Neutral Citation: [2023] UKFTT 00212 (TC)

Case Number: TC08738

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2020/01327

INCOME TAX – was the appellant domiciled in England in the tax years ended 5 April 2013 – 5 April 2016 – consideration of domicile of choice of the appellant's father and mother – Father came to England in 1938 from Austria – had he acquired a domicile of choice in England by the relevant date? - Yes – Mother arrived in England in 1954 from Ireland –had she acquired an English domicile of choice by the relevant date? – yes – appellant born and brought up in England – did he have an English domicile at the relevant date? - yes – appeal dismissed

Heard on: 28 November to 9 December 2022
Judgment date: 28 March 2023

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JULIAN STAFFORD

Between

JEREMY COLLER

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

This is our original decision reissued pursuant to Rule 37 Tribunal Procedure (First-tier Tribunal) Rules 2009 concerning accidental slips and partially anonymised following an application by the appellant and our subsequent decision to that effect dated 23 March 2023

Representation:

For the Appellant: Christopher Stone of counsel instructed by Macfarlanes LLP

For the Respondents: Akash Nawbatt KC and Georgia Hicks of counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The appellant ("**Jeremy**") appeals against closure notices dated 8 January 2020 issued under section 28A (1B) and (2) Taxes Management Act 1970 for the tax years ended 5 April 2013 to 5 April 2016. The notices were issued on the basis that Jeremy was domiciled in England for each of those four tax years.
2. This decision, therefore, considers Jeremy's domicile status, and in doing so needs to consider not only his domicile, but also the domicile of his father, John Coller ("**John**"), and his mother, Sylvia Coller ("**Sylvia**").
3. John was born in Austria in 1918 and arrived in England in 1938 having fled to escape the Nazi persecution of Jews. He therefore had a domicile of origin in Austria. Sylvia was born into a Jewish family in Dublin on 8 February 1930 and therefore had a domicile of origin in Ireland. During the Second World War, John served with the British Army and after the war established a business and lived in London. He met Sylvia in London in 1954 and they were married later that year. They had three children. Susan who was born on 21 May 1956 ("**Susan**"), Jeremy who was born on 17 May 1958, and "**CC**" who was born on 7 March 1967.
4. John and Sylvia continued to live in London with their children until he died suddenly and unexpectedly of a heart attack at the age of 50 on 31 August 1968. Jeremy reached the age of 16 on 17 May 1974. Following John's death, Sylvia continued to live in London where she passed away on 11 August 2022.
5. The relevance of the foregoing dates is due to the four issues which we have been asked to determine in this appeal. Each concerns the domicile status of either Jeremy or his parents. The four issues ("**the issues**") which have been agreed between the parties, and which have been formulated by way of questions, are these:

(1) By the date of Jeremy's birth on 17 May 1958, had John acquired an English domicile of choice, such that Jeremy's domicile of origin was England? The burden is on HMRC to prove that John acquired an English domicile of choice by 17 May 1958 ("**issue 1**").

(2) Alternatively, had John acquired an English domicile of choice by 31 August 1968, the date on which he passed away, such that Jeremy had an English domicile of dependency, which became an English domicile of choice, on his reaching majority on 17 May 1974. The burden is on HMRC to prove that John acquired an English domicile of choice by 31 August 1968 ("**issue 2**").

(3) Alternatively, if John had not obtained an English domicile of choice by the time of his death, had Sylvia acquired an English domicile of choice after his death on 31 August 1968, such that Jeremy had an English domicile of dependency, which became an English domicile of choice on his reaching majority on 17 May 1974? The burden is on HMRC to prove that Sylvia acquired an English domicile of choice by 17 May 1974 ("**issue 3**").

(4) In the final alternative, if Jeremy had an Austrian domicile of origin that remained unchanged during his minority and after he had turned 16, had he acquired an English domicile of choice on or before 5 April 2012? The burden is on HMRC to prove that Jeremy had acquired an English domicile of choice by 5 April 2012 ("**issue 4**").

6. For us to dismiss the appeal, HMRC only need to succeed on one of those issues (i.e. if one of these questions is answered in the affirmative).
7. In a nutshell, the appellant's position is this:

(1) John. John never acquired a domicile of choice in England. He always retained his domicile of origin in Austria. HMRC have not provided the clear and compelling evidence that John had a settled intention to make his home in England until the end of his days. Although it is not for the appellant to show this, there is clear evidence that John, had he lived, would have ultimately settled in France. However, given that the burden of proof is on HMRC, if the evidence shows that John had not given any thought to where he might end his days or, having thought about it had come to no conclusion, they have not discharged that burden. In those circumstances, the only conclusion we can come to is that John retained his domicile of origin in Austria. That is the case here.

(2) Sylvia. Sylvia had a domicile of origin in Ireland, but on her marriage to John, acquired his domicile in Austria. On his death, given that she had no intention of living in Austria, she abandoned that domicile, whereupon her domicile of origin reasserted itself. She therefore had, during the relevant period, a domicile in Ireland. For the same reasons that HMRC have not managed to come up to proof in asserting that John had acquired a domicile of choice in England, Sylvia never acquired a domicile of choice in England. The evidence shows that in the relevant period, she intended to return to live in Ireland.

(3) Jeremy. Jeremy did not acquire an English domicile of choice on or before the relevant date. Whilst he was born and brought up in England, the evidence shows that he had never come to a settled conclusion as to where he would ultimately live. HMRC have certainly not been able to show by clear and compelling evidence that he had a settled intention to make his home in England until the end of his days. He is a global person who could have decided to make that home in a number of jurisdictions, including, most importantly, America or Israel.

8. HMRC's position is straightforward as regards all three individuals. There is clear and compelling evidence that all three of them, at the relevant times, had a settled intention of living in England until the end of their days. All three of them, therefore, had acquired a domicile of choice in England at the relevant times.

9. It is agreed that if any of the individuals had acquired a domicile of choice in England on or before the relevant dates, then they had not abandoned it at the relevant date(s). So, for example if Jeremy, having "inherited" a domicile of origin in Austria, had acquired a domicile of choice in England between 17 May 1974 and 5 April 2012, the parties agree that he had not abandoned it sometime between 17 May 1974 and 5 April 2012.

10. Both Mr Stone and Mr Nawbatt made clear, eloquent, and helpful submissions, both oral and written, for which we are very grateful. We have carefully considered these, along with all of the evidence, in reaching our decision, but in so doing have not found it necessary to refer to each and every argument advanced by them on behalf of their respective clients.

THE LAW ON DOMICILE

11. In addition to their submissions, Mr Stone and Mr Nawbatt guided us, with expertise, through a large number of authorities. Having considered such guidance, it is our view that the principles most relevant to the issues in this case are as follows:

Domicile of origin and dependence

(1) Everyone has a domicile, and a single domicile. A person is born with a domicile of origin which will be retained until it is replaced: *Udny v Udny* (1869) 7M (HL) 89, (1866-69) LR 1 Sc 441 ("***Udny***"). In other words, a domicile of origin cannot simply be abandoned, only replaced.

(2) Until a child reaches an age at which they may acquire their own domicile of choice, their domicile is that of the person on whom they are legally dependent and it follows any

change in that person's domicile (In *Patten's Goods, Re* (1860) 24 JP 150). The relevant age of majority was 16 years of age (s.3 of the Domicile and Matrimonial Proceedings Act 1973).
(3) A domicile that is received as a dependent person continues until it is changed by the person's own act (*Gulbenkian v Gulbenkian* [1937] 4 All ER 618 at 624). Once a person has acquired a domicile of dependency, "the burden would then be on those seeking to show that he had acquired a fresh domicile of choice after reaching his majority".
(4) On the death of a father, an under-age child acquires the domicile of his or her mother: *Potinger v Wightman* (1817) 3 Mer 67; [1814-23] All ER Rep 788.
(5) Up until 1 January 1974 a married woman automatically acquired the domicile of her husband, which she retained throughout her marriage.
Tenacity of domicile of origin
(6) "The domicile of origin remains of great importance and is said to be 'more tenacious' than other forms of domicile. As Dicey (Dicey, Morris and Collins on the Conflict of Laws (16th edition) ("***Dicey***") put it at [6–031] 'it is more difficult to prove that a person has abandoned his domicile of origin than to prove that he has abandoned a domicile of choice'." See King LJ at [33 (i)] of *Kelly v Pyres* 2019 1 FLR 62 ("***Kelly***").
(7) "It seems to me that as a general proposition the acquisition of any new domicile should in general always be treated as a serious allegation because of its serious consequences." Arden LJ at [94] of *Barlow Clowes International v Henwood* [2008] EWCA Civ 577; [2008] BPIR 778 at [8(vi)] "***Henwood***").
Domicile of choice
(8) Everyone has a domicile of origin, which may be supplanted by a domicile of choice - "[the] domicile of origin adheres - unless displaced by satisfactory evidence of the acquisition and continuance of a domicile of choice" (Scarman J in *Re Fuld* [1968] P 675 ("***Fuld***") at pages 682 and 684). So, whilst a domicile of origin cannot be abandoned, a domicile of choice can be abandoned as in those circumstances the domicile of the propositus reverts to his/her domicile of origin.
(9) Every independent person can acquire a domicile of choice by the combination of residence and the intention of permanent and indefinite residence (*Dicey* 6R-037 to 6-048, cited by Arden LJ in *Henwood).*
(10) Lord Westbury made the following observations about the acquisition of a domicile of choice in *Udny* at 458:

> "Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicil, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that the residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case so soon as the change of purpose, or animus manendi, can be inferred the fact of domicil is established".

(11) So far as concerns the reference to "unlimited time":

> (a) Buckley LJ in *Inland Revenue Commissioners v Bullock* [1976] 1 WLR 1178 ("***Bullock***") said the following at page 1184:
>
> > "…the expression 'unlimited time' requires some further definition. A man might remove to another country because he had obtained employment there without knowing how long that employment would continue but without intending to

reside there after he ceased to be so employed. His prospective residence in the foreign country would be indefinite but would not be unlimited in the relevant sense. On the other hand,…I do not think that it is necessary to show that the intention to make a home in the new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no opportunity to change his mind. In my judgment, the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to make him change his mind".

(b) Scarman J in *Fuld* said the following at pages 684 and 685:

"…a domicile of choice is acquired only if it be affirmatively shown that the propositus is resident within a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking; but, if he has in mind only a vague possibility, such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn: the ultimate decision in each case is one of fact - of the weight to be attached to the various factors and future contingencies in the contemplation of the propositus, their importance to him, and the probability, in his assessment, of the contingencies he has in contemplation being transformed into actualities…" (*Fuld* at page 684 and 685).

(c) Arden LJ in *Henwood* said the following at [14]:

"Given that a person can only have one domicile at any one time for the same purpose, he must in my judgment have a singular and distinctive relationship with the country of supposed domicile of choice. That means it must be his ultimate home or, as it has been put, the place where he would wish to spend his last days".

And at [15]:

"In my judgment this test by its reference to ending one's days usefully emphasises the need for the subject to have a fixed purpose that he will live in the country of his domicile of choice'.

(d) In *Kelly*, King LJ at [69] comments on "singular and distinctive" thus:
"It follows that the reference to 'singular and distinctive' and 'ending his days in that country' must be considered in the context of the requirement for there to be a fixed intention to reside in a country for the indefinite future".

Length of time

(12) As regards the relevance of the length of time of residence in a jurisdiction:

(a) "It is common sense that the longer the residence and the more it is home, the more likely the inference that there is the intention to reside permanently and

indefinitely. But at any stage when it might be proper to make that inference, it is important to place in the balance any continued connections with Cyprus so as to be able to be clear whether his intention has become one of settling finally in England, abandoning Cyprus". (Waller LJ at [23] of *Musa*).

(b) In *Udny,* the Lord Chancellor, Baron Hatherley noted as follows:

> "Time is always a material element in questions of domicil; and if there is nothing to counteract its effect, it may be conclusive upon the subject. But in a competition between a domicil of origin and an alleged subsequently-acquired domicil there may be circumstances to shew that however long a residence may have continued no intention of acquiring a domicil may have existed at any one moment during the whole of the continuance of such residence. The question in such a case is not, whether there is evidence of an intention to retain the domicil of origin, but whether it is proved that there was an intention to acquire another domicil. As already shewn, the domicil of origin remains till a new one is acquired animo et facto".

(c) In *Ramsay v Liverpool Royal Infirmary* H.L (Sc) [1930] AC 588 ("***Ramsay***") at 597 per Lord MacMillan:

> "But residence alone is not enough. The real question in the case is whether this prolonged residence in England was accompanied by an intention on the part of the deceased to choose England as his permanent home in preference to the country of his birth. The law requires evidence of volition to change. Prolonged actual residence is an important item of evidence of such volition, but it must be supplemented by other facts and circumstances indicative of intention. The residence must answer a qualitative as well as a quantitative test".

Intention

(13) In *Ramsay*, Lord MacMillan said: "the acquisition of a domicile of choice is a legal inference which is drawn from the concurrence of evidence of the physical fact of residence with evidence of the mental fact of intention that such residence shall be permanent".

(14) Domicile cases require for their decision "a detailed analysis and assessment of facts arising within that most subjective of all fields of legal inquiry - a man's mind. Each case takes its tone from the individual propositus whose intentions are being analysed: anglophobia, mental inertia, extravagant habits, vacillation of will - to take four instances at random - have been factors of great weight in the judicial assessment and determination of four leading cases. Naturally enough in so subjective a field different judicial minds concerned with different factual situations have chosen different language to describe the law. For the law is not an abstraction: it lives only in its application, and its concepts derive colour and shape from the facts of the particular case in which they are studied, and to which they are applied. Thus, the relationship of law and fact is a two-way one: each affects the other" (see *Fuld* at pages 682 to 683).

Mind not made up

(15) "…….It follows that, though a man has left the territory of his domicile of origin with the intention of never returning, though he be resident in a new territory, yet if his mind be not made up or evidence be lacking or unsatisfactory as to what is his state of mind, his domicile of origin adheres. And, if he has acquired but abandoned a domicile of choice either because he no longer resides in the territory or because he no longer intends to reside there indefinitely, the domicile of origin revives until such time as by a combination of residence and intention he acquires a new domicile of choice" (*Fuld* at pages 684 and 685).

(16) "One must further be satisfied that the situation is not one in which Ramadan has simply not finally made up his mind because, as Scarman J said in [*Fuld*] in such a situation

the domicile of origin is retained" Waller LJ at [23] *Holliday v Musa* [2010] EWCA Civ 335 ("***Musa***").

Burden of proof

(17) As regards the burden of proof, Scarman J said the following in *Fuld* at pages 685 and 686:

> "It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the party asserting the change…"

(18) In *Winans v Attorney General* 1904 AC 287, ("***Winans***") The Earl of Halsbury said [p289]:

> "I must admit that I have regarded the whole history of Mr Winans' life differently at different stages of the argument, and the conclusion I have come to is that I cannot say that I can come to a satisfactory conclusion either way; but then the law relieves me from the embarrassment which would otherwise condemn me to the solution of an insoluble problem, because it directs me in my present state of mind to consider upon whom is the burden of proof. Undoubtedly it is upon the Crown, and, as I cannot bring myself to a conclusion, either way, whether Mr Winans' did or did not intend to change his domicile, his domicile of origin must remain…"

Standard of proof

(19) As regards the standard of proof, Scarman J said the following in *Fuld* at pages 685 and 686:

> "But it is not so clear what is the standard of proof: is it to be proved beyond reasonable doubt or upon a balance of probabilities, or does the standard vary according to whether one seeks to establish abandonment of a domicile of origin or merely a switch from one domicile of choice to another? Or is there some other standard…
>
> The formula of proof beyond reasonable doubt is not frequently used in probate cases, and I do not propose to give it currency. It is enough that the authorities emphasise that the conscience of the court (to borrow a phrase from a different context, the judgment of Parke B. in Barry v. Butlin) must be satisfied by the evidence. The weight to be attached to evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction, will vary according to the nature of the case. Two things are clear - first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists: and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words".

(20) In *Henwood*, Arden LJ stated at [88] that:

> "In essence there is no need for any higher standard of proof where more serious allegations are made in civil cases because the civil standard has the inbuilt flexibility to take the seriousness of an allegation into account. Accordingly, the more serious an allegation the more substantial will need to be the evidence to prove it on a balance of probabilities".

Evidence

(21) "Cogent and clear evidence is needed to show that the balance of probabilities has been tipped regardless of whether the issue is the acquisition, or loss, of a domicile of choice" (King LJ at [33 (ii)] *Kelly*).

(22) And in *Cyganik v Agulian* [2006] EWCA Civ 129 ("***Agulian***") Longmore LJ said at [53] : "….All the cases state that a domicile of origin can only be replaced by clear cogent and compelling evidence that the relevant person intended to settle permanently and indefinitely in the alleged domicile of choice".

(23) "However, what evidence is required in a particular case will depend on the application of common sense to the particular circumstances. In this case, Mr Henwood had an aversion to England because of childhood memories. If his domicile of origin arose at all in this case,

it arose only because of the default rule. In those circumstances, it is not improbable that he would wish to acquire a domicile of choice elsewhere and accordingly there is no reason why the court should approach a case that he has done so with undue scepticism. There were of course other reasons why certain evidence adduced by Mr Henwood, namely that he had created, was to be approached with caution. But that was a wholly separate matter" (Arden LJ at [94] *Henwood*).

(24) Rule 13 of *Dicey* provides that "any circumstance which is evidence of a person's residence or of his intention to reside permanently or indefinitely in the country, must be considered in determining whether he has acquired a domicile of choice in that country".

(25) And this in *Dicey* at 6-051:

> "Most disputes as to domicile turn on the question of whether the necessary intention accompanied the residence; and this question often involves very complex and intricate issues of fact. This is because ''there is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicile. A trivial act might possibly be of more weight with regard to determining this question than an act which was of more importance to a man in his life time…
>
> There is, furthermore, no circumstance or group of circumstances which furnishes any definite criterion of the existence of the intention. A circumstance which is treated as decisive in one case may be disregarded in another, or even relied upon to support a different conclusion" *(Ray v Sekhri* [2014] 2 FLR per McFarlane LJ ("***Sekhri***").

(26) At [25] of *Henwood*, Arden LJ says: "Because of the width of the enquiry necessary in order to ascertain a person's domicile, the judge's judgment contains a very full statement of the facts".

(27) "Special care must be taken in the analysis of the evidence about isolating individual factors from all the other factors present over time and treating a particular factor as decisive" (Mummery LJ in *Agulian* at paragraph [46(2)]). Instead, all factors need to be taken into account.

