

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

Royal Courts of Justice  
Strand, London, WC2A 2LL

04<sup>th</sup> May 2006

B e f o r e :

**MR. N. STRAUSS Q.C.**  
**(sitting as a Deputy Judge)**

In the matter of the Estate of Dorothy Loxston

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**(1) Ronald William Abbott**  
**(2) Help The Aged**

**Claimants**

- and -

**Elizabeth Richardson**  
**(Personal Representative of the Estate of Dorothy**  
**Loxston, Deceased)**

**Defendant**

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*Miss Katherine McQuail, instructed by Messrs. Irwin Mitchell appeared for the claimants.*  
*Mr. Peter Dodge, instructed by Messrs. Chambers, Rutland & Crauford, appeared for the defendant.*

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**HTML VERSION OF JUDGMENT**

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NICHOLAS STRAUSS QC:

**Introduction**

1. This is a dispute about the estate of the late Miss Dorothy Loxston, who died on 8<sup>th</sup> September 2003, aged 98. The issue between the parties is whether her true last will was her will dated 1<sup>st</sup> March 1990 or her will dated 30<sup>th</sup> January 2003. Her main assets were a house at 38 Albermarle Road, East Barnet, in which she had lived since the 1920s, and which is worth about £275,000, and a portfolio of shares valued at approximately £513,000.
2. Miss Loxston was born on 29<sup>th</sup> March 1905. Her father died in 1914 and she and her older brother, John, were brought up by her mother. She worked for the Post Office, in a job concerned with the

calculation of the correct amount of interest payments. She retired in about 1965. Her brother worked for the Midland Bank. Neither of them was married.

3. John Loxston died in 1979, leaving his sister the share portfolio already mentioned, and she also became the sole owner of the house at Albemarle Road. On 26<sup>th</sup> August 1980, Miss Loxston appointed the Midland Bank Trust Company (now HSBC) to act as her nominee and investment adviser. From April 1989, her affairs were looked after by Mr Stephen Rhodes, then an investment manager at the Midland Bank and now a Senior Premier Manager at HSBC, who gave oral evidence at the hearing. He used to visit her annually to carry out a review of her affairs, and in the last few years his visits became more frequent as her increasing age gave rise to various issues. On 24<sup>th</sup> January 1996, at Mr Rhodes' suggestion, Miss Loxston executed an enduring power of attorney in favour of HSBC. This was registered on 22<sup>nd</sup> June 2001.
4. Although Miss Loxston had no immediate family after the death of her brother, she did have contact throughout her life with her cousins in Yorkshire, although less so towards the end of it. Her mother's brother, William Middleton Abbott (1855-1937) was responsible for setting up a successful family cabinet and furniture making business in Ripon in the second half of the 19th century, called WM Abbott & Co. It is still flourishing. He had six children in all, one of whom died in infancy and two of whom left the Ripon area. The other three, however, remained in the Ripon area, to which Miss Loxston made regular visits.
5. The oldest of the three children who remained in Ripon was Annie Gladys (1884-1972), William Middleton Abbott's daughter by his first marriage. The others were two of his three sons by his second marriage, William Clare Abbott (1890-1962) and Arthur Wesley Abbott (1901-1980). William Clare Abbott had three children, all of whom are still living, namely, Dorothy (b 1923), Kathleen (b 1926) and Ronald (b 1931), the first-named Claimant. Arthur Wesley Abbott also had three children, Barbara Clare (b 1928), Colin (1929-1988) and Michael (b 1934). Colin was married to Marion nee Spence, and they have a son, Dr Richard Abbott, who lives in the United States.
6. By all accounts, Miss Loxston was a very fit and active lady in her youth. At the end of her life, she kept by her side "A Tramp Abroad" by Mark Twain, because it reminded her of her walking holidays in Europe in her youth. She was also a talented musician. She played the French horn in the Barnet Symphony Orchestra until 1998, when she was 93, and she played the piano in chamber music groups. She also owned a violin, a cello and a double bass. She made many friends through her music, including Dr Clive Ashwin, whom she met in about 1980 and who gave oral evidence at the hearing, Dorothy Parry, a near neighbour in Albermarle Road who is in her 80s and who provided a witness statement but did not give oral evidence, and Marjorie Stroud, who was younger but who died suddenly in about March 2000. Others included Clair Tozer and Susan Dingle.
7. Her first known will was made on 1<sup>st</sup> October 1980. She left her house to a Mr Norman Boulton, who I assume was a friend, her grand piano and Alexander horn to the Royal College of Music, her upright piano to Christchurch, Cockfosters, her beson French horn and her other musical instruments to June Eaton, also presumably a friend at the time. She gave a total of £1,000 to six other friends (including Marjorie Stroud) and she left the remainder of her estate to seven charities including Help The Aged. In a codicil dated 7<sup>th</sup> May 1982, she revoked the bequest to Mr Boulton and left the house on trust for sale, the proceeds to be divided equally between her six second cousins, the children of William Clare Abbott and Arthur Wesley Abbott. In a codicil dated 23<sup>rd</sup> January 1987, she revoked the bequests of her musical instruments, and replaced them with seven legacies of her musical instruments to six friends (there was also a gift of her music cabinet to Dr Ashwin) and to the Senior Citizens Light Orchestra, Winchmore Hill.
8. On 1<sup>st</sup> March 1990, Miss Loxston made a new will with similar small pecuniary bequests to friends, and similar bequests of her musical instruments to friends and to the Light Orchestra. She bequeathed the house in equal shares to her five surviving cousins (Arthur Colin Abbott having died in the meantime), and divided her residuary estate between the same charities as before.

9. Both wills were drafted by Midland Bank's executor and trustee department, on Miss Loxston's instructions. It is clear from a letter from Mr Rhodes to Miss Loxston dated 10<sup>th</sup> June 1990 that she kept a copy of the 1990 will in the house. At that time, she did not wish to make any changes to it.
10. By 1997, Miss Loxston had become more frail physically. She had had occasional cleaning help over the years, and the Defendant, Elizabeth Richardson, started to work for her, at first on one day a week. This was at the suggestion of Dorothy Parry. The exact date when she began to work for Miss Loxston is a minor issue in the case, but I find that it was sometime in 1997, probably in the second half of the year. At the time she too lived in Albermarle Road. Gradually, the time she worked, and the range of duties she carried out, increased. However, Miss Loxston continued to live alone, and to be able to get up, get dressed and make breakfast on her own, until July 2003.
11. It is clear from all the evidence that from the first Mrs Richardson treated Miss Loxston very well, on occasions helping her in ways which were beyond the call of duty, for example taking her out in her car, and that Miss Loxston liked to be looked after by Mrs Richardson and regarded her as a friend. I have no doubt, having heard her evidence, that Mrs Richardson was genuinely fond of Miss Loxston and that this was reciprocated.
12. On 30<sup>th</sup> January 2003, Miss Loxston - then aged 97 - made her last will. She appointed Mrs Richardson to be her executor and bequeathed to her the house at Albermarle Road together with the furniture and effects in it. She gave her grand piano to St. Mary's Church, East Barnet. She divided her residuary estate into two equal parts, and gave one part to Marion Abbott (the widow of Colin Abbott who had died in 1988), with a gift over to her son, wrongly named "John Abbott of the United States of America", and the other part to Kathleen Abbott. There were no bequests either to her musical friends or to any of the charities "which had been beneficiaries under earlier wills".
13. The Claimants' case is that by January 2003 Miss Loxston no longer had the mental capacity to make a will, that there was a want of knowledge and approval and that, in any event, her last will was procured by the undue influence of Mrs Richardson.
14. The main witness in support of the Claimants' case was Dr Ashwin, who was very concerned with Miss Loxston's welfare in the last ten years of her life and actively looked after her interests in many ways. His evidence depicts Miss Loxston as already in decline both mentally and physically by 1997, and Mrs Richardson, while looking after her well, trying by various means to get her to make a will in her favour. Much of his evidence is reflected in what he wrote to Mr Rhodes and others at the time.
15. The Claimants' case was also supported by the witness statements and evidence of Mr Rhodes and of Mr Roland Irving, who was Miss Loxston's gardener and handyman from early 1999, and by a witness statement of Dorothy Parry. There was also the witness statement and oral evidence of the First Claimant, Ronald Abbott, explaining the relationship between Miss Loxston and her cousins in Ripon, and the witness statement of Dr Richard Abbott, mainly about a visit to her in July 2001.
16. Mrs Richardson's case is that she and Miss Loxston became friends and that Miss Loxston spontaneously offered to leave her the house and was at all times anxious to make a new will, but was frustrated in her efforts to do so by the opposition of Dr Ashwin, who was also from the outset consistently antagonistic to Mrs Richardson. Her evidence is that Miss Loxston remained mentally capable, and insisted on her finding a solicitor to help her make a will without the assistance of Dr Ashwin or Mr Rhodes; once this was achieved, Miss Loxston was greatly relieved. Mrs Richardson herself had not taken the initiative at any stage.
17. Mrs Richardson also relied on the evidence of two solicitors. The first was Mr Christopher Thomas, the sole principal of Braikenbridge & Edwards. He took instructions from Miss Loxston in August 2000 with a view to making a will, but was not satisfied at the end of the meeting of her wishes or (one way or the other) as to her mental capacity. Despite subsequent correspondence, he never took the matter any further because he learned that HSBC was in the process of registering the power of attorney. Mrs Richardson relies, on the issue of undue influence, on his evidence that he was satisfied at the time that there was none. The second solicitor was Mr David Lesser, who practised for 37 years as DJ

Lesser & Co, and who, following his retirement in 1998, runs a will service called the Regent Wills Service from his home with the assistance of his wife. Both gave evidence about the taking of instructions from Miss Loxston, and the execution of the will in January 2003. Mrs Richardson relies on their evidence both on the issue of mental capacity and in support of her case that there was no undue influence. She also relies on a witness statement by Carol Ribeiro, a bath care attendant who visited Miss Loxston once a week from November 1999.

18. There is a medical report from Dr McElligott who, with his partner Dr Miles, looked after Miss Loxston at their practice in East Barnet. His work regularly involves assessing the mental health of the elderly. He did not carry out a formal mental state examination, as it was not appropriate or necessary at any stage. His recollection was that Miss Loxston's mental state was deteriorating "during the course of 2003". He was not able to comment on her testamentary capacity, except to say that she was not on any medication which would have affected her mental state at any time.
19. I have also seen copies of Miss Loxston's medical notes. They suggest that although frail, and prone to injuring herself by falling, she was in good physical health for her age until her final decline which started in July 2003 following two further falls. In the years from 1997 to 2002, there are respectively 2, 8, 3, 2, 7 and 2 entries, all of which relate either to her eyesight or to minor physical problems. A note dated 23<sup>rd</sup> February 2001 in her medical records records "Not suffering from any mental illness so far as I am aware". On 6<sup>th</sup> June 2002 Dr Miles recorded her as being "a little more confused than usual" after a fall. In early February 2003, shortly after the will was signed, she went into hospital for four days with acute gastro-enteritis. She was assessed as having "mild dementia" and being "very confused" at the time of admission, but this may well have been due to the illness.
20. There are also experts' reports, by Dr RF Kehoe, a consultant psychiatrist, on behalf of the Claimants, and by Dr Master, also a consultant psychiatrist, on behalf of the Defendant. They are agreed that no significance is to be attached to the diagnosis of mild dementia on 2<sup>nd</sup> February 2002, both because the doctor who admitted Miss Loxston would not have been in a position to make a proper diagnosis and because any symptoms may have been due to her temporary physical condition which began on 1<sup>st</sup> February 2003. They are also agreed that there is no other medical evidence as to her testamentary capacity, and that the issue depends on what view the court takes of the factual evidence. The medical evidence is inconclusive and provides no indication either way on testamentary capacity.

### **Mr Ronald Abbott's Evidence**

21. Mr Ronald Abbott's witness statement consisted of an assembly of the recollections of other members of the family who were too unwell to give direct evidence. He exhibited what they had written, and summarised what they said as follows: -

"My sister Kathleen Abbott would correspond with Dorothy about events in Ripon, especially at Christmas and on her birthday and vice versa. After my sister became ill in November 2001 I undertook to send Dorothy greetings at birthdays and Christmas, on behalf of my sister to which she did not reply.

My sisters Kathleen Abbott and Dorothy Nelson (nee Abbott) remember that Dorothy used to come and stay in Ripon, where a lot of our family were based, from 1930 onwards, when she would have been twenty five years of age. She would stay with my aunt. Annie Hall, known as 'Auntie Gladys', my grandfather's daughter from his first marriage. My sister Kathleen recalls that Dorothy visited regularly throughout Kathleen's school and college years.

Kathleen and Dorothy (Nelson) have both told me that they have clear memories of Dorothy coming for tea at our parent' house and that we would go for tea at Auntie Gladys' house and that we would take her on outings. Kathleen and Dorothy (Nelson) also recall that they enjoyed listening to Dorothy playing the piano, as we are a musical family.

Kathleen always remembered Dorothy at Christmas time sending her a card and often writing her letters throughout the years, something she continued to do after our parents had died. In these letters Kathleen would send her programmes of musical events that had taken place in Ripon and from the Ripon Choral Society, in which Kathleen sang. Kathleen has told me that Dorothy always wrote back and a lot of her letters talked about music, as she was highly musical.

In 1952, five years after her marriage, my sister Dorothy (Nelson) went to live on Marlborough Grove, in a house next door to Auntie Gladys, so she would see Dorothy more regularly during her visits. Dorothy (Nelson) recalls that Dorothy was very energetic and fond of the countryside and that she would go hiking in Wensleydale and Nidderdale and onto the Moors.

Dorothy (Nelson), moved in 1955 to Middlesbrough and then to Amesbury, Salisbury in 1959. Due to her move away from Ripon she lost touch with Dorothy, although did write to her on occasions and was always interested to hear how she was through other family members.

Dorothy (Nelson) also remembers that when Auntie Gladys died in 1972, Dorothy's visits to Ripon continued but she stayed with our uncle Wesley, our father's brother and Arthur's wife, Hilda.

My cousin, Michael Abbott, the son of my father's brother Wesley recalls that his early memories of Dorothy go back to when he was a small boy and Dorothy would come to visit Ripon and stay with my parents, his parents, or our father's step sister, Auntie Gladys. In the 1960s, during Michael's early years of marriage he lived next door to Auntie Gladys and would see Dorothy during her visits when she stayed with Auntie Gladys.

Michael has shared with me his memories of Dorothy's visits, when she would visit Wensleydale, a place she was very fond of. She would always miss the bus back to Ripon and be late for the evening meal that Auntie Gladys had prepared for her and Auntie Gladys would give her a 'ticking off'.

Michael has told me that like my own family, when Dorothy became unable to travel, contact was made through Christmas cards and letters which were responded to until the later years of Dorothy's life.

Michael's son Adrian was visiting friends in London in the weeks leading up to Dorothy's death. He took the opportunity to visit Dorothy in Barnet Hospital on a couple of occasions. On his first visit Adrian took some postcards which his father had asked him to pass on, including postcards of the Yorkshire Dales and of Ripon Cathedral, to remind her of her trips to Ripon.

Adrian was aware of Dorothy's love of music and to make her stay in hospital a bit easier he decided to buy a portable compact disc player and a selection of compact discs, so that she could listen to these whilst bedridden. On Adrian's second visit to the hospital, on his way back up to Ripon, he took the compact disc player and the compact discs with him placed them at her bedside. Adrian asked the nurses to keep playing the compact discs for her. A few days later Dorothy died.

My cousin, Barbara Clegg (nee Abbott), Michael's sister has also confirmed that she has clear memories of Dorothy's visits to Ripon which continued until Dorothy was unable to travel. Barbara also exchanged birthday and Christmas cards until Dorothy's death, although she did not receive any from Dorothy from 2002 onwards.

My cousin Colin Abbott, brother of Michael Abbott and Barbara Clegg died some years ago, however his wife Marion, has shared with me her clear memories of Dorothy. In 1987 Colin

and Marion's son, Richard, married and moved to Datchworth in Hertfordshire, as his wife's family lived nearby and it was close to Richard's work at GlaxoSmithKline. Dorothy lived about twenty miles away from Datchworth.

Marion would visit her son, Richard, two or three times a year and sometimes during these visits they would visit Dorothy. These thrice yearly visits with Dorothy took place from 1991 to 1996.

Marion recalls that the pattern of these visits changed quite markedly as the years went by. At first Dorothy would prepare them a 'sumptuous' tea, including dainty cucumber sandwiches, banana tea loaf and cherry and almond buns (a recipe which she had been given by Hilda Abbott during her stays in Ripon over the years). During Marion's visits Dorothy and her son Richard would play the piano and when the time came for them to leave Dorothy was often in tears as she was so attached to her Abbott connections.

Marion remembers two occasions when she was visiting Dorothy when Dorothy's friend, Dorothy Parr came to the door. When Mrs Parry saw Marion and Richard there, she immediately went away, knowing how much Dorothy treasured her time with the Abbott family. There was another occasion when Marion and Richard were visiting Dorothy when Sue Dingle, another friend of Dorothy's, who used to take her to church, called by. Richard and Marion persuaded Sue to stay and have tea with them and play the piano.

In 1995 and 1996, Richard and Marion's visits to Dorothy continue but she was no longer able to provide them with tea or play the duets on the piano with Richard.

On 10<sup>th</sup> February 1992 Richard and his wife had a daughter, called Judith. Richard used to take Judith to visit Dorothy, but by 1995 Marion recalls that Dorothy was not well enough to appreciate small children, as her health was clearly deteriorating and she was nearly blind and becoming quite senile.

Marion also used to have contact with Dorothy by telephone. On a Sunday evening, Dorothy Parr would dial Marion's number for Dorothy and then they would chat for a few minutes, mainly talking about different members of the family. Marion would also always send birthday and Christmas cards, together with an occasional letter, to Dorothy, about musical events in Ripon and family news.

Marion has told me that when her son, Richard moved to America in April 1997 her visits to Dorothy became less frequent but that Richard would always go and see her, if possible, when he was back visiting in the UK."

22. Mr Abbott had not seen Miss Loxston himself for some 50 years, but summarised her reputation in the family as a bohemian lady of decisive character, who did not react well to being told what to do. Asked what he meant by "a bohemian lady", he replied that she loved the Yorkshire dales, and often went off on her own for many hours; and did not come back for meals. Her dress was unusual, and not in keeping with what Yorkshire ladies in the 1950s, 1960s and 1970s normally wore.
23. Dr Richard Abbott's witness statement dealt briefly with his visits to Miss Loxston, which largely ended in 1997 when he went to the United States to live. However, there was one significant visit in the summer of 2001, to which I refer in more detail below.
24. It was obvious from the evidence of Mr Ronald Abbott, as well as from Dr Abbott's witness statement, that the family in Ripon was very fond of Miss Loxston and that the feeling was reciprocated. This is confirmed by the evidence of Dorothy Parry, Dr Ashwin and Mr Irving, to the effect that she often spoke of her family in Ripon and had photographs of them in the house.

