite that description of events not appearing in the solicitors' correspondence or in the Amended Defence. He was then taken to his first (testamentary) witness statement in which he stated that he had no knowledge of previous wills *except* the 2008 Will which, he stated, that he believed it to be in the possession of the Claimants. Simon stated that he did not understand that document, and that he had "*probably not read it".* When reminded that he had signed the statement with a statement of truth, he said "*Yes. OK. I don't know. Sorry*". The testamentary witness statement did not just omit to mention the 2008 Will, it was specific in stating that it was Simon's belief that it was in the Claimants' possession. This is inconsistent with the dramatic description of the will burning which is not something one would pass over when being asked about the 2008 Will by one's solicitors.

221. Simon then introduced evidence that he had also posted the POA documents on 8 August, and that Jo had executed those in advance of the will. He also stated that Jo had "*read the will a silly number of times*" and compared the draft to the bound version to ensure that they were the same, none of which had been mentioned before.

222. Turning to the spelling mistakes, Simon said that he didn't know what Jo had told Ray, but that she had told Simon that she had seen them and thought it was funny. It was pointed out to him that this was the first that he had mentioned this: it was not in the solicitors' correspondence; the Defence or in any witness statement, to which Simon replied that "*you do not need to say – she read it before and afterwards.*" This evidence about Jo noticing the errors and finding it funny is not only missing from his substantive witness statement (as is anything to do with the spelling mistake) but moreover, it directly contradicts Simon's supplemental witness statement which I had allowed to be adduced in order to clarify matters. This is a rather glaring inconsistency.

223. Simon went on to deny that the 18 July recording demonstrates that Jo and Tom were getting on fine, and insisted that it had been an ambush because the children had come to talk about money. When it was pointed out again that it had been Jo who had brought up the subject of money herself, Simon simply said "*OK*".

224. Simon was asked to explain the apparent diminution in the funds in Jo's bank account which had been thought to be about £80,000 at the date of her death and were now declared at £18,000. Simon said there were no transactions that were not accounted for. Simon accepted that he had refused to disclose the IHT403, despite recording lifetime gifts in the estate accounts in the sum of £136,221 which, when Tom and Henrietta are netted out would mean unexplained gifts of about £23,000. When it was suggested that his refusal to disclose the IHT403 was suspicious, Simon said "*I have not taken any money from my sister's account.*"

225. There was a heated and insulting altercation between Simon and Tom on the phone which was recorded by Tom. This followed an attempt by Tom to gain access to Jo's house the day after her death. The details are not particularly relevant, but Simon's reasons for preventing Tom having access were given as there being third-parties' property in the house which needed protecting, but that ignores the fact that Simon had allowed Ray to be in the house with access to the same property. This is inconsistent reasoning on Simon's part but the passage also discloses a deep-seated dislike of Tom by Simon which seems to have had its source in Ray's opinion of Tom. Hilary tried to excuse Simon's behaviour by suggesting he was tired and had a few drinks at the time, but the recording does reveal a rather aggressive and insulting side to Simon.

226. Finally, I asked Simon why he had not taken more steps to ensure that the 2019 Will and its execution was above suspicion, given its contents and the change of intention e.g. the involvement of a solicitor. He replied that Jo did not want to go and see a solicitor. I observed that there had been an offer of one to come to Jo's house, to which Simon responded that that had been prior to the occasion of the execution. In summary, his response was that he thought that he had done everything properly.

227. I turn to my assessment of Simon as a witness. The most troubling aspects about his evidence for me were his inconsistency and his willingness to back-fill and interpret things with hindsight, which he does to suit his case. I have highlighted some of his inconsistencies above, but examples are (in no particular order) Jo's testamentary intentions over time; whether Jo gave reasons for changing those intentions; the occurrence of an early July meeting between he, Henrietta and Jo; the failure to mention the reading over of the draft 2019 Will on the phone and the failure to mention it in the

email; the pointlessness of posting a draft which had already been approved and a bound copy of which had apparently been requested by Jo; whether Jo noticed the misspelling of her name in the 2019 Will and her reaction to that; when and how often Jo had read the 2019 Will to herself; what happened to the 2008 Will; whether and, if so when, the 2019 Will was read over to Jo; when and why a bound a copy was obtained, and what happened to the draft 2019 Will.

228. Simon was also inconsistent as to whether Jo had merely not accepted Henrietta's August 2019 offer made in the Abraham WhatsApp group to assist with the new will and his occasional assertion that Jo had strongly declined her offer to so assist. His evidence in this regard did not satisfactorily distinguish between the early summer of 2019 and the August texts.

229. I found Simon's evidence in relation to Jo's phone wholly unsatisfactory. He was wrong to state that it would only contain messages already available to the Court: Simon had not, for example, supplied his own or Hilary's phone. Furthermore, other phone records such as call dates and times and voice-mail messages could have been retrieved. In any event, it was a disingenuous and, I conclude, cynical evasion of his disclosure obligations to rely on the fact that the phone was in Ray's possession to instruct his solicitors to say that he did not have access to it. It is no excuse to say that the Claimants could have made an application for specific disclosure: the duty is on the party with possession or control of the evidence.

230. The same reasoning applies to the IHT403 and Jo's and Simon's bank accounts: I accept that an executor is under no obligation to disclose these items to a non-beneficiary, but it does not assist Simon in quelling any suspicion that has been excited in the Court's mind.