(28) However, in *Sekhri* McFarlane LJ said:

> "In any case such as this there is always a range of factors deployed by the advocates before the court on one side or the other. Mr Scott accepts that each of the detailed points that he has made to this court were also made to Holman J. It is not a requirement that the trial judge should slavishly list each and every such factor. He has a responsibility to look at the contours of the case and highlight the prominent elements that, in his view, fall for consideration and which may be determinative of the outcome. In that regard Holman J's approach is, in my view, beyond criticism. On the contrary his tightly worded summary of the evidence amply supports the conclusions to which he comes…"

(29) When considering intention, *Dicey* says that the weight to be accorded to declarations of intention "will vary from case to case. To say that declarations as to domicile are the 'lowest species of evidence' is probably an exaggeration. The present law has been stated as follows: "Direct declarations of intention call for special comment. The person whose domicile is in question may testify as to his or her intention, but the court will view the evidence of an interested party with suspicion. Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined carefully considering the persons to whom, the purposes for which, and the circumstances in

which they are made and they must however be fortified and carried into effect by conduct and action consistent with the declared expressions". This echoes the statement by Mummery LJ in *Agulian* at paragraph [13] that "in a case of proof of the subjective intentions of a person who has died little weight is attached to direct or indirect evidence of statements or declarations of intention by the person concerned. Subjective intentions have to be ascertained by the court as a fact by a process of inference from all the available evidence about the life of the person, whose domicile is disputed" and the statement by King LJ in *Kelly* at paragraph [33iii)] that "[the] court will view evidence of an interested party with suspicion". In *Frederick Henderson; George Henderson; Cordelia Henderson; Arabella Henderson v The Commissioners for Her Majesty's Revenue and Customs* [2017] UKFTT 556 (TC) ("***Henderson***"), the First-tier Tribunal (Judge Jonathan Richards and Mr John Robinson) was disinclined to accord much evidential weight to statements of intention which had been made by the main witness for the appellants because those statements were inconsistent with the actions that the appellants had taken (see paragraph [128(3)]).

(30) "In *Re Grove, Vaucher v Treasury Solicitor* (1888) 40 Ch D 216 Lopes LJ said (at 242) that the law was that "in order to determine a person's intention at a given time, you may regard not only conduct and acts before and at that time, but also conduct and acts after that time, assigning to such conduct and acts their relative and proper weight and cogency" (per Lewison J at [33] *Gaines-Cooper v HMRC* [2007] EWHC 2617 ("***Gaines-Cooper***").

Inferences

(31) In *Henwood,* Arden LJ said:

> "[67] There was no issue but that Mr Henwood had resided from time to time in Mauritius. The principal question at trial was whether he had the necessary *intention* to reside there. In order to succeed on this point, Mr Henwood had to show on the balance of probabilities that it was his intention to remain there permanently or indefinitely.
>
> [68] To ascertain whether such an intention was shown on the evidence, the judge had to make primary findings of fact and then make a global evaluation of all the relevant facts. The ultimate fact in issue was Mr Henwood's intention. This had to be a matter of inference from all the relevant facts, giving such weight to Mr Henwood declarations as to his own intention as the law allows. An inference of this kind must be drawn on the balance of probabilities, and thus the judge had to be satisfied that the inference that he drew as to Mr Henwood's intention was more likely than not on all the relevant and proved facts".

Perspective

(32) Mummery LJ in *Agulian* at paragraph [46(1)]) said this:

> "First, the question under the 1975 Act is whether Andreas was domiciled in England and Wales *at the date of his death*. Although it is helpful to trace Andreas's life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. Positioned at the date of death in February 2003 the court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death…".

THE EVIDENCE

The nature of the evidence

12. Both Jeremy and Susan provided witness statements (Jeremy provided two) and gave oral evidence on which they were cross examined by Mr Nawbatt. The documentary evidence falls into a number of categories.

(1) Firstly, Sylvia's witness statement. This contains a signed statement of truth and was prepared for the purposes of this appeal. It is dated 25 April 2020 and runs to approximately eight pages ("**Sylvia's witness statement**").
(2) Secondly, a book entitled "An Irish Waltz". This book comprises 257, or so, pages, although the relevant pages amount to approximately 44 (in addition, there are 50 or so pages of photographs). It was commissioned by Jeremy for Sylvia's 75th birthday. It was written by an American who specialised in biographies and who interviewed Sylvia in person and recorded their conversations which she then transcribed into the text of the book. As Mr Stone submits, this was not a warts and all exposé and does not cover a number of issues relevant to the questions that we have to determine in this appeal. For example, it does not cover the long-term intentions of John and Sylvia at specific points in time. However, as Mr Nawbatt points out this was originally submitted by the appellant to HMRC on 14 April 2015 with a covering letter from the appellant's advisers in which it is stated "The enclosed book provides considerable detail of the family's life". It is not unreasonable, therefore, for HMRC to rely on its contents even if these are disadvantageous to Jeremy.
(3) Thirdly, the notes of a meeting attended by Sylvia and Susan, along with the appellant's legal and accounting representatives, with HMRC, on 15 February 2018. These notes were approved by those accounting representatives save in respect of one answer at paragraph 18. The recorded answer is that "Sylvia never had any intention of returning to Ireland". This was alleged to be incorrect, and Sylvia, in a handwritten letter dated 30 March 2018 to those representatives, indicated that "I could not make any permanent decision about my life and that of my children at that time due to very distressing circumstances following my husband John's death".
(4) Fourthly, a map of London, compiled by Ms Hicks ("**the map**") which purports to show the locations of a large number of premises which were referred to in the oral and documentary evidence.
(5) Finally, the remaining documentary evidence which was contained in two bundles running into several thousand pages.
Sylvia's witness statement

13. One of the important issues which we must resolve concerns the evidential weight (or probative value) which we must accord to Sylvia's witness statement.
14. We are conscious of the weight which is attached to statements given by, on behalf of, interested parties. We have set out a number of the legal principles above, but, relevantly, Mummery LJ in *Agulian* at paragraph [13] said that "in a case of proof of the subjective intentions of a person who has died little weight is attached to direct or indirect evidence of statements or declarations of intention by the person concerned. Subjective intentions have to be ascertained by the court as a fact by a process of inference from all the available evidence about the life of the person, whose domicile is disputed" and the statement by King LJ in *Kelly* at paragraph [33(iii)] that "[the] court will view evidence of an interested party with suspicion".
15. It is a matter of considerable regret that Sylvia passed away before she was able to give evidence, in person, at the hearing of this appeal. And both Mr Stone and Mr Nawbatt made representations as to the reasons why this had not been possible. And rightly so. However, this does not detract from the fact that Sylvia was not able to give oral evidence and could thus not be tested on the statements made in her witness statement. Mr Nawbatt submits that her statement should be given little weight in light of the legal principles mentioned above, and that where there is a conflict between her evidence and the evidence in An Irish Waltz the latter is to be preferred given that it was not prepared for the purposes of this appeal.
16. Mr Stone on the other hand says that Sylvia's witness statement contains a signed statement of truth, and records not only her own intentions (her own mind at that time) but

also matter-of-fact discussion she had with John as to what he said to her about his intentions. So, we cannot either ignore what she says, nor make findings of fact contrary to what she says in that witness statement unless we have concluded that what she says just isn't true. Unless the facts of her life or John's life are positively inconsistent with what she says, we should accept what she says.

17. We are conscious of the fallibility of the human mind and, as set out in *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor***.** [2013] EWHC 3560 (Comm):

> "19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces".

18. And in *Dicey*: "Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined carefully considering the persons to whom, the purposes for which, and the circumstances in which they are made and they must however be fortified and carried into effect by conduct and action consistent with the declared expressions".

19. It is our view that Sylvia's witness statement, prepared as it was for the purposes of these proceedings, is likely to contain unconscious bias in favour of the appellant's assertions that neither he nor his parents had, at the relevant time, a domicile in England.

20. However, this does not mean that we automatically accord the evidence in that statement as having no evidential weight.

21. One of the reasons that Mr Nawbatt urges us to attribute little weight to it is that Sylvia's evidence has not been tested in cross-examination. However, it seems to us that our task is to undertake that test, not in cross examination, but by testing Sylvia's evidence set out in her witness statement against the oral evidence given by Susan and Jeremy, the text of An Irish Waltz, the other documentary evidence, and the actions, both during and after the relevant times, of John and Sylvia. In this way we are testing whether the views in her statement are fortified and carried into effect by conduct and action.

22. Once we have undertaken that exercise, we can attribute the appropriate probative evidential value to the evidence in Sylvia's witness statement, when considering (in the main) the issues of John's and Sylvia's domicile.

The oral evidence

23. As regards the oral evidence given by Susan and Jeremy, the position is considerably clearer. The qualifications set out in *Gestmin* and the cases set out at [11] above, and in *Dicey* apply equally to their evidence. Mr Stone suggests that there is a distinction between cases which deal with a deceased propositus rather than a living propositus. We do not accept this. *Dicey* is clear that the qualification regarding acceptance of self-serving evidence applies equally to a living as to a deceased propositus, and indeed the cases in which such qualifications have been voiced, for example *Henwood*, *Gaines-Cooper*, and *Kelly* are all cases which involve an examination of the domicile of a living propositus. However, we have had the opportunity of hearing that evidence and seeing it tested in cross-examination. We accept Mr Stone's submission that for Jeremy, we need to make findings of fact on the balance of probabilities about his intention at the relevant time (i.e. up to and during the relevant tax years) and in making that finding of fact, we need to give due weight and consideration to what he has told us of his intentions, and whether his mind was made up. And we test this against the other evidence which is proved or provable and the objective facts of his life. This requires a detailed fact-finding of the primary facts from which we can draw inferences (in accordance with the principles set out in *Henwood* at [11(26)] above. Accordingly, we do not accept, at face value, Jeremy's bald assertions regarding his intentions. Instead, we consider his evidence as tested in cross examination and in light of his conduct and actions, and from that draw our conclusions as to his relevant intention at the appropriate time.

Adverse inferences

24. In his skeleton argument, and in early oral submissions, Mr Nawbatt invited us to draw adverse inferences from the fact that other potential witnesses which could have been called to give evidence by the appellant, had not been so called. In his notes on evidence, he had somewhat watered down this contention, and submitted that more importantly, the failure to call these witnesses means that if the evidential burden shifts, the appellant is unlikely to discharge it. Mr Stone submitted that he could see no circumstances, given that the burden of proof in this case is on HMRC, where the evidential burden might shift. And in any case, he was critical of Mr Nawbatt's invitation in light of its lack of specificity. However, we have reached our conclusions in this appeal without the need to draw any adverse inferences, so we have not needed to consider this point further.

JOHN AND SYLVIA

Facts

25. We think it is convenient to deal with issues 1-3 together and to consider the facts relevant to John and Sylvia's domicile as a whole. In this section therefore, which is lengthy, we start by making findings of primary facts, consisting principally of the recital of the events that have taken place in the lives of John and Sylvia. We do not believe that these are particularly controversial. We will then move on to consider the more controversial evidence consisting largely of a consideration of the assertions that John had intended to settle in France, and that Sylvia had intended to return to Ireland. We then record the parties' respective submissions on the law and evidence before finally going on to consider and reach a conclusion on these three issues.

Findings of primary facts

John: early life

26. On 18 August 1872, Jeremy's grandfather (Josef Koller) was born in Vienna, Austria. John, who was originally named Hans Josef Koller, was also born in Vienna, Austria, on 10 August 1918.
27. In 1938, John fled Austria to England to escape the Nazi persecution of Jews. He was 20 years' old when he left and travelled with his parents. He never wanted to go back to Austria and he maintained an anti-Austria stance for the rest of his life.
28. The family went to meet Jeremy's aunt Margaret, who was already living and working as a musician in London, and whose invitation to a fictitious family wedding in London provided the excuse for the family to leave Austria. It was always intended that the family would ultimately move to Buenos Aires, but as a result of Josef's death in 1945, this did not materialise. On arrival in London, Margaret helped the family to find a flat (Flat 155, 29 Abercorn Place, NW8) in the building in which she was living with her husband. She also helped his cousin Julius Kornspann, who subsequently changed his name to Peter Scott, to settle. Therefore, shortly after arriving in London, John was living with his parents, sister, and his cousin in the flats at 29 Abercorn Place. His cousin Peter's sister Bianca Scott was also living in London as was his Uncle Arthur who lived with his wife in Swiss Cottage, Belsize Park.
29. By 1 November 1939, John had been ruled a refugee from Nazi oppression and exempted from internment so was free to live in the UK as a refugee at liberty.
30. During World War II John worked for the refugee statistics department before enlisting in the British Army. Upon enlisting, he changed his name to John Coller. He signed up for the army with his cousin. They were initially engaged in the Pioneer Corps. A working unit, rather than a fighting group, they were assigned to projects such as building bridges. In 1942 John joined the Royal Engineers.
31. Josef Koller died shortly after the war ended on 15 October 1945. He was buried in London. John continued to visit his grave for the rest of his life.
32. Following the end of the war, John returned to St John's Wood with Peter Scott. John set up his own car repair business, which was unsuccessful, before starting a business manufacturing leather belts, wigs and coats in a factory on Violet Hill, St John's Wood, opposite Peter Scott's shop. Margaret, John's sister, also had a business making smocks for hairdressers around the corner from where they all lived, on Violet Hill.
33. On 25 January 1947 John (then aged 28) successfully applied for naturalisation and acquired British citizenship. He swore an oath of allegiance to the King, pursuant to which he was "entitled to all political and other rights, powers and privileges", as well as "subject to all obligations, duties and liabilities, to which a natural born British subject is entitled or subject" and he was to "have to all intents and purposes the status of a natural born British subject". His address at this time was given as 92 Clifton Hill, London, NW8.
34. Around that time, he formally changed his name to John Howard Coller. Again, his address was given as 92 Clifton Hill, London, NW8.
35. Peter Scott remained a life-long friend and was best man at John's wedding. In An Irish Waltz it is recorded that Peter Scott always wanted to stay in England: he liked the people and never wanted to go back to Vienna. He believed John felt the same.
36. Prior to getting married, John maintained friendships with, at least, two other colleagues from the army, Ken Wilson and Norbert Faust. Peter Scott recalls he was very popular with all the young people.

Sylvia: Early Life

37. Sylvia was born in Dublin on 8 February 1930. Her grandmother used to take her on trips to Blackpool when she was 9 years' old. She first moved to England, aged 18, in 1948. In or around 1948 Sylvia was engaged to Merton Bursk, from Manchester. At some point between 1948 and 1952, after her relationship with Merton ended, Sylvia spent three months living in Liverpool, working at the Bankruptcy Fur Company and staying with a friend (Estelle) and her parents. When she later discovered Merton Bursk was already engaged to someone else, she returned to Dublin.
38. When her father died in 1952, the family found out that he had invested in bogus property with a cousin and lost practically everything. The family went from having a drive, a beautiful house and a resident maid to having nothing. Everybody knew and it was demeaning for the family; without money Sylvia felt they were 'persona non grata' and she felt she was "sidelined".
39. Sylvia's brother Mervyn left for London following their father's death ("He left us poverty-stricken and that's when I moved to London"). Her uncle, Max Coleman, was already living in London at that time.
40. Following the death of her father in 1952, Sylvia went to summer school in Thirsk in England, where she met Tony Field, a gentleman with whom she had a relationship. She stayed in Hoop Lane in Golders Green, London, the same area where he was living. When this relationship broke off, she returned to Dublin again. However, "Things weren't good in Dublin… Suddenly everything was gone. Home as I knew it had ceased to exist".
41. In 1953, Sylvia returned to London with her friend Sonia Rosenthal, who lived opposite her in Dublin, someone who remained in London (living in Southgate, North-west London) and with whom Sylvia remained good friends, for the rest of her life.
42. She worked as a receptionist for the British School of Motoring in Golders Green, was going out socially in the evenings, and rented a room at 188 Golders Green Road, where her brother Mervyn also had a room. Sylvia left both the job and the accommodation a few months later, taking a room on Foscot Road and working as a salesperson in the West End, a job she found through her uncle Max Coleman. She later moved to Hendon, renting a room from Mrs Vanner.
43. Sylvia knew at least the following people living in London at that time: her uncle (Max Coleman); her brother (Mervyn Medalie); her friend Anne Golding (Gilson); her friends Audrey and Sonia Rosenthal; Freddie Plant (a former boyfriend who would be a lifelong friend and later introduce her to Hugo Amschel); Susie Plant and her friend Stella, who would later be her bridesmaid and one of her lifelong friends.

Sylvia and John Coller

44. Having initially seen John at a Dance Hall on Finchley Road called La Cage d'Or, Sylvia met John at a party of a mutual friend and were married three months later in 1954.
45. After the wedding, which took place in Dublin, John and Sylvia Coller honeymooned in Paris and the South of France. John spoke fluent French. On their return they settled down in a rented flat at 29 Abercorn Place London NW8 in the same block of flats as John's mother Sofia, sister Margaret, and cousin Peter.
46. The couple made friends with other people in the flats, including Vera and Peter Fletcher, with whom they would go out to the cinema or a restaurant. Sylvia recalls:

> *"*After John and I married, I became very pally with another couple in the flat, Vera and Peter Fletcher, who were great friends. My husband liked them, too. We went out as a foursome to the cinema or a restaurant – it was lovely. I was having a good time and I was very happy".

47. Other friends during their marriage, who all lived in North-west London, included: Julian Cooper – John's best friend; Ken Wilson, who was married to Stella Bloom, Sylvia's childhood friend and bridesmaid at her wedding, whom John introduced; the Gilsons – Anne Gilson was a Dublin school friend who hosted the TV party where John and Sylvia were introduced; the Korels – friends from the Jewish Blind Society who lived on Blenheim Terrace, in St John's Wood; the Fausts – Norbert Faust was a friend of John's from the army, who lived in Lake View in Canons Park in Edgware; Tom and Paula Valentine – it was their wedding John was attending when he suffered a heart attack; Harry Fox; Alec and Sonia Rosenthal – Sonia Rosenthal was another one of Sylvia's childhood friends, who travelled with her from Dublin and lived in Southgate.
48. Susan Coller recalls that Sylvia, John, Peter Scott and Bianca Scott would also meet up together. John was also very fond of his brother-in-law, Mervyn and had a group of continental and Viennese-German friends ("a very polished group of people"). John was "very sociable" and was "a party man" who put on "fantastic buffets". At one party John hung lanterns all around the garden, put on a chef's hat, and made beef burgers; "there was such a run on those beef burgers that he spent the whole evening making them".
49. John's leather manufacturing business initially comprised a factory on Violet Hill, St John's Wood, with two or three employees. He would frequently work until late, but Sylvia describes how she was "very happy" at this time.
50. Two years after marrying, John and Sylvia had their first child, Susan, who was born on 21 May 1956 at St John and Elizabeth Hospital, St John's Wood, London. At the time they were still living at Flat 155, 29 Abercorn Place.
51. Sofie Koller, John's mother, died on 27 January 1957. She had never learned to speak English. She was buried in London. John visited his parents' graves until he passed away.
52. In 1958, when expecting Jeremy, John and Sylvia purchased a house at 8 Aberdare Gardens, NW6 3PY for £3,300. It was "in West Hampstead, although not the posh part. It was up Swiss Cottage way" and was a pre-war conversion with eighteen rooms on three floors.
53. Jeremy was born a few months later on 17 May 1958 at a private hospital, the St John and St Elizabeth's Hospital, St John's Wood, London.
54. The property at Aberdare Gardens was divided into flats and tenanted. The family lived in the top floor until they were able to give notice to the tenants and moved downstairs. Around this time Susan attended kindergarten at the North-west London Jewish Day School.
55. The family lived at 8 Aberdare Gardens and Sylvia was, in her words, "as happy as I could be". Susan agreed that her mother was "very happy" in Aberdare Gardens.
56. The children did not see John very often during the week. He came home at nine or ten o'clock in the evening. On Saturdays John and Sylvia went out for lunch together, just the two of them, and they prowled through antique shops. Occasionally the children came out with them to the Dorice, a continental restaurant on Finchley Road near 8 Aberdare Gardens. They also went to the Cosmo restaurant, another continental restaurant on Finchley Road. Their visits to the Dorice and Cosmo continued after they moved to 4 Armitage Road.
57. The Finchley Road was, at that time, a focal point for the Jewish refugee community settling themselves in North-west London, to the extent that the bus conductor would reportedly call out "Jerusalem" or "Vienna" at Finchley Road. In the 1940s, 1950s and early 1960s there was a strong North London Jewish community in and around the Finchley Road area and Belsize Park and the Swiss Cottage area was home to many refugees from both Germany and Austria. As a result, cafes, synagogues and refugee-run businesses sprang up to cater for their needs and there were cultural activities, concerts at Belsize Park Synagogue or the Austrian Club. People were drawn to the Finchley Road area and it became a "familiar community".