## **The Detailed Evidence**

25. In this section, I summarise the factual evidence chronologically, except for the evidence relating to the execution of the January 2003 will and Mrs Richardson's evidence, which I summarise in later sections.
26. The main witness for the Claimant was Dr Ashwin, who is a retired lecturer and teacher. He has a PhD in the history of education. He has neither medical nor legal qualifications. He was an impressively careful witness, whose recollection was in many respects supported by what he wrote at the time. He has no material interest in the outcome and I have no hesitation in accepting his evidence as truthful and substantially accurate factually, although I do not entirely accept the correctness of the views he formed. He met Miss Loxston in about 1980 when they were both members of the Barnet Symphony Orchestra, and they also played chamber music together, mainly clarinet and piano duets, but sometimes involving other instruments and friends. He used to visit her weekly, and they would play music together and talk. He also took out to lunch or to concerts on other occasions and they were good friends.
27. In later years, Miss Loxston was less able to play her instruments, but he continued to visit her frequently and over the years and she gradually came to rely on him in a variety of ways, for example to organise the maintenance of and improvements to her house, correspondence with her doctor and Barnet Social Services, to arrange for medical treatment and to advise her on routine financial matters such as bills which she did not fully understand.
28. It is quite clear, not only from his own evidence but also from the evidence of Mr Rhodes and the contemporary documents, that Dr Ashwin adopted a very protective attitude towards Miss Loxston. He considered that she had led a very sheltered life, and was in some respects innocent and naive. There is a considerable amount of evidence demonstrating that one of his main concerns was her vulnerability to a variety of unscrupulous people whom she would let into the house and who would either steal from her, or obtain excessive payment for services which they pressed on her or, on occasions, pretended to have carried out but had not.
29. In April 1993, he became concerned about Miss Loxston's health, because on two occasions she had had minor seizures, and he wrote to her doctor about this. At about the same time, he contacted Mr Rhodes, and from then on they stayed in frequent contact about many matters concerning her welfare. Dr Ashwin said that, in 1993, Miss Loxston was still fairly well physically, and reasonably competent mentally. She dealt with her own bills and outgoings and still did her own shopping. His main concern, apart from the seizures, was her vulnerability to fraud. At this time, he saw her once a week or possibly more often. Mr Rhodes confirmed that Dr Ashwin was heavily involved in caring for Miss Loxston and that he was in regular contact with him from 1993 onwards, treating him as a trusted friend of Miss Loxston. He does not appear himself to have seen anything untoward in Miss Loxston's physical or mental state during his annual visits up to 1997. A note which he made on 10<sup>th</sup> May 1994 recorded that she did not take too much interest in her financial affairs, but that Dr Ashwin assisted her with them. In January 1996, he suggested, and she agreed, that a power of attorney was appropriate in view of her age and this was duly signed.
30. On 10<sup>th</sup> November 1997, Dr Ashwin wrote to Mr Rhodes to report another occasion on which Miss Loxston was taken advantage of by somebody who demanded payment for work which was not done, and also stole her purse. He also reported more generally on her position, as follows: -

"She is now unable to do her own shopping without help, and needs help with all the basic paper work, such as Council Tax. I don't think she is able to walk out on her own. She depends upon increasing ad hoc support from a small group of friends, including Miss Marjorie Stroud, Mrs Dorothy Parry and myself. I feel that the time has come when you need to intervene and use your power of attorney to provide her with proper help and support, and also get her used to the idea of such help on a regular basis, which is likely to increase if her condition deteriorates. I take the liberty of suggesting a couple of possibilities:

1. Miss Stroud presently spends a great deal of her own time and money

providing unpaid support, including driving her to shops, etc. I have no idea of her personal position, but would it be possible or appropriate to offer to put this on to some kind of regular paid footing? She is very good at dealing with Miss Loxston, and this course might be happier than bringing in an unknown care worker.

2. Appoint a professional care worker to visit her every day for a set period of time, do her shopping or take her to shops, arrange a cleaning schedule, etc. She might spend part of her day at a suitable day centre.

3. Consider or prepare for a care worker to live in, or spend part of the day and possibly the night at her home. This might be excessive at present, but could become necessary quite soon and perhaps with no notice.

The ultimate solution is to move her into sheltered accommodation or a home, but whereas I feel she would adjust to all the other options, she would be very unhappy and resistant to moving out of her home; nor do I think it is necessary at present."

31. In cross-examination, Dr Ashwin said that Miss Loxston's difficulties at this stage were not all physical. Previously she had been very competent with her paperwork, but by now she was finding it very difficult to understand, for example, council tax bills. Even if she could read them, she seemed baffled by them. She kept a wallet on the piano marked Clive and put in it anything she could not understand. As he put it, there was a difference between not knowing the value of her shares, and understanding how to pay her electricity bill.

32. This letter led to a meeting at Miss Loxston's house between her, Dr Ashwin and Mr Rhodes, at which the subject of a possible carer was raised, and the question of the improvements to the house which might be needed were discussed. However, on 20<sup>th</sup> December Dr Ashwin wrote to Mr Rhodes to say that, having given some further thought to the matter, he had decided not to proceed, because he did not think that either he or any other friend would be able to organise a system of care in the home, and that if she became too infirm to manage on her own, there would be no alternative but residential care even though she was opposed to this. In the course of this letter, Dr Ashwin wrote:

". . . the situation is not made easier by the fact that she does not always behave completely rationally, and is not always in a position to understand and agree to all actions which might be taken on her behalf".

This, he felt, might lead to a situation in which whoever was trying to organise her care in the home might be doing so "against a background of possible misunderstanding or disagreement from Miss Loxston."

33. However, when asked about this particular passage in cross-examination, what Dr Ashwin described was eccentricity rather than mental incapacity. He gave as an example the fact that Miss Loxston never bought shoes and wore shoes that were twenty or thirty years old and so worn as to be dangerous. They were the reason for some of her falls. Yet she was adamantly opposed to taking them for repair. In the end Dr Ashwin found a firm which manufactured shoes for old people, took a template and bought them, putting the old shoes in the bin. When this had been done, Miss Loxston was delighted and never mentioned the fact that the old shoes had gone. Similarly, once it became clear that it might be necessary to bring somebody into the house, there was discussion about the spare bedroom which was in a dreadful state. Dr Ashwin said that Miss Loxston did not want the work done; she could not think forward to the situation that it might be in six months time. However, when the work was done, she was delighted.

34. In March 1998, Dr Ashwin wrote to Miss Loxton's doctor to seek advice as to her poor sight and as to what appraisal would be needed if it became necessary to have someone living in the house, since she was "very opposed to the idea of residential care". In connection with this letter, Dr Ashwin was asked whether it did not relate to merely physical rather than mental problems; his reply - which was



echoed in some later evidence from Mr Irving - is that the decline in sight led to Miss Loxston being less mentally engaged.

35. On 17<sup>th</sup> October 1998, Dr Ashwin wrote to Mr Rhodes to advise him that Miss Loxston was to have an operation for a cataract on 22<sup>nd</sup> October and again this letter is worth quoting at some length: -

"Miss Loxston's condition has deteriorated in several respects in recent months. She is now generally unable to leave the house unassisted and finds difficulty getting around the house. She depends upon friends and her clear Mrs Richardson for most or all of her shopping. Although her sight will hopefully be improved by the operation, she has difficulty in writing cheques and dealing with domestic finance. Her short-term memory is poor and confused.

In the absence of anyone else who may do so, I feel I should ask you to approve some steps to ensure her comfort and security in the present and near future. You will remember that when I wrote on 20<sup>th</sup> Dec I decided not to proceed with the refurbishment of her guest room with a view to resident care in the home, for reasons which I set out in that letter. However, the problem with the present situation became clear when the hospital asked me if it were possible to have someone stay overnight on the day of the operation, and her guest room is in such a state of dilapidation that it was not possible to find someone to do so. (I would have been prepared to stay and bring my own camp-bed, but I am already committed.) It is quite possible that, quite apart from the question of long-term nursing care, it might be very useful to have her accommodation in a condition suitable to have an overnight guest for such occasions, temporary illness, etc.

In anticipation of our meeting on Monday 9<sup>th</sup> November I would ask you to consider the following steps:

1. Ensure that all regular bills and are paid direct debit.
2. Agree some simple and dependable way of ensuring that she always has cash for day to day expenses such as shopping, laundry, milk.
3. Make funds available to clean and re-decorate her guest room and bath room and re-furnish the bedroom, so that it could be used at short notice if necessary (for example in the event of temporary illness). Buy linen, towels, etc as required.
4. Her some help Mrs Elizabeth Richardson is nominally employed to clear for two hours per week, but in fact spends a great deal of additional time on shopping for her and ensuring that she has food, etc. My assessment of Mrs Richardson is that she is a genuine and caring person, and Miss Loxston likes her very much. I would suggest that you put Mrs Richardson on to a more substantial basis as home help so that she is reimbursed for time spent on numerous other activities other than cleaning. I would be happy to oversee Mrs Richardson's commitments, but I would prefer that you paid her directly by cheque, say on a monthly basis. . . ."

36. This letter is relevant for a number of reasons. First, this is the first reference in the correspondence to Mrs Richardson, and as is clear from the passages emphasised above Dr Ashwin was at this time very positive about her. This is important because of what Mrs Richardson said in the course of her oral evidence, to the effect that Dr Ashwin had taken against her, and tried to get rid of her, right at the beginning of her employment. Nothing of this kind was put to Dr Ashwin in the course of his evidence, and all that Mrs Richardson had said in her witness statement was that she had from time to time received notes from Dr Ashwin, some of them containing unpleasant allegations, and that she had a feeling that he had some reason to think that the authorities should be checking upon her.

37. Dr Ashwin was again asked whether this letter related to Miss Loxston's physical and mental state, and he said that it was both, and indeed the letter does refer to Miss Loxston having difficulty in writing cheques and dealing with domestic financial matters, as well as to her poor short-term memory.
38. In relation to a further passage in the letter, not quoted above, his evidence was that Miss Loxston tended to speak of matters, such as private financial affairs, about which most people would be reticent, and that he thought that the information as to her financial affairs was sensitive, and that she needed protection in this respect. On a couple of occasions, he had collected papers and sent them to Mr Rhodes, and asked him to arrange for the bank not to send her financial statements, but this had not been entirely successful.
39. Shortly after this, Marjorie Stroud accompanied Miss Loxston to the local hospital for her cataract operation, and what happened is recorded in her letter of 22<sup>nd</sup> October 1998 to Dr Ashwin: -

"After about half an hour at the hospital Dorothy was examined by a doctor and I was present. He explained that both eyes were in roughly the same condition and the cataract operations could not be expected to make more than a small improvement, the risk of the operation going wrong was one in ten. He was very concerned at Dorothy's constant giggling and fidgeting and expressed grave doubts about a local anaesthetic and suggested that a general one would be more appropriate. Dorothy didn't like the idea and in the end the doctor finally agreed to do the operation, but after consulting with the anaesthetist, he said they would leave her to last (ie of the morning session), so that the anaesthetist could be present throughout. About 11am Dorothy had to be prepared for the operation and duly went in the operating theatre. Only to return after about ten minutes! The anaesthetist said that when they put her on a couch, she was giggling and, there and then, she and the doctor decided that it was too risky to operate by local anaesthetic. After she had got dressed, I asked if they would please arrange for transport home and was told that because we had actually made our own way there, under the rules, we were expected to make our own way home. I was disgusted as this and asked to speak to their transport people. Someone eventually came to see me and I won the day. They arranged for a mini-car and paid for it. We arrived back just before 1pm.

Where do we stand now! Dorothy will need to have the operation by general anaesthetic at City Road. They said it might be in about two weeks' time. . . ."

40. Three weeks later, Marjorie Stroud tried to assist Miss Loxston to complete an application for an Attendance Allowance, and again her letter to Dr Ashwin of 11 November 1998 is eloquent: -

"I came across this package, quite by accident, when I was on the point of leaving Dorothy, having spent a very stressful 1½ hours with her. For example, it took about ¼ hour, and a great deal of patience on my part, to get an answer to a very simple question as to when she was likely to need more money from the bank! Then I thought she might like to have a chat with Ernie, who used to take her to the Wed. orchestra and lives in E Barnet. I got him on the phone and heard her telling him that she didn't go through with the eye operation because she was kept waiting a long time and had no one to talk to! I think I shall have to limit my future visits to ½ hours' discussion about what she has listened to on Radio 3!! If I don't I am unlikely to live to the year 2003, let alone live to be 93.

In my view, these forms need some combined thought before attempts at completing them. As I see it, Dorothy's chief problems are her sight and to a lesser extent her deafness, but mainly her deteriorating mental state, leaving her generally vulnerable. Liz and Dorothy Parry see her more frequently than I do - although I try to see her at least once a week - and they may be able to cite some specific problems that she has. For the future, I wonder how long it will be safe for her to live alone - sometimes I think she will set fire to the house by having one of her chairs in the front room far too close to the fire.

When I mentioned it yesterday, all I got in reply was; "it's all right". . . ."

41. Accordingly, Dr Ashwin took over the task of completing the application by - as he put it - trying to write down her answers or, where they were not coherent, answering for her as objectively and honestly as possible.
42. Her illnesses and disabilities were described as follows: -

"I am partially sighted and hard of hearing. I walk slowly and with difficulty. I cannot remember things easily. I cannot go out of the house without help. I cannot cope with things like washing clothes, cleaning etc."
43. Dr Ashwin again said that he did not regard the disabilities as merely physical. Such tasks required a certain mental effort which she was losing the ability to make. For example, she was no longer washing properly and this was not a physical thing, forgetting to wash was part of her mental state. Similarly, the inability to shop was not merely physical, it was also a matter of organising what was needed. Again, there was a lack of interest in food hygiene resulting in decayed food being in the fridge, and she would say of some bills which she could not cope with "I'm worried about it and it's going round and round in my head". There was no diagnosis of dementia, or specific clinical condition, of which she was aware, but there was general mental impairment.
44. This is borne out by other passages on the form: -

"Need to be reminded to wash clothes and change clothes. Need to be reminded to wash or bath . . . need someone to get shopping for me . . . help me to check my fridge and keep it in order, keep the kitchen clean and tidy. Help me to sort out bills, paperwork etc. Keep the home clean and tidy . . . I worry about domestic things like bills and correspondence, I need help and advice to deal with them. I cannot get to the bank and friends bring me cash to pay the milkman etc . . . I cannot remember many recent events or appointments for the future. I find all reading difficult, also writing . . . I need help with shopping, cleaning, my personal washing, routine paperwork, bills etc . . . poor memory and often confused about dates, times and facts. Neglects cleaning and hygiene unless prompted. . . ."
45. In relation to the above, Dr Ashwin was asked, in effect, how this was compatible with the evidence of Mr Irving that Miss Loxston was able a few months after this to beat him at scrabble. Dr Ashwin replied that Miss Loxston would respond to personal interaction, but could not deal with inanimate matters such as seeing to a bill.
46. Dr Ashwin said in his witness statement that Miss Loxston's mental and physical deterioration was steady and continuous after this. Although there were occasional fluctuations in her condition, she never improved significantly and he never saw what he would call a "lucid interval". In his oral evidence, he explained that what he meant by this was that there was a deterioration in the degree of rationality which she retained; it declined steadily with no sudden improvement.
47. On 18<sup>th</sup> November, Mr Rhodes wrote to Dr Ashwin, referring to a meeting which they had had with Miss Loxston on 9<sup>th</sup> November, and this letter contains the following passage relating to Mrs Richardson: -

"I have visited Mrs Richardson and from what she told me it would appear that she does many more hours than the number she is paid for. Apart from cleaning for Miss Loxston I understand she does her shopping, helps her with her washing as well as providing some companionship and general help. I advised Mrs Richardson that you would be asking her on behalf of Miss Loxston to formally extend her range of duties and that we would expect her to formally visit Miss Loxston at least three times a week. As a result of this I would expect her hours to increase to five or six and that we would remunerate her at £5 an hour."

I have no doubt that Mrs Richardson will visit Miss Loxston more than three times a week and see her for more than five or six hours as I understand that they have become quite friendly with each other and in the past week Mrs Richardson has helped Miss Loxston bake a cake and done some sewing for her. I trust these arrangements meet with your approval.

I should be most grateful if you would kindly mention to Miss Loxston that she no longer need pay Mrs Richardson as I will be meeting these expenses."

48. On 10<sup>th</sup> December, Dr Ashwin wrote to Dr McElligott, enclosing a copy of the application for Attendance Allowance, and this letter contains the following relevant passage: -

"I am writing in connection with one of your patients, Miss Loxston of 38 Albermarle Rd, East Barnet. Miss Loxston is now 93, lives alone and has no surviving relatives with whom she has regular contact. In the absence of relatives, she depends upon one or two old friends, including myself. For some time now she has been unable to do her own cleaning, washing, shopping, etc. and employs a regular paid home help. She now finds reading almost impossible, and her financial and similar matters are dealt with by her personal banker in consultation with myself.

I am making an application for Attendance Allowance to help to cover the cost of paid home help, and I have named you as her GP on page 10 of Section 1. I am sending the form to her personal bank manager to complete the financial sections. I enclose a copy of the form with the sections which might relate to your appraisal of her needs. I hope very much that if you are asked for an opinion you will feel able to support the application. Completing the form has been difficult because she cannot read well enough to complete it herself, and like many old people either forgets or denies events such as her falls. However, everything in the responses can be verified by other friends and acquaintances who have regular contact with her.

The main issues are: poor sight (according to the Moorfields consultant registrable as partially-sighted), poor hearing, poor mobility, inability to maintain normal household duties such as cleaning, personal cleanliness etc, poor and often confused memory. In spite of this she is generally happy and wishes to continue living at home as long as she can.

She is due to go into Moorfields Hospital for a cataract operation on Monday 14<sup>th</sup> Dec. This will be done under general anaesthetist as a previous attempt under local did not prove possible because of her mental state. I have tried to arrange support for the post-operative treatment of regular drops, and I hope that Moorfields might offer some home support. However, I am sure that a visit from you would be welcome. She should be at home again on Tuesday 15<sup>th</sup> Dec pm, but I would advise you to call in advance should you decide to visit."

49. On 26<sup>th</sup> December 1998, Dr Ashwin wrote to Mr Rhodes to report that the cataract operation seemed to have gone well and that the decoration of the back bedroom, bathroom and toilet was the start of the following week. Various suggestions were made as to the decorations, maintenance and furniture in the house, including the fitting of a new lock since Miss Loxston had lost both her own keys and had given a number of other people keys but could no longer remember who they were.
50. There was further correspondence in January and February 1999. On 10<sup>th</sup> January Dr Ashwin wrote to Mr Rhodes about the decoration and furnishing of the house, and suggested that Mrs Richardson should be asked to accompany Miss Loxston to Moorfields Hospital because "if she goes on her own she gets confused and panicky and might leave without completing the appointment". Mr Rhodes replied that Mrs Richardson had agreed to do so. On 13<sup>th</sup> January 1999, Mr Rhodes wrote to ask for

Dr Ashwin's views on Mrs Richardson's request to increase her wages to £50 per week, since she now spent a couple of hours each day with Miss Loxston, including at weekends, and about Mrs Richardson's concern that Miss Loxston had little or no cash and had been unable to pay the gardener (at that stage not yet Mr Irving). Dr Ashwin agreed with Mrs Richardson's suggested wages, and suggested that he should give Miss Loxston cash in return for a cheque. On 25<sup>th</sup> January and 2<sup>nd</sup> February 1999 Dr Ashwin wrote to Dr McElligott and to the Barnet Elderly Unit to seek an assessment of Miss Loxston's condition; in the letter to Dr McElligott, he said that he found himself increasingly taking decisions on her behalf as her closest friend and referred to her inability to make practical day to day decisions. In the letter to the Barnet Elderly Unit, he referred to her inability to bath alone.