231. Of Simon's willingness to adapt evidence, there are many examples as referred to above. However, his persistent reliance on the passage containing the phrase "*I'll leave it to Simon*" as evidence that Jo intended to leave the house to him is a good paradigm: that is a highly artificial interpretation once the recording is listened to. I can only conclude that Simon adopted it without having listed to the recording itself. Simon's admission that he had used hindsight and other material to interpret that phrase is a good example of his methodology of asserting facts without justifying them. Another example of adaption of

evidence is the use of one brief text argument between Henrietta and Tom in January 2019 to characterise the whole family relationship as "*distant and broken*" in solicitors' correspondence. That was a gross misinterpretation of that text, in my judgment, which clearly was not referring to the existence of that state of affairs at that time or more generally. Simon's characterisation of the 18 July visit as being one which Tom had conceived in order to pester and bully his mother into making "admissions" for the purposes of the recording cannot withstand any sort of scrutiny. First, on Simon's case, Tom had no idea that the will was going to be changed to disinherit him – so that cannot have been any sort of motive for having the visit or making the recording. The only talk had been of changing the executors. Further and moreover, it must be remembered that these recordings go back to 2017. Secondly, and Simon could not answer this, the recordings are clear that it was Jo herself that raised the issue of money and inheritance. Simon has again extracted passages he feels serve his narrative and asserted them out of context. Simon's assumption (or assertion) that the falling out between Henrietta and Jo referred to in the January 2019 texts between Henrietta and Tom related to 2018 is in my judgment an *ex-post-facto* justification which cannot stand in light of the documentary evidence (i.e. the texts) available.

Submissions.

Mr Dickinson

232. Mr Dickinson submitted very comprehensive written closing submissions which he augmented with closing oral submissions. These incorporated his submissions on the legal framework which I have incorporated into the section on the law below, where appropriate. He also set out 20 headline reasons why the Court's suspicion should be excited by the circumstances of this case. They were supported by a detailed, cross-referenced set of submissions in relation to each. I have found these very helpful, and am very grateful to Mr Dickinson for having done so. But they run to 31 pages, and it is not proportionate to set them out or even summarise them here, save to refer to the headlines. These were:-

(1) There was no solicitor involved.

(2) Jo was vulnerable due to her weakened physical and mental state.

(3) Jo was vulnerable due to trusting Simon.

(4) Simon falsely accusing Henrietta of trying to take over the Will making process is suspicious.

(5) There are inconsistencies over the timing of the telephone call from Jo to Simon on 5 August 2019 giving her alleged instructions for her Will that are suspicious.

(6) Simon's WhatsApp message is suspicious and seems to have been designed by Simon to confuse or mislead Jo.

(7) Simon drafting the Will to benefit himself is suspicious.

(8) Jo's alleged instructions on 5 August 2019 are a significant departure from her previous testamentary wishes, so as to raise significant suspicions.

(9) Simon's changes in his evidence about Jo's alleged reasons for changing her testamentary wishes is suspicious.

(10) Simon interpreting the comments of Jo in the transcript as showing an intention to benefit him is suspicious.

(11) Simon taking the telephone call on 5 August 2019 but not drafting the Will until the evening of 6 August 2019 is suspicious.

(12) Simon's evidence in the witness box and the documentation suggests that there was no phone call from Simon to Jo after the Will was drafted.

(13) Simon sending an email to an email account that was not in use is suspicious.

(14) The evidence suggests that no draft Will was posted to Jo.

(15) There are contradictions between Simon and Ray as to what took place on the day the will was executed, 8 August 2019, and other suspicious circumstances.

(16) It is suspicious that there are contradictions in the account over whether Jo noticed spelling mistakes in the Will.

(17) There is no credible evidence that the 2019 Will was left with Jo or left with her for any appreciable length of time.

(18) It is suspicious that after the Will Jo spoke to Henrietta and Tom on terms that they would be receiving her estate.

(19) It is suspicious that Simon managed Jo's finances but refuses to explain the transactions that appear to show that he received funds from Jo as a lifetime transaction.

(20) It is suspicious that Simon's behaviour towards Henrietta and Tom changed dramatically after Jo's death.

233. Mr Dickinson also addressed the issues of credibility and the application of the facts to the legal principles. I have taken those submissions into account.

Mr Waistell

234. Over and above the submissions made by Mr Waistell on the law which I have incorporated into the following section of this judgment, Mr Waistell urged the Court to focus on the strict legal question and keep Morris J's warning in mind. To be admissible, anything external to the process of drafting and executing the will must be relevant to the question of knowledge and approval, he said. All the circumstances relied on by the Claimants are matters of evidence – just because there is disagreement between them and the Defendants, that does not make it suspicious, he submitted.

235. Mr Waistell rhetorically asked: did Jo achieve what Jo wanted? The 2019 Will is the best guide, he submitted.

236. Mr Waistell accepted that the normal burden of proof applies, and so what is required to satisfy the test will vary, but the Court must take account of inherent probabilities and improbabilities, including dishonesty. He submitted that the Claimants were hiding behind a failure to accuse Simon (and Ray) of dishonesty and fraud.

237. The more recent authorities finding a want of knowledge and approval (e.g. *Middleton v Boorman* [2020] EWHC 1481 (Ch) and *Reeves v Drew* [2022] EWHC 159 (Ch)) have had very unusual facts which is not the case here. In particular, Jo's reasons for changing her intentions are not sufficient to excite the suspicion of the Court or defeat the propounding of the 2019 Will.