58. John attended the Louie Baker Synagogue in Abbey Road, NW8 and when they moved to 4 Armitage Road, he attended the Golders Green Synagogue on Dunstan Road.
59. In 1963, their accountant (the brother of John's best friend) advised them to move elsewhere and rent the property out. On 8 April 1963, the family bought a 5-bedroom house at 4 Armitage Road, Golders Green, NW11. The couple bought it for £11,500 and rented out the flats at Aberdare Gardens. At this point, Susan was five and Jeremy was three. They did it up nicely and added a bathroom. After the renovation, the property had five bedrooms, two bathrooms, three reception rooms, a conservatory, a scullery, a breakfast room and a hidden staircase. Unlike Aberdare Gardens, they had the whole house to live in and the family had a live-in maid and a daily woman.
60. By the time the family had moved into 4 Armitage Road, John's business (called Howard Manufacturing or HOMAC) had expanded from belts to leather coats and was built up to consist of a shop at 2 Newburgh Street (off Carnaby Street) and a showroom and factory at 53 Broadwick Street. The business went on to become successful as the fashion for leather coats took off and contracts were secured with high street shops, such as C&A and Neiman Marcus.
61. John invested in three North-west London properties with his best friend and business partner, Julian Cooper: the properties were situated on Priory Road; Compayne Gardens; and Hoop Lane. The Hoop Lane property was a semi-detached property with 6 rooms in total which were each rented out. Compayne Gardens was a very substantial property in West Hampstead. The Priory Road property was another family Victorian / Edwardian house in West Hampstead. John and Julian Cooper rented out the rooms or flats in those properties.
62. The children had a strict and settled family routine: a bath at five-thirty; in pyjamas by six; lights out by six-thirty. As John often worked late, the children rarely saw him during the week. After his shop opened, John would often work there on a Saturday. Sunday was his day with the children; they would often go to a country club, Kendall Hall, where they and their friends the Gilsons were members and John played tennis.
63. From about 1963 the family started going to the South of France for holidays in the summer. They did not go every year; in 1965 they went to Lake Garda in Italy. When they went to the South of France they would rent a flat in Juan-Les-Pins. In the winters they would go to Davos to ski.
64. On 7 March 1967, CC was born in London. Sylvia says, "At this point things were going perfectly for us. We had a nice life. We were having fun. Golders Green was very lively then and very posh, with fashionable shops. We had a beautiful house, filled with beautiful things. We had nice friends and the kids were in private schools". Susan said that Golders Green was "a very pleasant residential area with a beautiful high street…it was a very nice area to live in" and that, by this time, her mother was "settled". Her evidence was also that "….. I knew my mother inside out. My mother was very happy if everything was nice around her, and she was happy with her family. Her family was the most important thing to her, wherever we were".
65. John died suddenly of a heart attack on 31 August 1968 whilst at the wedding of the daughter of friends. He was aged 50. Although he had prepared three draft Wills in London, he died intestate.

Sylvia: 1968 to 1974 and beyond

66. Following John's death life became a real struggle for Sylvia and the children. Sylvia lost a lot of weight and Susan recalls that about a year after John's death, Sylvia attempted to overdose on pills. The properties which had been owned by John and his partner Julian Cooper were divided, with Julian Cooper taking the valuable ones. One reason for this was that Julian Cooper's solicitor was also John's solicitor and John's accountant was Julian

Cooper's brother. The family's standard of living dropped and they went from living in all of the house, to living in a converted flat comprising one of three dwellings in that house. The family received charity from a number of sources to help with, inter alia, school fees, and whilst the rents from the properties that the family had managed to secure (Hoop Lane and Aberdare Gardens) just about kept them going, they had very little money to spare.

67. HOMAC was closed, following evidence of theft and embezzlement, and bailiffs removed the plant and equipment. The factory site was given away and Sylvia received nothing in respect of it. Sylvia was fortunate that the Brewer Street property, having been taken on a full repairing lease, was demolished by the government. If this had not happened, she would have faced even more significant liabilities given the state of repair of that property.

68. According to Sylvia, the bank manager was at her throat and she just coped "day to day". "The physical upheaval of converting the house along with keeping the family going was very stressful it was a constant battle just to get through each day".

69. Susan's unchallenged evidence was that Sylvia received little support from friends or family during this period (notwithstanding that she had a number of good friends as set out below) and that a lot of the burden of looking after the household fell on her (Susan). She did most of the housekeeping and looked after CC. She suffered from the burden of looking after the family and her schoolwork suffered. Jeremy was young and had become unmanageable. He was impossible to control and argued constantly with Sylvia. This was a huge struggle for Susan and Sylvia. After a time they found their feet but by 1974 they had not moved much beyond living day to day. It was many years before Susan could say that their lives were on a more stable basis.

70. Jeremy's first school was Hereward House in St John's Wood. After John's death, he had a year to go at Hereward House but as he was not doing very well, and the couple's plan had always been to send him to Hasmonean Prep (also in North-west London), Sylvia pressed ahead with that plan and sent him to Hasmonean Prep early. He then went to Carmel College, a boarding school. Sylvia paid for the fees with the money from renting out rooms at Aberdare Gardens. She also continued the family's membership at Kendall Hall Country Club and learned to drive so she could take the children.

71. Sylvia's friends in London from 1968 onwards included:

(1) Norma and Harry Michaels; whom she knew from Susan's primary school, who lived in Brondesbury Park; Susie and Freddie Plant who lived in Manor House Drive, Brondesbury Park; Susie was "a very good friend" to Sylvia according to Susan.

(2) The Gardeners, who were particularly good friends, especially after John died. Their sons went to Hereward House with Jeremy. They lived around the corner (the Ridgeway in Golders Green). CC also recalls how Garbi Gardiner would pack a little box of food for her to have in the car when the family visited her father's grave before festivals with the whole family.

(3) The Gilsons and the Korels (with whom the Coller children would play). The Gilsons lived on London Road, near Stanmore train station and the Korels lived on Blenheim Terrace, St John's Wood.

(4) The Fausts, who lived in Lake View, Stanmore, were good friends after John's death and at least until she re-married, although she lost contact with them towards the end of her life.

(5) Stella Bloom, her childhood friend and bridesmaid, who lived near Hornsey Lane, Highgate and who remained her great friend for the rest of her life.

(6) Her brother Mervyn was also living in Powis Gardens, Golders Green.

72. In 1979, CC celebrated her Bat Mitzvah at the Golders Green Synagogue, Dunstan Road.
73. Sylvia married her second husband, Hugo Amschel, on 13 July 1982. She was fifty-two years old. Hugo also came from Vienna but was raised in Manchester. The couple bought properties at 17 Sheridan Walk London NW11 (their marital home) and Bournemouth (a holiday apartment) as Sylvia always wanted a place by the sea. Sylvia retained and rented out the property at Armitage Road for the rest of her life and has bequeathed it to her daughters on her death.
74. Eighteen years her senior, Hugo died in London in 1986. The Bournemouth property was left to Hugo's daughter (who sold it shortly after his death) but the marital property was left to Sylvia.
75. On 1 July 2011 Jeremy acquired 14 Mountview Close, NW11 7HG, which remained Sylvia's home for the rest of her life.
76. Sylvia died in England in August 2022. She is buried in the plot directly next to John in the United Synagogue Bushey cemetery.

John and Juan-Les-Pins

77. In An Irish Waltz, Sylvia records that "I told [John] I'd like to go to the south of France". She goes on to say that they started a honeymoon in Paris and drove down to Juan-Les-Pins and that it was wonderful to be in Europe with her new husband and it just suited him. However, nowhere in An Irish Waltz is it recorded that John had any intention of moving to Juan-Les-Pins or settling there.
78. In her witness statement, Sylvia records that:

(1) "….. Even though we did not have a lot of money, we travelled regularly to France (in particular, Juan-Les-Pins on the Cote d'Azur) which is where we spent our honeymoon. John was at his happiest when we were there because he loved France and its way of life. He spoke fluent French and he felt a sense of belonging there that he did not have in London. There is no question that we wanted to live there. John went as regularly as possible and the plan was always that he would settle in France when he was able to spend more time away from the business".
(2) "John's experiences in Vienna also made him very sensitive to the potential need for flight at any moment. I believe that he did not want to lay down roots in the UK in case it stopped being a welcoming or safe place for him or our family".
(3) "The only place that John felt at home was France and the plan was for us to move there".
(4) "…. However, whereas John would not have returned to Austria, I always had a longing to return to Dublin, which is where my friends and parents were, even if this was unlikely while John and I were married given that John had his heart set on France".
(5) "That being said, John was determined that we continue to spend as much time as possible in the south of France. Any spare money we had we spent travelling to France. Life in London was difficult for us and France was where we felt at home, John in particular".
(6) "If John had not died we would have settled permanently in France once the children finished school and John was more secure with his business… It was incredibly sad that John's premature death meant that he never got to settle in France… Retirement in France was something that John and I would clearly have done together…".
(7) "John never regarded the UK as his home. He arrived in the UK because, at the time, it was his only way out of Vienna. He and his family initially intended to settle in Buenos Aires. What HMRC do not appreciate is the position of an Austrian Jew at that time. While John's extraordinary circumstances meant that he had landed in the UK, the country was foreign to him. It was not his home and was not where he wanted to be".

79. HMRC's notes of the meeting held on 15 February 2018 between HMRC and the appellant's representatives, but at which Sylvia and Susan were also present, record that:

(1) "Sylvia said John had no wish to return to Austria, he "hankered" after a move to France. He spoke perfect French".
(2) "Sylvia did not feel John was settled in England but the matter was not discussed as he was at work all the time".

80. Susan's relevant evidence on this matter was:

(1) "My father did not participate much in the community in England outside of his close family. He spent most of his time working… He had a distinct continental character that stood out from the culture in the UK, whether Jewish or otherwise. My father saw himself as continental, and to the extent he did participate in any culture, it was a sophisticated continental culture".
(2) "We would take the train to the south of France and would stay for the summer, perhaps 6 or 7 weeks, in an apartment in the same complex in Juan-Les-Pins… To my eyes, my parents, my father in particular, it was a culture where they felt much more at home… My father stuck out in London as someone who clearly came from a continental background but that culture and way of living was everywhere in Juan-Les-Pins".
(3) She thought they had rented a flat in Juan-Les-Pins every summer from when she was 6 or 8 years old apart from one year when they went to Italy.

81. In a letter dated 14 April 2015 from the appellant's tax advisers, Munslows LLP to HMRC, Munslows state:

> "Without wishing to waive legal professional privilege, in a meeting of 28 October 2009 Julian Scott reiterated to MacFarlane's LLP that due to the circumstances in which John had to leave Vienna, in his view both he and John would not have returned there. In addition, Mr Scott believed that although he (Mr Scott) wanted to stay in England, John "never felt right" in England. At the time of his death, his job was in the UK and his children were being educated in the UK and so he was not able to leave at that time. However as soon as he was able to leave the UK, he would have moved to the South of France, where he would always have preferred to live".

John and English Society

82. Susan's evidence, which we accept, was that at the time that John arrived in England in 1938, refugees fleeing Austria and Germany had established a presence on the Finchley Road in North-west London which related largely to food. This was the environment into which John entered in 1938, but it was very different from the established Jewish community in London. The Jews who had been in the UK for some time had generally come from Eastern Europe, and they first made their home in the East End. They spoke a language called Yiddish. John did not speak Yiddish. Indeed, according to Sylvia, although he could speak English quite well, he did so with a strong Viennese accent and preferred to speak German.
83. Accordingly, when John and Sylvia went out, they tended to go to restaurants and other establishments that were popular with Austrian expats or continental Jewish people. Such establishments included the Cosmo and the Dorice, both on Finchley Road.
84. Both Susan and Sylvia's evidence was that John had a close circle of family and friends with whom he socialised, but he did not socialise more generally amongst the broader Jewish or English communities.

John and his family

85. Sylvia says in her statement that "John was a sociable man but he did not have many friends in London. He was focused above all else on his family…… I would describe our family during this time as very close-knit. As I mentioned above, we did not feel attached to the community in the UK and tended to keep ourselves to ourselves".

86. In cross examination, Susan confirmed that John was first and foremost a family man who wanted to be close to his children and given his circumstances, following the war, family was the most important thing to him.

Sylvia and Ireland

87. In her witness statement Sylvia says:

(1) "[in 1954] I had no affinity with London. Life was difficult and I certainly had no intention to establish my home in London. I would have loved to return to Dublin but, at that time, I was obviously living where John needed to be…".

(2) "… I always had a longing to return to Dublin, which is where my friends and parents were, even if this was unlikely while John and I were married given that John had his heart set on France".

(3) "… John's sudden death did not suddenly change my feelings about the UK. If I had been able to, I would have gone back to Dublin as I have mentioned, Ireland is where I consider my home and my heart to be and I would have loved to be able to go back. At that time, however, my family in Ireland were in no position to help. As I have mentioned, my deceased father had lost a lot of money and my mother was quite ill. There was no support network for a young family and I was in no position to cart 3 young children about, particularly as they were settled in school".

(4) "However, I still felt like an outsider in the UK and I expected that when I had got through this very difficult period and the children were older, I would be able to move on and base myself elsewhere as I have said, this would have been Ireland".

(5) "In the period after John's death (i.e. the late 1960s to mid 1970s), Israel was still a very young and uncertain country. I am (and was) very supportive of Israel but I cannot say that I saw myself moving at that time. If anyone had asked me where my heart lay for the future, I would definitely have said Ireland".

(6) "My intention has always been to move out of the UK and I would have been happy moving to Israel (particularly if it meant being close to my children) but the truth is that I have always been closest to Ireland. What is sad to me is that I have not been able to move there (or to Israel) permanently……. I am now [June 2020] reliant on receiving live in care in the UK. I acknowledge that the reality is that, while I would still love to return to Ireland, my current situation makes this difficult".

88. In the appellant's notes of the meeting the 15 February 2018, it is recorded that HMRC's representative asked whether Sylvia had thought about going back to Ireland after John's death. She replied, "what for?".

89. Nowhere in An Irish Waltz does Sylvia say that she ever wanted to return to Ireland either before John's death or afterwards.

90. Susan's evidence was that she had visited Dublin with her parents when she was young and there met the Jewish community of which her mother had been part. She explained that as far as she was concerned, her mother still did not feel at home in England and that it was a wrench for her to have left Ireland. It was her view that knowing her mother and what they went through following her father's death, she had no doubt that "after my father died my mother would have wanted to go straight back to her family in Ireland so that they could look after her again. That was not possible, partly because her father had lost a lot of money. My grandmother was living on a restricted budget and had to move in with her mother following

death. My grandmother also suffered from a severe case of Parkinson's disease and had undergone a series of operations which left her in a very poor state. She was cared for by my great grandmother and my aunt and they all lived together in my great-grandmother's home".

91. In cross examination, she accepted that the Dublin that her mother had known before she came to England, namely a happy home with a mother and a father with an affluent lifestyle, a very settled middle-class lifestyle which was destroyed after her grandfather passed away, had ceased to exist. Her economic social and family life was very different, and life did not exist "as it did when she was an innocent young person… surrounded by loving family with no obvious economic stresses".

92. Her grandmother had had a lobotomy and was becoming increasingly ill. It wasn't the home that she [Sylvia] remembered. It wasn't a loving and comforting environment for her mother to go to with all these situations going on. "A very ill woman living in a house with her mother and her sister and unable totally to do anything for herself". It was Susan's view that if Sylvia's circumstances were as she had remembered them [until her grandfather's death] she "would obviously have wanted to go back to them". She also recalls how she had been back to Ireland, following John's death, on a number of occasions, during which Sylvia would talk about how she wished she could go to stay with her family in Dublin, but they did not have room for us "and my grandmother was very ill".

Sylvia and family

93. It was Susan's evidence that not only was John first and foremost a family man, but also that Sylvia was first and foremost a family woman both whilst John was alive, and after he had passed away. Sylvia valued her family which was "foremost" and the family had a very particular closeness "and my mother didn't really need anybody except myself and her other two children and grandchildren". She went on to say that both of her parents would always want to be close to their children and that family was the most important thing.

Jeremy's evidence

94. Jeremy mentioned his holidays in Juan-Les-Pins and Sylvia's love of Ireland in his witness statement but accepted that he was not in a position to say what either John's intentions were before he died, or what Sylvia's intentions were from the point of his father's death in 1968 to 1974.

Submissions

95. We now set out, in brief, the parties' respective submissions both on the law, and as regards the application of that law to the question of John and Sylvia's domicile. Whilst we will deal with Jeremy's domicile later in this decision, some of these submissions are equally relevant to a consideration of that issue.

Mr Nawbatt

96. In summary Mr Nawbatt submits:

(1) HMRC have the burden of proof but only have to succeed on any one of the four issues. Jeremy is seeking to argue that he is not domiciled in the country; to which his grandfather moved; in which his parents met and established a family life; in which he is the third generation to have resided; in which he was born, educated and raised; in which he has principally lived and worked throughout his life to date; in which he established his family home and raised his children; and in which he established the headquarters of his business.

(2) What is unusual in this case is the lack of any meaningful ties which John, Sylvia, or Jeremy, have with their asserted domiciles of origin (Austria in the case of John and Jeremy and Ireland in the case of Sylvia). Indeed, the parties are agreed that John had rejected Austria and never wanted to go back there.

(3) When looking at evidence of intention, the question is not whether Sylvia, Susan or Jeremy should be disbelieved. Self-serving statements from Jeremy and his family should be treated with suspicion and caution unless corroborated by action consistent with the statements. The authorities provide a clear guide. When considering an individual's intention, we must look at the facts and consider the individual's actions, and then consider whether those actions are consistent or inconsistent with the stated intention. In *Furse* the court felt unable to give any weight to a draft affidavit made for the purposes of the proceedings. Given the principles set out in *Gestmin*, we should accord little weight to the points made in Sylvia's witness statement.
(4) Whilst the concept of ending one's days in a location is useful in emphasising the need for a propositus to have a fixed purpose of residing in a location, it is less instructive in cases where the propositus is relatively young. In those circumstances, as in *Henwood*, the test is to ask where, if anywhere, the propositus had settled.
(5) Statements as to the adhesiveness of a domicile of origin do not represent a separate freestanding rule of law. What evidence is required to demonstrate an acquisition of a domicile of choice will depend on the application of common sense to the particular circumstances. In particular, the relative weakness of the propositus' connections to his domicile of origin is a factor that can increase the likelihood of his acquiring a domicile of choice in a new jurisdiction (*Henwood* [94]). As the FTT said in *Henkes v HMRC* [2020] UKFTT 00159 ("***Henkes***") at [160], "If the attachments which the Appellant has to the UK are significant, his lack of attachments to any other jurisdiction can affect both the adhesiveness of his domicile of origin and the proper interpretation of his intentions as regards the UK".
(6) Furthermore, "search for independent proof of intention becomes most essential where a residence is retained in the domicile of origin" (per Lord Buckmaster in *Ramsay*).
(7) Whilst a propositus cannot abandon a domicile of origin, rejection of a domicile of origin is highly relevant in considering whether a propositus has acquired a domicile of choice. If there is no real connection with a domicile of origin it makes it more likely or easier to acquire a domicile of choice. Given that John had rejected Austria, it is not inherently unlikely that he would have acquired an English domicile of choice. The same is true of Sylvia who had few ties to Ireland and Jeremy who had no ties to Austria.
(8) The requisite intention is not established by long residence alone, but it is common sense that the longer the residence and the more it is home, the more likely the inference that there is the intention to reside permanently and indefinitely (*Musa* at [23]).
(9) The question is whether the propositus has a singular and distinctive relationship with the country of supposed domicile of choice (*Henwood* at [14]). In *Musa,* at [67], "where someone has clearly set up their home for a very long time in the country, has a family and does not have a home elsewhere, that must prove a strong starting point". Settling in a jurisdiction, even if not the technical test in itself, is strong evidence of an intention to permanently reside there.
(10) The intention of establishing a permanent home in a place must be more than a vague hope or aspiration. It must be more than a pipe dream, and when it comes to considering John's ostensible intention to live permanently in France, that is classic pipe dream territory.
(11) The principles which can be derived from the authorities are a function of the facts of those authorities. The courts undertake a "weighing up" exercise and consider the ties which the propositus has to his/her domicile of origin and domicile of choice. Having considered those ties, and consistent with the burden and standard of proof, the courts then go on to determine the issue. In the case of John, there are no ties with Austria and very few ties with France. As Mr Nawbatt put it, colloquially, there is nothing in his Austrian "bucket" and very little in his French bucket. The same can largely be said of Sylvia where there is very little in

her Ireland bucket. And the same is true for Jeremy, who is asserting that he has a domicile in Austria (through his parents). There is nothing in his Austrian bucket.