51. On 17<sup>th</sup> February, Dr Ashwin wrote to Mr Rhodes to report that most of the work at the house was complete, and that he was applying to place Miss Loxston on the Barnet Council's Lifeline service. This letter contains another passage which is relevant to Dr Ashwin's attitude to Mrs Richardson: -

"Miss Loxston has deteriorated over recent months and is now totally dependent upon Mrs Richardson for her shopping, cleaning, washing, and, to a greater extent, company and advice. This requires virtually daily attendance, and on some days on more than one occasion. Mrs Richardson has also agreed to be named as the first contact on the Lifeline service, which means that she will make herself available by day and night if an emergency arises. (I am named as the second contact.)

In the circumstances, I would recommend that you increase Mrs Richardson's employment to 12 hours per week, which I feel is less than the hours she is already doing. I will undertake, as before, to liaise with Mrs Richardson to ensure that the time is being well spent in Miss Loxston's interests. I now have the District Nurse involved on a regular basis, and she will be a valuable source of expertise and advice.

Taking a longer view, it seems clear that collectively we are gradually moving from a supportive role to more of an in-house caring role. Miss Loxston is now quite unable to cope with the physical demands of living in her home without a great deal of help, and in my view her mental faculties are noticeably declining. She has little short-term memory and can behave in irrational and sometimes dangerous ways (such as recently letting an unknown man into her home at 8pm).

I am awaiting notice from Barnet Council to undertake an appraisal of her situation. However, in the meantime you might consider whether it would be worth commissioning a professional appraisal of her mental and physical condition so that we fully understand her condition. I assume that the Bank must have encountered such situations in the past."

52. Dr Ashwin also wrote in this letter that in his view Miss Loxston's mental faculties were "noticeably declining". She had little short term memory and could behave in irrational and sometimes dangerous ways (such as letting an unknown man into her home at 8pm). He suggested that consideration might be given to commissioning a professional appraisal of her mental and physical condition. Mr Rhodes replied that consideration should be given to registering the power of attorney, and said that he was not qualified to assess the state of Miss Loxston's health. Dr Ashwin responded that he had not meant that he should personally assess it, he suggested that an assessment should be undertaken by Barnet Social Services, although he had so far failed to persuade them to do it despite the understanding that they had a statutory duty to do so. He said that he had not found her GP, Dr Miles, very helpful or informative. He said that he had discussed the situation with Age Concern, and said that they had advised obtaining enduring power of attorney as soon as possible, since this could only be done while she remained in a rational state since otherwise an application to the Court of Protection would have to be made; clearly at this stage Dr Ashwin did not appreciate that the power of attorney had already been obtained. Mr Rhodes wrote to Barnet Social Services requesting an assessment of Miss Loxston's condition, but can tell from the evidence this never happened.
53. In early April, one of the matters which Miss Loxston put in the wallet file for Dr Ashwin was a letter from an accountant at Midland Bank relating to her tax affairs. Dr Ashwin said that Miss Loxston did

not know what the accountant was talking about, and he wrote to Mr Rhodes about it on 11 April 1999, suggesting that he should assemble the financial information and forward it. He also referred to Miss Loxston's new spectacles being a great success, and to her sitting down at the piano and starting to play. Dr Ashwin's evidence about this was that he encouraged her to play but that by this stage she was losing the coordination between her brain and her hands. He, Miss Loxston and Marjorie Stroud played in a trio (Marjorie Stroud played the cello), but before Marjorie Stroud died in early 2000 Miss Loxston had ceased to be able to participate in this.

54. In May 1999, Dr Ashwin decided to dispense with the services of the gardener, Mr Holding, because he was neglecting the work, and to appoint Mr Irving in his place. Mr Irving had worked for him for 15 years, and had also worked for Miss Loxston before in 1981-2. Mrs Richardson's evidence is that Miss Loxston did not wish to this, and this is borne out by Dr Ashwin's letter to Mr Rhodes on the subject dated 2<sup>nd</sup> May 1999 which suggests that she may have initially have resisted a change out of a sense of loyalty to Mr Holding, although she by now welcomed a more reliable arrangement. Mr Irving was therefore employed to do four hours per fortnight, maintaining the garden and carrying out minor maintenance jobs in the house. Mr Irving's evidence is to the effect that Miss Loxston's mental faculties deteriorated noticeably over the period in which he worked for her, and that by January 2003 she had become very withdrawn and difficult to communicate with. I refer to this evidence in more detail later.
55. In June 1999, Dr Ashwin retired and moved to Norfolk; after that he spent a week in London every month, and tried to visit Miss Loxston once or twice in the week, spending an hour or an hour and a half with her and perhaps taking her out to lunch. He wrote to tell Mr Rhodes that he would be visiting Miss Loxston less often in the future on 12<sup>th</sup> June 1999, and this letter also refers to the arrangement with Mr Irving working out very well. Miss Loxston liked him, and he was completely honest, trustworthy and reliable. Dr Ashwin suggested he should now spend four hours a week, taking on the tasks which Dr Ashwin had previously undertaken. He was also prepared to be named as a keyholder in the lifeline scheme.
56. On 5<sup>th</sup> July Mr Rhodes confirmed that the new arrangement had been made with Mr Irving, and that there was an enduring power of attorney which he considered it might now be appropriate to register with the court. For that purpose, he asked whether Miss Loxston had any living relatives.
57. Dr Ashwin replied to Mr Rhodes' question about Miss Loxston's relatives, stating that he could only identify two possible relatives, Kathleen Abbott and Mrs Marion Abbott. Neither Kathleen Abbott nor Miss Loxston had been able to remember the precise nature of their relationship, which "sounded something like a second cousin via Miss Abbott's grandfather" and Mrs Abbott was related by marriage. Dr Ashwin said that he had discussed this with Miss Loxston; by this stage she was articulate and could express sentences, but her logic was confused and the meaning had to be extracted from what she said. He had also looked at her address book to get the addresses for Mr Rhodes.
58. In October 1999, Mrs Richardson telephoned Mr Rhodes to say that Miss Loxston was becoming more and more dependent on her and that she was now spending five or six hours a day there. She asked for her wages to be doubled to £120 per week, which Mr Rhodes thought was reasonable. He met Dr Ashwin to discuss this. Dr Ashwin's letter of 20<sup>th</sup> October 1999, referring to it, stated that Miss Loxston was in the position of close dependants upon paid help and that "we are very fortunate to have Mrs Richardson and Mr Irving in this role". This - coming at least a year after Dr Ashwin had become aware of Mrs Richardson's role - is inconsistent with her evidence that he was antagonistic to her from the start.
59. In March 2000, Dr Ashwin and Mrs Richardson agreed that Miss Loxston could live with her for about a week while alterations were made to the house to put in a downstairs toilet, and Dr Ashwin wrote to Mr Rhodes to suggest that she should be paid extra for this; however, the work was deferred. Later in March, there was a suggestion that Mrs Richardson's husband, who is a builder, should do the work. Dr Ashwin wrote to Mrs Richardson, in polite terms, stating that she could not authorise major

changes to her affairs because Mr Rhodes had power of attorney, and sent a copy of the letter to Mr Rhodes, stating that he was anxious about the possibility of Miss Loxston authorising major works on her own. The letter to Mr Rhodes states "otherwise, the relationship with Mrs Richardson is very good so I don't want to do anything which would upset her". Dr Ashwin was wrong, in the letter to Mrs Richardson, to say that it was not possible for Miss Loxston to authorise work on her own, but the importance of the correspondence is again that Dr Ashwin was not antagonistic to Mrs Richardson. In cross-examination, Dr Ashwin agreed that Mrs Richardson was being very helpful and supportive to Miss Loxston at this time and that they had developed a good relationship or companionship. The evidence suggests that, up to the end of March 2000, Dr Ashwin's view of Mrs Richardson remained largely positive. The letter of 26<sup>th</sup> March 2000 also refers to Miss Loxston's "confused mental condition" and suggests that it might be advisable for Dr Ashwin to hold her cheque book and supply her with weekly spending money, because of the risk that she might be persuaded to write a large cheque without Mr Rhodes' knowledge and approval.

60. On 14<sup>th</sup> April, Dr Ashwin wrote to Mr Rhodes to express his concern that Miss Loxston had in the last few months written several large cheques without clearly knowing why. This was triggered by her having written a cheque for £500 in favour of Mrs Richardson and having agreed with her the installation of a gas fire costing several hundred pounds, without notifying Mr Rhodes. He was also concerned that he could no longer visit Miss Loxston as regularly as before and supply her with cash, and that Miss Stroud, who had sometimes done so in his place, had now died. He therefore suggested that this could be done by adding the necessary amount to what was paid for to Mrs Richardson for wages and weekly shopping expenses. He concluded: -

"I would like to agree with these principles with you and Mrs Richardson's presence so that there is no confusion. I will bring Miss Loxston's cheque book to the meeting, and I would like you as the person with power of attorney to decide whether it is prudent to leave it in her possession."

61. This led to a meeting on 17<sup>th</sup> April, which was the only meeting between Dr Ashwin, Mr Rhodes and Mrs Richardson, as well as Miss Loxston herself were present.
62. At the meeting, there was discussion about the two cheques which (as Mr Rhodes put it in his note of the meeting) "did not carry the prior approval of either himself or Dr Ashwin". This reflected their view of Miss Loxston's vulnerability at the time, although of course she was entitled to write cheques without their approval. According to Dr Ashwin's witness statement neither Miss Loxston nor Mrs Richardson was able to explain the reason for either cheque, but Mr Rhodes' note of the meeting states that the gas fire was "much needed and worthwhile" and I find that it was agreed at the meeting that this had been a necessary expense. Mrs Richardson claimed that the cheque for £500 was for back pay, but her wages were paid directly by HSBC. Nevertheless, Dr Ashwin and Mr Rhodes do not appear to have taken issue with her over this, but Miss Loxston agreed that her cheque book should be taken from her, and it was also agreed that Miss Loxston's cash float should be topped up by £20 per week, which would be added to the £40 per week paid to Mrs Richardson for other outgoings. There was also discussion about fitting the bathroom downstairs with a shower and toilet, but Miss Loxston was against it for the time being; a later note refers to her being "agitated" about this suggestion.
63. Both Mr Rhodes and Dr Ashwin's evidence is that, at this meeting, Miss Loxston suddenly said: "Liz wants me to leave her this house". This was something which she had said to Dr Ashwin on previous occasions, and also to Mrs Parry, and on these occasions Mrs Richardson had laughed the matter off as a joke. Dr Ashwin had said that on this occasion he was shocked by it, because it was blurted out entirely out of context and unprompted. Mr Rhodes responded by telling Mrs Richardson that she had no authority or responsibility in Miss Loxston's legal or financial affairs and should confine her involvement to the duties for which she was employed.
64. It is clear that both Dr Ashwin and Mr Rhodes regarded Miss Loxston's remark as quite out of place at the meeting, but it is difficult to see why. Dr Ashwin was a close and disinterested friend. Mr Rhodes

was the person who was looking after her affairs on behalf of a bank which had previously assisted her to make will. He did not visit her often and it seems to me to have been an entirely appropriate occasion on which to raise the subject. That she did so in an awkward manner is not surprising at her age, and it is regrettable that Mr Rhodes did not take the opportunity of discussing Miss Loxston's testamentary arrangements with her, having first asked Mrs Richardson and Dr Ashwin to withdraw.

65. Following the meeting, Dr Ashwin wrote to Mr Rhodes to confirm the altered financial arrangements, sending a copy to Mrs Richardson. The letter contained the following passage: -

"4. Major items such as furniture or work on the house may only proceed with your prior knowledge and approval.

5. All long-term decisions in relation to Miss Loxston's finances or legal matters should only be made in private consultation with you. We appreciate Miss Loxston sometimes jokes about her assets or her will, but we feel it is not in her best interests to pay attention to such comments or to raise the matter with her."

66. Dr Ashwin said that he put the matter in this way, rather than record what Miss Loxston had actually said, because he was "trying to settle things down" and to convey what had been agreed at the meeting, that financial affairs should only be dealt with by Mr Rhodes. Mrs Richardson had said after the meeting that she would no longer have any involvement in Miss Loxston's financial or legal affairs, and Dr Ashwin had been relieved by this.
67. In a letter dated 23<sup>rd</sup> April 2000, Dr Ashwin referred to his understanding that Mrs Richardson was making a claim for paid leave and suggested a confidential conversation away from Miss Loxston's home to discuss whether Mrs Richardson might be "collecting implied contractual commitments" entitling her to pay sick leave, vacation leave and so on. They met on 2<sup>nd</sup> May 2000. Dr Ashwin's notes indicate that he saw it as a plus that Mrs Richardson was liked by Miss Loxston and took care of her but that she was "manipulative? eg will, house, building work . . . tended to isolate D - eg D. Parry." Dr Ashwin expanded upon this in his witness statement: -

"During a meeting with Mr Rhodes at his Enfield Offices on 2<sup>nd</sup> May 2000, to discuss Dorothy's care, I expressed my growing concern about Mrs Richardson's attitude and behaviour. I advised him that she had become increasingly inquisitive about Dorothy's assets and her will. Mrs Richardson had previously asked me questions which indicated that she knew that Dorothy owned a substantial portfolio of shares. She expressed doubt as to whether Dorothy's affairs were being properly looked after by the Bank and suggested that Dorothy should seek additional advice on financial matters. This all took place in Dorothy's presence. She appeared to know that Dorothy owned her house. Part of Dorothy's child-like behaviour was that she became very indiscreet about her personal affairs and would happily tell other people confidential things about her finances and show them documents, statements etc.

At my meeting with Mr Rhodes on 2<sup>nd</sup> May 2000, I also advised him that Mrs Richardson had tried to frustrate the plans agreed with Barnet Social Services to convert the ground floor of Dorothy's property to satisfy her needs. I also raised my concerns over Mrs Richardson's behaviour towards Dorothy's oldest friends and visitors, such as Mrs Parry and Miss Dingle, she appeared to be trying to discourage visitors and isolate Dorothy. Mrs Parry, one of Dorothy's oldest and most loyal friends, told me that she had become so afraid of Mrs Richardson that she ceased visiting all together. I stated to Mr Rhodes that in my opinion Mrs Richardson was becoming increasingly manipulative."

68. Mrs Parry's witness statement contains the following passage: -

"In my opinion Dorothy's poor state of health left her vulnerable and open to being easily persuaded to do things. Dorothy became very childlike, she would often ask me if I would



like her house and I would always say no and that her house had been dealt with in her will.

Dorothy often told me that Mrs Richardson was always asking her to leave her house. I told Dorothy to tell her no and tell her that she already had a will in place which dealt with her house. Dorothy mentioned to Mrs Richardson that I had said this to her and this made Mrs Richardson so angry that I received an abusive telephone call from her. Mrs Richardson told me to stay away from Dorothy and to not to visit her anymore. During this telephone conversation Mrs Richardson came across as being very vindictive and vicious. She informed me that she would get the police, social services and her husband to 'sort me out'. Throughout the telephone conversation she was screaming at me and telling me that I was upsetting Dorothy.

After this telephone conversation with Mrs Richardson, I telephoned Dorothy and asked her if I had upset her and she said that I had not. I also asked her if she still wanted me to continue visiting her and she said that of course she did."

69. Dr Ashwin's general description in his witness statement of Miss Loxston's state in this period was as follows: -

"By 1999 Dorothy was no longer able to leave the house unassisted. She was only able to ascend the stairs with great difficulty, the only toilet and bathroom being on the first floor. She often used to go upstairs on all fours and descend on her bottom. She was no longer able to bath herself or wash properly, depending upon weekly visits from a district nurse. Mentally, after having been for many years a regular reader of a broadsheet newspaper, Dorothy lost interest in local, national or international affairs. She became unaware of any major news issues of a local or national nature. Dorothy never owned or watched television and never listened to news or current affairs on the radio. Apart from local free newspapers, the only single occasion I saw a newspaper in the house was a tabloid brought in, I believe, by Mrs Richardson. The only book I recollect seeing in her hands for the last two years of her life was Mark Twain's 'A Tramp Abroad' and I believe she occasionally looked at the pictures but never read it in any sustained way. As she no longer did her own shopping or paid her bills, she lost interest in housekeeping affairs.

For the last two to three years of her life Dorothy appeared to be generally incapable of making a telephone call or writing a letter unassisted. It was very unusual for Dorothy to telephone me after 1997/1998 and during the last three years I do not recall her telephoning me at all. I did not telephone Dorothy very often as on one occasion she had been going to answer the telephone and fell and I was concerned that by telephoning her I was putting her at risk.

During the last three or so years of Dorothy's life she became increasingly passive in reactions and showed no strong interests in anything. Up until 1999 she had constantly listened to Radio 3; however from 1999 onwards I rarely found her listening to the radio.

Dorothy became increasingly childlike and eccentric in her behaviour, often behaving in an indiscreet or dangerous manner, for example permitting unknown people to enter her house, even after dark. This led to thefts and exploitation by rogue tradesmen as I have explained above. She often behaved strangely to friends and guests. She obtained a policeman's truncheon and made feigned assaults on visitors, sometimes striking them playfully with the truncheon or with her walking stick. I explained that this could be dangerous and might unintentionally injure someone. Dorothy would often seize the hand of a visitor and refuse to let go, even when they wished to leave. Her grip was very strong and could hurt. This behaviour was often accompanied by loud giggling, and this could transform into hoots of 'stage laughter'. She sometimes exhibited this type of behaviour in moments of stress. On one occasion during my visit, when Mrs Richardson had to leave Dorothy seized Mrs Richardson's hand and refused to release it. We treated this as a joke,

but Mrs Richardson could only release her hand by the use of moderate physical force.

Dorothy seemed to wish to revert to her childhood status of the 'baby' of the family, and enjoyed being called by childhood pet name of 'Muffet', which was short for 'Miss Muffet'. She repeatedly behaved in a child-like and irrational manner notwithstanding the repeated cautions of friends. . . .

Having spent more of her life as a spinster living with her late widowed mother and elder brother, I believe Dorothy enjoyed the feeling of having a maternal authority figure in the house again. Dorothy never appeared to understand that Mrs Richardson was paid a salary for her duties, from funds drawn from Dorothy's own assets, but she kept asking how she could repay her. Dorothy said that Mrs Richardson gave her good advice on a range of matters, including financial issues."

