Neutral Citation Number: [2022] EWHC 2202 (Ch)

Case No: H30NE004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PORPERTY COURTS IN NEWCASTLE UPON TYNE
PROBATE TRUSTS AND PROPERTY LIST (ChD)

Date: 22/08/2022

IN THE ESTATE OF BERNARD DIMBERLINE DECEASED

Before:

HH JUDGE DAVIS-WHITE QC
(SITTING AS JUDGE OF THE HIGH COURT)

- -

Between :

MRS COLLEEN CROPPER
(AS THE PERSONAL REPRESENTATIVE OF BERNARD DIMBERLINE DECEASED) — **Claimant**

- and –

(1) Ms KIM ELAINE DIMBERLAINE
(2) MR MARK DIMBERLINE
(3) MRS LISA HIRST

Defendants

- -
- -

Mr Stephen Fletcher (instructed by **Newtons Solicitors Limited**) for the **Claimant**
The Defendants in person

Hearing dates: 18 (reading), 19-21 July 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

HH JUDGE DAVIS-WHITE QC

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 2pm on 22 August 2022

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HH Judge Davis-White:

1. This case is about the validity of a purported will said to have been made by the deceased, Bernard Timberline (the "Deceased" or "Bernard")). The Deceased died on 11 October 2017. The purported will is dated 27 May 2017 (the "Disputed Will"). Probate of the Disputed Will has never been obtained and until the start of the trial had not been applied for.

2. The precise value of the Deceased's estate is unclear. According to the pleaded defence, his net estate was £50,122.40; his net estate net of survivorship assets was £46,051.46; funeral related expenses were £14,196.09. The net estate figure depends, however, on there being debts owed to the third defendant of some £21,000 which I infer, from the cross-examination that I heard, may be the subject of challenge.

3. In this judgment I use the given names of certain family, or former family, members as was done at the trial for convenience and in order to avoid having to refer to their names in full on each occasion. No disrespect is intended by my doing so.

4. The claimant, Ms Colleen Cropper ("Colleen"), was granted letters of administration by a grant dated 6 September 2019. The letters of administration were granted on the basis that the Deceased had died intestate. Colleen is one of the Deceased's daughters by one Mavis Haynes.

5. The first defendant, Ms Kim Dimberline ("Elaine") lived with the Deceased, for about 30 years prior to his death, as his partner. In the years prior to his death, they lived at 8, Fielding Gate, Armley, Leeds (the "Property"). They were not married, although, until after his death, this was not commonly known. This fact was made known by Elaine to members of the family after Bernard's death.

6. The second defendant, Mr Mark Dimberline ("Mark") is the son of Elaine. He was brought up by the Deceased and Elaine as their child though in fact he is not the Deceased's child or step-child, whether by blood or in law. He is named as the executor in the Disputed Will. He and his then wife, Katie Dimberline (now known as Katie Fryer) ("Katie"), appear be the attesting witnesses to the Disputed Will. He says that he was involved in its preparation, as I shall go on to explain.

7. Katie was divorced from Mark in 2020. She is now, and has been since about the Summer of 2018, in a relationship with a former friend of Mark, Lee Thackray ("Mr Thackray"). It is Katie and Mr Thackray who say, in effect, that they are "whistleblowers" who informed Colleen in 2018 that the Disputed Will was created after the Deceased's death and that the Deceased's signature on it was a forgery. Katie also says that her signature as attesting witness was also forged and is not her signature.

8. The third defendant, Mrs Lisa Hirst ("Lisa"), is the daughter of the Deceased and Mrs Dimberline and the younger half-sister of the claimant, Ms Cropper. At all material times she has lived in Epsom, Surrey.

9. The Deceased and Elaine brought up three children as the family unit, being Mark, Lee Dimberline ("Lee") (both children of Elaine) and Lisa.

10. According to Colleen, and I do not understand this to be contested save as I explain later in this judgment, the Deceased had six biological children, in order of age: David Young, Ian Young, James (or Jim) Young, Susan, Colleen and Lisa. The four eldest children were children of the Deceased's first marriage. They are, as appropriate, respectively half-brothers and half-sister to Colleen and Lisa. Susan died in about 2016/2017 leaving at least one child. (There was a dispute before me as to whether Susan left one or two children but, for the purposes of this judgment, resolution of this issue is unnecessary).

11. For present purposes I shall treat the property at Fielding Gate as belonging to Elaine (the "Property"). There has been correspondence as to whether this is in fact the legal position but, as I understand it, no challenge to that position is currently raised by Colleen.

Legal representation during the proceedings

12. Mr Stephen Fletcher of counsel appeared before me on behalf of the claimant, instructed by Newtons Solicitors Limited ("Newtons").

13. Until days before the trial, the defendants had been represented by Bowles & Co solicitors. Their defence was drafted by senior experienced Chancery Counsel from Lincoln's Inn. Before me Elaine and Lisa expressed themselves content for Mark to address the court on their behalf. I noted that Lisa in particular was, during the trial, assisting Mark in identifying documents and points and in raising points for him to raise with the court and I am sure was very helpful to him. I am also satisfied that she was thus able to raise any points that she wished to have raised.

14. I am grateful to Mr Fletcher for the assistance that he gave to the court and, so far as he was properly able to do so, the defendants. I am also grateful to Mark for the calm, careful and dignified manner in which he presented the defendants' case and cross-examined witnesses, including his ex-wife, Katie.