(12) And the authorities show that retention of ties and property in a domicile of origin weighs heavily when considering whether a propositus has established a domicile of choice in another jurisdiction. This of course is not the situation in this appeal where John and Jeremy have no connections with Austria and Sylvia had little attachment to Ireland.

(13) It is not necessary for a propositus to adopt the manner of life in a new country or make himself a member of the civil society of that country. It is not necessary for him to identify himself with its customs or merge into the general life of the inhabitants. England today is a very multicultural country and there are pockets of London and in other areas of the country where people remain within communities, and where some speak English either not at all or not very well. But that does not mean that they are precluded from acquiring a domicile of choice in England.

(14) A domicile of choice of England can be acquired if it can be established on the facts that the propositus had the intention of establishing a permanent home in England. This intention must not be limited in time or for some temporary or special purpose. In the context of John and Sylvia, their residence here was not for a limited time nor for some temporary or special purpose.

(15) Contrary to Mr Stone's submission, it cannot be the case that unless you have given positive thought and formed a positive intention about where you are going to die, or end your days, you cannot acquire domicile of choice. If you reside in a country without any intention of leaving it then you are likely to be settled there and to have a singular and distinctive relationship with it.

(16) In *Sekhri* the court found as a fact that the settled intention of the propositus was to remain living with his wife and close to his children. The evidence showed that he was first and foremost a family man albeit quite a strict disciplinarian of his children. He loved and was completely loyal to his wife. He loved his children and would never leave them behind. In these circumstances the court found that the propositus had shrugged off his domicile of origin and acquired a domicile of choice in England. His talk of ceasing to live in England and returning to live in India was a pipe dream. This resonates with the situation in our appeal where John and Sylvia have been described as first and foremost a family man and family woman respectively and both would have wanted to be close to their children. It is unlikely, therefore, that they would have left their children in the UK and ended up living in either France or Ireland.

(17) The purpose of the map is to demonstrate the extensive roots and ties that Jeremy and his parents laid down in a small area of London.

(18) "…Even in the case of a young bachelor, it is no misuse of language to say that the quality of intention is that he must have the intention of establishing himself and his family (if he acquires one) in the new territory. In determining whether at any given time the propositus did have that quality of intention, it is in my judgment legitimate to examine what in fact happened when the propositus did acquire a life and family." (Per Lewison J at [47] in *Gaines- Cooper*).

(19) In order to consider whether HMRC have established, on the facts, that John and Sylvia acquired a domicile of choice in England we must consider all relevant facts. Case law clearly shows this even though we can stand back and look at contours. There is no one single factor which outweighs everything else in this exercise. HMRC's case is that when you look at the details of John and Sylvia's lives, they have discharged their burden of proof and have provided clear and compelling evidence that both intended to live permanently in England.

(20) These details, derived from the evidence that we have heard, was set out by Mr Nawbatt in a useful document which we have slightly amended and included in this decision

as an appendix. According to him these facts clearly show that both John and Sylvia had settled intention of living permanently in England

(21) Mr Nawbatt cites these items as evidence for the following narratives.

John

(22) By the time of his death, John had been living in London for 29 years, he had served in the British Army, sworn allegiance to the Crown, and obtained a naturalisation certificate (a condition of which was an intention to reside in the UK). He had met and married Sylvia, settled in North-west London where they had three children together. They had purchased two family homes in London: 8 Aberdare Gardens and 4 Armitage Road, both of which they were very happy at. They spent time doing up 4 Armitage Road, in particular. They were surrounded by family: both of John's parents lived first with him and then nearby; his sister Margaret (who passed away in around 1997), and her husband lived and worked in North-west London; his brother-in-law Mervyn, whom he liked very much, lived in Golders Green; and his cousins, Peter ("definitely… a significant person in his life"); and Bianca Scott, lived nearby. He had a wide circle of friends (both continental and non-continental) in North-west London; he was "very sociable" and a "party man". He had established a business, which he worked hard to grow, and had also invested in three additional properties: Priory Road; Compayne Gardens; and Hoop Lane with his best friend Julian Cooper.

Sylvia

(23) Prior to 1968, Sylvia had settled in North-west London with her husband and established her home there over the previous fourteen years. She had been very happy living in Abercorn Place, then 8 Aberdare Gardens, and finally at 4 Armitage Road. In 1968, when John died they had been living at 4 Armitage Road in Golders Green for five years. Sylvia was already very familiar with Golders Green having lived in Golders Green even before she met John in 1954. She remained living in that area for the rest of her life. Further, although John's assets were originally frozen, once the probate was resolved Sylvia had the rental income from 8 Aberdare Gardens and Hoop Lane, as well as the rental income from the first-floor flats in 4 Armitage Road.

(24) The evidence that John, a continental man, always intended to retire to the South of France, is very weak, given that it derives largely from Sylvia's witness statement and some highly tenuous statement from Peter Scott. Susan's evidence, too, can be seen as self-serving, and given that her evidence is that there was little debate and discussion about family matters in the household, she cannot shed meaningful light on her father's intention. To the extent that her evidence is that the family enjoyed their time in Juan-Les-Pins, that is unsurprising given that this was family time together and John whilst working in London, seldom saw the family.

(25) John went there only on holiday. Whilst he spoke fluent French, it was Sylvia's suggestion that they went on honeymoon there. The family only went after about 1963. They always took rented accommodation. John invested no capital in Juan-Les-Pins. They never visited there in the winter. There were no other connections. There was no evidence of a Jewish community similar to the one in which he felt so comfortable in North London.

(26) John was a family man and it is inherently unlikely that he would have returned to the south of France and left his children in the UK. When he died, CC was one year old, and had he survived he would have been in his 70's when she completed her education. There is no evidence the Sylvia would have left her children to live in the South of France.

(27) In all cases where there has been a consideration of a contingency and whether or not an intention is simply a pipe dream, it has been in the context of an individual's stated intention to return to their domicile of origin. Here we are being asked to consider that contingency in respect of a third country (France) in respect of which John has never lived and has no ties or links other than it was a place on which he enjoyed going on holiday with

his family. If this intention existed at all, it pales into insignificance compared with the strength of the ties, links, roots in London. His properties, business, family, friends, and long residence.
(28) Sylvia's evidence about her long-term intention to return to Ireland should be treated with suspicion. She does not mention any such intention in An Irish Waltz. Ultimately, as a matter of fact, she never returned to Ireland notwithstanding that she had opportunities to do so.
(29) The first of these opportunities arose following John's death. She could readily have sold some of the properties she inherited and gone back to Ireland with that capital. Instead, she reinvested in London.
(30) However, the truth of the matter is the Sylvia never intended, nor indeed wanted, to go back to Ireland following John's death as the Ireland that she had known and left in 1954 had changed dramatically as far as she was concerned. Her father had died leaving the family penniless and with a poor social reputation. Her mother was very ill and living with two other elderly ladies. Sylvia and the family had no support network. The answer that she gave to HMRC at the meeting in February 2018, recorded at [88] above demonstrates that there was nothing for her in Ireland.
(31) Sylvia was devoted to her family and wanted to live close to them. It is implausible that in her 60's she would have left her adult children in London and relocated to Ireland.

Mr Stone
97. In summary, Mr Stone submitted:

(1) The authorities are clear and consistent that a definite, positive intention to live permanently or indefinitely in England is required in order for HMRC to discharge their burden of proof that John, Sylvia, or Jeremy, had the necessary intention to acquire a domicile of choice in England at the relevant times.
(2) The burden on HMRC requires them to present a cogent and clear evidence that each person had the necessary intention.
(3) Where a propositus has not made up their mind or has an attitude of indifference, that is insufficient for a propositus to acquire a domicile of choice. "Haven't thought about it" or "haven't made up my mind" is not sufficient on the authorities to amount to an acquisition of a domicile of choice.
(4) The test of whether a person has an intention of permanent and indefinite residence is set out in *Bullock* and is "whether [the propositus] intends to make his home in the new country until the end of his days unless and until something happens to make him change his mind". This is not, as submitted by HMRC, a question of whether the propositus has decided to simply "settle" in the new country. It cannot be established by long residence alone.
(5) Domicile is not a tiebreaker test. We start with a domicile of origin. HMRC then have to show a positive intention that the propositus has acquired a domicile of choice. To do this they must do more than show that the individuals in this case were reading a settled life. It is not enough for HMRC to prove facts which could be consistent with the intention or not having the intention was simply not having made up one's mind. The domicile of origin endures unless and until HMRC satisfies us that there was the necessary intention. And that intention must be a positive settled determination of intent. It must be more than simply carrying on living where you are and not thinking about it.
(6) We must focus on the particular facts of this case. Those facts must be the relevant facts i.e. something that tells us about the intention of the propositus. Each case is unique, and it is futile to identify a factor that was relevant or even decisive in another case and then apply it to ours. In this context, the map is of limited value. Whilst it clearly shows an attachment to a

locality, this does not provide any insight into the intention to permanently reside in England which HMRC must show in respect of John, Sylvia, and Jeremy.

(7) Our determination requires a two stage process. First we must find as a fact what was the intention of each propositus at the relevant time. Second, we then need to apply that finding to the test of what is required to acquire a domicile of choice.

(8) A domicile of origin is adhesive since a change of domicile is a serious matter which brings with it other repercussions. And this is the case even if there is no strong connection with the domicile of origin. The evidence still has to be clear and compelling.

(9) Unless we have contemporaneous documents of evidence of the relevant intention, we are looking at inferences from the facts of what the individuals have done. Unless they have got to a point in life where they have actually done something inconsistent with not having made up their mind or with an intention to go somewhere else, we must ask ourselves whether HMRC have satisfied their burden of proof.

(10) And in the case of John and Sylvia, HMRC have to convince us that, over 50 years ago, both had a positive intention of making London their permanent home.

(11) Returning to the map, which simply shows evidence of attachments to a small area of London, this is consistent with both having formed an intention to stay here permanently. But it is equally consistent with living life in England with the intention of ultimately settling permanently in another jurisdiction (John, the South of France; Sylvia, Ireland; Jeremy, Israel).

John

(12) John died in 1968 aged 50. The evidence shows that it was his intention to settle in the South of France once he was able to step away from his business. The true narrative is set out below.

(13) John was a refugee who fled Austria and ended up here out of necessity, although the plan was to go to Buenos Aires. He understood the precarious nature, therefore, of the Jewish community in any host country, he must have done. His background -- his mother spoke only German. He was an enemy alien in England who had to change his name in order to fit in because of the discrimination he would otherwise face in the army and in his life in London. He spoke German as a first language and English with a strong accent. He looked and acted Austrian and brought up his family that way. He had no history in England, his family had no history, and actually he had very little family here, certainly I don't think he had, that he was close to. He socialised with Viennese people and other refugees in an area that was not integrated either to the rest of English life or to the wider Jewish community. And his most significant relationship outside of his immediate family was with his cousin. He worked most of the time with little time for socialising, and what time he did have on a Sunday he spent with his family. So they were sociable but they weren't gregarious and sort of integrated into society in that way. He spoke fluent French and was, as Sylvia describes him in the book, a continental. He felt culturally out of step in England and a foreigner, whereas he felt culturally at home in France and looked forward to moving there when he could step away from the business.

(14) We must put ourselves in John's shoes. Having been forced to flee Austria and arriving out of necessity into post-war Britain, it is not surprising that by the time of his death he had not made any positive decision to stay in England. Indeed, to the contrary, he was looking forward to a move to the South of France.

(15) The fact that John did his best to succeed in England tells us nothing about his position as an Austrian Jew in post-war England, never feeling at home or comfortable in England. HMRC's case appears to be limited to length of residence, presence of John's immediate family, his role in the army during World War II, the establishment of his business of property investments, socialising with friends and family, and his acquisition of family

homes. Whilst these might be consistent with an intention to settle permanently in England, they are not inconsistent with a settled intention to move to the South of France.

(16) It is accepted that John has effectively abandoned his domicile of origin in the sense that he definitely did not want to go back to Austria. It was also accepted that he was resident in England. It is for us to decide on his objective mindset and if we cannot say that he had a fixity of purpose to end his days here, we must conclude that he had not acquired a domicile of choice in England.

(17) Sylvia's evidence, supported by the evidence of Susan, and of what Peter Scott is recorded as saying, demonstrates John's objective mindset that his intention was to go to France when he retired. The facts on which HMRC rely as demonstrating an objective mindset to settle permanently in England are equally consistent with that objective mindset to settle permanently in France. And relevant too, are customs practices and tastes. John was expelled from Austria and was steeped in Austrian culture as demonstrated by the fact that he carried on living life as an Austrian, in England, with a small circle of friends and family drawn from the Austrian and German refugee communities.

(18) The fact that John's wish to move to Juan-Les-Pins is not mentioned in An Irish Waltz is of little weight. There are a lot of things that are not mentioned in the book for example Sylvia's suicide attempt or breakdown at the school gates. It is not surprising that things which didn't come to pass were not expressly mentioned. It is not the appellant's case that John was planning on moving straight away. The family did not have the financial resources. But not buying a house in France is not inconsistent with an intention of ultimately settling in France and permanently living there.

Sylvia

(19) Following John's death, Sylvia carried on living in England. However, she formed no intention about where she was going to make a permanent home. In her words, she "focused on surviving day-to-day". The true narrative for Sylvia is that set out below.

(20) Sylvia was born and raised until adulthood in Ireland, had an extensive family there, and close relatives and friends in Ireland. She came to the UK out of economic necessity, because she needed to find, well, she wanted to find a husband and didn't consider she had prospects in Ireland of doing so. She married a Viennese refugee who worked most of the time and ran the household along Viennese lines. She had some friends, most of them were Viennese, and she lived in area marked by that Viennese refugee culture and not integrated into English life or the wider Jewish community. Her husband had died leaving her destitute, and his best friend stole the most valuable properties he had, such that she had barely enough to live with and was reliant upon her daughter to run the household. The position was so bad that she attempted to overdose on pills, and she would have loved to return to Ireland had it been practical, had her family in Ireland been able to support her. But she couldn't, and therefore she was required to continue living in England because she had no options.

(21) Her upbringing was in Ireland where her family was fully integrated into the community. Her closest friends were from Ireland, and she would have loved to be able to go back there. She retained her Irish passport and citizenship at all times. She came to London with a heavy heart and whilst she was happy with John, she did not feel at home in England.

(22) Whilst married to John, she was happy. This was not because of living in England, but because of the way of life they were living. She had a very happy family life. It was not feasible to return to Dublin following John's death. This was for a number of reasons. Firstly, her family had lost a lot of money and her mother was ill. Secondly, her children were at school and she had no support network immediately available in Ireland. Thirdly, she was not thinking of long-term plans. Life was a struggle, it was a constant battle to get through each day, and she was simply focusing on bringing up her children.

(23) However, whilst these circumstances meant that Sylvia could not move to Ireland for the time being, she did expect a move there when she had got through the difficult period

following John's death. Her situation differs from John who had renounced his connections with Austria. Sylvia still had family links with Ireland, and the evidence shows that she clearly had an intention to return there.

(24) There is nothing in Sylvia's actions which is inconsistent with her assertion that that is what she wanted to do. And even if we are satisfied that her mind was not made up, then HMRC must fail given that they have to prove a positive intention. Given Sylvia's circumstances following John's death, it is unsurprising that she never turned her mind to where she might live permanently. And in these circumstances, we cannot find that she had a settled intention to live permanently in England.

Discussion

John

98. We now turn to a consideration of John's domicile as this is determinative of issues 1 and 2.

99. In this regard, we are in virtually the same position as the court in *Musa.* At paragraph [3] of that decision, Lord Justice Waller said this:

> "3. It is important to emphasise at the outset (and I am sorry to say that unfortunately I do not think the judge at all times kept this in mind), there was only one issue for the judge to decide in order to reach a conclusion on the preliminary issue. There was no issue that Ramadan was originally domiciled in Cyprus. There was no issue that he resided in England at various addresses from 1958 until his death in 2006. It was never suggested that when he took up residence in England in 1958 he did so at that time with the requisite intention of settling in England so as to have abandoned his domicile of origin and acquired a domicile of choice in England. It was furthermore never suggested by either side that he at some stage acquired a domicile of choice in England but had, by some later stage, abandoned that domicile of choice and that his domicile of origin had thus revived. This was one of those cases in which if he was to have acquired a domicile of choice in England there came a stage, following lengthy residence, where it was right to infer that he had the intention to reside in England indefinitely – to settle in England and abandon his domicile of origin. The only issue was therefore was it right at any stage of his residence in England prior to his death to infer that he had formed the intention to settle in England indefinitely and abandon his domicile of origin".

100. The only difference between *Musa* and John, is that the date on which HMRC have to establish that he had acquired a domicile of choice was not only at the date of his death, but also earlier, on the date of Jeremy's birth, on 17 May 1958.

101. That this is very difficult is expressed in many of the authorities, including *Musa*, which emphasises that any circumstances of the individual's life might be relevant and what might be an important factor in one case might be less important in another. Each case turns on its own facts and it is incumbent on this tribunal to undertake an extensive review of the facts.

102. It is up to HMRC to prove, on the balance of probabilities, that John had acquired a domicile of choice by either 17 May 1958, or by 31 August 1968. The former is Jeremy's date of birth, the latter is the date of John's death.

103. In our view the authorities set out at [11] show that what HMRC have to prove is that by those dates, John had formed the settled intention to reside in England permanently and indefinitely. This is in accordance with the position in *Bullock* (the question is did John intend to make his home in England until the end of his days unless and until something happened to make him change his mind). And *Musa* (had John become settled in England and intended his residence in England to be permanent and indefinite, and the place where he would end his days).

104. To prove this, HMRC have to provide cogent and compelling evidence of that settled intention. And if they cannot do this, for example because they cannot establish that John had neither considered the position at all or having considered it, had not made his mind up, then we must find that John had not acquired a domicile of choice in England (see *Fuld* and *Musa*).