70. In August 2000, Mrs Richardson contacted Mr Christopher Thomas, the sole principal of Braikenbridge & Edwards, and asked him to visit Miss Loxston to take instructions for her will. He went to Miss Loxston's house and was let in by Mrs Richardson. He saw Miss Loxston alone. Mr Thomas received instructions to draw up wills on average about twenty times a month and had dealt with elderly clients on many occasions, including some centenarians.
71. Mr Thomas described his general practice with elderly clients. He would start by checking if the client could see and hear him comfortably, and then ask questions, trying to develop matters slowly so as to find out what he could about the client. He would ask straightforward questions such as full name, address, date of birth and then go on to ask about the family. He liked the client to tell him about the family, as it was a good indication of memory. It was essential to know whether the client knew what a will was and, in his view, creating a will required knowledge of what was being disturbed, and therefore to try to find out the contents of the previous wills. One could then see what changes were required and why and this gave a good indication of the client's level of understanding, especially important with elderly people.
72. Mr Thomas said that, with a lady of that age, the question of capacity was always uppermost in his mind, and that he would not have completed a will without a doctor at least witnessing it. Equally, he was also always aware of the possibility of undue influence, and therefore would seek to find out the extent of the client's contact with the outside world, in particular which members of the family or friends visited and how often.
73. In this case, although Mr Thomas spent about an hour to an hour and a half with Miss Loxston, he did not receive clear instructions which enabled him to proceed to prepare a will for her: the meeting "ground to a halt on the question of whom she wanted to benefit". On the question of her understanding to what a will was, Mr Thomas said that he would have asked her, and that the absence of any note as to her response meant that she was unable to tell him. Further, there is a note of her saying that there was a previous will ten or twenty years ago, the whereabouts of which were unknown (in fact she probably still had a copy of the will at the house). As to family, Miss Loxston told Mr Thomas that she only had the one brother, who was deceased, as well as cousins on her mother's side whom she did not see very much. When he raised the question of family and friends, Mrs Richardson's name came up as a possible beneficiary, and Mr Thomas noted it, but matters went no further. The sparse notes made by Mr Thomas support his recollection that, by the end of quite a long meeting, Miss Loxston had not given instructions and did not appear to know what she wanted to do. Mr Thomas said that he formed no view as to her competence to make a will, because matters had not gone far enough for him to need to do so. He did not consider, however, that Miss Loxston had at any stage been unable to understand what he said to her, and said that her faculties seemed to be good; what was striking was her indecision.
74. In his witness statement, Mr Thomas said of Mrs Richardson that he had no reason to believe that she was anything more than the conveyor of messages and information from Miss Loxston (the further contacts between them are dealt with below) and added:

"I have little doubt Mrs Richardson knew and accepted that she could not and should not be involved in what I was being asked to do for Miss Loxston. I do not have any reason to believe that she was seeking to influence Miss Loxston into making decisions about her will and to state in any way whatsoever."

75. Asked on what this was based, Mr Thomas explained that he had never felt that Mrs Richardson was acting outside the normal ambit and that she had behaved quite appropriately. Housekeepers have warning signs all over them, but when he got to the house Mrs Richardson introduced Miss Loxston and behaved properly; he was not sure whether he had to ask her to leave, but either she did so promptly or without being asked. This was not always the case and sometimes clients actually wanted the comfort of a friendly face at the meeting.
76. On 22<sup>nd</sup> August, Mr Thomas wrote to Miss Loxston, to ask if she had decided to whom she wished to leave her estate, and to say that if she wanted to have a further meeting to let him know.
77. On 24<sup>th</sup> August, Dr Ashwin went to see Miss Loxston and on the following day wrote to Mr Rhodes the following terms: -

"I visited Miss Loxston yesterday. She told me she had been visited recently by a member of a local solicitors, Braikenbridge and Edwards of 30 Church Hill Rd, East Barnet EN3 (tel. 020 8449 1171). According to her it was something to do with her legal or financial affairs. She said he had shown her some papers, but she was unable to tell me anything else about the purpose of the visit.

I have for some time had a suspicion that someone is attempting to influence Miss Loxston in regard to the disposition of her assets, within or after her lifetime. I feel it is inconceivable that she would have initiated a visit from a solicitor on her own account and unprompted. She is now not able to make competent decisions about her own affairs unaided by an disinterested party and would be vulnerable to persuasion by an interested party with access to her.

Mrs Richardson tells me that she has no knowledge of the visit in question."

78. He was asked in the cross-examination whether Miss Loxston might have resented being cross-examined, and therefore had been unwilling and unable to tell her anything about the visit, but he said that this was not so. She had referred to it and if she had wished to keep it confidential she need not have done so. She had said that she did not know what the meeting was about and he had asked her "don't you know anything about it at all" and she had replied "no". He then asked Mrs Richardson "what's this about Dorothy being visited by solicitors" and Mrs Richardson had replied that she knew nothing of it. Mrs Richardson accepted in her evidence that she had arranged for Mr Thomas to see Miss Loxston.
79. Mr Thomas wrote to Miss Loxston again on 4<sup>th</sup> September, and this produced a telephone call from Mrs Richardson which Mr Thomas noted at the time as "DL want me to deal all matters. Beware Mr Ashwing (sic)." He was unable to explain what all matters meant, and he had no recollection of what had been said about "Mr Ashwing". There is then a further note to say that Miss Loxston could not see him on that day and a meeting was arranged for 10.30am on 7<sup>th</sup> September, but Miss Loxston cancelled it. Mr Thomas wrote her a short note on 20<sup>th</sup> September and a more formal letter on 4<sup>th</sup> October, but without response.
80. On 2<sup>nd</sup> October 2000, Dr Ashwin wrote to Dr McElligott to ask him to look into the possibility of removing the cataract from Miss Loxston's right eye, stating that he assumed that if this were to be undertaken, she would have to have a general anaesthetic as last time it had not been possible to do it under local anaesthetic; he said that this was a reference to her behaviour in the operating theatre when the attempt had been made to operate under a local anaesthetic. On 31 October 2000 Mr Rhodri Daniel, the consultant ophthalmologist wrote to Mr Rhodes to say that she needed to be seen

by Mr Paul Rosen of the same practice, who eventually advised, on 27<sup>th</sup> November 2000, that it was worth removing the right cataract in order to try to improve the overall contrast and field of vision.

81. On 23<sup>rd</sup> October Mr Rhodes, at the instigation of Dr Ashwin, wrote to Braikenbridge & Edwards to say that he was considering applying to the Court of Protection to register the enduring power of attorney, and to ask about the visit which he understood had been made to Miss Loxston: Mr Thomas replied, summarising what had happened.
82. On 8<sup>th</sup> November, Mr Rhodes visited Miss Loxston in order to give her notice of intention to apply to register the enduring power of attorney. He said in his oral evidence (although this is not consistent with the note he made at the time) that she did not really know who he was for a while, but he agreed that this could have been her eyesight. He also said that he explained to her that he looked after her investments, and that she did not seem to understand this in the same way as she had done previously, and did not seem to understand the value of her investments. However, his other evidence suggests that she had little interest in this anyhow. On the question of notice, Mr Rhodes' note reads as follows: -

“On Wednesday 8<sup>th</sup> November 2000, I travelled to Miss Loxston's home in the afternoon, as I wished to see her when not accompanied by Mrs Richardson.

Miss Loxston recognised me and met me into the house, although she did not realise I looked after her investments for her until prompted and it was not clear to me that she understood the value of the investments. I told her that we had completed her tax return and that this needed to be signed and asked her whether she would be able to check the figures.

As is Miss Loxston's way, she laughed at that suggestion and I said that I would sign it on behalf of the bank as her Attorney and we agreed that she was not able to deal with the detail of her finances.

I then asked her if she had sufficient funds, stating that we sent money's to Mrs Richardson to look after her and she agreed that she had all the money that she needed.

I told Miss Loxston that I was going to register the attorney with the court of protection and hand it to her. Form EP 1.

Miss Loxston stated that she could not read this form as her eye sight was poor. I therefore read it to her. Miss Loxston insisted that she is not senile, but I advised her that this would enable me to take full control of her financial affairs, again she agreed that she was not able to look after these without assistance.”

83. Mr Rhodes' oral evidence was that, in his view, by this stage Miss Loxston was incapable of understanding or handling her affairs.
84. The cataract operation took place on 7<sup>th</sup> December, and Mr Rosen reported a “tremendous result”, but in Dr Ashwin's view this proved to be incorrect since Miss Loxston's vision continued to deteriorate.
85. In January 2001, Mrs Richardson telephoned Mr Rhodes to ask for an increase of £2 per hour, amounting in a 24 hour week to an increase from £120 to £168 per week. Mr Rhodes wrote to Dr Ashwin about this, stating that in his view this was not excessive as Miss Loxston was comfortable with Mrs Richardson and able to remain in her own home, which was her main concern. In his reply of 24<sup>th</sup> January, Dr Ashwin counselled caution, since this would leave less leeway for possible future rises. In the course of this letter, he wrote that “as this type of work goes, Miss Loxston is relatively rational, capable, pleasant and undemanding”. In cross-examination he stressed “relatively”; Miss Loxston did not wander about or get lost, and there was no violent or irrational behaviour, as was the

case with some people of extreme age.

86. In the meantime, on 12<sup>th</sup> January 2001, Mrs Richardson hand delivered to Mr Thomas' office what he describes as a "list of wishes", handwritten (for the most part reasonably clearly) and signed by Miss Loxston, in the following terms: -

"This is my will.

10<sup>th</sup> January 2001

1) This is my house. I wish to leave it to Mrs Elizabeth Richardson, my carer and my help; also £50

2) All my shares that my brother left me are in the trust of Midland Bank HSBC Mr Rhodes - Private Clients in Crossfield Chambers. I leave all my shares to Mrs Marion Abbott, 28 Whitcliffe Lane, Ripon Street, Yorkshire. I would like Marion to divide all the shares among all the family.

3) My own money in my banking account HSBC 1323 High Road, Whetstone N.20. I wished to be used (1) to pay for my funeral and would (2) I would like Mr Clive Ashwin to have £500 for being a good friend.

4) I would like to leave Carol my bath nurse £100.

5) I would like to leave £500 to St. Mary's Church, East Barnet.

6) I would like Mrs Richardson to arrange my funeral. I, Dorothy Loxston of 38 Albemarle Road, East Barnet, Hells EN4 8EQ.

I hereby revoke all wills and testaments and documents made by me previously. This is my last will.

I appoint Mrs Elizabeth Richardson to be my executor of my last will.

D Loxston 10<sup>th</sup> January 2001."

87. According to Dr Ashwin, it is inconceivable that she wrote this, because it is written in a style which is alien to the way in which she spoke or wrote at the time and because she would not have been capable of producing the necessary thought processes at the time. According to Mrs Richardson, to whose evidence I refer in more detail below, Miss Loxston did write it on her own and without any assistance. She was merely asked to deliver it to Mr Thomas.
88. Having received this, Mr Thomas wrote to Mr Rhodes on 17<sup>th</sup> January, and again on 29<sup>th</sup> January, to enquire what was happening and on 31 January Mr Rhodes replied that he had sufficient cause to register the power of attorney with the Court of Protection and was currently in correspondence with them. Mrs Richardson then contacted Mr Thomas to ask him to visit Miss Loxston for the purposes of making her will, and he wrote to Mr Rhodes again. Mr Rhodes replied to say that in his opinion Miss Loxston did not have the capacity to deal with her own affairs, and Mr Thomas then took the matter no further.
89. On 10<sup>th</sup> February, Miss Loxston wrote to the Public Trust Office in the following terms: -

"Dear Sirs,

I would like to revoke Mr Stephen Rhodes or Mr Ashwin.

Mr Rhodes of HSBC Trust Company (UK) Ltd 27/32 Poultry London EC2. I am of a sound

mind.

I will be getting a solicitor to sort all my affairs.

Can you please sort this out."

90. The Public Trust Office replied on 20<sup>th</sup> February, stating that medical evidence was required to show that she was capable of revoking the power of attorney and, if she wished to object on the grounds when the application was premature, that she was presently capable of managing her own affairs. The Public Trust Office suggested that she should seek the advice of solicitors.
91. On 21 February, Dr Ashwin wrote to Mr Rhodes to express his concern. He said that it was "inconceivable" that she would have decided to revoke the power of attorney unilaterally, and that he assumed that she had been persuaded or encouraged to do so by Mrs Richardson. He said that Miss Loxston had been unable to make rational and informed decisions about the management of her assets for several years, and that she had always had total trust in Mr Rhodes' stewardship. He said that, whilst Mrs Richardson took very good care of Miss Loxston in a material sense, there were increasing indications that she exerted an influence over her affairs beyond that which was appropriate for an employed care worker.
92. In the letter, Dr Ashwin referred to an occasion some considerable time previously when a doctor had concluded that Miss Loxston was senile. In cross-examination he said that this had happened when Miss Parry was with Miss Loxston when the doctor visited: he had said that she was senile and should be in a residential home, not living on her own. This had probably been some time in 1999 or 2000.
93. Mr Rhodes confirmed that in his previous years of dealing with Miss Loxston there had been no hint of dissatisfaction from her and that she had never said that she lacked confidence in him or in HSBC's actions, and that he believed that Miss Loxston may have been prompted by Mrs Richardson to oppose the registration of the power of attorney.
94. On 23<sup>rd</sup> February, Mrs Richardson contacted Dr Miles by telephone and said that Miss Loxston wanted a solicitor to handle her affairs, not the bank; he advised that one should be instructed. It was he who noted "not suffering from any mental illness so far as I am aware".
95. On 28<sup>th</sup> February; Dr Ashwin visited Miss Loxston, and on the following day he wrote to Mr Rhodes in the following terms: -

"During my last visit to Miss Loxston (28<sup>th</sup> Feb) she suggested that she might wish to end your authority in her financial affairs, and this idea was associated with Mrs Richardson who, as she says, gives her good advice. Mr Irving told me today that Miss Loxston had said much the same to him. Miss Loxston would now be quite incapable of managing her own affairs without help, and one can only assume that if the bank ceased to do this she would have to depend upon Mrs Richardson to do so. The objections to this possibility are obvious, and I feel that prompt action is now needed to protect Miss Loxston from a situation which would not be in her best interests and might leave her open to exploitation.

I feel you should give immediate consideration to terminating Mrs Richardson's employment and place Miss Loxston's care in the hands of a registered care agency. I have as promised made some enquiries, and the most suitable would be. . . .

It will not be easy to make this switch, and I think it would be best done promptly and at the minimum notice, otherwise I fear that Mrs Richardson might use any interregnum to organise resistance to the proposal. I also feel that you should avoid any implied criticism of Mrs Richardson or her work, put put the reasons for the change in an entirely positive way. I attach a draft letter to indicate the approach which I feel would cause least

problems and least distress to Miss Loxston.

It would be helpful if you and I could meet with the representative of the care agency to set it up and also to deal with any queries from Mrs Richardson. I anticipate that Miss Loxston will be upset by this change, but I feel we have to weather this out in her own interests. During the initial period it would be helpful to increase Mr Irving's hours temporarily so that he can spend more time with Miss Loxston and maintain the presence of a familiar face."

96. In cross-examination, Dr Ashwin denied that he was opposed in principle to friendship between Miss Loxston and Mrs Richardson. He said that he had no problem with this, and was delighted with anyone who helped in a benign way. What concerned him was that Miss Loxston was relying on Mrs Richardson's advice, which was self-interested, and that Mrs Richardson was exerting control over her.
97. At about this time, Mrs Richardson contacted another solicitor, Clare Davey of Boyes Sutton & Perry, and asked her to see Miss Loxston with a view to deciding her fitness or otherwise to revoke the power of attorney and to give a further power of attorney. On 2<sup>nd</sup> March 2001, Clare Davey wrote to Dr McElligott "at Miss Loxston's request through her carer Mrs Richardson" to ask him to assist. She then spoke to Dr Miles, who said that he would be happy to visit and prepare the report. She then wrote to Miss Loxston on 7<sup>th</sup> March to say that she would need Mr Rhodes' confirmation that Dr Miles and her own fees would be paid. On 12<sup>th</sup> March, Miss Loxston wrote to Mr Rhodes asking him to confirm that payment would be made to Dr Miles and to Boyce Sutton & Perry, and sent a copy of it two days later to Miss Davey.
98. In the meantime, Dr Ashwin had visited Miss Loxston again, and wrote to Mr Rhodes on 11 March: -

"Since last speaking to you I have visited Miss Loxston and had a further conversation with Mrs Richardson. This has confirmed my view that it would be advisable to terminate Mrs Richardson's employment as soon as is feasible. Mrs Richardson has adopted an almost proprietorial attitude to Miss Loxston's home, and said literally at one stage of our conversation, 'Nobody is going to get me out of this home, not you, nor Mrs Rhodes, nobody!' This was said in the context of her professed desire to care for Miss Loxston, but I find her attitude quite disturbing, and if she has not already succeeded in secretly getting Miss Loxston to bequeath her the property, this must be her intention . . .

I feel it would be advisable to base your reasons for terminating Mrs Richardson's employment entirely in positive terms and avoid raising criticisms. The positive reasons are:

1. Miss Loxston needs to get used to the idea that she might be looked after by other carers. It is not desirable for Miss Loxston, or any elderly person, to become emotionally and physically totally dependent upon one person.
2. Miss Loxston will soon need expert nursing care, which the agency can provide.
3. Although the Bank can assist a client to maintain the services of a carer, it has limited resources for this type of task and is not able to serve the function of an employment agency, negotiating rates of pay, conditions of service etc. when, as in Mrs Richardson's case, they appear to have been unacceptable.

Obviously, how you go about termination of her employment must be based on your judgment and the best legal advice you can get; but however it is done, I feel it must be effective instantaneously and irrevocable. Any element of interregnum would be very distressing for Miss Loxston and dangerous in terms of possible legal moves by Mrs Richardson. . . ."

Dr Ashwin went on to say that he hoped that it would be possible to terminate Mrs Richardson's employment as previously discussed, but on 14<sup>th</sup> March Mr Rhodes replied that he did not feel able to do this while his authority was being contested.

99. Dr Ashwin was sufficiently alarmed about the situation to write to Miss Loxston's family (Kathleen, Marion and Ronald Abbott) to advise them of the situation, without telling Miss Loxston that he was doing so, and also to write a long letter to the Public Trust Office; this letter gives a clear picture of Dr Ashwin's view of Miss Loxston's mental capacity and vulnerability at the time: -

"I have known Miss Loxston well for about twenty years and I am her oldest surviving friend. We met as musical partners. She used to be a very good pianist and we regularly played clarinet and piano duos as well as other forms of chamber music. For most of the period I have known her I have met with her for musical or social reasons at least once a week. I often have tea at her house and sometimes I take her out to lunch.

Miss Loxston has no close relatives, and no relatives living close by who keep in touch on a regular basis. For many years Miss Loxston has regularly sought my advice on many issues, practical, financial and legal. This I have been happy to give, and have worked in close conjunction with Mr S F Rhodes, her Private Clients manager at the HSBC Bank. These issues have included, for example, maintenance of her property and garden, the provision of help in her home, and, most recently, arrangement of two successful cataracts operations. I have never sought or derived any material benefit from this association, nor, to the best of my knowledge, will I at any future time: anything I have done has been in the spirit of longstanding friendship.

I should also explain that Miss Loxston's late brother John was until his death in 1976 an employee of the Midland Bank (now HSBC) and since his death the Bank has always looked after her affairs to her entire satisfaction.