238. Mr Waistell also addressed me on the credibility of the witnesses which I shall not summarise in full here. I will highlight a few points he made.

239. The Claimants' witnesses were largely family and friends and, although most came to assist, he said, they were giving opinion evidence about what *they thought* Jo had wanted – there was no evidence of discussions with her.

240. Mr Waistell conceded that Kane Ingram had been a reliable witness. He also accepted that Henrietta had been an honest witness but with limitations. In particular she was uncomfortable when criticising or contradicting her brother (e.g. that she knew that the books were going to Hilary) and a reluctance to state that the Defendants' witnesses were lying.

241. He said that Tom had obviously lied when he had to change his witness statement to accord with his sister's evidence about the 18 July gathering: the words "by chance" used in his witness statement could not have possibly meant that their schedules had "by chance" coincided.

242. Mr Waistell was highly critical of Tom's recordings stating (correctly) that we only have Tom's word as to how representative they were and how they had been selected and even

edited. The Defendants had, up until trial, understood them to be separate recordings. The fact that Tom had made what he thought might be a "death-bed" recording was distressing and demonstrates that he is mis-trustworthy. Great care should be taken in relying on these recordings, he said.

243. Of Ray, Mr Waistell submitted that he was an honest and reliable witness, e.g. his acknowledgement of hating Tom early in his evidence. It was obvious that he had not read the others' witness statements, and had been surprised when he heard that Nick would be called.

244. Mr Waistell said that Nick, as Jo's twin, would have had a strong bond with her, even if theirs had been a volatile relationship. He pointed out that he had stayed with Jo in July 2019.

245. As for Simon, Mr Waistell emphasised that he had spent the whole day giving evidence which was extremely stressful, but despite that, he had come across as an honest and accurate witness who gave clear evidence. There were two overriding themes, he submitted: first, that Jo's wishes should be carried out; second, a desire not to unnecessarily air the Claimants' family's dirty laundry in public. He contrasted this approach to the Claimants, which was to consider that it was acceptable to rake up any sort of family dirt that suited their case.

246. Mr Waistell criticised the Claimants' case as accusing Simon of not telling the truth without alleging fraud. He explained Simon's very short witness statement as concentrating on the narrow issues in contrast to the wide-ranging and largely irrelevant cross-examination. He accepted that some of Simon's recollection of detail had not been good, but that was not attributable to dishonesty, he said.

247. As for Hilary's absence as a witness, Mr Waistell pointed out that it had been apparent from the very beginning of the proceedings that she would not be participating, and cited paragraph 5 of her Defence in which she simply submitted to the Court's decision. Her profound deafness was a genuine and understandable reason for her absence as a witness, as explained by Simon, he said.

248. Turning to what he termed the "central facts", Mr Waistell referred to the 5 August text messages in the Abraham family WhatsApp group. He described the "*I'm doing it my way now*" text as being crucial, which defeats the Claimants' case, he submitted. If nothing was changing, Jo would not have used those words: something was going to change.

249. Simon's explanation to Henrietta and Jo in that text conversation was accurate and straightforward, he submitted, and far from being criticised, Simon should be acknowledged as having tried to assist.

250. Mr Waistell submitted that Mr Dickinson's cross-examination of Simon in the forensic detail as to times and places was simply unrealistic: Simon has always used the words "on or about" in his substantive witness statement and pleadings.

251. It was important to concentrate on the simplicity of the 2019 Will and the evidence from Tom and Henrietta that Jo would have understood it, submitted Mr Waistell. There was good evidence that the draft had been posted and Jo had read and had had the draft over to her. Furthermore, there was no evidence that Jo was drunk or incapacitated on the day, he said.

252. Regarding Simon absenting himself from the room whilst the will was executed, Mr Waistell submitted that Simon was damned if he did and damned if he did not. He knew that it would be difficult and did his best. Both Simon and Ray said that the will was left with Jo, he said.

253. The spelling errors had been accounted for, submitted Mr Waistell, and there was no evidence that Jo's initials had been forged. It had not been put to any of the Defendants' witnesses who had been present that they had forged Jo's initials, he added.

254. As regards the burning of the 2008 Will, Mr Waistell suggested that there was no reason to have made that up: the 2008 Will has been destroyed and that is all that needed to be said.

255. On the balance of probabilities, therefore, it was clear that Jo had read and understood the 2019 Will.

256. Turning to the explanations, Mr Waistell emphasised that where there was a change in testamentary intention, the need to prove explanations was not the test: it was perhaps relevant but not a requirement. Here, he said, there were good reasons advanced and evidenced, particularly in some of the texts, and he took me through several of them as set out above, in particular in relation to the Christmases of 2017 and 2018. It was clear, he submitted, that Jo and Simon had been discussing for some time the prospect of a purchase as joint tenants and so the notion that Simon would inherit did not come out of the blue.

257. Mr Waistell also submitted that the books were an insight to where the truth lay: there is good evidence that Jo wanted to give the books to Hilary which is reflected in the 2019 Will, and yet the Claimants were still contesting that aspect.