105. The burden is not on the appellant to show that John had either not abandoned his domicile of origin, or had acquired a domicile of choice in a jurisdiction other than England. And so he does not need to establish the necessary strong links or attachments to any such jurisdiction.

106. However, it is clear from the cases that whilst a domicile of origin is adhesive (one of the reasons being that to change a domicile of origin carries with it many consequences and it is therefore not shrugged off lightly) that adhesiveness is considerably lessened where the individual in question has few, if any, links or attachments to that domicile of origin. It is also relevant, too, to the proper interpretation of the individual's intentions as regards residing permanently and indefinitely in England.

107. Many of the cases to which we were referred involved individuals who had retained links and attachments with their domicile of origin and had acquired new links and attachments with England. That is not the case with John.

108. He is in the same position as the propositus in *Musa*:

> "67. Against the above I come back to the question - has it been established, on the balance of probabilities, that the proper inference to draw from the facts is that by some stage prior to his death Ramadan became settled in England and intended his residence in England to be permanent and indefinite, and the place where he would end his days? Rule 11 in Dicey quoted above demonstrates how difficult that question can be. But, where someone has clearly set up their home for a very long time in a country, has had a family there and does not have a home elsewhere, that must provide a strong starting point…".

109. Lord Justice Waller then goes on to consider a number of factors which in his view demonstrated that the propositus in that case had not established an intention to abandon his domicile of origin in Cyprus.

110. We shall adopt the same approach and so we now consider the evidence or factors which HMRC have suggested demonstrates John's intention to reside in England permanently and indefinitely, and in doing this, we will consider the appellant's submissions that there was no such settled intention.

111. Firstly, we find as a fact, having left Austria with his family to escape persecution in 1938, John severed all ties with Austria. The evidence is that he had said that he never wanted to return there, and he certainly never acquired or maintained any real property or other domestic economic or commercial links with Austria. He effectively renounced it. Whilst it is not possible, legally, to abandon a domicile of origin without having acquired an alternative domicile of choice, in practical, nonlegal, terms, this is what he did. He turned his back on Austria.

112. Secondly, in our view, he became physically and emotionally settled in England. This happened over a period of time and by small, incremental, steps. Whilst there might initially have been an intention for the family to move on to South America, following the end of World War II, that move never took place due to the death of his father. The primary facts identified by Mr Nawbatt as evidence of this settlement, and which are recorded at [26-65] and summarised in the appendix, are clear and compelling. Having left the army and changed his name he set up two businesses, the second being very successful. He initially lived in rented accommodation in the same block as his family and Peter Scott. In 1954 he married Sylvia. In 1958 he bought property in North London. He had friends in North London. He socialised in North London. In 1956 Susan was born. In 1958 Jeremy was born. In 1963 he

acquired and renovated a large family house in North London for the family to live in, retaining his former property which he let out. By 1963 he had acquired three more properties in North London.

113. So little by little, over this time, by small steps, he was becoming increasingly immersed, physically and emotionally into commercial and domestic life in North London. By 1963, and certainly by the date of his death, the primary facts set out at [26-65] above, summarised in the appendix and in this section of this decision, show that he was clearly both commercially successful and domestically content. In our view he had put down deep roots in England, albeit a very small geographical part of England. In 1958 he had lived in England for about 20 years. When he died in 1968 it was about 30.

114. The facts show that John was at home in England, even though that was in a small part of England. But in that small part, he had integrated himself into the business community and into the expat community, albeit on the basis of a small group of friends and acquaintances. To our mind the important thing is the depth of the integration rather than its breadth, and the fact that John did not integrate more broadly into English society does not mean that he was not entirely content in the company of his family and with the group of émigrés, living in England, with whom he was integrated.

115. Thirdly, we must consider the evidence that John felt out of place in England. As we mention above, and the extract from *Musa* shows, where someone has clearly set up their home for a very long time in a country, has had a family there and does not have a home elsewhere, that is a strong starting point that the individual has acquired a domicile of choice in that country.

116. Mr Stone submits that John had never become assimilated into English culture or society. He was uncomfortable with English as a language and had a small coterie of Viennese emigrants with whom he engaged. And this demonstrates, to the extent that he has any need to demonstrate anything, that John was not settled in England, and had not integrated into English life or with the broader Jewish community. And that John's commercial and domestic position is not inconsistent with the fact that he was never at home or in England.

117. His point is that whilst the primary facts might show that John was settled in the non-technical sense, in North London, that does not demonstrate that he intended to live in England permanently and indefinitely. His intention must be seen in the context of having been forced to flee Austria and having arrived as a necessity into post-war Britain. And the fact that he did his best to succeed in England tells us nothing about his position as an Austrian Jew in post-war England. He submits that John never felt at home nor was he comfortable in England. We need to consider the basis for this submission.

118. The evidence for it stems from Sylvia's witness statement, Susan's witness statement and oral evidence, and the book An Irish Waltz. There is also the evidence from Peter Scott referred to at [81] above.

119. We accept, as Mr Stone has submitted, that we must consider all the evidence. We have done so. When considering this evidence, we should give it appropriate weight, and we should accept Sylvia's evidence unless we consider that she was not telling the truth. However, we do not accept this submission.

120. We have considered this in [13-22] above. It is abundantly clear from the authorities that we should treat statements about an individual's intention with a degree of caution verging on suspicion. They should be treated as self-serving and tested against objective fact. The principles are clearly set out in the extract from *Dicey* recorded at [11(29)] above. Furthermore, given that Sylvia's witness statement was compiled in the context of this appeal, and that Susan was giving evidence in this appeal, we are conscious of the further principle regarding the weight of evidence which attach to such statements set out in *Gestmin.* Sylvia had and Susan has, with respect, a stake in this litigation. It is only human

for them to give evidence which is, as far as they are concerned accurate, but which is inevitably tilted towards assisting the appellant's case. As we have mentioned above, it is our view that it is likely that both will have an unconscious bias towards a recollection of the facts which assists the appellant's case. And suggesting that John never felt at home in England and thus we should consider the primary facts of his physical settlement here in that light, is clearly a self-serving statement which assists the appellant's case. Sylvia's evidence that "John never regarded the UK as his home" and that "the country was foreign to him. It was not his home and was not where he wanted to be" could not be tested in cross-examination.

121. Susan's evidence was less certain on this point in that it focused on John's continental character and the fact that his participation in English society was restricted to socialising with a few Viennese émigrés. We accept John socialised in this restricted fashion, but we do not believe that this is indicative of the fact that he did not feel at home in England.

122. Mr Stone's narrative requires us to view the facts of John's life in England before he died through the lens of Sylvia and Susan's oral evidence that he never felt at home in England. But we do not accept at face value the suggestion that John did not feel at home in London. And the facts show, as demonstrated by the narrative suggested by Mr Nawbatt at [96 (22)] above, he had integrated himself both commercially and domestically into a small corner of London, where he lived a fulfilled commercial, family and social life.

123. It is our role to put ourselves into John's mind. He arrived in England in 1938 to escape Nazi persecution and immediately sought to assist the English war effort by joining the army. This demonstrates to us in immediate affinity with England and was the first small step towards settling here. His association with England was initially intended to be transitory but following his father's death in 1945 it started to become more permanent. He then took the steps mentioned above, none of which of themselves is conclusive to demonstrate his intention to live here permanently but collectively demonstrate a deeply settled life in England by both 1958 and 1968.

124. To our mind they must be seen not through the lens suggested by Sylvia that John never felt at home here, but through the lens of an Austrian refugee who was grateful for the opportunity to start a life in a country which was far less likely to be persecuted than the Austria that he had escaped. Having arrived here to escape persecution, it is our view that his increasing immersion into North London commercial and family life demonstrates an increasing commitment to England and an increasingly settled intention to live here permanently and indefinitely.

125. Fourthly, there is the issue of his ostensible desire to retire to Juan-Les-Pins. It is our view that this falls into the pipe dream territory, as does Mr Nawbatt. John went to Juan-Les-Pins only once before Jeremy was born, and this was on honeymoon. He then went three or four times between 1963, and his death in 1968. These trips were for summer holidays, for a few weeks at a time, in rented accommodation. He never acquired any property there, nor any attachments or other economic commercial or domestic connections. It is asserted that he was a "Continental man", who was more comfortable in conversing in French, in which he was fluent, rather than English. He had a love of Mediterranean life (which he passed on to Jeremy) and that the only reason that he could not realise this intention to retire to France was because of his untimely death.

126. The evidence of John's wish to return to Juan-Les-Pins stems virtually exclusively from Sylvia's witness statement. The same caveats as regards her evidence in respect of John's integration into English society mentioned above are equally, if not more pertinent, to her evidence regarding Juan-Les-Pins. We treat them with a very great deal of caution. There was no opportunity for her evidence to be tested in cross-examination. It was given in the context of this appeal when, in our view, it is likely Sylvia would have been told of the issues which would crop up in this appeal (in order to frame her witness statement to ensure that included

relevant facts, this must have been the case). It is inevitable, therefore, that she would have included in it, or given more weight to, John's ostensible desire to return to France.

127. We also think that, from evidential perspective, it is telling that Sylvia does not mention John's desire to return to France in An Irish Waltz. Although we accept that this may not have been intended to be a warts and all account, it strikes us that it is something that she would have mentioned had this indeed been John's declared intention. The contrast between that failure to mention it in the book compared with the many mentions made in her witness statement, and in the notes of meeting, is stark. We do not need to conclude that Sylvia was being untruthful in her witness statement. But we give the statements regarding Johns' desire to retire to France, recorded at [78] above, little weight in light of the fact that it was untested and her witness statement was made in the context of this appeal.

128. Furthermore, this assertion does not stand up to scrutiny when tested against the primary facts. As mentioned above, the facts show that John visited there only on summer holidays, and then only on a handful of occasions before his death. He went only once before Jeremy was born. He acquired no property there. There is no evidence that he intended to acquire property there either in the short or long term. Whilst he might have spoken French, that of itself carries no weight as regards his future intention. He had no ties or attachments to France.

129. In summary therefore: John arrived in England because he was compelled to do so to escape Nazi persecution; he renounced any connection with Austria; he turned his back on that country; he retained no ties or attachments with it; having arrived in England he served in the army following which he settled (in the non-technical sense) in North London where he started businesses, bought houses, married, had, and brought up, three children; he was a devoted family man to whom his wife and children were of overriding importance; he had a small circle of friends with whom he socialised; these were in the main Viennese émigrés; these were however deep friendships; between 1938 and 1958, when Jeremy was born, John had become deeply settled in North London; he had been to Juan-Les-Pins only once, on honeymoon; neither by then, nor by the date of his death in 1968 had he acquired any physical commercial or economic attachment to Juan-Les-Pins.

130. These facts far outweigh any evidential weight which might be attached to the evidence of Sylvia, Susan, or Peter Scott.

131. We appreciate that it is not for the appellant to show that John acquired a domicile of choice in France, but for HMRC to show that he acquired a domicile of choice in England. And therefore, it is erroneous to consider this a "contest" between France and England.

132. But in truth, (and this is no doubt the reason that Mr Stone has adduced the evidence regarding John's wish to move to Juan-Les-Pins), as stated in *Musa*, the strong starting point is that somebody does intend to reside in England permanently and indefinitely where he has clearly set up a home here for a very long time, has had a family here, and does not have a home elsewhere.

133. And, as in *Musa*, the court must consider factors against this (see [68-73] *Musa*). One of these factors is John's purported wish to retire to France once he had retired from his business.

134. In domicile cases, it is unusual for the propositus to have absolutely no ongoing links with his domicile of origin. And, frankly, in the absence of any suggestion that John had an intention to end his days in France, we would have little hesitation in saying that all the evidence shows that John intended his residence in England to be permanent and indefinite. And the evidence that he intended to retire to France is very weak indeed and pales into insignificance compared to the factors and evidence in favour of John having acquired a domicile of choice in England.

135. We ask ourselves whether it was at all likely that John would turn his back on his deeply settled way of life in England where that most important of institutions, his family,

was happily ensconced, and where he was part of a rich social life, and move to France where his only relationship seemed to be his honeymoon, a few family holidays and the fact that he spoke French. It seems to us that this is unlikely.

136. To our mind it is clear that John had intended to abandon his domicile of origin in Austria. He achieved this by acquiring a domicile of choice in England. His purported intention to retire to France was of the "vague variety" (*Musa* at [69]). He had become deeply settled in England with which he had a singular and distinctive relationship, by the date of Jeremy's birth in 1958, and certainly by the date of his own death in 1968. HMRC's evidence that this is the case is clear and compelling.

137. It is our view, and we find as a fact, by way of an inference based on the primary facts, that by both dates John had made up his mind consistent with his permanent home and way of life in England, to live in England permanently and indefinitely. He had, therefore, an English domicile of choice by the date of Jeremy's birth in 1958 and by the date of his own death in 1968.

138. Given that this means that HMRC succeed on issues 1 and 2, and thus the appeal must be dismissed, there is no need, strictly speaking, for us to consider issues 3 and 4, namely Sylvia's domicile and Jeremy's domicile at the relevant times. But given that they were fully argued, and we have found the primary facts in relation to those issues, and conscious as we are that this matter might go further, we now go on to consider them.

Sylvia

139. The extract from *Musa* set out at [99] above applies equally to Sylvia as it does to John. But again slightly tweaked in that the date on which we need to consider whether Sylvia had acquired a domicile of choice in England is not her death, but is 17 May 1974 when Jeremy reached his majority. And when considering this, we do so on the basis that contrary to the conclusion we have actually reached on issues 1 and 2, John was domiciled in Austria on 31 August 1968, the date of his death.

140. The main difference between John's position, and Sylvia's position, is that it is the appellant's case that Sylvia had never abandoned her domicile of origin, and thus had not acquired a domicile of choice in England, on the basis that she had always intended to return to Ireland and never intended to reside permanently or indefinitely in England. This is different from John's position who had by his own admission renounced his connections with his domicile of origin and who never had any intention of returning there (albeit that he purported never to have acquired a domicile of choice in England).

141. The extract from *Musa* at [108] applies equally to Sylvia as it does to John.

142. In 1974 Sylvia had been living in England for about 20 years. She had visited England before 1954, but it was only in that year that she came to England as, as Mr Stone puts it, an economic migrant, and in that year she married John. The reason why Mr Stone so describes her is due to the circumstances in which she left in 1954. Her father had died in 1952 and it then transpired that he had invested in a property business with a cousin which had failed and which left the family financially destitute. Her family who had a comfortable way of life during her father's lifetime found themselves in serious financial difficulties which was demeaning for them. As Sylvia describes it, she felt that the family were persona non grata and that she was sidelined.

143. Having met and married John in 1954, the evidence shows that, as was the case for John, she started to develop a relationship with England. She and John became increasingly settled in England. They initially lived in rented accommodation but in 1958, following Susan's birth in 1956, they acquired their first family home and thereafter acquired further properties to live in and to rent out. John established his businesses. Jeremy was born in 1958 and CC in 1967. They were clearly an extremely happy family unit, John was a family man, and by the time of his death in 1968, they were living an extremely happy and settled domestic, commercial, and social life (albeit, as mentioned above in respect of John, that

social life revolved around a limited number of friends, and largely around their family). She travelled to Dublin on a number of occasions when Susan was small to visit her family.

144. The primary facts set out at [37-76] and [87-93] above and summarised in the appendix and in this section clearly demonstrate that Sylvia was deeply settled in North London. By 1974 she had lived there for 20 years and had put down deep roots. She had done this with John. She was part of a loving family. She had a small circle of close friends. She had few if any attachments with Ireland.

145. So we must now consider what factors militate against the strong starting point that having set up her home in England and brought up a family here, and not having a home elsewhere, she has acquired a domicile of choice in England.

146. By the time of John's death in 1968 (and whilst Sylvia says that she would love to have been able to have gone back to Ireland) her evidence was that her family in Ireland was in no position to help. Her father had lost a lot of money and her mother was ill. There was no support network for a young family and she was in no position to cart three young children about particularly as they were settled in schools in London.

147. Susan's evidence supports this. Her evidence was that her grandmother (Sylvia's mother) was, at the time of John's death, living on a restricted budget. She had suffered a severe case of Parkinson's disease and had undergone a series of operations (including a lobotomy) which left her in a very poor state. She was cared for by Susan's great-grandmother and her aunt, and all three ladies lived together in her great grandmother's house. This was not the loving and comforting environment for her mother to return to.

148. We find as a fact that Sylvia never returned to live in Ireland and died in England.

149. However, it was Sylvia's position, set out in her witness statement; that she always longed to return to Dublin; this was unlikely whilst she was married to John given that John had his heart set on France; and that her intention has always been to move out of England (and would have been happy to move to Israel if it meant being close to her children).

150. As before, we do not accept Sylvia's evidence at face value but we test it against the other evidence of more objective fact. As regards these, it seems to us that there are two extremely important objective facts which clearly militate against Sylvia's ostensible intention to return to live in Ireland, and in favour of HMRC's assertion that Sylvia had acquired a domicile of choice in England.

151. The first of these is that the Ireland that Sylvia had left and had remembered, (perhaps romantically looking back from the more recent past but obviously not initially when she left in 1954 given the circumstances of her departure) was, on her own and on Susan's evidence, not an Ireland to which she wanted to, or indeed given the domestic circumstances, could return. The comfortable way of life that she and her family had led until her father's death in 1952 had dissipated. Her family were outcasts. By the time of John's death, or shortly afterwards, her mother was extremely ill. On any objective view, it is inconceivable that Sylvia had any realistic intention of moving herself and her family back to Ireland following John's death. It is telling that the appellant's notes of the meeting with HMRC on 15 February 2018 record Sylvia replying "what for?" to the question as to whether she thought about going back to Ireland after John's death.

152. Immediately following John's death, Sylvia's life was thrown into total disarray. We wholly understand, and absolutely accept that she was living hand to mouth having discovered that John had been if not defrauded, then at least stitched up by a business colleague and his advisers. The family had little or no ready cash and was surviving on a day-to-day basis. Against this background it is inconceivable that Sylvia would, or could, have moved the family back to Ireland until she and the family were on an emotional financial and domestic even keel. And we reject Mr Nawbatt's submission that John's death was an opportunity for Sylvia to relocate back to Ireland if that was indeed her long-term intention.