Miss Loxston will be 96 on 29<sup>th</sup> March. In recent years, she has increasingly behaved in an indiscreet manner detrimental to her interests. She has, for example, written cheques without any idea as to the purpose of the payment; agreed to work being carried out on her house with no idea as to what it was, whether it was necessary, or what it would cost; agreed to work in her garden which was damaging and exorbitantly expensive; admitted unknown persons to her property who have stolen from her; etc. I have personally had to intervene on a number of occasions to expel unwanted builders from the premises, to trace and stop cheques she has issued to prevent gross overcharging, and to protect her against unscrupulous tradespeople.

In former years Miss Loxston used to have a lively mind and a quick wit. She read the Daily Telegraph every day and did the 'Quick' crossword puzzle. We often completed it together over tea. We regularly discussed stories she had read in the newspaper. In her career she had calculated interest for National Savings accounts mentally and manually, and prided herself on her mental arithmetic and quick memory. For some years now she has taken no newspaper or magazine. She now has negligible knowledge of or interest in issues, people or events outside her home. She has little idea of the current price of goods, services or commodities. She is often unable to follow a simple chain of reasoning. She used to be a professing Christian and a regular church-goer. Now she never mentions the church or any spiritual matter and expresses no interest in being taken to church or receiving contact from the local church community.

Miss Loxston has been visited on a number of occasions by her GP, Dr Simon Miles of 113 East Barnet Rd, New Barnet, Herts EN4 8RF (tel 020 8449 6442). I understand that some time ago he expressed the view that she was literally 'senile', unfit to remain in her own home, and should be moved to a residential home. However, she has insisted on remaining in her family home and I have done everything in my power in cooperation with



the Bank to maintain her security and happiness, and to minimise the risk of exploitation or injury.

Miss Loxston has always been, until very recently, highly satisfied with the services of the Bank. Any request, financial or legal, was dealt with promptly and sympathetically by Mr Rhodes. He and I have on many occasions met with her at her home to discuss matters in connection with her welfare and agree upon any necessary course of action.

Recognising her increasing infirmity, mental and physical, about 18 months ago the Bank agreed to employ on her behalf some one to help Miss Loxston with her shopping, cooking, cleaning and laundry. Mrs Richardson is a housewife and neighbour in the same street and was happy to accept this employment at the current rate of £5.50 per hour, for three hours per day. Mrs Richardson is a good cook and keeps the house and Miss Loxston much cleaner than before. Miss Loxston has never previously benefited from this kind of support and enjoyed the novelty of the additional luxury and the company. Mrs Richardson's wages, like all Miss Loxston's outgoings, are paid directly by the Bank, and I have repeatedly had to explain to Miss Loxston that she does not need to pay Mrs Richardson anything directly or give her any additional reward for her services.

About a year ago a number of events caused the Bank and I, and all other regular acquaintances of Miss Loxston, increasing concern. Miss Loxston informed me that Mrs Richardson had told her that she should appoint a solicitor to look after her affairs. I expressed surprised and asked Miss Loxston what affairs were not already well looked after by her Bank. She was confused and unable to explain. I then learned indirectly that solicitors had visited the property at Mrs Richardson instigation, without any prior notice to any other party, including the Bank and myself. Shortly after this, Miss Loxston suddenly declared, 'Liz (Mrs Richardson) wants me to leave her this house in my will.'

I became alarmed at this sequence of events, and asked Mr Rhodes to meet with Miss Loxston, Mrs Richardson and myself at the property to clear things up. At this meeting Miss Loxston repeated unprompted exactly the same words. Mrs Richardson explained this away as being a joke she had made with Miss Loxston. Another purpose of the same meeting was to discover why Miss Loxston had written Mrs Richardson two substantial cheques, when all her payments had been agreed directly with Mr Rhodes. Again, there was a rather unsatisfactory answer from Mrs Richardson but we took the opportunity to make it clear to both of them that Miss Loxston should never make payments directly to Mrs Richardson."

(It is clear that Dr Ashwin placed the instructing of solicitors too early in the sequence of events, but this does not lead me to doubt the substantial accuracy of his evidence:

"Parallel with her increasing involvement in Miss Loxston's private financial and legal affairs, Mrs Richardson appeared to wish to isolate Miss Loxston from other influences, including old friends. Miss Loxston used to be visited every day by a Mrs Dorothy Parry, who for some considerable time also did Miss Loxston's shopping. Mrs Richardson was so rude and abusive to Mrs Parry, who is 75 and in poor health, that she became afraid to visit the property. She subsequently resumed visiting Miss Loxston during the afternoon, when she knew Mrs Richardson was not there; but Mrs Richardson found out and told her not to do this as Miss Loxston, in her view, needed to rest during the afternoon. Mrs Parry and has not been there for several months. Another old friend and musical associate, Miss Sue Dingle, also informs me that Mrs Richardson has been rude and aggressive to her, as if to deter her from maintaining contact with Miss Loxston. I believe that Mrs Parry and Miss Dingle would confirm this if they were asked, although it should be borne in mind that Mrs Parry lives on the other side of the road is now very afraid of Mrs Richardson. Perhaps because of the length of my contact with Miss Loxston, and perhaps because I am a man, Mrs Richardson has been more cautious and restrained; but I have found that if I disagree with her on any aspect of Miss Loxston's welfare she immediately becomes very

determined and forceful. I quote the following example.

Miss Loxston's toilet, bathroom and bedroom are on the first floor. She has been having increasingly difficulty in mounting the stairs. I anticipated that in due course she will be unable to manage the stairs, and will have to remain on one floor or the other. In February 2000, after lengthy consultation between Miss Loxston, Mr Rhodes and myself, it was agreed to convert Miss Loxston's rear reception room into an en-suite bedroom, toilet and shower. There were lengthy consultations with the elderly unit and occupational therapists of Barnet Council, tenders were raised from builders, and a date was agreed for the work to proceed.

Mrs Richardson took an opposing view, insisting that it would be better to build an ambitious extension on the side of the property rather than converting one room. Without first informing the Bank, me or anyone else, she brought her husband, who is a self-employed builder, to the property to prepare a design and estimate. When we learned about it, the Council occupational therapist was totally opposed to this alternative plan, and said that not only would it be far more expensive and disruptive, but it would not satisfy the principal objective of adapting the home for an infirm elderly person. Miss Loxston meantime got into a state of great distress about the whole project which, because of Mrs Richardson's intervention, had to be abandoned. Mrs Richardson's alternative proposal would have made the property more valuable and more convenient for an able-bodied family, but would have done nothing to solve Miss Loxston's immediate problem. Since the abandonment of our proposal she has continued to negotiate the stairs with ever-increasing difficulty.

Mrs Richardson has now very recently admitted to me that:

- she has repeatedly told Miss Loxston that her financial and legal affairs are not being properly looked after by her bank;
- she has consulted external bodies like Citizens' Advice Bureau and Help the Aged on Miss Loxston's behalf; told her that she needs to appoint a solicitor separate from the legal advice of her bank;
- arranged for solicitors to visit the property.

All these actions have been in the first instance taken clandestinely and without prior notice to the Bank or any friend or acquaintance.

Miss Loxston now appears willing to accept Mrs Richardson's opinion and authority on almost any matter, domestic, personal legal and financial. At the same time she has become critical and suspicious of any other contact, including the Bank, her personal manager and friends.

Mrs, Richardson, now makes repeated claims as to Miss Loxston's rationality and mental acuity, and her perceived ability to make informed and competent judgments as to her welfare and assets. Mrs Richardson appears to be totally alone in this perception: every other person with regular contact with Miss Loxston acknowledges that she has been for some time quite incapable of making sound and rational judgements about anything, particularly her own long-term welfare and needs.

Miss Loxston's physical and psychological dependence upon Mrs Richardson has become more pronounced over the past year. One of her oldest and most trusted friends, Miss Marjorie Stroud, who regularly helped her to pay bills, respond to correspondence etc, died suddenly of a heart attack in 2000. I now spend longer periods away from London, and can only visit Miss Loxston about once every two or three weeks as formerly. Mrs Parry, as I have said, is afraid to visit the property at all.

I am extremely concerned for the welfare of Miss Loxston. I understand that under the influence of Mrs Richardson Miss Loxston has now instructed solicitors to oppose the Bank's application for full power of attorney. My anxiety is that if this opposition is successful and the Bank is not awarded power of attorney, and if its authority and influence in Miss Loxston's affairs is further eroded she and her assets, which are now very substantial and include property, cash and a portfolio of shares, will become vulnerable to exploitation by anyone who has suitable and unsupervised access to her."

100. Dr Ashwin sent a copy of this letter to the family, and Mr Ronald Abbott contacted Mr Rhodes to say that he supported the bank's application for the power of attorney.
101. On 21 March, Dr Ashwin visited Miss Loxston, and wrote out a letter to Boyce Sutton & Perry withdrawing her opposition to the registration of the power of attorney. He went through her long association with HSBC with her, and persuaded her that it was in her best interests to sign it, which she did. She was not able to read it, but he read it out to her. Mrs Richardson was not present, but Dr Ashwin then had a separate conversation with Mrs Richardson in which she said that Miss Loxston was not being properly looked after and that she needed to employ a solicitor. Dr Ashwin said that he did not agree, and this led to an argument in which he said that it was not for her to give advice about legal affairs.
102. Despite her letter, Miss Loxston telephoned Miss Davey on 26<sup>th</sup> March to ask whether she was still acting for her, and had no recollection of the letter of 21 March. Miss Davey reported this to Mr Rhodes, stating that Mrs Richardson had been with Miss Loxston when she made the call, and confirmed that she was no longer acting.
103. On 26<sup>th</sup> March, Dr Ashwin met Mr Rhodes to discuss the situation, and again pressed him to consider terminating Mrs Richardson's employment. However, Mr Rhodes did not do this because he felt that Miss Loxston could have reappointed her. It was suggested to Dr Ashwin in cross-examination that he had by this stage irrevocably turned against Mrs Richardson and was prepared to believe the worst. His reply was that, in the light of experience, he had come to that conclusion.
104. On 26<sup>th</sup> April, Miss Loxston wrote to HSBC at Whetstone: -

"I would like you to help me get a solicitor so that I can make a new will. I haven't got a cheque book to pay for one myself. Can you come and see me."
105. This was referred to Mr Rhodes, who replied saying that he would contact her further when he had heard from the Court of Protection. The court wrote on 14<sup>th</sup> June to say that, having heard from Miss Loxston's solicitors that they were no longer instructed, the power of attorney would be registered in 7 days time, and it was sent on 22<sup>nd</sup> June.
106. On 27<sup>th</sup> June 2001, Mr Rhodes wrote to Dr Ashwin to confirm that he had received the registered power of attorney and said that he had written to Mrs Richardson. In the letter to Mrs Richardson, he stressed that HSBC was now responsible for ratifying all items of expenditure and keeping the appropriate accounts, and invited her to contact him if additional expenditure was needed. He said that Miss Loxston would be unable to enter into any form of legal agreement, but that if one were necessary, the Bank would deal with it on her behalf.
107. Mr Rhodes also wrote to Mr Thomas, to say that Miss Loxston had an existing will and that the Bank would therefore not be seeking to make a statutory will: he did not at this stage seek to ascertain Miss Loxston's wishes, although he did make some attempt to do so some months later as will be seen. Mr Rhodes wrongly believed that no further testamentary instrument could be executed by or on behalf of Miss Loxston without the consent of the Court of Protection.
108. Mr Rhodes' letter of 27<sup>th</sup> June to Dr Ashwin again referred to the issue of downstairs toilet facilities,

and Miss Loxston's unwillingness to disturb the back room. Dr Ashwin responded on 7 July: -

"Thank you for your letter of 27<sup>th</sup> June and for the fax of the estimate from Mr Allen. I think the proposal would be mistaken for obvious reasons. The toilet would be very tight, even for a small able-bodied person, and unusable by anyone with disability or needing assistance. There is also the question of what Miss Loxston will do when she is no longer able to climb the stairs, as there are no washing or bathing facilities on the ground floor. We discussed a similar scheme with the Occupational Therapists last year, and they were totally opposed to it.

Miss Loxston's anxieties about the conversion of her back room have been fed by Mrs Richardson, who is very keen on the idea of an independent toilet. However, Mrs Richardson is unable to explain how Miss Loxston will cope when she is no longer able to climb the stairs.

Miss Loxston is no longer capable of making rational and balanced judgements about her own welfare on topics like this, and I feel that the time has come for you to use your authority under power of attorney to proceed with what seems to be the best solution. If she can no longer climb the stairs but wishes to remain in her home, there are only three obvious solutions:

1. remain permanently on the first floor and have all food brought up to her
2. build a large extension on the side of the house to accommodate toilet and bathing facilities (a proposal opposed by the occupational therapists)
3. convert the rear reception room into a potential en-suite bedroom with toilet and shower facilities.

Of these three, the third seems to be the most viable and attractive option. It will provide toilet facilities on the ground floor during such time as she can still sleep on the first floor. When she is no longer able to climb the stairs, the room becomes an en-suite bedroom. In the meantime, she still has the use of the room as a reception room, albeit reduced in size because of the installation of toilet and shower facilities.

I would recommend that you instruct the builder Mr B K Carrington to proceed as soon as possible with the conversion. I understand that he is booked until late September, but it is unlikely we could raise another estimate and make a start before then. If he could give us a reasonably firm start date of about 1<sup>st</sup> October I suggest we go ahead. (Copies enclosed.)

I strongly recommend that no-one should know of this intention other than yourself, myself and the builder. If Mrs Richardson or Miss Loxston get prior knowledge, I fear that Mrs Richardson will get Miss Loxston into a state of great agitation, which will make the operation much more difficult. When we have a firm start date, I will try to arrange to get Miss Loxston out of the property for the first two or three days of work so that she is not distressed by the noise and upheaval, either taking her away myself or with the help of Mr Irving. I will tell her that we are 'refurbishing' the back room and have the door sealed during the work.

The irony is that, as with every other change or improvement we have made in Miss Loxston's situation, she is usually totally opposed before the event but invariably delighted with the results."

109. On the previous day, 6<sup>th</sup> July 2001, Dr Richard Abbott had visited Miss Loxston. This was his first visit since 1996, as he had been living in the United States since then. In his witness statement (which mirrors an email wrote at the time to Mr Ronald Abbott), he describes the visit as follows: -

"I visited Dorothy on 6<sup>th</sup> July 2001; she seemed fine although a little slower than the last time I had seen her. We talked about the family, including her visits over the years with my grandmother and my mother's cooking. I played the piano for her, as she was no longer able to play due to arthritis, which was obviously very frustrating for her.

Throughout this visit Mrs Elizabeth Richardson, Dorothy's home help was there. I had been made aware that Dorothy had a home help/carer but cannot recall whether I had been told about her and by Dorothy herself or my mother. Dorothy's house seemed to be in order and was clean and tidy. Mrs Richardson did try to engage me in a conversation about Dorothy's financial affairs and seemed very irritated that the Bank (HSBC) and her friend, Dr Clive Ashwin, were so involved in them. I remember that on returning home after this visit I expressed to my wife my concern that Mrs Richardson seemed to have too much interest in Dorothy's financial affairs for someone in a caring role.

Mrs Richardson, also during this visit gave me her opinions of the family saying that the family did not care about Dorothy and that she thought I should stay for at least a few days. This surprised me as I had visited Dorothy several times previously and me staying there had never been discussed or been an expectation. Mrs Richardson also stated that she felt the family should be more involved with Dorothy. I told her that I had visited when I could when I lived in the area and that I had been the only member of the family who had ever lived in the area. I also explained that many members of the family were now elderly and unable to travel as far or as easily."

110. This evidence, although led on behalf of the Claimants, supports Mrs Richardson's case in two respects. First, it does not suggest that there had been a marked decline in Miss Loxston's mental faculties over the previous five years. Secondly, the fact that Mrs Richardson was seeking to get Miss Loxston's family to become more involved in her affairs, however inappropriate this may have seemed to Dr Abbott, does not accord with the Claimants' case that Mrs Richardson was, by this stage, seeking by unscrupulous means to induce Miss Loxston into leaving her a substantial part of her fortune. If this had been so, involving the family would hardly have been the best way to achieve her ends.

111. Nothing of note occurred until early 2002, when the necessary work was carried out to provide toilet and washing facilities downstairs. On 21 January 2002, Dr Ashwin reported to Mr Ronald Abbott:

"I thought I would write to bring you up to date on Dorothy's situation. I feel that all is going well. As you know, HSBC bank in the person of Mr S F Rhodes, were awarded power of attorney in her affairs last year and it should not now be possible for anyone to meddle in her legal or financial affairs.

We have pushed ahead with the plan to install a toilet and shower room in her rear reception room and most of the work was completed when I visited her today. Dorothy's great desire is to remain in her home for as long as possible. When she is no longer able to climb the stairs we will convert the rear room into her bedroom adjacent to the new toilet and shower room.

Her carer keeps Dorothy and the house clean and tidy, and provides her with a good diet. Mr Irving looks after the garden and does any necessary jobs in the house.

I feel that Dorothy is contented and cheerful. I should be very grateful if you would let her other relatives know that all seems to be well, and thank them for their support in the application for power of attorney. You might also mention that she takes special pleasure in receiving a card or a short letter."

112. On 2<sup>nd</sup> February, Dr Ashwin wrote to Mr Rhodes to say that the work was satisfactorily completed and suggested the replacement of the french windows in the rear reception room downstairs, with a

view to the possible later conversion of the rear reception room to serve as a bedroom, if Miss Loxston became unable to go upstairs.

113. In March, Mrs Richardson contacted Mr Thomas again, and he wrote to HSBC on 11 March in the following terms: -

"We are again being told by Mrs Richardson, on behalf of Miss Loxston, that Miss Loxston wishes to make amendments to her will. We cannot in view of your appointment but would you please confirm that you will make arrangements to visit her. We are very concerned that a 97 year old lady, who wishes to amend her will, should be able to do so ... you will doubtless treat the matter as one of urgency."

114. Mr Rhodes did treat it as a matter of urgency and visited Miss Loxston on 13<sup>th</sup> March, using as a pretext a desire to inspect the recently completed work. He raised the subject of her will, and his note of the visit reads as follows: -

". . . she stated that 'Mrs Richardson wants me to leave her this house'. When I asked her if this is what she wanted to do or for the Will to remain in favour of her relatives in Yorkshire, she made no reply to the question. Under the circumstances, I did not feel that there was sufficient evidence to suggest that there was a real wish to make these changes but that this had been instigated by prompting from Mrs Richardson."

115. In cross-examination, he said that he raised the question of changes to the will directly and that when he asked the question, is that what you want, Miss Loxston did not answer in any way. She did not say that that was what she wanted; if she had said that she wanted to leave the house to Mrs Richardson, he would have referred the matter to his technical department for advice. As it was, he took it no further.

116. On 18<sup>th</sup> March, Mr Rhodes wrote to Mrs Richardson referring to Mr Thomas' letter and advising her:

". . . and as the power of attorney has been registered with the court of protection Miss Loxston is unable to change her Will unless I receive direction from the court that this is permissible. The court would obviously wish to know the circumstances of the case and may require medical evidence confirming that she has capacity to effect such changes. Having visited Miss Loxston on Wednesday, she did not convince me that this was the case and unless there is strong evidence I do not propose taking this up with the court."