258. Accordingly, Mr Waistell submitted, there were good and plausible explanations advanced by Simon for Jo's apparent change of mind. There was good evidence in support of those explanations. It was not surprising that Jo had not told Tom and Henrietta about the change: it was only natural not to do so in those circumstances, he said. Mr Waistell summarised the position by submitting that Jo was angry and sad about Tom, and fed up with him asking for money, and was worried he would fitter it away if she left him a lump sum. Henrietta was well set up and was not interested in money, which explains why it was not just Tom that was cut out of the will.

259. As regards the failure to disclose documents and the phones, Mr Waistell referred me to *Prest v Petrodel* [2013] UKSC 34, paragraph 44 where Lord Sumption said this:

> "*There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party's failure to rebut it. For my part I would adopt, with a modification which I shall come to, the more balanced view expressed by Lord Lowry with the support of the rest of the committee in* R v Inland Revenue Commissioners, Ex p TC Coombs & Co *[1991] 2 AC 283 , 300:*

> *"In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified."*

260. The remedy for any suspicion was an application for specific disclosure submitted Mr Waistell. This applied to the bank statements, the phones and the testamentary file documents (if, which is doubtful, any exist), he said. The bank statements do not go to the drafting of the 2019 Will and Simon was merely protecting the estate's privacy. Fraud was not pleaded or put, he said, and there was no *prima facie* evidence upon which an adverse inference could be drawn. As to the phones, it was doubtful that there was anything on them that was no available elsewhere, Mr Waistell submitted.

The Law

261. I had many first-instance authorities cited to me. These represent examples of applying the established principles, as usefully summarised in a relatively modern context in *Gill v Woodall* as set out above. There are no presumptions at work, each case will depend on its own facts.

262. *Williams, Mortimer & Sunnucks – Executors, Administration and Probate* 21st Ed ("WSM") paragraphs 10-28 – 10-42 extract a number of principles from the authorities, and I bear those paragraphs in mind, in particular those referred to in the following sub-paragraphs.

263. A few examples from the authorities of the approach to be taken are, however, helpful.

    263.1. The question before the Court is about establishing that the testamentary requirements are satisfied, it is not about assessing the desirability of the result

and is not a discretion upon the Court to depart from a valid will. As Lord Neuberger pithily said in the leading case *Gill v Woodall* [2011] Ch 380 at paragraphs 26-27:

> "*… a court should be very slow to find that a will does not represent the genuine wishes of the testatrix simply because its terms are surprising, inconsistent with what she said during her lifetime, unfair, or even vindictive or perverse*"
>
> *Having said that, it is only right to emphasise there is no doubt that the sort of factors which the Judge set out in grounds 1 to 8 may properly be added into the balance to support other factors, where they exist, which call into question whether the testatrix knew and approved of what was in her will. In a number of cases, the court has relied on the surprising (or unsurprising) provisions of a will to support (or undermine) other grounds for thinking that the testatrix did not know or approve of its terms — see e.g. Butlin 2 Moo PC 480 , 487–488, Tyrrell [1894] P 151, 156 and Sherrington v Sherrington [2005] EWCA Civ , paras 73-75 and 84.*"

The Court of Appeal in *Sherrington* was at pains to make clear (twice) that it thought that the morally correct result would have been to revoke the will and yet they still applied the law to overturn an eminent trial judge's decision to do so because it could not seriously be suggested that the testator had not understood and approved his will.

263.2. It is thus clear from *Sherrington* that the Court's view of the morally correct thing to do is irrelevant and must not be taken into account.

263.3. Lewison LJ in *Simon v Byford* [2014] EWCA Civ 280:

> "*it is knowledge and approval of the actual will that count: not knowledge and approval of other potential dispositions. Testamentary capacity includes the ability to make choices, whereas knowledge and approval requires no more than the ability to understand and approve choices that have already been made*"

263.4. The proponent of the will bears the burden of proof. The scale is a sliding one (see WSM paragraph 10-30) depending on the factors at play and the time-honoured phrase the extent to which the suspicion of the court has been excited. The proponent must simply provide sufficient evidence of knowledge and

approval to address any suspicion aroused by the circumstances of its execution. *Fuller v Strum* [2002] 1 WLR 1097 *per* Chadwick LJ at paragraphs 67-72.

263.5. Once the suspicion of the court is aroused the court is 'vigilant and jealous' in examining the evidence in support of the will. – see ***Fuller v Strum*** [2002] 1 WLR 1097, Peter Gibson LJ 1107E-F.

263.6. Where a party writes a will under which they take a benefit that is a circumstance that excites the suspicion of the court – see WMS paragraph 10-34.

263.7. The matters which arouse suspicion include the beneficiary preparing the Will, the deceased being without legal advice, the Will being a radical departure from previous instructions and the Testator 'feebleness of body or mind' – WMS paragraph 10-36.

263.8. The approach of the court is an objective analysis of the evidence.

263.9. The fact that the effect of a will is to exclude entirely the deceased's children is not sufficient *in itself* to overturn knowledge and approval, even if there is clear evidence of a strong relationship and other concerning factors about the will's execution: *Sherrington* at paragraph 74 and *McCabe v McCabe* [2015] EWHC 1591 (Ch), but each case will depend on its own facts.

263.10. In the case of *Reeves v Drew* [2022] EWHC 153 (Ch) there being no adequate explanation for a dramatic change in testamentary wishes was an important factor in the court not being satisfied that the Deceased knew and approved of the terms of the last Will (paragraphs 367 – 379, 406, 413). The explanations put forward were analysed and rejected by the court.