153. Mr Stone said that this is a point in favour of Sylvia not having established a domicile of choice in England, in that it is not inconsistent with her stated intention of returning to Ireland. She did intend to return but was prevented in doing so by her domestic circumstances.
154. Our view is very different. In our opinion, probably before John's death but certainly thereafter and before 1974, Sylvia had decided that her future lay not in the Ireland that she had left in 1954, nor the Ireland that it had become in 1968, but in the England in which she had settled by then.
155. In saying this, we are considering not the countries in their broadest sense, but in the aspects of those countries which are relevant to the individuals. This is not a comparison between Ireland, as an abstract concept, and England as an abstract concept. This is a comparison between the way of life which was led by Sylvia in England compared with the way of life which she might have led had she returned to Ireland. And the latter must take into account the family circumstances which pertained not just in 1954, but thereafter, and in particular in or around 1968 by which time her mother's illness and domestic circumstances recorded above meant that it was inconceivable that she would return.
156. Sylvia never actually returned to live in Dublin. And this is significant. We are entirely entitled to take this into account when testing her stated intention to return. We appreciate that it was unlikely that she would return immediately following John's death. But she has had the opportunity to do so since notwithstanding her remarriage in 1982. Her second husband died in 1986, and it would have been entirely feasible for her to return to Dublin thereafter, at least in theory. Her children would have been aged approximately 30, 28, and 19. She was on even domestic and financial keel. She could readily have returned to Ireland and live there as she had ostensibly expressed was her long-term intention. But she did not.
157. In *Musa* at [67] Lord Justice Waller, records, about the propositus who had died aged 74; "having expressed to the Inland Revenue an intention to retire in Cyprus, it is worth pointing out that at the age of 74 he had still not done so". The same can be said of Sylvia who died last year without having moved to Ireland.
158. When considering John's position, and the likelihood of him moving to France, it was our view that it was extremely unlikely that he would turn his back on his deeply settled life in England in favour of settling in France. That is our view given that, as a matter of fact, we do not know whether he would have done so as a result of his untimely death in 1968. However, in the case of Sylvia, we think the same as regards leaving a deeply settled way of life in England in favour of settling in Ireland. But in her case we are able to test that against her actions which show that she did not actually return to Ireland and live there at any stage following her original departure in 1954.
159. It is our conclusion that Sylvia had acquired a domicile of choice in England. Her purported intention to return to Ireland was of the "vague variety" (*Musa* at [69]) and was never actioned even though there was the opportunity to do so. She, as with John, had become deeply settled in England with which she had a singular and distinctive relationship by the date of John's death in 1968 and by 17 May 1974 when Jeremy achieved his majority.
160. It is our view, and we find as a fact, by way of an inference based on the primary facts, that by both dates Sylvia had made up her mind (consistent with her permanent home and way of life in England) to live in England permanently and indefinitely. She had, therefore, acquired an English domicile of choice by the dates set out above.

JEREMY

161. Although not strictly necessary given that, in light of the conclusions we have reached above, HMRC must succeed in this appeal, we now move on to consider issue 4, and whether Jeremy acquired a domicile of choice in England on or before 5 April 2012. We do so for the

obvious reasons that this issue was fully argued (and indeed Jeremy's evidence given over 3 days took up most of the first week of the hearing) and in case we are wrong on issues 1 to 3.

Findings of primary facts

162. The main evidence regarding Jeremy's intention is his oral evidence as set out in his two witness statements and the answers he gave in cross examination and re-examination. We have set out at [23] above the approach we intend to adopt regarding his oral evidence. Generally, we found Jeremy to be a credible and truthful witness, and he was keen to assist the tribunal when giving oral answers. Whilst it is clear that he had allowed inaccurate information to be submitted to HMRC during the conduct of their enquiry, and that some of the statements in his witness statements turned out to be inaccurate when tested in cross-examination, we do not consider that these detract from our impression of his truthfulness. They simply emphasise the caveats which must be given to the oral evidence of a propositus both generally (as in *Gestmin*) and, in particular, in domicile cases (as per the principles which we have set out, extensively, above).

Findings of primary facts
1978 to 1989

163. Jeremy had a troubled childhood and was sent to boarding school in the hope that the school could "manage him". Jeremy did not do well at school, having to retake his A-levels three times. At school he made some lifelong friends.
164. Prior to going to university, Jeremy did a yeshiva in Israel. He did not visit Israel between attending the yeshiva and a family trip to Israel in 2008.
165. He wanted to study management at Manchester University but his grades were not good enough. He went to Manchester to see one of the tutors who told him that if he took a year off and did something productive, he could join the course the following year. Accordingly, he commenced and discontinued a one-year foundation course in accounting, before enrolling on and completing a one-year diploma course on French Civilisation at the Sorbonne in Paris.
166. Between 1979 and 1982, Jeremy studied at Manchester University.
167. In his first term at university (October 1979), he met "**RD**". They became a couple a year later, in 1980, and were to remain a couple for some 30 years, until their separation in 2010 and divorce in 2012.
168. Since leaving Manchester, Jeremy has maintained connections with the institution: in 2008 he was named Alumnus of the Year. On 2 December 2012 he gave Manchester University £10,000. In 2020, he gave £100,000 to the president of the University "for her to do with as she wanted. I owe them a lot, because they took me".
169. RD was born in Denver, USA, on 10 December 1959. Her father (who along with her mother was originally from Poland) had gone there to receive medical treatment. Her parents, who were Holocaust survivors, moved back to Germany in 1966. On their move to Germany, they sent RD to boarding school in England, after which she took her A-levels at a sixth form college in Oxford. RD's parents had themselves moved to North-west London by 1979 when Jeremy met them.
170. Following Manchester University, RD studied at London School of Economics and Oxford University, where she earned a doctorate in political science. She trained at the Tavistock Centre (the Tavistock and Portman NHS Trust) and at The Institute, both in Hampstead.
171. During the period of her marriage to Jeremy, she was honorary lecturer at the London School of Hygiene and Tropical Medicine.
172. Having graduated from Manchester University in 1982 with a 2:1, Jeremy completed a Masters in Philosophy at the University of Sussex (1982-1983).

173. Since he graduated, Jeremy and his sisters have visited their father's grave together every year.
174. In 1983 Jeremy started working for Target, a post he held for six months following which he worked at Fidelity, but his employment was terminated after six months. He was then "lucky" to move to the ICI Pension Fund in London as an 'Investment Analyst' (essentially a sector fund manager), after which he was promoted to Venture and Buyout Manager.
175. In or around 1984 / 1985, he bought his first property, the middle floor flat at 8 Aberdare Gardens NW6 which his parents had themselves purchased (as their first property) in 1958, and in which he was born. It was a large flat with four bedrooms. Shortly afterwards he bought the top floor flat and sold his middle flat, to gain a roof terrace.
176. In 1987 Jeremy became a full member of the Worshipful Company of Drapers (the Livery Guild) and received the Freedom of the City of London.
1989 to 2001
177. On 3 September 1989, Jeremy married RD at Frederick's restaurant in Islington. RD was 29 at the time, Jeremy was 31.
178. After the marriage, as the "man of the house", Jeremy would host the family Passover dinner at his mother's house, until his sister CC got married, at which point she took over hosting.
179. Jeremy worked for ICI until November 1990. In 1990 he founded Coller Isnard, in which he had a 50% holding, a fund management group specialising in secondary private equity transactions. He was sponsored by Barings to set up the fund, who gave Jeremy and his partner Mr Isnard £100,000, 60% of which they had to return if the fund failed. So as not to have his "back against the wall", Jeremy sold his flat in Aberdare Gardens and began renting with RD on Primrose Hill Road London NW3. In 1990 Jeremy had no idea how successful he would eventually become: "I assumed I'd fail".
180. On 5 February 1992 their first child was born ("**JC1**"). Two years later on 4 April 1994 their son was born ("**JC2**"). In 1995 the family purchased and moved into 19 Primrose Hill Road London NW3, a three-bedroom house.
181. In or around 1994 Jeremy took charge of his own fund: Coller Investment Capital ("**Coller Capital**"). The focus of Coller Capital was to raise secondaries fund's (buying positions in private equity funds from private equity investors). These had become commonplace in America by the early 1990's, but they were not common in Europe. Barings agreed with this strategy and whilst Jeremy raised some money in Europe, it was principally US investors who provided Coller Capital with commitments which allowed it to close its first fund in 1994 (for over 50m euros).
182. In 1996 he joined the Royal Automobile Club, a private social and athletic club with clubhouses at 89 Pall Mall and at Woodcote Park in Epsom, Surrey.
183. It is Jeremy's evidence that he wrote a business plan in 1995 which envisaged he would exit the business by 2020. He is unable to recall what, in 1995, he envisaged doing after he had sold the business aged 60. However, in the 1970's, 80's, 90's and 2000s Jeremy and RD were not thinking about relocating or leaving the UK and, according to him, "were not actively or actually thinking about where they would end their days" but rather they were focused on establishing their careers, their families and their businesses.
184. Jeremy's evidence was that in the period up to 2012, he was a workaholic and focussed on his business and he did not have any intention to live in England permanently or indefinitely: "there was no intention for anything". "I never had time to think about it"; there were no big discussions about his and RD's future careers. He accepted that staying in the UK was "just sort of the way it happened".

185. However, Jeremy did discuss his intention to move to the US while he was with RD and growing the business. RD said that she did not want to go at that time while her children were young and not without her parents.
186. Jeremy explained why between starting work and 2012 he had not formed any intention about where he was going to live in the long term:

(1) When starting work, Jeremy felt like a failure, doing three jobs in the first year.
(2) He started his own business (Coller Isnard) in 1990.
(3) He got married in 1989, had children in 1992 and 1994 and had "zero revenue" in the business.
(4) He sold his apartment and moved into rented accommodation so that he could pay back the money owed to Barings.
(5) "So all I was about was, you know, got two children, got no money, you know, just that's when I became a sort of workaholic".

187. Jeremy gave similar evidence about his early career "I could not say that when I left school I had a concrete plan to end up in a particular place, whether Israel or the UK, but I had nothing that tied me to the UK for good and the business that I started was essentially global".
188. It was put to Jeremy in cross-examination that a decision had been made with RD to live in England and that is why they started their careers and family here. Jeremy explained in his answer that this was incorrect; the reality was the other way round. He was focussed on the outcome in terms of establishing a successful business; the location was a secondary consideration.
189. Jeremy's evidence was that he formed the intention to relocate to Israel after his divorce in 2012.
190. Jeremy has been Coller Capital's Chief Investment Officer ("**CIO**") since its inception. As the sole face of the business, he has been responsible for delivering the firm's strategic plan. That has required him to be able to engage directly and physically with investors and other counterparties as well as staff and stakeholders. All of this has meant that it has not been practical for him to be based outside of London. That has been the position since at least 1994 when he founded Coller Capital. He set up and headquartered his business in London as he "was raised in England and I love the country so the City of London was the obvious place for me to start".
191. In 1998, Coller Capital acquired the Shell US Pension Trust portfolio. In 2000, it acquired the Natwest Portfolio (at that time the largest secondaries investments made). In 2001, Coller Capital acquired Bell Labs Corporate. In 2004, Coller Capital did a $900 million Abbey National transaction (at that time the largest ever secondaries investment). In 2006, Coller Capital made the first ever secondaries investment in India. In 2007 it did a $1 billion joint venture and in 2009 it agreed to acquire a significant part of 3i's venture portfolio. In 2011, Coller Capital acquired 100% of Credit Agricole's private equity and then in 2012 it agreed to fund the acquisition of a $1.9 billion private equity portfolio from Lloyd's Banking Group.
192. Since its inception in 1994, Coller Capital has gone from strength to strength and now employs 180 people worldwide. The company, which also has offices in New York and Hong Kong is headquartered in London as it is a financial centre. Jeremy describes the business decision to base Coller Capital in London as follows:

> "It was logical for me to be based in the UK because that is where there was a gap in the market, combined with international professionals and a mature financial market. There was little or no secondaries business in the UK and Europe, compared with the

US, and so the UK presented the perfect opportunity for me as a differentiated place to base the fund".

193. Jeremy's evidence is that although it made sense for Coller Capital to be based in the UK, it has a global model and operates internationally. He was looking for investors and investments from around the world. He has spent much of his time travelling to pursue those investments. In building up this business, he has been a workaholic and most of his time and energy has been spent in building up Coller Capital.

11 "X" Gardens

194. On 4 December 1998 he bought and moved into 11 X Gardens, London NW6 for which he paid between £800,000 - £1,200,00. The house was substantial, with a large garden.

195. Upon purchase, Jeremy immediately applied for planning permission for renovation works. The renovation works were "extensive" and included putting in a conservatory and converting the loft putting in a study for Jeremy, bathroom and balcony in the roof.

196. In addition, prior to September 2001, Jeremy "did a lot of work on" the garden. The garden renovation was featured in six pages of the Royal Horticultural Society magazine.

197. On 29 January 1999 Jeremy became a member of the Cumberland Lawn Tennis Club, opposite the house.

198. While living at 11 X Gardens Jeremy would host Rosh Hashana dinners for his family.

199. When they moved into 11 X Gardens Jeremy's children were attending local schools.

200. On 7 September 2001, Jeremy acquired the next-door property, 10 X Gardens, London, NW6 for £800,000 because he wanted additional space and a bigger garden.

201. During his marriage, the house at 10 X Gardens was used as storage space and as accommodation for an au pair, who would help to clean their houses, as well as RD's parents' house in Mill Hill.

2002 to 2011

202. In 2002 Jeremy founded the Coller Foundation in Park Street, London ("**the Foundation**"). In 2015 it was incorporated as a limited company in England and Wales, and it is also a UK-registered charity. The objectives of the Foundation focus on three key areas: Educating on factory farming; supporting the Coller School of Management; and supporting education, culture and other causes.

203. Jeremy has been a member of a number of North London synagogues where he has celebrated bar mitzvah's for his children. He maintains annual membership of one of these.

204. In 2004, the Foundation, gave £50,000 to the London Business School to help to found the LBS Private Equity institute. In 2008, the Foundation gave a multi-million pound donation with the intention of cementing the LBS' private equity institute as the world's pre-eminent centre for teaching and research in its field. In 2011 Jeremy was awarded a fellowship by the London Business School.

205. In 2004 Jeremy won the award for Personality of the Year from the British Venture Capital Association.

206. In August 2006, Jeremy became a member of the Arsenal Emirates Stadium Diamond Club. He has been a fan of Arsenal Football Club since at least 2008, although he started going to their games at the Highbury Stadium before 2006.

207. In 2006, in addition to becoming a member of the Arsenal Diamond Club one of his companies bought 34 debentures (lasting for 24 years) at the Emirates Stadium at a cost of £3,500 each. He explained that he takes a combination of family, friends and business acquaintances stating: "It's the only way I really get to entertain friends".

208. In or around 2007, he also bought a further 52 debentures at Wembley Stadium.

10 X Gardens

209. In 2008 Jeremy and RD agreed to separate but decided to put it on hold until their children had finished their GCSEs (JC2) and A-Levels (JC1). As a result, they did not separate until 2010 and did not officially divorce until 2012.

210. In November 2009 Jeremy applied for planning permission to carry out works at 10 X Gardens.
211. These extensive works included a rear and side extension on the ground floor to create a combined big dining room, kitchen area and lounge in one space, with a separate cinema room. He completely renovated the middle floor so that he had three bedrooms and a box room. On the third floor he inserted a kitchen and bathroom, which is where the maid / au pair lived. The refurbishment works took around a year and cost "a couple of million".
212. In December 2009, Jeremy started renting a Swiss chalet in Verbier at an annual rent of CHF 110,000, where he would spend approximately one month a year. Prior to this he neither rented nor owned any property abroad.
213. In or around 2010, following the renovation works, Jeremy and RD separated. Jeremy moved into 10 X Gardens, in the hope that he would be able to live next door to his children, see them, have them to stay and to remain, to a certain extent, a family.
214. On 18 April 2012 Jeremy and RD divorced.
215. In or around December 2012 and before selling 11 X Gardens, Jeremy restructured the gardens to enlarge the garden at 10 X Gardens and engaged a landscape architect to re-design and build the garden along similar lines to the landscaping he had done at 11 X Gardens.
216. In or around 2012, he started playing backgammon regularly with friends living in North-west London.
217. As at 2012, Jeremy had the following family in London: His uncle Mervyn, Sylvia, Susan, his sister CC and brother-in-law and their three children, JC1 (then aged 20) and JC2 (then aged 18), Peter Scott, and his cousin, Melissa Scott.
2012 to 2019
218. On 28 January 2013 Jeremy sold 11 X Gardens for £4,000,000.
219. On 21 May 2013 Jeremy purchased an apartment, situated near his office, for £2,250,000 ("**PP**").
220. The bank statements for the one year (2015/16) which were shown to us suggests that he was regularly present in North-west London throughout 2015/16, including spending Christmas 2015 there.
221. After Jeremy acquired PP he divided his time between PP and 10 X Gardens, albeit "very, very unevenly".
222. Given that he is so frequently overseas, he used 10 X Gardens as his postal address because someone was always there to pick up the post, in contrast with PP.
223. In December 2013, after purchasing PP, Jeremy joined the Hampstead Garden Suburb United Synagogue on Norrice Lea, London N2 0RE. This is the synagogue where his father was buried in 1968.
224. In 2013 he joined the Royal Horticultural Society. He also joined Annabel's (a private member's club) following his divorce. He also joined the following further clubs in this period: in 2016 he joined Virgin Active near PP; in 2017 he joined the Conduit Club and Soho House; in 2018 he joined the British Film Institute; and in 2019 he joined the George; Mark's Club; Harry's Bar. Jeremy made a £15,000 donation to the Conservative Party in June 2015.
225. On 3 July 2013, Jeremy purchased Apartment 31 and 32 in David Promenade, Tel Aviv. These were purchased off plan. On 2 October 2013, he purchased further apartments (33, 34, 35 and 36) in the same building, again off plan. This amounts to over 11,000 ft². The cost of the properties and professional fees together with fit out to date, which is expected to finish in 2023, is in the region of $30 million. The redeveloped property will be considerably larger than anything Jeremy has owned before, and it has been designed to his exact specification. Jeremy's professed intention is to move into the premises, once the renovations have been completed.

226. In 2013, through the Foundation he committed to a long-term donation agreement in order to establish the Coller Institute of Venture at Tel Aviv University, the purpose of which is to assist in creating an ecosystem that will encourage the development of ideas and the translation of those ideas into businesses.
227. In 2013 a friend wrote two obituaries for him: one in which he died on 15 April 2013, having built Coller Capital, and in which he was described as "*the Godfather of Private Equities Secondaries*" and "*a bore*". In the second obituary, Jeremy lived until 98 and this, he says, changed his life:

> "The shock treatment of the second obituary was to use the additional 44 years for crazy, shoot for the moon projections of what I might achieve by 98. Alongside my continuing ambitions for Coller Capital, the obituary included a shopping list of achievements, from having a business school named after me to using state-owned assets to kick start pension systems".

228. He says he had, at this point, a "lightbulb moment" to focus on environmental, social and governance issues and factory farming.
229. Between 2012 and 2019 Jeremy was in a relationship with "SL". By 2014 the relationship was sufficiently serious that he had proposed to her and left PP to her in his Will. During the course of the relationship, SL split her time between PP and elsewhere in London. By 2016 Jeremy was still hoping that she would accept his proposal. On 9 September 2019, when the relationship broke off, the PP bequeathment was revoked in the Second Codicil to his Will, although the pair remain good friends. Jeremy's view is that she loves Israel.
230. In 2014, JC1 graduated from Birmingham University. After graduating she moved back to London and was a teacher at the Westminster Academy from 2015 until at least 2017. During this time, she lived with her mother at 18 Willow Road, London, NW3 1TG. She now lives in Switzerland with her fiancé.
231. JC2 graduated from Nottingham University in 2015. Between 2015 and 2016 he did his Masters at University College London before starting an internship at Lepe Partners LLP in September 2016 in London. Following his graduation he also returned to live with his mother at 18 Willow Road, London, NW3 1TG. Between September 2018 and January 2019 he lived in Paris. In 2020 he bought a flat at 59 Bartholomew Road, Kentish Town.
FAIRR
232. In 2015, the Foundation established FAIRR ('Farm Animal Investment Risk and Return'), a collaborative investor network established "to educate investors in relation to the investment risks and opportunities connected with intensive livestock farming and poor animal welfare standards" FAIRR is the "lynchpin" by which the strategic focus of the Foundation (to end factory animal farming) is achieved.
233. Jeremy is the Chair of the Foundation and FAIRR. The Foundation's predominant mission and growth area was and remains ending animal factory farming and the Foundation's primary strategic focus in ending animal farming is the FAIRR initiative.
234. FAIRR is based at 166 Park Street, London, W1K 6AF (the headquarters of Coller Holdings Ltd and the Foundation).
235. Between 2016 and 2017 the FAIRR team grew from two employees to four. By 2018 the team had grown to six employees. By 31 March 2019 the team had grown from six employees to ten employees. In the period between 2019 and 2022, the team at FAIRR has grown from ten employees to about 45 employees.
236. Jeremy is currently looking for new premises for the Foundation and his family office in between PP and his Park Street office because it is his intention to continue working at Coller Capital's headquarters and staying at PP.