As previously mentioned, Mr Rhodes was wrong in his belief that the direction of the Court of Protection was required in order to effect a will. Nevertheless, this is what he told Mrs Richardson at the time, and he sent a copy of the letter to Dr Ashwin.

117. On 14<sup>th</sup> May, Dr Ashwin wrote to Mr Rhodes stating that Mrs Richardson had become very hostile to Mrs Parry and had, in effect, forbidden her to visit the property: -

"I regret that it appears that Mrs Richardson is giving problems again. In addition to her recent attempt to bring solicitors on to the premises, which you know about, she has become very hostile to Mrs Parry and, as I understand it, has in effect forbidden her to visit the property.

According to Mrs Parry, Mrs Richardson claims that she 'upsets' Miss Loxston. My own impression is that Miss Loxston has always enjoyed and welcomed Mrs Parry's visits. I imagine that what has infuriated Mrs Richardson is that Mrs Parry advised Miss Loxston, when she raised the subject, that Mrs Richardson had no responsibility or authority in relation to Miss Loxston's private financial or legal affairs.

Mrs Parry is almost the only person apart from myself with a regular contact with Miss Loxston based on friendship rather than employment. I can only conclude that Mrs

Richardson's desire to frighten Mrs Parry away from the property arises from a desire to isolate Miss Loxston and make her feel a sense of total dependence upon Mrs Richardson.

I feel we should take steps to at least bring an additional care element on to the property, perhaps splitting duties with Mrs Richardson. It might also be advisable to meet with Mrs Richardson to make it clear to her that you, as the person with power of attorney, should be the arbiter of who is a suitable person to visit the property, not Mrs Richardson."

118. Dr Ashwin suggested that steps should be taken to employ another carer, perhaps splitting duties with Mrs Richardson. Although Mr Rhodes replied to the effect that he would look into this, nothing seems to have come of this suggestion. On 15<sup>th</sup> June 2002, Dr Ashwin wrote to Mr Rhodes again about a fall which Miss Loxston has sustained, which had resulted in her being unable to get up until Mrs Richardson visited her later in the evening and in her having to sleep in the rear downstairs room for a day or two. Further, on the day on which Dr Ashwin called, Mrs Richardson reported to him that Miss Loxston had not made herself any breakfast or a cup of tea and had had nothing to eat or drink that morning. Dr Ashwin suggested increasing Mrs Richardson's duties for additional pay, as well as agency care.

119. On 17<sup>th</sup> September, Miss Loxston wrote to Dr Miles: -

"I would like a letter from you so that I can make a new will. I hope you will call to see me. I will pay you for the letter."

Dr Miles replied that no letter from him was required in order to make a new will, and advised her to see a solicitor.

120. On 24<sup>th</sup> October, Miss Loxston was visited by Mr David Cowan of Barnet Social Services, at Dr Ashwin's request, and Dr Ashwin subsequently spoke to him. Dr Ashwin then wrote to Mr Rhodes on 24<sup>th</sup> November as follows: -

"My impression of Mr Cowan's visit is that he felt that everything which can reasonably be done is being done to make Miss Loxston safe and comfortable in her home. Because of Miss Loxston's personal financial resources he did not feel that there would be any likelihood of additional cost-free resources from the Council.

Mr Cowan also remarked that, somewhat to his surprise, Mrs Richardson raised in Miss Loxston's presence the suggestion that Miss Loxston could change her will in Mrs Richardson's favour, leaving her the house. That Mr Cowan should have felt this exchange worthy of remark indicates that he felt it was somewhat unusual and inappropriate.

It suggests that Mrs Richardson has not abandoned the hope of persuading Miss Loxston to change her will in her favour. If this arises at some future date I feel I should put on record now the fact that it does so, not from any spontaneous desire on the part of Miss Loxston, but from persistent suggestion and persuasion from Mrs Richardson."

121. In cross-examination, Dr Ashwin said that what Mr Cowan had said to him was that Mrs Richardson told him that Miss Loxston would like to change her will, was asking how to go about it. It was suggested to him that this differed from the account in the letter, but I agree with Dr Ashwin that there is inconsistency. Dr Ashwin said that he was not especially concerned, because he wrongly thought that this was not a problem (presumably in view of what he understood to be the effect of the registration of the power of attorney). Despite Mrs Richardson's denial, I am sure that Dr Ashwin's letter records the substance of what she said to Mr Cowan.

122. In response to further questions in cross-examination connected with this letter, Dr Ashwin said that if Miss Loxston had ever said that she wanted to leave Mrs Richardson something in her will, he would have been quite happy about it, and would have told Mr Rhodes and left it to HSBC's legal

department to deal with it appropriately. He believed that it would be possible for someone with impaired mental capacity to make changes with disinterested advice, and that it would not have been for him to judge whether Miss Loxston had mental capacity.

123. However, it was his view that she was not capable of making a complete will, because her memory was so impaired that she could not understand the totality of it. She could convey an intention to leave something to one person, but she had not the slightest idea of how much she was worth. Similarly, she could recollect people, but her memory was so fragmented that it was largely aroused by dialogue with someone. Her spontaneous recollection of facts was by now very difficult. Equally, whilst it was difficult to separate capacity from influence, her diminished capacity made her more vulnerable to influence. The first part of this, relating to Miss Loxston's powers of recollection, is an important piece of evidence, and I accept it.
124. At some time during the summer of 2002, Dr Abbott went to see Miss Loxston again, during a visit to the UK, but he appears to have had no significant recollection of what happened on this occasion.
125. On 17<sup>th</sup> September, Miss Loxston wrote to Dr Miles to ask for a letter "so that I can make a new will" and offered to pay for it. Dr Miles replied that she did not need a letter and advised her to instruct a solicitor.
126. As already mentioned, Mr Irving worked for Miss Loxston as a gardener and handyman from May 1999 onwards. He went to the house twice a week, and would usually have a cup of tea with Miss Loxston. He clearly liked her and was kind to her. He was an objective and reliable witness.
127. When he first went to see her (he was referring to 1999, not to 1981-2), he judged her as quite capable mentally. She was able to engage in conversations. For example, when Mr Irving cleaned her furniture, she would find photographs from her hiking days, and enjoyed talking about them. She had magazine articles going back to the 1950s, and brought them out and talked about them, for example, the conquest of Mount Everest in 1953. She beat him at Scrabble in 1999.
128. However, in the last couple of years of her life, she deteriorated. Her life seemed to become more confined to the chair in the front room. She no longer played Scrabble and as her walking became worse, she did not go into the garden so much. She slept a great deal, and she used to have a book on her lap most of the time, either a picture book of Yorkshire, or the same passage in the Mark Twain book. She no longer instigated conversations. Mr Irving would think of subjects to talk about, and they would tend to have the same conversations over and over again from one week to the next, for example, her french horn playing or the Mark Twain book, or he would suggest looking at a photograph album from the 1920s, which he thought would be of interest to her.
129. In his witness statement, Mr Irving said that he had a good working relationship with Mrs Richardson as well as with Miss Loxston, and that they got on well together. He never had any concerns about their relationship. In cross-examination, he agreed that they were very fond of each other and that he never saw anything to suggest otherwise.
130. On the subject of Miss Loxston's will, Mr Irving said the following in his witness statement: -

"On having seen a copy of Dorothy's wills, after her death, I am surprised that the will dated 30<sup>th</sup> January 2003 did not include some of her musical friends, for example, Sue Dingle, Clair Tozer and Clive Ashwin, as she was very fond of them and they had been mentioned in her previous wills. As I have previously mentioned Dorothy Parry was a frequent visitor. I remember meeting Sue Dingle on three or four occasions whilst she was visiting Dorothy but she told me that Mrs Richardson made her feel unwelcome. Dorothy would receive cards from Clair Tozer which she really enjoyed receiving. Dorothy kept many cards from family and friends and she would always enjoy having these read to her. On her fireplace Dorothy had two photographs of two children who I believe were the children of Richard Abbott. Dorothy often spoke of her family and her links to Ripon and the family furniture business."



131. Mr Irving also recalled an occasion some time before January 2003, when Miss Loxston mentioned that Mrs Richardson wanted her to leave the house to her. Mr Irving replied that he would like the garden. Mr Irving said that her remark "came out of nothing at all".

132. He also recalled a number of incidents occurring in the last couple of years of Miss Loxston's life: -

(a) On one occasion he found Miss Loxston in an agitated state because she had received correspondence from the Council about her community charge which she did not understand. Mr Irving told her not to worry and to put the letter in the folder for Dr Ashwin to send on to Mr Rhodes.

(b) On 7<sup>th</sup> December 2002, Mr Irving let himself into the house and went to the sitting room where Miss Loxston was sitting. She smiled at him and asked who he was: at first he thought she was joking, but it then became clear that she had no idea. He noted this in his diary. However, he saw her twice a week, and this was the only occasion on which anything of this kind happened.

(c) From time to time, Miss Loxston either forgot about her lunch, so that it turned to charcoal, or forgot to turn the gas off: one such occasion was noted in his diary on 21 December 2002.

(d) On another occasion, noted in diary for 21 January 2003, the kitchen table was set for tea, but Miss Loxston did not know why.

133. Mrs Richardson relies on the witness statement of Carol Ribeiro, who is employed by the Barnet Primary Care Trust as a bath care assistant and who provided bathing services to Miss Loxston from November 1999 right through to late July 2003, once a week on the same day and at the same time. The substance of her evidence is as follows: -

"When I first met Miss Loxston she appeared to be in reasonably good health but she was obviously experiencing difficulties with bathing and was not helped by the fact that she had to get herself up and down stairs in order to go to the bathroom. I would help her to wash herself. She was not able to get fully into the bath but she could be washed by sitting on a board across the bath. Once she had had her bath, I would help her to dress. I remember that it was very cold upstairs, particularly during the winter months and that was a source of some concern.

Miss Loxston and I got on well. She was always pleased to see me. She was happy to let me into her home and I think she rather enjoyed having a bath and her hair washed. She always knew who I was and why I had come to see her.

Throughout the time I was caring for her, I had no difficulty communicating with her. We were always able to have a chat about things while I was helping her. She was responsive. She was usually cheerful and there was a general air of lightheartedness about the conversation. She did not like to get too serious about things. She was jolly and often amused by our exchanges. I cannot think of any time when she was in any way unable to express herself.

I have had the experience of providing assistance to a large number of clients. I have assisted clients who suffered from varying degrees of dementia. I can honestly say there was nothing about Dorothy Loxston which gave me reason to believe that she was suffering from dementia. I will accept that as she grew older, she became a little more forgetful, and physically she became less able to help herself to dress and particularly to go up and down stairs. It was in due course necessary for her to use a zimmer frame.

If I had reason to believe her mental condition was deteriorating, that was certainly

something that I would have felt obliged to record and, to report. At no time did I feel that was necessary in her case.

Over a period of four years, I spoke to Miss Loxston about many things. She was quite happy to talk to me about the work she used to do, about holidays she used to take, how she used to like going on walking trips and she also spoke of her family. Her great love was to play the piano and listen to music and often she would have the radio on playing classical music. She never had a television. She did suffer from deafness and I do not think her eyesight was too good. . . .

I cannot assist in any regard to the making of a will by Miss Loxston in January 2003. I know nothing about that. My entries in the record book show that I visited her to help her shower, wash her hair and to assist her to dress on the 8<sup>th</sup>, 22<sup>th</sup> and 29<sup>th</sup> January 2003. Nothing is recorded to suggest that there were any unusual circumstances that needed to be noted on any of those occasions."

134. She also stated that she often saw Miss Loxston towards the end of the morning and that she could remember her taking the meal which Mrs Richardson had prepared from the oven and then sitting down to eat it. She also remembered meeting Dr Ashwin on one occasion, and that Miss Loxston talked about him having moved to Norfolk, and therefore not seeing her so often.

135. On the subject of Mrs Richardson, her evidence was as follows: -

"I know that Miss Loxston had high regard for Mrs Richardson. In fact I would say that she developed quite a deep affection for her. I know that Mrs Richardson was doing all sorts of things to help Miss Loxston, including going and buying her clothes and assisting her in many other ways. I remember Miss Loxston saying to me about Mrs Richardson that she was 'very good to me' and I specifically remember her saying that 'she's marvellous'."

### **The January 2003 Will**

136. Mr David Lesser is an experienced solicitor, who practiced from 1960 to 1997 as Dr Lesser & Co. He had a general practice, and he had extensive experience of dealing with wills and estates including advising on tax matters relating to estates. After his retirement, he and his wife, Naomi, who has significant business and administrative skills, decided to set up a will service called the Regent Wills Service, advertising in local newspapers. For the modest fee of £55, they provide advice on the making of a will, draft it and, if necessary, assist at the time of its execution. On average, they deal with some 500 wills each year.

137. Mr and Mrs Lesser were straightforward and careful witnesses, and I have no hesitation in accepting their evidence as both truthful and accurate. In particular, it was suggested to Mr Lesser that his evidence that Miss Loxston said that she was leaving the house to Mrs Richardson because of her kindness to him (which was not referred to in his handwritten notes made at the time) was made up after the event. He rejected this suggestion, and so do I.

138. On 7<sup>th</sup> January 2003, Mrs Richardson telephoned Mr Lesser and said that she helped to look after a very elderly lady, Miss Loxston, who wanted to make a will. Mr Lesser understood from what Mrs Richardson said that she was a carer and, although not explicitly told that she was paid, would have assumed this if he had thought about it.

139. Neither Mrs Richardson nor, subsequently, Miss Loxston told Mr Lesser that Miss Loxston had given a power of attorney to Mr Rhodes, or that it had been registered. Mr Lesser never become aware of Mr Rhodes' existence.

140. On 17<sup>th</sup> January, Mr Lesser went to Miss Loxston's house. The front door was opened by Mrs Richardson. He was shown into the sitting room and introduced to Miss Loxston as "the man who had come to deal with her will". Mrs Richardson then left the room. The visit lasted up to an hour.

141. Mr Lesser described Miss Loxston as frail, and said that because of her age he would have spoken more loudly and slowly than usual. However, she had no difficulty in engaging in conversation with him. He followed his usual practice of having a very general chat in order to put the client at her ease and established a rapport with her. She was fully alert and responsive throughout the meeting, and he was quite satisfied that she heard and understood what he said to her.
142. Mr Lesser then followed his usual practice of making sure that the client was aware of the nature of a will. He explained the need to appoint executors, stating what their role would be when the time came. He explained about specific legacies and a disposition of the balance of the estate. Still following his usual practice, he made manuscript notes of her instructions, recording the basic information given to him.
143. Mr Lesser explained that, in order to be sure that Miss Loxston knew what a will was, he asked her "do you know why I am here?". He made no note of her answer; his practice would have been to make a note only if the client lacked awareness. Miss Loxston did understand that he was there to help her make a will.
144. Then Mr Lesser asked her "can you tell me what you want to do?". Miss Loxston's response was simple and clear and had three parts to it, all of which came out "in one go". First, she wished to leave the house and its contents to Mrs Richardson, secondly, she wished to leave the piano to the church and thirdly, the rest was to go to her family in Yorkshire. She was "very positive" about the first two matters - she wanted these - but there was a subtle change of emphasis as to the third, the rest was just to go to the family. At some point, she also said that she wanted Mrs Richardson to be her executor.
145. Mr Lesser was quite satisfied that Miss Loxston knew exactly what she was asking him to do for her, but he felt the need to consider the possibility of undue influence. He addressed this in two ways.
146. First, either he asked her why she wanted to leave the house to Mrs Richardson, or possibly she told him without being asked. She said that she wished to do this because of the kindness which Mrs Richardson had shown her for a considerable length of time, whereas she had not had a great deal of contact with her family. Without being sure of the exact words, Mr Lesser was certain that the contrast between Mrs Richardson's kindness and the lack of contact with the family came in one sentence.
147. Secondly - and Mr Lesser again described this as "standard", he said something to the effect that "it's what you want that counts, not what I want, nor what Mrs Richardson wants, is this what you want?" to which Miss Loxston replied that it was. He then asked her confirm that nobody had put any pressure on her, or tried to persuade her what to do, and Miss Loxston confirmed this. Mr Lesser considered that, if this had not been so, there would at least have been some noticeable hesitation in the reply, but there was not.
148. Mr Lesser did not seek to ascertain whether there was a previous will. He said that he would have done this if the instructions had been to change something in the previous will, but that this was not necessary where he had precisely instructions as to what she wished to do. On this, his view differed from that of Mr Thomas.
149. In his witness statement, Mr Lesser said that Miss Loxston was "a little vague about which members of her family she wished to benefit", and that she "did not seem particularly concerned that any one or more individuals should be benefit". In his oral evidence, he said that his impression was that he did not favour or disfavour any particular member of the family, was not particularly concerned which members of the family benefited and would have been "quite happy if I'd just put, everything else to her family".
150. However, Mr Lesser explained to her that he could not leave her property to "the family" but had to give specific names. She then "put on her thinking cap" and came up with the two names Marion

Abbott and Kathleen Abbott. He then found the addresses in her address book. Mr Lesser asked her whether there was anyone else she wanted to put on the list, and she said not. He did not ask her whether there was other members of the family, but he did ask her what should happen in the event that either Marion or Kathleen did not survive her, and she said that in that event, she wanted Marion's son, "John Abbott", to be the alternative beneficiary. Mr Lesser was sure that she said John and not Richard, and that he come from the United States of America. In fact, the gift over to "John Abbott" related only to the part left to his mother; there was no gift over in the event that Kathleen pre-deceased Miss Loxston. Mr Lesser said that Miss Loxston did not indicate who was to benefit in the event of Kathleen pre-deceasing her.

151. Mr Lesser asked her whether there was anybody else she wished to benefit by, for example, a gift of a picture which he pointed to on the wall, and Miss Loxston said not. Mr Lesser did not ascertain whether she had any friends other than Mrs Richardson, and did not ask her whether she wished to make any charitable bequests.

152. Mr Lesser said in the course of his oral evidence that, save to the limited extent indicated, he never became aware of the identity of the members of her family, or the extent of her property. He was then asked whether he was able to say whether Miss Loxston herself was aware of the extent of her property, and he said that he was not.

153. At the end of the meeting, Mr Lesser obtained from Mrs Richardson the name and address of Miss Loxston's doctor, Dr Miles. He did not tell Miss Loxston that he would be contacting him, but he did, referring to his visit to take instructions for the drawing of her will and adding: -

"Miss Loxston is, of course, an elderly lady and I found her to be frail and rather vague but she was able to convey her testamentary wishes to me and I considered that she was fully aware of the nature and effect of those wishes.

However, I shall be grateful if, as her medical practitioner, you could kindly confirm (if such be the case) that you consider her to be mentally competent to make a will."

154. To this, Dr Miles replied that he had last seen her in June 2002 and that he therefore felt unable to comment on her current mental competence to make a will. He was about to retire, but Dr McElligott or his replacement would be willing to examine Miss Loxston at a charge, set by the BMA, of £108 per 45 minutes. Mr Lesser said that he did not consider that he was justified in imposing this expense on Miss Loxston. It was suggested to him that the very fact that he wrote to Dr Miles meant that he was not satisfied as to her mental capacity to make a will, but I accept his evidence that this was not so: he was satisfied that she was mentally capable of giving instructions for her will, and decided that this further precaution was unnecessary.