263.11. Typographical errors and sloppy drafting are not necessarily significant, even where the deceased was an experienced solicitor: *Sherrington* at paragraph 76.

263.12. Mr Wasitell relied on *Re R (Deceased)* [1950] P 10 as authority for the proposition that relevant matters which may "*excite the suspicions of the Court"*

and require satisfaction by contrary evidence must be circumstances attending or at least relevant to the preparation and execution of the will itself; matters extraneous to the preparation and execution of the will cannot "*conceivably be admissible in evidence on the issue whether the deceased knew and approved of the contents of the will"*. That is, in my judgment, too narrow an approach. The facts that the challengers to the will in that case related to what was in those days scandalous and illegal sexual activity, and the other authorities show that all the relevant factors should be taken into account, always bearing in mind Norris J's warning in *Wharton v Bancroft* set out above. Later or earlier events can be 'relevant' to knowledge and approval if they assist in the inherent probabilities as to whether or not the testator did know and approve the terms of their will.

263.13. In addressing the suspicious circumstances the court is not considering whether a case of fraud has been made out, but whether those propounding the Will have discharged the burden of showing that the document propounded expresses the true Will of the Deceased – see WMS paragraph 10-42. In *Reeves v Drew* [2022] EWHC 153 (Ch) Green J at paragraphs 346 to 347 explained that it was not necessary to plead fraud or dishonesty in order to raise matters which led to a strong inference that there was fraud or dishonesty. As Green J said *'it is not a necessary part of their case and they do not need to set the bar that high . ..They do not allege any financial arrangement or incentive between the Claimant and Mr Curnock. They simply say that the Claimant has not discharged the evidential and legal burden of proving that the 2014 will represented the true intentions of the deceased and part of the reason for that is that Mr Curnock's evidence was untruthful and his attendance notes unreliable. It is not necessary to explain why Mr Curnock acted as he did. I too will not speculate as to that.'*

263.14. Several authorities were cited dealing with the fact that the will had been left amongst the testator's papers and the Court had found that it was highly unlikely that the testator would not have read the will before they died. That will depend on who the testator is and their propensity to do so. In *Re Morgan* [2008] WTLR 73, the testator was a solicitor which would no doubt have made it more likely that he would have read the will. Again, each case turns on its own facts.

263.15. Testamentary freedom is at the heart of this area of the law. I bear that fully to the forefront of my mind. There is no obligation whatever on a testator to abide by assurances given or promises made during their lifetime or to explain or justify their dispositions.

Findings of Fact and Conclusions

264. I have already given some indications as to my conclusions on some of the most hotly disputed factual issues and to the credibility of the individual witnesses, and I don't intend to repeat them here.

265. Having accepted the evidence of the Claimants' witnesses, and read the documentary evidence, I find that Jo's long-standing intention was to leave everything to her children. Contrary to what Mr Waistell said in his submissions, some of those witnesses had discussed those intentions with Jo directly. Others had drawn reasonable inferences from conversations with her. In addition, there is overwhelming evidence in the form of texts and recordings going back several years that this was Jo's intention, as well, of course, as the 2008 Will.

266. There is no doubt in my mind that Jo deeply loved her children and that they were her pride and joy, accepting as she did their faults and foibles. They represented all that she had achieved in her, at times troubled, life. She lived for them as demonstrated by the difference of approach to her first diagnosis of cancer when they were young, which she fought tooth and nail to survive, and her second, which she felt she did not need to because Tom and Henrietta had grown up. She had overcome many personal and health adversities (including extended periods of estrangement from her brothers) and Tom and Henrietta were her continuity and a real and dependable family for her. It is clear that she felt that she was very similar to Tom, and that they were both volatile, and she accepted that. Tom is a sensitive character and vulnerable in his own way. He is idealistic as can be seen from his conversations in the July 2019 recording trying to get Jo to focus on what she wanted in her dying months, when she wants to have "a laugh". He does flare up, much like his mother, but he struck me as someone who will listen to reason.

267. There is a deep division between Tom and Ray which colours their evidence in relation to each other. More so Ray than Tom, who is more philosophical about it. Simon seems to have taken his lead from Ray regarding Tom and has a similar, but less vitriolic, view of Tom. It could be a generational thing: Tom is very much more relaxed about "achievement" in the traditional sense (which his mother recognised but seemed to hope that time would 'cure'), and that does not chime with either Ray or Simon, and was probably a source of frustration for Jo who struggled all of her life to achieve just that. However, that is a far cry from her wishing to punish him by disinheriting him entirely, and a concern that he may not be wise in spending it is not sufficient in my judgment to do so either. Furthermore, it is not a reason advanced by Simon as having been given by Jo, and does not explain the actions in relation to Henrietta.

268. The relationship between Jo and Henrietta was very strong. Having seen and heard her give evidence, I have no doubt that Henrietta would have been very grateful for the £90,000 gift she received, and she would have shown that to her mother. I have formed the clear view that she would never have been so callous or insensitive to have not spoken to her for several months after the gift had been given. Both she and Kane are gentle and sensible people, and they got on very well with Jo who loved them both. She respected them both and was very proud of Henrietta, in particular for her job, as was reflected in Jo asking Henrietta to assist her with arranging the new will and the POA, which I find as a fact, that she did. I will return to this below.