237. In February 2020, when a shower leak in the upstairs flat caused some damage to his flat, Jeremy decided to completely renovate PP, specifically to suit his taste and particular needs.

Succession planning and future work

238. In 2022 Jeremy was still the 100% owner of Coller Capital and both CEO and CIO of the firm.

239. In 2013 Jeremy appointed Tim Jones as CEO but he left in 2016.

240. Jeremy's evidence about his succession plans, including the disposal of some or all of his interest in Coller Capital, was, with respect, slightly confused. We find this perfectly understandable given that it is a moving feast. Furthermore, for further equally understandable reasons, there are commercial sensitivities around Jeremy's proposals which we do not intend to compromise in this decision.

241. However, we have absolutely no doubt that Jeremy's intention is to reduce his involvement in the business, and this will involve the disposal of some or all of his shares in Coller Capital. This is consistent with a business plan which he drafted in 2020 and which he has shared with his senior staff.

242. He will still be involved, operationally, as it is his involvement with the organisation which gives investors confidence. He also needs to mentor members of staff. And we find that it is highly likely that he will remain as CIO in the short to medium term.

243. It is Jeremy's evidence that whatever ongoing role he will have at Coller Capital it will be a reduced one compared to his current involvement, and that he does not need to be physically present in London to effectively discharge that role. However, it is not known where he will need to be to run this organisation and it is clear that he intends to keep working at Coller Capital's headquarters and living at PP when he visits London.

244. Once Jeremy has stepped back from Coller Capital he will, he says, be dedicating "the majority of [his] working time in the future" to FAIRR.

245. Jeremy's passion is ending animal factory farming and animal rights in all its guises. FAIRR is one, significant, part of that. Although headquartered in London, its reach is "totally global" and most of the work is done in the US because that is where major corporate headquarters, such as McDonald's, are based. The role that Jeremy envisages for himself is as a figurehead at global events, such as COP27 or the World Economic Forum. Jeremy's work would therefore take him to wherever these events are located, which is typically outside the UK. Otherwise, he personally can be based anywhere. However, he thinks that FAIRR would probably remain based in London.

Israel

246. Having not visited Israel at all between the 1970s and 2008, Jeremy spent just a few weeks a year there between 2012 and 2019.

247. During these visits, Jeremy would not have been staying at his own property, as he did not own one. Having rented an apartment in the Daniel Herzliya hotel in Tel Aviv for his mother and Susan since 2010 Jeremy bought them an apartment in 2012, "because they asked [him]".

248. On his own evidence, over the last ten years, there has been an evolution in Jeremy's thought process as to how he wants to live his life. He accepted that his views have necessarily changed as a result of significant life events.

249. Jeremy plans to retain his two London properties.

250. He has made substantial donations to organisations in Israel. A $5 million funding commitment to the Coller Institute of Venture, and a $25 million funding commitment to the Coller School of Management at Tel Aviv University (which in fact turned out to be a commitment of $50 million). A $750,000 seed capital for psychedelic research. He has also made a number of smaller donations to a variety of Jewish charities.

251. He has applied for Israeli citizenship.

252. Jeremy plans to split his time between Ibiza (6 weeks a year); Verbier (a few weeks a year); Israel (five-six months); travelling around the world a lot; and very small blocks of time in London focussed on his children.
253. Jeremy's sisters are planning to move to Israel.
HMRC enquiries
254. In 2005 HMRC opened an enquiry into Jeremy's Transfer of Assets Abroad liabilities. The issue of domicile (and in particular the suggestion that Jeremy might not be domiciled in England and Wales) was first (and only) raised towards the very end of that enquiry in four brief paragraphs of a 118-page report from Jeremy's representative, BDO LLP, dated 28 May 2010. The issue of domicile was not addressed further by either party because it did not impact on the Transfer of Assets Abroad enquiry and the tax payable in the years under enquiry: "On a without prejudice basis although we consider Mr Coller to be not domiciled in the UK for the purposes of UK Income Tax and UK Capital Gains Tax, we have not considered this further in this report since his domicile status does not affect the historic tax payable in light of our findings…" .
255. Jeremy first claimed to be entitled to be taxed on the remittance basis (pursuant to s.809B Income Tax Act 2007) on the grounds of his domicile status, in his 2011/12 tax return, filed on 30 January 2013.
Submissions
Mr Nawbatt

256. In addition to his more general submissions on the law set out above, as regards Jeremy, Mr Nawbatt submitted, in summary, as follows:

(1) As at 2012, the only properties which Jeremy owned were 10 and 11 X Gardens in West Hampstead and 14 Mountview Close (bought for his mother). The X Garden properties were the homes he bought as a family and renovated to suit his family's needs. They were in North-west London, the area he had lived in his entire life and the area his wife and her family had also made home. Jeremy neither owned nor rented (for his own personal use) any property in either Israel or elsewhere, despite doing so for his sister and mother since 2010. He had visited Israel once (in 2008) since his yeshivah in the 1970's. On his own case, his apparent intention to move to Israel was formed at some point after his divorce in 2012 and "was not immediate"; it "sort of warmed up on me to do that" as time went on.
(2) The matters on which he relies to demonstrate Jeremy's relationship with England are set out in the appendix. In Mr Nawbatt's submission, these facts demonstrate that by 2012, Jeremy was settled in, and had a singular and distinctive relationship with, England.
(3) One of the reasons that such a detailed analysis has been provided is because of the Special Commissioners' findings in the case of *Gaines- Cooper* which recorded about 23 bullet or numbered points describing the sort of factors that are relevant to their decision in that case.
(4) And the reason that that note pauses at certain stages in Jeremy's life is because cases show that having done a chronological run, one should then trace through and stop at various points during the life of a propositus to consider whether at that date or by that date a domicile of choice has been acquired.
(5) Jeremy's evidence was often digressive and discursive and unsupported by corroborating documentary evidence. We need to be mindful of the repeated refrain in the authorities about the need for caution and suspicion in respect of the oral evidence of a propositus. Furthermore, it is clear from his cross examination that Jeremy had not given honest accurate or truthful answers to some of the questions which had been raised during HMRC's enquiry.
(6) Some of Jeremy's assertions are clearly uncorroborated when they could have been. For example, his evidence about SL and that she would have loved to move to Israel. Similarly,

his exit and succession planning, CC's intentions, and indeed his own evidence about his intentions has evolved from his first witness statement to his second witness statement and then again in the oral evidence.
(7) His evidence was that he had agreed to separate from RD in 2008. But the pivot towards Israel, on the appellant's case, only took place in 2012 after the divorce. Nothing seems to have happened between 2008 and 2012 to support his contention that he wanted to move there. Indeed, between going there after leaving school, and the family visit in 2008, Jeremy had not set foot in Israel.
(8) The map demonstrates that the extensive roots and ties which had been laid down by not just Jeremy but also by John and Sylvia were laid down in an even smaller area than was considered in *Gaines-Cooper*, in which case it was regarded as significant that nearly all of the appellant's connections with the United Kingdom were located in a comparatively small area of the contiguous counties of Berkshire and Oxfordshire.
(9) It also shows the colour and character of Jeremy's residence. It shows individuals who are, on any view, settled. At each stage when there has been a decision to make, to move, to raise children, to educate children, to invest in properties, at each stage they act within an area which is at most within ten minutes of each other along the Finchley Road.
(10) When considering Jeremy's assertion that he had no settled intention of living permanently in the UK, and that he had intentions and aspirations to live elsewhere, it is of considerable significance that it was not feasible or possible for him to live elsewhere during his marriage because of RD's attitude towards moving, and the fact that his business was located in the UK.
(11) It is equally clear that Jeremy has not yet reached the final conclusion as to how he is going to divide his time between various jurisdictions.
(12) At certain points in his life, Jeremy could have moved from the UK, but at each of those stages, he strengthened his ties with the UK. Those dates are identified in the appendix. When pausing at these dates, we need to consider what his status was at that time, what was his wealth, and indeed what was in his contemplation. In the 1980s and 1990s, he accepted that he had no idea how wealthy he would eventually become. So when looking at his property purchases in London, these are evidence of an intention to reside in the UK indefinitely.
(13) Because Jeremy had not contemplated that he might be divorced, then we have to be cautious about relying on events which happen after it, as evidence of Jeremy's intention before 2012. He did not envisage that he would end up in his 50s and 60s divorced; he envisaged that he would remain married. Similarly, we should be cautious about post-2013 events because of the reliance placed on the 2013 obituaries which were described by Jeremy as a lightbulb moment, an epiphany which for him was life changing. This means that he acted in a very different way, and changed the way in which he acted, and thus reliance on post-obituary events don't necessarily reflect an earlier intention.
(14) The relevance of the donation to the Conservative party in 2015 is a demonstration that Jeremy was invested not just financially but also emotionally in the UK.
(15) Jeremy is not at all clear what he means by "retiring" from Coller Capital. Furthermore, he doesn't intend to retire, but intends to spend his time working towards ending animal factory farming. But he seems to be increasing his operations in London as he is looking to find an office for the Foundation as a location between Park Street and PP.

Mr Stone

257. In addition to his more general submissions on the law set out above, as regards Jeremy, Mr Stone submitted, in summary, as follows:

(1) The evidence shows that Jeremy does not have the necessary definite positive intention to live permanently or indefinitely in England. This is consistent with his move to Israel.

(2) Much of the evidence submitted by HMRC might be relevant in an appeal concerning residence but it sheds no light on Jeremy's intention at the relevant times.
(3) In the period up to 2012, he was a workaholic who focused on his business and the evidence showed that he and RD were concentrating on bringing up a family and had not thought about where they might live permanently or indefinitely. Given the focus on growing the business which he decided to do in the UK and doing so almost to the exclusion of anything else, it is wholly unsurprising that he had no fixity of purpose as to where he was going to settle permanently.
(4) Jeremy had thought that he might be a failure, he had little revenue, he had two children, and was a workaholic. When he left boarding school, where he had been educated for seven years, and where 90% of his friends came from overseas, he had no concrete plans to end up in a particular place. He had nothing which tied him to the UK for good and the business he was starting was essentially global.
(5) He had discussed moving to America with RD who did not want to move there because her parents were in England and she did not want her children to move whilst they were young. If Jeremy's mind was made up to settle permanently in England, then why was he asking her, during their marriage, to move to America. And why, once he was divorced, did he then decide to go to Israel. These are inconsistent with HMRC's contention that he had a settled positive intention to end his days in England.
(6) Growing Coller Capital took all of his time. He spent a lot of time promoting the business overseas. He started his business in the UK because that was where he saw a gap in the market.
(7) He did have a wish to move overseas. He tried to get jobs in New York at the very outset of his career but could not do so. He went on a four month secondment there, and Coller Capital started an international fund in 1998 and opened an office in New York in or around 2000. Coller Capital is now, and for some years has been, a global business with a global reach.
(8) His passion is ending animal factory farming and animal rights in all its guises. His Foundation and FAIRR are significant parts of that. Although headquartered in London, they have a global reach and most of the work is done in America which is where major corporate headquarters such as McDonald's are based.
(9) He is no longer the workaholic that he was. There are a number of commercial reasons why he needs to remain involved, and his precise plans for disengagement are not definitely fixed. But there is no doubt at all that in a few years his role will have changed. He will move on to focus on what he really wants to do which is, in a nutshell, to stop the factory farming of animals.
(10) To do this he does not need to be based in London which has been the case whilst he is CEO. If he reduces his time to say, half a day a week, he can do this from anywhere.
(11) He fell in love with Israel when he went there after school and throughout his life has had a strong connection to it. His house in Tel Aviv is his forever house. It is physically very large, at 11,000 ft². It has cost to date approximately US$30 million and is now valued at US$60 million. This dwarfs any property which Jeremy has owned in the UK.
(12) Whilst he and RD converted 11 X Gardens into a family home, and Jeremy has done some work on 10 X Gardens, this is insignificant compared to the work that he is doing on his house in Tel Aviv.
(13) Jeremy divided his time between PP and 10 X Gardens. But once he had bought the former property, he spent most of his time there. It was more convenient for his work.
(14) Taking people to watch games of football at the Arsenal was a way of keeping in touch with both personal and business acquaintances. He didn't care too much about football, but the dining was of high quality. This "entertaining" is therefore referrable to his business activities as, too, was his membership of London clubs rather than to his social life.

(15) His life in England revolves around his work and he has acquaintances rather than friends. These acquaintances may well not remain friends once he has ceased being in business with them. This is to be contrasted with Israel where he has a lot of friends.
(16) After Jeremy's divorce in 2012 he formed the intention to relocate to Israel. He had been to Israel between school and university. This is consistent with his global outlook as, too, was spending a year in France before going to Manchester.
(17) Since 2012 the evidence shows that he has established a life in Israel. He has made substantial commitments to educational establishments and charities. He has a "buzzy social life". Its climate is consistent with his preference for a Mediterranean climate which he inherited from his father. It fosters a climate of innovation which suits Jeremy as, too, does its entrepreneurial spirit and is a place where he can be an inventor and an industrialist. He has also made an application for citizenship.
(18) His financial endowments to Tel Aviv University reflect his intention of moving to and living in Israel. He is planning a belated 65th birthday in Tel Aviv to mark not only that birthday but also the point at which he expects to be spending much more time in Israel and when he expects to be settled in his new home. He anticipates splitting his time between Ibiza, Verbier, and Israel (5 to 6 months). The small blocks of time he spends in England will be focused on his children. These plans are wholly inconsistent with Jeremy ever having decided to live permanently or indefinitely and end his days in England.
(19) Jeremy's sisters are intending to move to Israel. CC and her husband have a house there and have both acquired Israeli citizenship, and Susan has made an application for Israeli citizenship. Susan has many friends and charitable connections in Israel.
(20) Jeremy has designed his house in Tel Aviv so that it can accommodate his children and in the anticipation that they will visit along with any grandchildren.
(21) Jeremy's relationship with SL during the relevant tax years would have been no bar to Jeremy's stated intention to move to Israel after his divorce. He purchased the apartments in Tel Aviv and developed his relationships with Tel Aviv University during that relationship, and his evidence was that she would have liked to move to Israel, too, because she loves it there.
(22) In 2012-2013, Jeremy, having divorced, could make decisions about his life for himself. He immediately bought his first property in Israel in the building where, since 2010, he had rented an apartment, principally for Sylvia and Susan. A year later he bought the seven apartments, off plan, in the David Promenade. He appointed Tim Jones in an attempt to disengage from Coller Capital and started a long-term relationship with Tel Aviv University. These are consistent with his assertion that he formed an intention to relocate to Israel after his divorce. As soon as he had a free rein and was not constrained by the pressures of work and family that needed to be based in the UK, Jeremy's life immediately started to pivot towards Israel. This is wholly inconsistent with HMRC's case that prior to, and during, the relevant tax years, Jeremy had a fixed intention to live permanently or indefinitely and end his days in England. They cannot show (and have not shown) a clear and unequivocal intention to make his permanent home in England. His move to Israel is clearly not just a "pipe dream".
(23) Evidence which shows Jeremy purchasing items such as petrol, or groceries, in North London, says nothing about his intention of living here permanently. Similarly, the map which shows attachments to a locality may be relevant to a case involving residence, but tells us nothing about Jeremy's intentions to live here permanently. To do this we need to understand his personality and his upbringing. Jeremy has all kinds of international aspects to him and his upbringing starting with his parents arriving as refugees, through his education at Carmel College, and then focusing on business which although based in the UK, had a US influence and subsequent focus. He is not a "settled, steady Joe with a background in England. He is a man of international background, international outlook".

(24) Jeremy's residence in England, which might be a starting point, is clearly because he started his business here and started his family life here, and so until his divorce, he lived here. But he never had a settled intention of living here permanently as evidenced by the fact that as soon as he divorced, and his family had grown up, he is planning to move to Israel. The money he has invested in his property, and in his relationships with Tel Aviv University, demonstrate that he did not have the necessary fixed intention to end his days in England during the relevant tax years. That degree of investment is entirely inconsistent with somebody who had thought that he was going to end his days in the UK.
(25) HMRC's "scattergun of factlets" about Jeremy's life are insufficient to allow us to conclude that he had a settled intention of living permanently in the UK. For example, the fact that he might have been a member of three synagogues is not relevant given that Jeremy, whilst culturally Jewish, is not religious. He hosted Friday night suppers with his family, but that is simply consistent with being culturally Jewish.
(26) As far as approaching the evidence is concerned, we must make a finding of fact on the balance of probabilities about Jeremy's intention at the relevant time. And in making that finding of fact, we must give due weight and consideration to what Jeremy has told us of that intention, and whether his mind was made up. We must then test that against the other evidence which is proved or provable and the objective facts of his life to consider whether or not we believe him.
(27) Jeremy's evidence was that he never had a settled intention to stay in England for the rest of his days. We need to analyse the evidence to discern whether there is anything that is actually inconsistent with that assertion. And when we have done that, the only conclusion that we can come to is that there is nothing which is inconsistent.
(28) Jeremy was a candid witness who was giving the best evidence he could, and it wasn't filtered to ensure that he give only the best evidence for his case.

Discussion

258. There is a significant difference between Jeremy's situation, and that of his parents. Whilst his parents had been born and spent their formative years in a jurisdiction other than England, Jeremy was born, brought up and educated in England. In April 2012 he was aged 53. Whilst Mr Stone submitted that there were no authorities which determined that a live propositus who was alleging a domicile in one jurisdiction had been told by the court that he was in fact domiciled in another, we were not provided with an authority which was on all fours with the position in which Jeremy finds himself.
259. We remind ourselves of the legal principles that we have set out at [11] above. And, in particular, that long residence itself is insufficient to establish a domicile of choice. We must look at the quality of that residence in the context of the facts of any particular case including the characteristics of the propositus. But it is also true that a domicile of origin is less adhesive where a propositus has few attachments or ties to it, and that where someone has set up their home in a country and has lived there for a long time and has no home elsewhere, that is a strong starting point.
260. We have adopted these principles in respect of John and Sylvia and do so in our consideration of Jeremy's position.
261. We have set out the facts in considerable detail at [163-253] above. These have been summarised by Mr Nawbatt in the appendix. It is our view that they show that Jeremy, had, by 5 April 2012, become deeply settled in England.
262. In short summary; he was born in England and was brought up in a loving household in North London, a location from which he never moved far in his adult life before 2012; he was educated in England and established his business, Coller Capital in England; he purchased a number of properties in North London; he joined London clubs; he married RD who did not want to move from England, and with whom he had two children, who were brought up and

educated in England; between 1978 and 2008 he did not visit Israel; in 2013 he purchased a substantial property in Tel Aviv which he is currently renovating; he has made considerable financial contributions to institutions in Manchester and London (before 2012) and Tel Aviv (since 2012); he intends to devote his energies to, amongst other things ending animal factory farming, through FAIRR; his current plans are to spend half of the year in Israel and the rest of his time elsewhere in the world including some time in London; he has never had any attachments or ties to either Austria or Ireland.