155. A further appointment was then made for 30<sup>th</sup> January, and on this occasion Mrs Lesser so that there would be two witnesses. Mrs Richardson again showed them in and then left the room, and Mr Lesser introduced his wife. Miss Loxston knew who they were, and why they had come to see her.

156. Mr Lesser then read the will to her, clause by clause, summarising what was contained in each clause, making it clear that it was to be a will setting out her wishes alone and that if there was anything she wished to change, this would be no problem. Mr Lesser said that he was again satisfied that Miss Loxston was alert and aware of what she was doing, and that she fully understood the contents of the will. She signed it and he and Mrs Lesser witnessed it. The meeting lasted no more than half an hour.

157. Mrs Lesser's evidence confirms that of her husband, and she also remembers two comments made by Miss Loxston. When Mr Lesser referred to the provision leaving the piano to the local church, she gestured and pointed towards the piano, saying words to the effect "Yes I want to leave that piano to the church". This was a logical comment to make, since there was also an upright piano in the house. When her husband was explaining the gift of the residue of the estate to members of her family, she commented that she could not remember exactly where they lived, because she did not hear from them too often and had not seen them recently.

## Mrs Richardson's Evidence

158. Mrs Richardson is 63 years of age. She is divorced, but remains on good terms with her husband, who was present for part of the hearing. She has three children, two grandchildren and one great-grandchild. She has done various kinds of work in her life, including work as a hairdresser and clerical work, but most often domestic work. For a time, she was employed by the local authority as a home help for Barnet Social Services, including caring for the elderly. She said that she had no training for this, she simply got on and did the job. What was essential was to be nice to the old people, and to cook and clean properly for them.
159. As already stated, whilst she was originally employed by Miss Loxston as a cleaner once a week, her work expanded considerably over the years. When she was first employed, the house was in a shocking state and it took her about three months to get it up to standard. After a time, Miss Loxston asked her to do the shopping, and on occasions they went to the shops together. In addition, she started to do Miss Loxston's washing and cooked for her. In time, in addition to cleaning, she did all Miss Loxston's washing, cooked and shopped for her, washed and rolled her hair and visited in the evenings in order to help her go to bed. Miss Loxston used to call her sometimes when she needed company, and Mrs Richardson used to take her out in the car, and generally look after her. Towards the end of her life, she became physically much weaker, and Mrs Richardson carried out what she referred to as "wider duties of physical care and housekeeping" than previously. Miss Loxston needed a lot of physical care and attention. All this is consistent with other evidence, and I do not doubt that it is true or that Mrs Richardson performed extra tasks for Miss Loxston, outside her regular hours of 9am to 1pm and for which she was not paid, out of friendship.
160. Mrs Richardson's evidence is consistent with that of other witnesses, and the contemporary correspondence, so far as Miss Loxston's increasing physical frailty is concerned. However there were some things which she did to the end of her life, including making her own bed, getting her own breakfast (albeit towards the end of her life no longer a cooked breakfast), making herself a cup of tea and occasionally, with the aid of her zimmer frame, going into the garden. Other things - such as playing the piano and going out to the post box - fell by the wayside in the last few months or year of her life.
161. As regards Miss Loxston's mental capacity, Mrs Richardson described her as "a very determined strong lady until the end of her life" and said that she remained mentally capable: she knew and understood everything, and was able to convey her wishes to Mrs Richardson both as regards day to day matters such as shopping, and as regards more important matters such as the making of a new will. Mrs Richardson's evidence was that she was always able to converse easily with Miss Loxston, who liked to be in the kitchen while she got on with her work. She described her discussions with Miss Loxston as "not very high conversation", just small mundane things and talk about her friends or Mrs Richardson's own children or current activities. She also remained able to sit and talk with other friends such as Sue Dingle and Clare Tozer. She listened to the radio and read, amongst other things, a local newspaper which Mrs Richardson brought into the house.
162. Mrs Richardson gave some rather surprising evidence, which was not in her witness statement, to the effect that - when she first started to work for Miss Loxston Dr Ashwin did not want her there. It was obvious from the word go that he did not want her. First, Mrs Parry said to her "Clive has gone mad that you've started" and then Dr Ashwin himself pinned a big note up in the house stating "your work here is terminated, Mrs Richardson, your services are not required here". Miss Loxston then said to her that Dr Ashwin was only a musical friend, and that she liked her in the house. In the following week, Dr Ashwin said "oh you're still here", to which she replied that Miss Loxston wanted her, that it was not for him to sack her. After that, according to Mrs Richardson, Dr Ashwin tended to avoid her.
163. This was not in Mrs Richardson's witness statement and it was not put to Dr Ashwin. It is inconsistent with earlier evidence in which Mrs Richardson had said as regards a later period that Dr Ashwin became wary of her and "no longer friendly". It is inconsistent with everything Dr Ashwin wrote up to April 2000. I am sure that this part of Mrs Richardson's evidence was made up on the spur of the moment in an effort to discredit Dr Ashwin's testimony, and I do not believe it.

164. What Mrs Richardson did say in her witness statement was that Dr Ashwin had from time to time sent her notes, some of which contained "unpleasant allegations", of which Miss Loxston was aware: she said that she did not want Dr Ashwin interfering in things, and particularly not in their relationship. In her oral evidence, she said that there were "a whole load" of such notes, at one point, she said hundreds and in another "a good 20 or 30". They were typed, but the typing was bad and sometimes Dr Ashwin did not finish sentences. She was unable to specify any particularly unpleasant note. She said, for example, that there might be a note saying "I saw what you gave Miss Loxston to eat, did you give her such and such a wine with it"? Another note was about the sewing of Miss Loxston's clothes. Mrs Richardson had said to Dr Ashwin "you keep sending me these notes, you stop it or I might just take you to trouble over them". Whilst I accept that Dr Ashwin may have written occasional notes to her which she felt implied some criticism of her care of Miss Loxston, I consider that this part of Mrs Richardson's evidence for the most part either invented or very greatly exaggerated.
165. I find that Dr Ashwin's view until April 2000 or shortly before that was that Mrs Richardson was providing very welcome good care for Miss Loxston, and that he was glad that they got on so well together. This really only changed as a result of the events leading up to and at the meeting of 17<sup>th</sup> April 2000.
166. As to the first of the three main topics of discussion at the meeting, the gas fire, Mrs Richardson's evidence was that she had written the cheque in favour of British Gas for this, this had been agreed with Miss Loxston, who knew what she was doing. Furthermore, Miss Loxston had explained the reason for the gas fire: "he (Dr Ashwin) keeps telling everyone she didn't know what she was doing - she knew exactly what she was doing". As to the cheque for £500 in her favour, this was for extra hours worked, and had been agreed with Miss Loxston.
167. On the cheque for the gas fire, in substance I accept Mrs Richardson's evidence. Either Mrs Richardson or Miss Loxston herself was able to satisfy at least Mr Rhodes that the gas fire had been a necessary and sensible purchase. On the cheque for the Mrs Richardson (given an hourly rate of some £5 per hour) £500 back pay for extra hours seems quite a lot, but whatever doubts Dr Ashwin and Mr Rhodes may have had about this at the time, they did not question her closely (nor was she cross-examined in detail on this point at the hearing), and the outcome of the meeting was that she was entrusted with weekly amounts of cash. Therefore they must have felt that she could be trusted.
168. As regards "Liz wants me to leave her the house", Mrs Richardson's evidence was that Miss Loxston never said this. What she said, both at the meeting and previously, was that she wanted to leave Mrs Richardson the house, to which Mrs Richardson always replied "don't be so silly" or words to that effect. I do not accept her evidence on this point. It is clear from the contemporary letters, as well as from the evidence of Dr Ashwin, Mr Rhodes and Mr Irving, that it was "Liz wants me to leave her this house".
169. Mrs Richardson's evidence was that Miss Loxston was upset that her cheque book was taken away at this meeting, which meant that she could no longer write small cheques in favour of charity, as she had done in the past. I accept her evidence on this point.
170. Mrs Richardson also said that Dr Ashwin had wanted to sack her at the meeting but Miss Loxston would not have it. I do not think that this took place at this meeting, but it is clear that Dr Ashwin later wished to terminate Mrs Richardson's employment, and I accept her evidence that Miss Loxston was at no time prepared to agree with this.
171. I also accept her evidence that she did not intervene in an untoward way in the extensive and complex discussions about various possible alterations to the house to accommodate Miss Loxston's increasing frailty. I think that the principal obstacle was Miss Loxston herself, who was reluctant to agree to alterations to the familiar layout of the house, which were likely to (and did) make it more difficult for her to access familiar papers or other possessions. I am sure that Mrs Richardson expressed her views, but I do not think that she acted in an untoward way either in arranging for a quotation from her husband or otherwise. Nor do I think that the suggestion put to her in cross-

examination, that at one stage she promoted a plan to extend the house because this would add to its value and she hoped to inherit it, was justified.

172. Mrs Richardson denied that she was antagonistic to Miss Loxston's friends, or that she sought to isolate them. She gave evidence of two incidents involving Marjorie Stroud. The first arose because Miss Loxston wanted someone to sort her money out, and wanted to make a will, and she (Mrs Richardson) suggested that she saw a solicitor. On the same afternoon, Miss Loxston told Marjorie Stroud this, and she said to Mrs Richardson in a "very sharp and very narky" way that she should mind her own business. This was about 18 months or two years after she had started work, and was the occasion after which, Mrs Richardson said, Dr Ashwin became wary and unfriendly to her. The second occasion involving Mrs Stroud an occasion on which Mrs Richardson went back for a shopping list which she had forgotten and her Marjorie Stroud "shouting her head off" at Miss Loxston. She went up and Marjorie Stroud was looking for some cheque stubs. She eventually found them and there were 30 or 40 stubs. Mrs Richardson did not know why Marjorie Stroud wanted them, and Miss Loxston was very upset. Although I consider that Mrs Richardson magnified the incident, I think it entirely possible (bearing in mind the two letters she wrote) that Marjorie Stroud may have been trying to carry out some tasks for Miss Loxston and may have become exasperated with her, and I accept that something of this kind occurred.
173. So far as Dorothy Parry is concerned, Mrs Richardson's evidence is that Dr Ashwin had told Mrs Parry that Miss Loxston wanted Mrs Richardson to have the house, and that Mrs Parry gone to see Miss Loxston "to have a go at her" and had upset her; she had remonstrated with her. On another occasion, about six months or a year before Miss Loxston died, Mrs Parry brought the subject up again and Mrs Richardson said that it was none of her business: Mrs Parry said "I will make it my business".
174. Mrs Richardson said was that her efforts to find a solicitor for Miss Loxston arose from an incident about four years after she started working for Miss Loxston (which on her timing would be in about 2000), when Miss Loxston opened a package and commented that it was "only shares". She then showed Mrs Richardson the paperwork and it was obvious that she had shares which were worth a lot of money. She said to Miss Loxston "you're loaded". On the following day, she found Miss Loxston with a box of papers which she had apparently keeping under her wardrobe. These were financial records, and she was very keen that Mrs Richardson should see them. She told Mrs Richardson that she had been keeping them out of the way so that Dr Ashwin did not see them. Then on another day, Miss Loxston was looking for her will, which she could not find, because she was thinking of altering it. Mrs Richardson suggested that the Bank might be able to provide her with a copy. From then on, Miss Loxston became increasingly concerned about what was to happen her shares, which she saw as family assets and which she wanted her relatives in Ripon to inherit. She became "desperately anxious" to make a new will, and all Mrs Richardson's actions in contacting the two firms of solicitors were at Miss Loxston's insistence after she had tried to get Mr Rhodes to assist her but he had not done so. Miss Loxston did not believe that they were looking after her affairs properly. Mrs Richardson had done nothing on her own initiative, had never seen the old will and had had no hand in writing the instructions of 10<sup>th</sup> January 2001; Miss Loxston had given her a sealed envelope and asked her to take it to Braikenbridge & Edwards for her. Nor had she caused Miss Loxston to telephone Mr Thomas in March 2001. She denied bringing up the question of a will during Mr Cowan's visit, or having anything to do with Miss Loxston's letter to Dr Miles of 17<sup>th</sup> September 2002. Although Miss Loxston had, from to time, expressed the intention to leave the house to her, it was not until Guy Fawkes Night of 2002 that she said that she would definitely do this.
175. Mrs Richardson said that Miss Loxston was "obsessed" with the new will, and insisted on her contacting solicitors and taking the other steps she took to this end. Dr Ashwin had been angry when he found out, and had a go both at Miss Loxston and Mrs Richardson. Mrs Richardson had not wanted to get involved further, and had told Dr Ashwin so, but Miss Loxston had insisted: when Dr Ashwin found one of the letters from Ms Davey, he was furious with both her and Miss Loxston. He shouted at her "how dare you get in touch with more solicitors" and he screamed at Miss Loxston as well. Miss Loxston sat back looking up and away from him without reacting, but later went on insisting that Mrs

Richardson took further steps.

176. As regards the visit of Dr Abbott in July 2001, Mrs Richardson's evidence was that she suggested to Miss Loxston that the meeting was an opportunity to talk to him about her wishes and the difficulties she was having. She herself saw Dr Abbott for a short time and told him that Miss Loxston was keen to sort out her affairs and had concerns that her wishes with regard to the family were carried out, but he did not seem to want to talk about this. This corresponds with his evidence. After the meeting, Miss Loxston told her that she did not know him sufficiently well to ask him for help and had not done so.
177. Mrs Richardson said that by January 2003 she had had enough of trying to assist Miss Loxston with the will, and, as a result of what she had been told by Mr Rhodes in the letter of 18<sup>th</sup> March 2002 she did not in any event think that it was possible for Miss Loxston to make an effective will without the consent of the Court of Protection. It was Miss Loxston herself who had seen "an advertisement of a will service in the local newspaper that is delivered to the house". This is inconsistent with her evidence that by this stage the local newspaper was not delivered to the house; she brought her own local newspaper and Miss Loxston read it. Miss Loxston told her that she wanted her to get in touch with the Regent Will Service and prevailed upon her to do so. She therefore telephoned them, gave Mr Lesser Miss Loxston's details and made an appointment. When we came, she showed him in and, at the end of the visit, out. On the second occasion, 30<sup>th</sup> January, she remembers Miss Loxston practising her signature before the meeting. She was not present at the meeting, but afterwards she recollects Mr Lesser saying that they would need to look after the will, and Miss Loxston put it in the piano. She told Mrs Richardson that she had left the house to her and the fact that she had at last made a new will pleased her no end: she was delighted. Mrs Richardson's evidence is that, at the time, she was mentally alert and knew exactly what she wanted to do, and that she had not been in any way responsible for causing her to make the will, nor had she persuaded her to do so.
178. In cross-examination, Mrs Richardson said that, because of Mr Rhodes' letter, she did not think that the will would make any difference but that, even if it did not go through, she was glad if it made Miss Loxston happy. Miss Loxston seemed to think that she was entitled to make a will if she wanted to. It was suggested to her that she had reminded Miss Loxston just before Mr Lesser's visit that the purpose was to make a will leaving her the house, and that she had provided the £55 to pay for the will herself, but she denied both suggestions.

### **General Conclusions On The Facts**

179. I have made a number of findings of facts on individual points earlier on in this judgment, and I now set out some more general findings.

180. Miss Loxston

(1) I am satisfied that all the evidence I heard about Miss Loxston's activities, bearing, her state of health and mental capacity was truthful, and represented the perception of the witnesses who gave it, with the exception of Mrs Richardson's evidence. In general, I accept her evidence on these matters as well, and I think that she was right to say that Miss Loxston would be likely to have been able to converse more easily with her since they saw each other daily, but I think that she exaggerated Miss Loxston's mental competence and resources.

(2) The perception of the witnesses as to her mental capacity differed. For example, one can contrast Dr Ashwin's opinion in 1999 with the much more positive view of Mr Irving. This is not surprising. The mental capacity of elderly people can vary as between one day and another, and it is possible (as Mrs Richardson suggested) that if it may sometimes have a matter of not wanting to talk to a particular person or about a particular subject.

(3) I do not attach much weight to Miss Loxston's occasional lapses of memory, for example not recognising Mr Irving on one occasion, when she did recognise him on all



other occasions both before and after December 2002. As is clear from Dr Master's evidence, occasional lapses of memory of this kind - which in her case may in any event have been a matter of eyesight - are not of great significance, and the same applies to her inability immediately to remember Mr Rhodes' role on a couple of occasions, forgetfulness over the laid tea table and the mistake as to Dr Abbott's first name.

(4) Rather more significance is to be attached to the occasional inappropriate behaviour (as recorded in Marjorie Stroud's letter about the failed first cataract operation and in Dr Ashwin's letter to the Public Trustee Office). These seem to me to indicate occasional and intermittent lack of self confidence and vulnerability.

(5) It is clear from all the evidence (other than Mrs Richardson's) that by January 2003 Miss Loxston's mental faculties had declined considerably and that she was incapable of sustained mental effort without her mind being engaged by interaction with another person. On the other hand, the evidence of Mr and Mrs Lesser demonstrates that, when her mind was engaged, she was capable of conducting a businesslike conversation with people she did not know, and of logical thought in connection with the making of a will.

(6) As to Miss Loxston's attitude to Mrs Richardson, I have no doubt that she felt genuinely grateful to her. It is true, and was duly noted by Dr Ashwin, that Mrs Richardson was paid, but she did more than she was obliged to do, and was kind, friendly and good company. Miss Loxston may well have felt that, without Mrs Richardson, she would not have been able to stay in her own home.

(7) As I have already found, Miss Loxston did on several occasions say "Liz wants me to leave her the house". It is impossible to know exactly how it arose, but the most likely explanation is that, after a year or two, Miss Loxston told Mrs Richardson that she wanted to benefit her in her will. Whether the suggestion that it should be the house came from Miss Loxston or Mrs Richardson I do not know, but the obvious explanation for Miss Loxston blurting it out in this form is that she was uncertain whether it was the right thing to do and wanted (as Mr Dodge submitted) to "test the water". She wanted to be advised on what to do, or at least to talk it over with someone else, but everyone else's reaction was either hostile or to dismiss it as a joke.

(8) Whilst for the reasons set out below I do not believe Mrs Richardson's evidence that she did not instigate the various steps taken in the attempt to make a will, I do accept her evidence that Miss Loxston wished to make a new will and felt that neither Mr Rhodes nor Dr Ashwin was, in this respect, looking after her properly. My reasons for doing so are (a) that I do not think that Miss Loxston was able to locate her previous will or remember its contents, (b) that, this being the case, it is inherently likely that she would have been anxious to ensure that her property was disposed of as she wished and (c) that in any event she did wish to benefit Mrs Richardson either by leaving her the house or in some other way.

(9) Further, I think that Miss Loxston must have realised that Dr Ashwin and Mr Rhodes, and Mrs Parry, were hostile to the idea of her leaving the house to Mrs Richardson, and increasingly to Mrs Richardson herself, while at the same time doing nothing to help her make a will. Whilst again I find that Mrs Richardson's account of Miss Loxston's "obsession" is exaggerated, I do think that she willingly co-operated in Mrs Richardson's efforts to find her a solicitor so as to make a will.