269. I do not know the details of the 2016 dispute between Jo and Henrietta, but I am satisfied that it was that dispute to which Tom was referring in the text 'argument' he had with Henrietta in January 2019. The documentary and oral evidence suggests that there was no division or dispute between Jo and Henrietta at any point since 2016. There is no hint of any ongoing resentment by Jo of Henrietta in any of the evidence that I have seen or heard.

270. I find that Simon did not significantly start making his way back into Jo's life until October 2018 after her admission to hospital. I accept that he did not return to the UK permanently until about April 2018 – after his extended holiday (taken upon his return from working abroad). This is not a criticism, but his bringing forward of the date is an

example of Simon's tendency to, in my judgment, bend and interpret evidence to fit what he thinks he knows or what the Court wants to hear.

271. Having come back into Jo's life, Simon and Hilary did commit to supporting Jo and, as Mr Dickinson accepts, Jo was very pleased about that, having been deprived of family support early in her life. Hilary was of particular practical support and, in Simon, Jo was very glad to have someone of her generation and a blood-relation to rely on. She did trust Simon. Her rapprochement with Simon was a great relief for her, but that was as an addition to her continuing relationship with her children, not instead of it.

272. I have found that Jo asked Henrietta to help with the new will. Of course, this renders it unlikely that, as at early summer of 2019, Jo intended to disinherit the children, or at least would not have been afraid of telling them if that had been her intention. As I have observed above, the two propositions are not contradictory. The help asked for by Jo was not limited to the POA.

273. There is no doubt in my mind that, as of 18 July 2019, Jo intended to leave everything to her children as reflected in the recording of the family gathering that evening. She had given thought to the imbalance in her *inter vivos* gifts and told the children how that was going to be addressed. It is important and noticeable that Simon eventually accepted that proposition in cross-examination. It is inconsistent with other assertions made on his behalf and his case in general that there was a gradual shift in Jo's intentions and/or that the reasons for the change were distinct events some 8 and 15 months previous to the new will. I don't base my conclusion solely on the recording, though that is a compelling piece of evidence. I find that the text and WhatsApp messages throughout 2019 support that conclusion, as well as all texts and recordings from before. The oral testimony from Tom and Henrietta and their witnesses that I have accepted also supports that.

274. This leads me to the troubling position that Simon initially adopted in relation to Jo's reasons for changing her testamentary intentions, and how that has shifted. I have set this out above. I cannot accept that identifying the reasons advanced for Jo changing her mind amount to "airing the family's dirty linen in public" as claimed in Simon's solicitors' letter. First, at that stage, the matter was not public: it was between Simon (and Hilary) and Tom and Henrietta. Secondly, the reasons advanced are not particularly salacious,

nor were they concerning scandalous or criminal conduct. Thirdly, these reasons seem to be an *ex-post-facto* construct by Simon to justify the apparent shift in Jo's intentions. This starts from the phrase "*It seems likely that the catalyst for Jo's decision to disinherit Henrietta was because of her perceived ingratitude …*" which is not consistent with Simon's later (albeit not wholly consistently expressed) evidence that Jo had told him of her intentions and why. Simon has admitted that he construed the phrase "*I shall leave it to Simon*" with the benefit of hindsight and taking into account everything that he knew including the 2019 Will. Even in his oral evidence, however, Simon repeatedly stated, despite being pressed, that Jo had refused to disclose her reasons for giving him the instructions that he said that she had.

275. Simon's inconsistency with the events surrounding the giving and receiving of instructions, namely where he was; the time of day and what he did immediately afterwards is telling. It is inconceivable that someone who had just learnt that he was unexpectedly to be getting the entirety of his sister's estate would not recall where he was at the time. The apparent insouciance with which he received the news is also unbelievable, as is his stated lack of curiosity as to why she had done so.

276. I have made my findings in relation to the events of Christmas 2018 and the alleged period of Henrietta not speaking to Jo in the summer of 2018 vs. 2016. Those findings do not support Simon's reasons for Jo's abrupt and radical change of mind in relation to either of her children.

277. I accept Tom and Henrietta's evidence as to Jo's propensity to want things to be "done properly". She was, as observed by Ray, an accomplished wordsmith, and avid reader as well as collector of books: words meant a lot to her. In those circumstances, I accept that she would have noticed the misspellings of her name had she been paying attention to the 2019 Will as a document when she signed it, and insisted that they were corrected, even if that had been done by manuscript. It is conspicuous that Liz Lewis did not see Jo read the will, nor have it read it to her. Jo trusted Simon and she would not have felt the need to check what he had written in the document: she was happy to sign it without more. She was mercurial and would not have wanted to concentrate on the detail of the will: it is clear that she found discussing the will (as opposed to her intentions) uncomfortable because, I suspect, it represented the formal reality of her impending and early death.

278. I find, too, that no draft of the will was posted to Jo. There is no reference in Simon's email. More importantly, on Simon's evidence, Jo had not only approved the will on the telephone, but had requested that he obtain a bound copy to bring to her. On that basis, there would have been no point in posting the draft and, it now being accepted on all sides that Jo would not have picked up the email using her phone, there was no opportunity before the presentation by Simon of the bound copy on the day of its execution for Jo to have read the will carefully, even if she had been inclined to do so.