263. Mr Stone submitted much of the evidence adduced by HMRC concerning Jeremy's life in England was relevant to an enquiry concerning Jeremy's residence and shed no light on his intention regarding his residence in England to be permanent and indefinite, and the place he would end his days. And whilst that might be the case, it is our view that it is highly relevant in showing Jeremy's deep roots in England, and in particular his strong relationship with a small area of North London. It seems to us to be clear and compelling evidence that Jeremy has set up his home, for a long time, in England. He has had a family here, and at the relevant time had no home elsewhere. In the language of *Musa*, that is a strong starting point.

264. In this respect Jeremy's position is very similar to that of his parent's. So, as with them and as in *Musa*, we need to consider the factors which militate towards showing that Jeremy had no such settled intention.

265. We attach little weight to the submissions that Jeremy was an international businessman having been educated at a school in which he was surrounded by individuals, the vast majority of whom had come from overseas. These facts are commonplace and travelling on business and exposure to different cultures at school shed no light on Jeremy's intention at the relevant time.

266. Similarly, the fact that he was a workaholic, or as Mr Stone submitted, had few genuine friends, merely acquaintances who he would take to football matches, is of little relevance to Jeremy putting down deep roots in North London.

267. In truth, there are three significant factors which militate towards showing that Jeremy had no such settled intention. The first of these is that Jeremy's evidence is that he had never made up his mind about where he might ultimately settle. It might have been America, it might have been Israel. But the significance of having not made up his mind is that the authorities show that in the circumstances, HMRC have not discharged their burden of proving a settled intention to live in England permanently and indefinitely.

268. Secondly, that lack of intention is evidenced by the fact that during his marriage to RD he was obliged to live in England. But immediately following his divorce in 2012, he pivoted towards Israel, purchasing a significant house there and making substantial donations to Tel Aviv University. This is consistent with a lack of intention to live permanently in England prior to 2012.

269. Thirdly, he intends to plough his energy into FAIRR projects. He will base himself in Israel and only come to London when domestic and business needs require him to do so.

270. We deal with the last of these three factors, first. Whilst we have certain misgivings about Jeremy's evidence which we have already mentioned at [162] above, we have absolutely no issue with, and we find as a fact, that he is proposing to reduce his involvement in Coller Capital; he clearly intends to devote his energies to FAIRR which he can do from Israel; he will shortly move his permanent home to Tel Aviv once his property there has been finished and fitted out; he can undertake his work with FAIRR from virtually anywhere in the world; he will come to London when it is domestically and commercially appropriate.

271. We do not think that the Foundation's search for new premises in an area of London located between Coller Capital on the one hand and PP on the other, has any relevance. It is clear to us that Jeremy's current intention is to move abroad and spend less time in London than he has done hitherto. Whilst this might be relevant if we were considering Jeremy's

position at the date of the hearing, we do not think that it assists in fathoming Jeremy's mindset in 2012.

272. If we were to consider the position of the date of the hearing, then the question would be one which the authorities have considered on many occasions; namely a propositus who has considerable attachments and ties with a domicile of origin (in Jeremy's case, as we have found, England) and a stated intention, supported by attachments and ties, to move to another jurisdiction (in Jeremy's case Israel). And we would need to decide whether Jeremy had abandoned his domicile of origin, which in this case, given his ongoing attachments and ties, is conventionally adhesive, and acquired a domicile of choice in Israel.

273. But that is not what we need to decide (and indeed given that this question might arise in the future and might need to be determined by a tribunal, we emphasise that we express no view as to the merits or otherwise of any such assertion). We have to determine whether Jeremy had a settled intention of permanently and indefinitely living in England before 5 April 2012. And, with respect to the parties, we find very little assistance in answering that question in Jeremy's ambitions regarding Coller Capital and FAIRR. They tell us virtually nothing about Jeremy's intention regarding his intention at the relevant time. The evidence shows that his withdrawal from Coller Capital has been pursued in earnest only relatively recently. We have not found it of assistance in determining Jeremy's state of mind in 2012.

274. The second factor is that following Jeremy's divorce his focus pivoted towards Israel where he purchased the substantial property in Tel Aviv in 2013 and made substantial financial endowments towards Tel Aviv University because that is where he sees his future.

275. This is a submission of considerable substance. It is based on Jeremy's evidence that whilst he was married to RD, he was (in essence) domestically compelled to live in England. But once he was free of that relationship, he turned towards Israel. And this is evidence that prior to 2012 he had no settled intention of residing permanently and indefinitely in England.

276. In *Henderson*, the tribunal stated that "therefore, how Nicholas Henderson acted when facing the prospect of a high degree of freedom of action sheds a strong light on his intentions". In that case the tribunal found that the propositus went on to strengthen his ties to the UK thus providing evidence that he did intend to permanently reside in the UK on an indefinite basis.

277. And so, the argument runs, the opposite applies in Jeremy's case. As soon as he was given his high degree of freedom, he loosened any ties to the UK by pivoting towards Israel.

278. Given that this submission turns on Jeremy's oral evidence regarding his relationship with RD, we now need to consider the weight which we should attribute to his evidence. We have set out at [23] above the approach which we should adopt towards evidence given by a propositus. How we should treat it as self-serving and with considerable suspicion, and that actions are a far more reliable indicator of intention than the oral evidence. Indeed, Mr Nawbatt went so far as saying that words are largely irrelevant and actions are all. We do not go that far, since it is our view that we must consider all of the evidence and that includes Jeremy's oral testimony. But we do treat it with considerable suspicion. This is not simply because of the admonition to do so provided by the authorities. But also because, notwithstanding Mr Stone's assertion to the contrary, we did not find Jeremy a wholly satisfactory witness. It is clear that he either gave, or allowed to be given on his behalf, information to HMRC which turned out to be inaccurate. And inaccurate in ways which are relevant to the issues which we have to decide.

279. So, we do not automatically accept that the reason why Jeremy pivoted towards Israel in 2013 was because he had the freedom to do so following his divorce from RD in 2012.

280. He separated from RD in 2010. This reflects their agreement that they should put their earlier agreement to separate, made in 2008, on hold until JC2 had finished his GCSEs and JC1 had finished her A-levels. But at that stage, when he had greater freedom to do so on separation, it seems that he did not pivot towards Israel. On his case he only did so in 2012.

If, on his case, he had no settled intention of residing permanently in England, and evidence of that was a pivoting towards Israel once he was free to do so, then that pivot could have happened in 2010. But it didn't. This sheds doubt on Jeremy's testimony.

281. Mr Nawbatt makes the point that we should view with suspicion actions that took place after the divorce given that they were not in contemplation certainly up to 2008, and thus Jeremy's intentions before then should be gauged against an assumption that his marriage would continue. And in those circumstances, it was wholly unrealistic that he might move to Israel given RD's wish to remain in England. And there is some merit in this submission.

282. However, we accept Jeremy's evidence on the point that around that time he had no settled intention to move to Israel, which only occurred after his divorce in 2012.

283. But there is considerably more merit in his submission that Jeremy had an epiphany in 2013 following the publication of his friend's obituary in April 2013. That was a life changing moment. And his pivot towards Israel should be seen in this context. And so, it should not be read as a reaction to his divorce, but more a reaction towards that life changing moment.

284. We agree. The obituary was published in April 2013. Jeremy brought the first tranche of property in Tel Aviv on 3 July 2013, and the second on 10 October 2013. His donations to Tel Aviv University were made in 2013. Reading the obituary was a lightbulb moment for Jeremy. He decided to focus on environmental social and governance issues in factory farming and to switch from being a bystander to an upstander. And it was this which was the reason for establishing FAIRR in 2015.

285. It is our view that the pivot towards Israel which Mr Stone suggests is evidence of an ambivalence towards permanent and indefinite residence in England prior to 2012, whilst not inconsistent with Jeremy's evidence that it was because he had freedom to do so following his divorce from RD, was in fact more likely to have been a result of his lightbulb moment following the reading of this obituary. And the entrepreneurial environment of Israel was a considerable incentive to establish both his business and domestic centre of gravity there.

286. It does not carry the weight, argued for by Mr Stone, as a significant factor which militates towards a lack of intention to reside permanently in England before April 2012.

287. We now turn to the remaining significant factor, namely that the evidence shows that Jeremy had never given any serious thought to where he might end his days. He was focusing on his business and his family. He was a workaholic. He never had any discussions with RD about it, but had they discussed that it was likely that he would have wanted to move to America. In these circumstances HMRC have not established the relevant settled intention.

288. This evidence stems exclusively from Jeremy's oral evidence. This is set out at [184-187] above.

289. For all the reasons previously mentioned, we treat this evidence with some considerable caution. By the time Jeremy compiled his witness statement and gave evidence at the hearing he would have discussed his case, and the legal principles, with his advisers, and we have no doubt that he would have fully understood that the burden of proving his settled intention to reside permanently or indefinitely in England rested with HMRC. Moreover, they would not be able to establish this if all they could show was that he had either not considered it or having considered it, had reached no settled conclusion. It is, frankly, unsurprising, therefore, that he gave evidence to this effect.

290. Notwithstanding that, Jeremy's evidence that he and RD had never discussed where they may end up living permanently or indefinitely, has a ring of authenticity. We ask ourselves, rhetorically, how many couples, whilst they are bringing up children and working extremely hard, formally sit down and have a discussion about where they might end up living on a permanent and indefinite basis, once they had retired from their jobs and the children have left home. And so, we can see why Jeremy says that he never had time to think about it and that living in the UK was just the way it happened. We also accept that whilst he

was married to RD, he was domestically compelled to remain in the UK. We also accept that it was inevitable, given the business model of Coller Capital, that the business would be headquartered in the UK and that Jeremy would have to reach out to investors in a number of overseas jurisdictions.

291. Mr Stone's submission, in these circumstances, would (we imagine) be that Jeremy has now established that he had never thought about where he might end up on a permanent and indefinite basis, and in those circumstances HMRC have not proved a settled intention to reside in England and thus Jeremy had not acquired a domicile of choice in England before 5 April 2012.

292. But Jeremy's evidence is just one element of the evidence that we must consider when determining that intention. And we must test it against the more objective facts of what Jeremy's actual position was at the relevant times which are set out very clearly in [163-253] above and the appendix. They show an individual deeply settled in England who was born and educated here, had brought up a family here, started and developed a phenomenally successful business here, and prior to 2012 had visited Israel only twice.

293. When tested against these objective facts, Jeremy's oral evidence carries little weight when considering the clear and compelling evidence of his deeply settled way of life in England. Those facts are not consistent with either an intention to settle in a country other than England, or with his contention that he had neither thought about where he might permanently settle and that he had reached no conclusion on the issue.

294. In our view HMRC have discharged their burden of proving that Jeremy was domiciled in England on or before 5 April 2012. This is based not just on the length of time that Jeremy has spent in England but also on the quality of that residence. Having been born here, established a family here and having no home elsewhere, that is a strong starting point when considering the question as to where he intended his residence to be on a permanent and indefinite basis and the place where he would end his days. That is England. The factors against this which we have set out above do not demonstrate that he had either no such fixed intention or that he had neither considered it, or having considered had come to no firm conclusion. It seems clear that he had no intention to move to Israel until after his divorce in 2012. Prior to that the indications are that he had laid down deep (and to our mind permanent) roots in England and that prior to 2012 this reflected an intention to live here permanently and indefinitely and to end his days here.

295. We therefore find that Jeremy had an English domicile on 5 April 2012 irrespective of the domicile of his parents.

DECISION

296. In view of our findings at [137], [160] and [295] above we dismiss this appeal.

REVISED DECISION

297. Our original decision was released on 21 February2023 with neutral citation reference [2023] UKFTT 00212. That decision was revised under the slip rule and republished with the same neutral citation reference. Following an application for anonymity of certain elements of our original decision which we granted in part on 23 March 2023, we have further revised our original decision, and this decision is that further revised decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

298. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after 21 February 2023. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 28th MARCH 2023

APPENDIX

JOHN COLLER

1954 (age 36) Marriage to Sylvia Coller

- Arrived with parents, sister already here.
- Enlisted and served in the British Army (volunteered, not conscripted) during World War II.
- 25/1/47 (aged 28) applied for naturalisation / oath of allegiance.
- Name change to John Howard Coller - assimilate / start a new life.
- Set up car repair and then leather manufacturing business in St John's Wood.
- Father died but mother, sister, cousins Peter/Bianca, Uncle Arthur in London.
- Wife: Sylvia Coller – Irish national living in NW London when met.
- Rent flat in same block as mother, sister and cousin / best friend Peter.
- No non-UK ties, connections / aversion to Domicile of Origin / 16 years UK residence.
- Subsequent Acts (to death): acquisition of 8 Aberdare Gardens (1959) then 4 Armitage (1963); establish, raise and educate family in London; business expansion and acquisition of investment properties.
- South of France family holidays do not commence until 1963.

1958 (aged 40) Acquisition of 8 Aberdare Gardens

- 1958 acquisition of first family home at 8 Aberdare Gardens.
- Finchley Road: focal point of Jewish refugee community.
- 1956: Start a family in London; Susan Coller born; Sylvia heavily pregnant with Jeremy, born a few months later.
- NW London family and friends.
- No non-UK ties, connections / Aversion to Domicile of Origin / 20 years UK residence.
- Subsequent Acts (to death): acquisition of 4 Armitage (1963); establish, raise and educate family in London; business expansion and acquisition of investment properties.
- South of France family holidays do not commence until 1963.

1963 (aged 44) Acquisition of 4 Armitage Road

- 8/4/63: Acquisition, renovation of 5-bedroom family house: 4 Armitage Road.
- Had two children: Susan (aged 7) and Jeremy (aged 5).
- 2 Newburgh Street shop / 53 Broadwick Street showroom and factory.
- Retention of 8 Aberdare Gardens (rented out as flats for income).
- 3 more UK properties: Priory Road; Compayne Gardens; and Hoop Lane.
- No non-UK ties, connections / aversion to Domicile of Origin / 25 years UK residence.
- Subsequent Acts (to death): establish, raise and educate family in London; business expansion, further UK residence to death.
- 1963 is first family holiday to the South of France.

1968 (aged 49) died in London

- 7/3/67: third child, CC, born.
- Had secured contracts with High Street shops C&A and Neiman Marcus.
- Had become members of Kendal Hall Country Club.
- No non-UK ties, connections / Aversion to Domicile of Origin / 29 years UK residence.
- 5 years of regular family holidays to France (Summer), Davos (winter).

SYLVIA COLLER

1974 (aged 44)

- 1968: Reserved her burial plot next to John Coller in the Bushey Cemetery.
- Did not return to Ireland, continued living at 4 Armitage Road.
- Retained and rented out 8 Aberdare Gardens and Hoop Lane properties.
- Requested money from mother and aunt to invest in John's business.
- Continued with plan to educate children in London / England.
- NW London family and friends.
- Continued membership of Kendal Hall Country Club.
- No non-UK property / 20 years UK residence (discounting pre: 1953 previous periods).

- Ireland had long ceased to be home / place remembered as a child.
- Subsequent acts: Lived in NW London close to family until died 2022.

JEREMY COLLER

1985 (aged 27)

Bought his first property (8 Aberdare Gardens).

- Born, raised and educated in England.
- Gap Year: Yeshivah (Israel) and Sorbonne (France).
- Studied at Manchester University and then Sussex University.
- Following graduation commenced his career in London in 1983.
- London family ties included: Sylvia, Susan, CC, Peter Scott and Uncle Mervyn.
- 5-year relationship with UK-educated and resident RD.
- Acquisition of first property which had been his first childhood home.
- No non-UK ties, connections / exclusively UK resident since birth (except gap year).
- Had not visited Israel in the 7 years since Yeshivah.
- *Subsequent actions:* Marriage and established his family and business in London; acquisition of 19 Primrose Hill Road, 10 and 11 X Gardens; continued exclusive UK residence (save for a four-month secondment).

1989 (aged 31)

- Married RD in London and living together at 8 Aberdare Gardens.
- Freeman of the City of London and a full Livery member since 1987.
- Working in London for ICI since 1985.
- Observed Religious holidays with extended family.
- NW London family ties now also include RD's parents and sister.
- No-non UK ties, connections / Exclusively UK resident since birth (except gap year).
- One Israel visit in 31 years (Yeshivah); RD would never leave UK based parents.

- *Subsequent actions:* Established his family and business in London; acquisition of 19 Primrose Hill Road, 10 and 11 X Gardens; continued exclusive UK residence (save for a four-month secondment).

1995 (aged 37)

Purchased and moved into 19 Primrose Hill Road.

- 1992: Daughter (JC1) born; 1994: Son (JC2) born.
- 1994 had set up Coller Capital in London.
- 1995: Acquisition of family home 5-minute drive from first childhood home.
- No non-UK ties / Exclusively UK resident since birth (except gap year / secondment).
- One Israel visit in 37 years; RD would never leave UK based parents.
- *Subsequent actions:* Educated children in London; acquisition of 10 and 11 X Gardens; continued exclusive UK residence, 1986 joined RAC Club.

1998 (aged 40)

Purchased and moved into 11 X Gardens.

- Acquisition of substantial family home.
- Immediate application for planning permission for extensive works.
- Educated children in London.
- Commence hosting Rosh Hashanah dinner.
- No non-UK ties / Exclusively UK resident since birth (except gap year / secondment).
- One Israel visit in 40 years; RD would never leave UK based parents.
- *Subsequent actions:* Refurbishment of 11 X Gardens; educated children in London; acquisition of 10 X Gardens; continued exclusive UK residence.

2001 (aged 43)

Purchased 10 X Gardens.

- 1999 became member of the Cumberland Lawn Tennis Club opposite home.
- Extensive refurbishment of 11 X Gardens and designer garden.
- 2001 acquired next-door property.
- No non-UK ties / Exclusively UK resident since birth (except gap year / secondment).
- One Israel visit in 43 years; RD would never leave UK-based parents.

- *Subsequent actions:* Educated children in London; acquired properties nearby for RD's parents and Sylvia. Continued exclusive UK residence.

2008 (aged 50)

Agreement to separate from RD.

- 2004: Commenced membership of Alyth NW Reform Synagogue.
- 2006: Became Diamond Club member, acquired 34 (24 year) debentures.
- 2008: Entered 10-year commitment to London Business School.
- No non-UK ties / Exclusively UK resident since birth (except gap year / secondment).
- 2008 Israel visit with Sylvia, siblings, wife, children; first Israel visit in 30 years.
- *Subsequent actions:* Extensive refurbishment of 10 X Gardens; UK club memberships, continued exclusive UK residence.

2010 (aged 52):

Separated from RD and moved into 10 X Gardens.

- 2010: Spent "a couple of million" pounds renovating new home.
- 2010: Moved into 10 X Gardens.
- No non-UK personal ties except in 2009 started renting chalet in Verbier.
- Herzilya flat rented for Sylvia and Susan – but not himself.
- Exclusively UK resident since birth (except gap year / secondment).
- *Subsequent actions:* UK club memberships, 2012 designer garden; continued exclusive UK residence.

2012 (aged 54)

Divorced on 18 April 2012

- Home: 10 X Gardens.
- December 2012 engages landscape gardener to re-design garden.
- 2011 acquires shares in 5 Hertford Street to secure life membership.
- 2012: Starts relationship with SL (UK resident).
- 2012: Starts regular backgammon with NW London friends.
- UK family and friends.
- 55 years exclusive UK residence since birth (except gap year and 4 month

secondment).

- No non-UK personal ties or connections (except rental of Verbier flat).
- Short trips to Israel in 2012 - longest visit was 8 days in August.
- 2012 purchase of Herzliya flat for Sylvia/ Susan at their request.