(10) I also consider that Miss Loxston, while no doubt grateful to Dr Ashwin for his great friendship to her, and for his many kindnesses, may have felt that on occasions he curtailed her independence more than she would have wished. This is particularly so in relation to the taking of the cheque book, and may have been so in relation to some of the proposed alterations to the house. I do not mean by this to imply any criticism of Dr Ashwin in relation to these matters; he had good and valid reasons for doing what he did.

181. Dr Ashwin and Mr Rhodes

(1) As I have already found, they were truthful and accurate witnesses.

(2) It is clear that, as from April 2000, Dr Ashwin became increasingly convinced that Mrs Richardson was trying to manipulate Miss Loxston into leaving her the house, when Miss Loxston did not wish to do so, and that this was reflected in "Liz wants me to leave her the house".

(3) Thereafter, as is clear from the correspondence, Dr Ashwin communicated his increasing suspicions to Mr Rhodes, and both saw her as, on the one hand, providing much needed care and friendship for Miss Loxston but, on the other, as an unscrupulous fortune hunter.

(4) Whilst there were grounds for suspicion, there was an alternative and in my view more likely explanation for Miss Loxston intermittently bringing this subject up, namely that she wanted advice. It was in my view clearly appropriate at this stage to make a determined attempt to ascertain Miss Loxston's testamentary intentions. She had not made a will since 1990 and was unlikely to recollect its contents. It was fairly clear that she wished to benefit Mrs Richardson in some way, and there were good reasons for this. It would have been entirely appropriate for Mr Rhodes to visit Miss Loxston, taking a copy of her existing will, and to go through it with her patiently and in detail to see if she wished to make any changes, and to discuss with her in particular what if anything she wished to do for Mrs Richardson.

(5) Regrettably, Mr Rhodes did no more than have a perfunctory discussion in March 2002 (nearly two years after the matter had been brought up at the meeting on 17<sup>th</sup> April 2000), in which he merely asked her whether she wished to leave the house to Mrs Richardson, to which she replied neither yes nor no, but did nothing further to ascertain her wishes. By this time, influenced by Dr Ashwin, I think, that he saw Mrs Richardson as a person who was seeking unscrupulously to manipulate Miss Loxston, and not as somebody who Miss Loxston might genuinely feel deserved to benefit under her will. Whilst I appreciate that it is easy to be wise with hindsight, I do think that in this respect (but in no other) Miss Loxston was right to think that her affairs were not properly attended to.

182. Mrs Richardson

(1) I have already found, her evidence as to Mr Ashwin's initial attitude to her was untruthful, and I also find that her evidence as to his behaviour when there were issues about her attempts to obtain a solicitor for Miss Loxston were considerably exaggerated. I do not accept, for example, that Dr Ashwin, on any occasion, "screamed at" Miss Loxston.

(2) I also reject her evidence that she did not actively encourage and take steps on her own initiative to try to secure the making of a will. I do not think that Miss Loxston would have been capable in August 2000, and certainly not by January 2003, of taking any of these steps on her own initiative. She lacked the continuous memory of events necessary to do so, as well as the mental energy. This is demonstrated, for example, by the fact that she telephoned Ms Davey on 26<sup>th</sup> March 2001 to enquire whether she was acting for her, having forgotten that a few days earlier she had signed a letter withdrawing her objection to the registration of the power of attorney. The telephone call must have been instigated by Mrs Richardson. Equally, I do not believe that Miss Loxston would have been capable of writing the letter of instructions of 10<sup>th</sup> January 2001 on her own, whether with the assistance of her previous will (which as I have already found she had mislaid) or of a home-made will kit. I find that it was Mrs Richardson who instigated all the letters and telephone calls, as well as the giving of instructions to Mr Lesser in January 2003.

(3) I also find that Mrs Richardson reminded Miss Loxston of the purpose of Mr Lesser's visit on each occasion, and reminded her of the decisions which had been reached as to the contents of the will. I do not believe that Miss Loxston would have been capable by that stage of recollecting these matters on her own.

(4) It does not however follow from this that Mrs Richardson was unscrupulously "manipulating" Miss Loxston into leaving her the house against her will. The Claimants' attempt to portray her in that light founders, on the evidence of Dr Abbott. The very last thing a person who is seeking to manipulate an old lady into making a will in her favour would do is to suggest to a member of her family that they should take a closer interest in her affairs. The likely result of doing so would be, at the very least, that the family would ensure that no bequest was made unless it was really intended, and it might in any event have its own interests at heart. Yet it is common ground that this is what Mrs Richardson did. Because of the letter which the family had by this stage received from Dr Ashwin, it seems to have been regarded as inappropriate for Mrs Richardson to make this suggestion, although I cannot not see why. Nor do I agree with Dr Ashwin's suggestion in the letter to the Public Trustee Office that there was something sinister in what he refers to as Mrs Richardson's admission that she had consulted the Citizens' Advice Bureau and Help The Aged on Miss Loxston's behalf. Equally, there was nothing unscrupulous, in my view, in seeking to instruct independent solicitors, whom she did not know and to whom she said nothing material, on Miss Loxston's behalf and then to leave them to take instructions from Miss Loxston herself.

(5) As to the allegation that Mrs Richardson sought to isolate Miss Loxston by deterring visits from her friends, the evidence is rather unsatisfactory. It is clear from Dr Ashwin's letters that her friends were complaining to him at the time, but Mrs Parry (for unexplained reasons) was not called to give evidence orally, and Ms Dingle did not provide any evidence at all. Nor was the matter explored in great detail in the cross-examination of Mrs Richardson herself. I am left with the impression that there was hostility, but there is no clear evidence as to the reasons for it. However, what matters is that, given the evidence of Dr Abbott, it cannot be the case that Mrs Richardson was seeking to isolate Miss Loxston from her friends in order to be able to gain influence over her so as to obtain a substantial legacy.

183. Having regard to all the above, my overall assessment of the position is that by April 2000 Miss Loxston wished to leave Mrs Richardson a substantial legacy in her will, that she was considering leaving her the house, that Mrs Richardson had said that she would like the house, and that thereafter Mrs Richardson - acting in her own interests and not, as she suggests, reluctantly doing Miss Loxston's bidding - did what she could to ensure that Miss Loxston did make a will which she knew would benefit her. However, I do not think that she was trying to get her to make a will in her favour which Miss Loxston did not wish to make.

### **Testamentary Capacity**

184. I was referred to the leading authority, Banks v Goodfellow (1870) LR 5 QB 549, [1861-73] All ER Rep 47, and to the familiar passage from the judgment in Lord Cockburn CJ at 565:

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

185. I was also referred to Lord Cockburn's summary of the requirement as explained in the earlier case of Den v Vancleve (1819) 2 Southard 589 at 567:

“a sound and disposed mind and memory . . . if [the mind and memory] have so far failed as that [all those things and all those circumstances which enter into the nature of a rational fair and just testament] cannot be discerned and judged of then he cannot be said to be of sound and disposing mind and memory”

186. I was also referred to the passage in Harwood v Baker (1840) 3 Moore 282 at 291, which was approved in Banks at 569:

“in order to constitute a sound disposing mind, a testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard, but he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom by his will he is excluding from all participation in that property; and that the protection of the law is in no case more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one; and more especially, when that one object may be so forced upon the attention of the invalid as to shut out all others that might require consideration. And therefore, the question which their Lordships propose to decide in this case is, not whether Mr Baker knew, when he executed this will, that he was giving all his property to his wife, and excluding all his other relatives from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property. If he had not the capacity required, the propriety of the disposition made by the will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or the injustice of the disposition might cast down some light upon the question as to his capacity.” (My emphasis).

187. In the light of these passages, the elements of testamentary capacity are in my view that the testator must: -

- (1) be able to understand the nature of the act of making a will;
- (2) know which persons he should consider as possible beneficiaries;
- (3) be able to understand the extent of the property of which he is disposing;
- (4) not be subject to any disorder of the mind as shall “poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties”; and
- (5) have the mental capacity to make decisions which take into account the relevant property, persons and circumstances and arrive at a “rational fair and just” testament.

188. In the present case, on the basis of Mr and Mrs Lesser's evidence, I have no doubt that, at the time of both the meetings in January 2003, she was able to understand the nature of the act of making a will, and that she fully understood the nature and effect of the provisions of the will which she signed.

189. As to her property, I find that she was aware of the house, its furnishings and its main contents, including in particular musical instruments. As to these, they were her main interest in life, and the comment about the piano at the second meeting shows her awareness in this respect. As to her remaining property, I find that she was aware that she had shares of substantial value, but no more; she did not know exactly approximately what the value was, and probably would not have known this even in earlier years.

190. As to the possible beneficiaries of the will, she was obviously aware of Mrs Richardson, and she had a clear intention to benefit “the family”, I find that by this she meant her cousins in Ripon (including Colin Abbott's widow). However, I do not think that she was capable of remembering all their names. Further, I am sure that, but for her mental decline, she would have wished to leave her musical

instruments, and possibly small bequests of money, to her musical friends, as she had done in previous wills. It is inconceivable that she would have wished her musical instruments to be left to Mrs Richardson, who had no use for them. The fact that there are no such bequests indicates clearly that Miss Loxston did not have the mental capacity, on her own initiative, to recollect those (such as Dr Ashwin, Mrs Parry, Sue Dingle, Clair Tozer) to whom she would have at least wished to consider making bequests of this kind. Equally, I am sure that she was not capable, on her own, of considering whether to make substantial requests to charities, as she had done in the past, and if so how to divide up the estate between the family, the charities and Mrs Richardson.

191. Mr Dodge made two submissions about Miss Loxston's inability to identify the individual members of her family. First, he submitted that an inability to recollect distant cousins cannot be sufficient to affect testamentary capacity. I agree that in many cases, where the testator has closer family, this might well be the case, but not in the present case in which Miss Loxston's cousins in Ripon were her closest family, and meant much to her even though there had been little contact in the last few years. Secondly, he submitted, inability to remember did not constitute a lack of capacity. She was aware of the existence of, and wished to benefit, a defined class of relatives, namely her cousins in Ripon, and the failure to identify them was due to the way in which Mr Lesser handled the matter. I agree with this submission. I do not think that Miss Loxston's inability to remember the names of her cousins, or the fact that she mistakenly referred to John rather than Richard, affects her testamentary capacity. It is clear both from the written instructions of 10<sup>th</sup> January 2001 and from Mr Lesser's account of the meeting on 17<sup>th</sup> January, that she recollected that branch of the family and wished to leave her property to it, probably in equal shares. I do not think that it was right for Mr Lesser just to tell her that she must name specific members of the family. He should have asked her who the members of the family were whom she wished to benefit and, if she could not remember them all, he should have contacted the ones he was able to identify from the address book so as to obtain further details which he could then have discussed with her on a second occasion. In my view, if he had pursued the matter in this way, he would have been able to list the members of the family for Miss Loxston, and she would almost certainly have divided what she wanted to leave the family in equal shares between them. The fact that this did not happen does not seem to me to be something which should be seen as affecting her capacity to make a will.
192. Nor do I think that Miss Loxston's ignorance of the value of her shares affected her testamentary capacity. There is little authority on the extent of the knowledge which a testator must have of his property for the purposes of testamentary capacity, but it seems to me that it must depend upon the nature of the disposition which he is likely to wish to consider making. In some circumstances, it might well be necessary for the testator to know the approximate value of his assets, and indeed liabilities, particularly if what he is contemplating is making a series of pecuniary legacies, the amount of which would depend upon the value of the assets available. I do not think that this is the case here. Even if Miss Loxston had been considering a wider range of beneficiaries, it is probable that she would have left a proportion of her assets to each beneficiary, and for that purpose it was quite sufficient that she knew that there were shares of substantial value.
193. Further, as was pointed out by Mr Michael Briggs QC in Minns v Foster, 13<sup>th</sup> December 2002 at para 115, the question is not whether the testator actually knew the extent of his property, but whether he was capable of understanding it, and I think that Miss Loxston would have been capable of understanding the value of her shares, if she had been told what it was.
194. However, notwithstanding the above, I do not think that Miss Loxston was mentally capable of making a will. This is essentially for the reasons set out in the extract from Harwood v Baker emphasised above. In my view it is not necessarily the case that a person's mental capacity diminishes to the point at which he or she is no longer capable of making a will, and that remains the static position thereafter. The question is always whether the testator had the necessary capacity at the time the will was executed, and that may depend upon the efforts made by others to enable her to have in mind all the relevant considerations necessary for a "rational, fair and just testament". In this case, I do not think that Miss Loxston was able, without assistance, to recollect, understand or focus on all the persons whom she might reasonably wish to benefit at one time, and arrive at a rational decision as

to which of them she wished to benefit and in what way. The limited range of beneficiaries in her last will, when compared to the range of beneficiaries in her previous will, is striking and is in my view due to the fact that she was incapable of concentrating on more than a very limited range of objects at one time without help being provided at the times she gave instructions for and executed the will. Reverting to what I have said earlier, if Mr Rhodes had at some stage taken the time to go through her previous will with her, and to discuss with her whether she wished to benefit Mrs Richardson and if so how, and what changes to make to the previous will, I think that Miss Loxston's mental capacity once her attention was engaged might have been sufficient, and if there had then been a further meeting to go carefully through the will drafted on the basis of her response, again it might have been sufficient.

195. What I find must actually have happened in January 2003 is that the contents of the will were discussed between Mrs Richardson and Miss Loxston before Mr Lesser's first visit, but such discussion must have been limited and cannot have extended to the possibility of leaving musical instruments or legacies to friends, or making gifts to charities. As to charities Mrs Richardson was unaware of the details of the previous will, and wrongly believed that Miss Loxston had no interest in giving to charity except for occasional small amounts. Mr Dodge submitted that testamentary capacity cannot depend on the ability to recall all known charities: clearly not, but in Miss Loxston's case, in view of her poor memory, it was necessary for someone to remind her of the terms of her previous will and ascertain what she now wished to do about friends and charities. Nothing of this kind took place, and without it Miss Loxston was unable to consider these kinds of legacy and therefore in my opinion lacked testamentary capacity both on 17<sup>th</sup> January and on 30<sup>th</sup> January 2003.

### **Want Of Knowledge And Approval**

196. Although in many cases capacity and want of knowledge and approval are closely related, this is not so in the present case. I find that Miss Loxston knew and understood the contents of the will, and expressly approved them.

### **Undue Influence**

197. There is no issue between the parties as to the relevant principles. I was referred to the well-known decisions in Hall v Hall (1868) LR 1 P & D 481, 32 JP 503 and Wingrove v Wingrove (1885) 11 PD 81, 50 JP 56. Undue influence is a form of coercion, or pressure exerted so as to overpower the will without convincing the judgment of the testator. There must be both improper pressure and the gift must be the result of that pressure. The burden of proof is on the party asserting undue influence, and what is required is to be established is that the circumstances of the will are consistent with the hypothesis that it was obtained by undue influence, and inconsistent with a contrary hypothesis: see Re Cooper 17<sup>th</sup> October [2005] EWHC 2389 (Ch) at para 53.
198. Miss McQuail submits that the numerous statements made by Miss Loxston to the effect that "Liz wants me to leave her the house", together with the initiatives taken by Mrs Richardson over a period of some two years, and also what she said to Mr Cowan, establish that there was undue influence. She submits that Mrs Richardson must have used her daily contact with Miss Loxston and Miss Loxston's dependence on her to put constant pressure on her to leave her the house. A finding of improper pressure is easier, where the testator is enfeebled in body or mind and also if he is enfeebled in both: see Killick v Pountney [2000] WTLR 41 (31 March 1999) at p 31 per Sonia Proudman QC. This, she submits, was the position with Miss Loxston.
199. Whilst there is force in these submissions, I do not think there was undue influence in this case. My principal reasons are as follows: -

(a) It is clear that Miss Loxston was consistently considering leaving Mrs Richardson the house from, at the latest, early 2000, and this indicated in my view an intention to make a substantial bequest to her, but doubt as to whether it should be a bequest of the house.

(b) Her wish to make a substantial gift to Mrs Richardson was entirely rational having

regard to what Mrs Richardson meant to her, even after two or three years, and all the more so by early 2003.

(c) Although Miss Loxston was enfeebled, both in body and in mind, the evidence suggests that she retained her determination to the end. This is shown, for example, in her spirited resistance to some of the alterations proposed to the house, even though it meant that at times she had to get up and down stairs in a seated position, and in the fact that she was able to live alone and get herself up in the morning virtually until the end of her life. I do not believe that Mrs Richardson or anyone else would have been able to get her to do anything important which she did not want to do.

(d) Whilst I have no doubt that, contrary to her evidence, Mrs Richardson participated in the drafting of the instructions of 10<sup>th</sup> January 2001 (as well as of the various other letters) I think that it was a joint effort. I doubt if Mrs Richardson would have been able to dictate the letter as a whole, even if Miss Loxston had been prepared to take dictation, and there are signs that its compilation was a joint effort. For example, as Miss McQuail points out, it is likely that Miss Loxston wrote "Mr Ashwin" because Mrs Richardson was dictating that part, but equally, as Mr Dodge points out, the phrase "banking account" is old fashioned and is more likely to have come from Miss Loxston herself. The letter evidences an intention, in January 2001, to leave the house to Mrs Richardson.

(e) In the end, considerable weight must be attached to Mr Lesser's account of the meeting. Mrs Richardson must have reminded Miss Loxston of the purpose of the meeting and of the intended bequest of the house to her, but I do not think that she would have been able to cause Miss Loxston to give instructions to Mr Lesser which she did not wish to give. Further, Miss Loxston was, on Mr Lesser's account, able to give succinct and logical reasons for leaving the house to Mrs Richardson, and firmly stated that she had not been subjected to pressure.

200. Accordingly, whilst I am sure that Mrs Richardson did everything she could, in her own interests, to cause Miss Loxston to make a will, in my view its terms represented what Miss Loxston wished to do.

### **Conclusion**

201. The result of the case is that the claim succeeds. I must hold that the 2003 will is invalid because Miss Loxston lacked testamentary capacity. Despite what I have said about Mrs Richardson's evidence, I reach this conclusion without enthusiasm, because I am sure that it does not accord with Miss Loxston's wishes. As previously stated, I think that she did want to leave Mrs Richardson the house and that, even if she had been able with the assistance of others to focus on other possible beneficiaries such as friends and charities, she might still have wished to leave Mrs Richardson the house, and would certainly have wished to make her a substantial bequest of some kind. However, it is not in my power to give effect to her wishes. Whether Mrs Richardson benefits from Miss Loxston's estate, and if so to what extent, is solely within the discretion - of the beneficiaries.

202. I should like to express my thanks to both counsel, and their instructing solicitors, for the clear and concise way in which this case was presented. If the parties are able to agree the terms of an order, or if they are able to deal with any disputed matters by written submissions, there will be no need for anyone to attend when judgment is handed down. The terms of the judgment may be discussed with the parties, but otherwise are to remain confidential until it has been handed down.

N. Strauss Q.C  
Deputy judge. Ch. D.

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