279. As for the initials, it does not need a handwriting expert to recognise the obvious discrepancy between the initials on the 2008 Will and the 2019 Will. I accept that there are no other documents to compare them to, and that there was a gap of 11 years between the two wills. However, Jo's signature had not changed in that time, and there is no reason to believe that she would have appended her initials in such a radically different way in the 2019 Will. I accept Tom and Henrietta's evidence that she had never signed her initials other than in the form seen in the 2008 Will. Again, it is suspicious that Liz Lewis does not recall Jo signing her initials. Although more towards the realm of a handwriting expert, it is curious that the "A's" are formed differently in two of the five initials on the 2019 Will.

280. On the balance of probabilities, I find that Jo did not sign "JA" on the pages of the 2019 Will. I am not obliged to make a finding on who did sign those initials or when they did so (or why). Several hypotheses are credible, but one that is not (on the balance of probabilities on the evidence available to me) is that Jo did so. Allegations of forgery were not put to Simon or Ray, and Mr Dickinson was, it seems, careful to avoid the same. This may have been because of the lack of positive evidence to support such allegations against any one individual, but I take the matter no further than a finding that Jo did not sign those initials.

281. There is a clear inconsistency between Simon and Ray about what happened after Liz Lewis had left with regard to the 2008 Will and the 2019 Will. Ray was clear that nothing had happened except for him (and the evidence was clear that it was him) placing the new will amongst Jo's paperwork. When confronted with Simon's description of the comparing the two; the attempt by Jo to tear the 2008 Will and the subsequent burning of it, Ray said that it "rang a bell" and that he recalled some talk of it, before settling on

quite a familiar "I can't really remember" position. It is surprising that this somewhat dramatic event escaped the solicitors' correspondence and the Defence (all of which dealt with the events of the 8 August in some detail) and, apparently, Ray's memory. It is not clear why the 2008 Will should have been to hand: it was not needed for the execution of the 2019 Will, and its destruction would have been purely symbolic given that the original presumably remained with solicitors, given that a copy is in the trial bundle. Given its dramatic nature and the importance in the context of the execution of the 2019 Will, together with Simon's expressed concern (as stated in the witness box) about being "accused" of something on the day (in relation to his leaving the room for the execution), and its late appearance in the Defendants' narrative, I find that on the balance of probabilities, this sequence of events did not happen. Even if it did, it would not be inconsistent with my over-all findings: Jo may have wanted to destroy the 2008 Will to make sure things were, in her mind, complete. Whilst it is understandable that Jo may have wished to destroy the 2008 Will, I however find it much less likely that she would have undertaken any comparison between the two wills and that did not happen.

282. The witnesses who gave evidence that the 2019 Will was left at the property are not wholly reliable. However, I find that Jo would not have revisited the will even if it had been. As referred to above, there are many references in the written and recording evidence, as well as the oral testimony, which strongly suggest that she found the necessity for, and existence of, a written document dealing with what happened after her death very uncomfortable, and to be faced only as absolutely necessary.

283. I accept Tom and Henrietta's evidence that, following August 2019, Jo would continue to make reference to their upcoming inheritance. Of course, with the onset of Covid, particularly with Jo's medical vulnerability, there was less opportunity for face-to-face meetings, but there were ongoing loving text exchanges and nothing to suggest to Tom or Henrietta that anything had changed. It is more likely than not that Jo would have confronted Tom and Henrietta with her decision, had she made it, to leave her estate to Simon for his own purposes. Every witness said that she was unusually frank and open with people; only Nick said that she had a secretive and deceptive side to her which is not supported by any other evidence, and I reject it.

284. Simon refused to produce his own phone (which would have had relevant call records) and failed to produce Jo's phone. I do take an adverse inference from that, bearing in mind the passage from Lord Sumption's judgment cited above. Ray said that he had kept it to look at the text messages, and so I conclude that there must have been something there that he did not like, given his support for Simon's position. In any event, both phones clearly had potentially relevant material on them and the reasons for not producing Jo's phone were manifestly woeful and untrue. I was extremely surprised when Jo's phone's continued existence came to light during the trial. I had presumed that it had been destroyed or mislaid given its obvious relevance to this case.

285. It is also unsatisfactory that Hilary did not give evidence. I accept, of course, that she is profoundly deaf, but the Court will normally be able to overcome such difficulties. She would have been able to give relevant evidence about Jo and her relationship with her children; the discussions regarding the abandoned joint house-purchase, as well as matters concerning the instructions received and the preparation of the 2019 Will. Her phone might also have shed light on Simon's movements in early August 2019. I also find it surprising and suspicious that Simon, refused to disclose the IHT 403 and the will file, whilst of course acknowledging that that is his prerogative.

286. I do not find the Defendants' response that an application for specific disclosure could have been made in respect of each of the matters complained of by the Claimants satisfactory, particularly in relation to Jo's phone because they were deliberately misled by Simon in that regard.

287. None of these matters are by themselves conclusive, but they all fall into the scales to be weighed.

So What Happened?

288. In my judgment, the root of Jo's misunderstanding is evidenced in the "Abraham's" WhatsApp group chat sequence on 5 August 2019 in which Simon intervened. It is my judgment that Jo had not grasped or appreciated the difference between an executor; a person with POA, and the finality and prescription imposed by the terms of a will. She understood that the POA gave Simon control over her affairs and finances both during

her life and after her death. This is crystal clear from Henrietta's contribution to that conversation. There is no convincing evidence that she saw or read Simon's short explanation in that 'chat' and/or that it altered that opinion. And even if she had *seen* it, I am quite sure that Jo thought that Simon's role as executor meant that he would be in control of the house and funds in the estate to deal with as she thought the will required him to, or in accordance with her wishes as regards her children. Simon having that power was fine by her because she trusted him. This is also reflected in Jo's text of 13 February 2020 to Henrietta reassuring her that she had told Simon what they each had had, from which I infer that Simon would bring everything into account when dealing with the estate. It is my judgment that Jo thought the changes to her will were to remove the executor who had died and the one she had fallen out with, and to replace them with Simon. She understood that, as executor, Simon would receive her estate (which in law, of course, he does) and then to distribute in accordance with her wishes. She did not understand that Clause 9 of the will meant that she had gifted the entirety of the estate (bar the books) to Simon to keep for his own purposes.

289. On the balance of probabilities, I find that Jo told Simon something along the lines that she wanted to leave everything to him, but in the sense of sorting it out in accordance with her wishes – as reflected in the WhatsApp passage referred to above. Those wishes were that he would take account of the imbalance in the life-time gifts, and that he would make sure that Tom did not fritter the money away, and assist him to find a flat. This is evidenced by the text conversation between Jo and Bob referred to at paragraph 44 above, and referenced in the transcripts about Simon having to approve whatever flat that Tom would be able to find and whatever mortgage he, with Simon's assistance, could secure.

290. I should deal with the text message in the 5 August 2019 WhatsApp conversation referring to Jo having "*cancelled Tom coming over yesterday … I wanted you both to listen to my wishes … I'm doing it my way now*". That precedes the discussion mentioned above about the role of executor and POA. I am quite satisfied that what Jo was referring to here was that she wanted to leave it to Simon to administer her wishes rather than deal with and calculate the detailed mathematics of her testamentary intentions herself in her will because things were fluid. For example, the £3,500 paid by Simon in August 2019 which led to Jo reassuring Henrietta that Simon knew what each had had. Jo's wishes

were to trust Simon to act in the way that I have described. This explains about the need for Jo to explain her wishes, and the reference to Jo "*doing it my way*". By that she meant trusting Simon to look after Tom and Henrietta rather than finalising things in the will. Ironically, this formulation of Jo's intentions concur with Simon's own description of his position as described above at paragraph 203.

291. A lawyer would recognise her intentions as for the creation of a discretionary trust in favour of Tom and Henrietta, with Simon as trustee to act in accordance with her stated intentions. The formalities would have fallen rather short, but there were no lawyers involved, which is part of the problem. The 2019 Will does not, of course, achieve that intention because Simon, as executor, is trustee for himself and Hilary alone.

Conclusions

292. Without wishing to reinstate the two-stage test for establishing a want of knowledge and approval, there are ample aspects of the background and history of this regrettable matter to "excite the suspicion of the Court". The most obvious is the fact that Simon produced a will of which he was all but the sole beneficiary. He was responsible for taking instructions which were only ever orally conveyed, and only to him, and never confirmed in writing other than in the executed will itself. No draft version has ever emerged. Those instructions were said to have been taken whilst driving (which may possibly have led to an innocent misunderstanding) and there is conflicting evidence as to the steps taken to bring the contents of the draft will to Jo's attention. Both Simon and Ray are, and have been for many years, hostile to Tom (extremely so as regards Ray), who was one of the witnesses to the will and the only person other than Simon to have stated that they witnessed Jo reading the 2019 Will or having had it read to her. The other witness was present for a very short period and participated in a most perfunctory way. There were spelling errors on the face of the will and a suspicious difference in the appearance of Jo's initials applied to its pages. Simon in his oral testimony accepted that it was likely that there would be concerns about him being "accused" of things in the process of the execution of the 2019 Will and yet did not involve a solicitor at any point, despite both the Macmillan charity and Barclays Bank being knowingly available to provide visiting solicitors. Added to this is the long and, as I have found, well established and oft-repeated intention of Jo wishing to leave everything to her children, latterly stated to have

been carefully divided to take account of life-time gifts. The family gathering of 18 July provides compelling evidence that that intention was as strong as ever as of that date – a mere three weeks before the instructions were given to create the new will. The lack of disclosure as referred to above fans those flames.

293. Those circumstances pertain without taking into account the credibility of any of the witnesses (save, perhaps, as to whether the 18 July gathering was an ambush).

294. Having considered all of the evidence and come to the conclusions on the facts that I have, I find that what Jo wanted to achieve was to secure the benefit of her estate for her children, apportioned to reflect their life-time gifts, and that that benefit and apportionment was to be entrusted to Simon to implement. Clearly, the 2019 Will did not achieve that. In light of the entirety of the foregoing, I have little hesitation in finding that Simon and Hilary have failed to discharge the burden of proof to establish that Jo when she signed the 2019 Will understood: (a) what was in the 2019 Will when she signed it; and (b) (more emphatically) what its effect would be. She thought that Simon would inherit her estate to distribute it as per her orally and repeatedly expressed wishes to divide it fairly between Tom and Hilary.

295. Accordingly, I refuse to propound the 2019 Will in solemn form, and allow the claim. I accordingly find that the 2008 Will should be admitted to probate.

296. I would be grateful if Counsel would liaise to agree the appropriate form of Order, and will list a further hearing if that is necessary to finalise the same.

HHJ Berkley

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