The Disputed Will

15. The Disputed Will is, as I have said, dated 27 May 2017. It takes the form of a pre-prepared precedent which has been completed in manuscript.

    i) It appoints as "executors and trustees" Mark Dimberline and, failing him, then Lisa Hirst.

    ii) As a specific gift and legacy it gifts all of the Deceased's "personal belongings to include the Jewellery, the contents of our home at 8 Fielding Close, LS12 2JG and my car registration number NO56WGM to my partner Kim Elaine Dimberline".

    iii) It leaves the residue to his executors and trustees to be held on trust to pay his debts, funeral and testamentary expenses and pay the residue to his daughter Lisa Hirst, but if she fails to survive him by 28 days or the gift fails for any other reason, then for his partner Kim Elaine Dimberline.

    iv) He expresses the wish to be buried.

v) The will is signed 27 May 2017 and apparently witnessed by Mark and Katie.

16. Mr Fletcher, as I shall explain, submits that it is of significance that the reference to Elaine is as "partner" rather than "wife".

17. From cross-examination, it is clear that the specific gift(s) to Elaine were of comparatively insignificant financial value.

The respective cases of the parties

18. According to Mark's evidence, the Disputed Will is valid. What he says took place can be summarised as follows.

19. Bernard came to visit Mark at what was then his (Mark's) and Katie's home at Butterbowl Grove in Leeds. Bernard asked Mark to assist him in preparing and completing his will.

20. Bernard and Mark were alone together in a room when Bernard produced a blank pro forma will document. Bernard explained that he wanted to leave his personal possessions to his long-term partner Elaine and the remainder of his assets to Lisa. This came as no surprise to Mark as it had been known within the family that Bernard intended to repay the kindness of Lisa in paying for him and Elaine to go with her immediate family on "luxury" family holidays.

21. They went through the will form. Mark discussed each section of the will form with Bernard who told Mark what he wanted to say. Mark filled in the will form in his own handwriting. He then read the will to Bernard to ensure that it was correct.

22. Katie was then called into the room. Bernard signed the form. Katie and Mark witnessed his signature and signed the will form accordingly. Bernard then left the will with Mark for safekeeping.

23. The case of Colleen is, as I have said, that the will is a forgery in the sense that it came into existence after the death of the deceased. The deceased's signature was forged. Further, the signature of Katie was forged as well. The Disputed Will came about when it was realised that the result of Elaine and Bernard not being married was that the intestacy rules would apply, and Elaine would get nothing. To circumvent this, the Disputed Will was created. Instead of leaving the estate to Elaine, it was left to Lisa so that Elaine's entitlement to benefits would not be put in jeopardy and on the basis that Lisa in fact would allow Elaine to have the money as she needed it.

24. The defendants say that the Disputed Will is a valid will. The reason, they say, that this claim has been brought is because, in 2018, Katie was in a relationship with Mr Thackray and in the midst of a bitter battle with Mark for custody of their children. Their allegations about the Disputed Will, made to Colleen (and now persisted in by way of evidence in these proceedings), were made up to further their position in that custody battle and as a result of the very bad relations between them on the one hand and Mark on the other. The custody/access battle over the children of Mark and Katie has now been resolved by the Court and, as I understood it, the arrangements put in place are working and not contentious. However, as Mark put it in his first witness statement: he believes that the allegations made by the claim are:

"*designed to cause him personally, and the family, harm though malice, ill-will and for financial gain.*"

25. In her first witness statement, Lisa said:

> *"I believe that the claim presented by the Claimant is generated by, and supported by, malice that the Claimant has against myself and my family following the failure of Mr Dimberline's marriage to Katie Fryer (nee Dimberline) and threats made by Katie Fryer to make Mark Dimberline's life hellish if he did not agree to her requirements regarding contact with children."*

26. I should make clear that the defendants have made disturbing allegations about harassment in terms of occurrences at Bernard's grave and/or receipt of mail. An example of the latter was said to be photographs, as I understand it from facebook, of members of Lisa's immediate family. The defendants say that these matters are all part of the malicious actions carried out by Colleen and/or her husband and/or Katie and/or Mr Thackray. These matters were rightly not explored in cross-examination. I am not satisfied on the limited evidence produced to me that Colleen, those connected with her, or Katie or Mr Thackray are responsible for the alleged incidents and accordingly leave them out of account.

27. At the commencement of the trial, I was faced solely with a claim by Colleen, as the person representing the estate of the Deceased, for declaratory relief and consequential accounts and enquiries. This was on the basis that the three defendants, who assert that the estate has been fully administered according to the terms of the Disputed Will, had no authority to so administer the estate or receive assets from the estate and that they are what is called "*executors de son tort*", a latin phrase meaning an executor in his own wrong. Put more simply, this concept encompasses a person who has acted as personal representative of a deceased person when they do not have authority to do so. The position is helpfully set out by s28 of the Administration of Estates Act 1925 which clarifies that the expression covers a wider category of person simply than those who act as personal representatives. For example, the concept can cover certain people who receive assets of the estate which have not been properly administered by the properly appointed personal representative of the deceased person:

> "***Liability of person fraudulently obtaining or retaining estate of deceased.***
>
> *28. If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting—*
>
> *(a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and*
>
> *(b) any payment made by him which might properly be made by a personal representative."*

28. It was clearly anticipated by the claimant's legal advisers that the defence raised would be that there was a valid will and that a counterclaim would also be raised seeking relief that the court pronounce in favour of the Disputed Will and that the grant of the letters of administration to Colleen should be revoked. The particulars of claim therefore address and set out the claimant's case that the Disputed Will is invalid.

29. In what is not the only surprising feature of the defence, no counterclaim was raised by that document. In those circumstances, the letters of administration would have bound me. The claimant would have been entitled to judgment as the only person having authority to act for the Deceased's estate and there being an admitted purported administration of the same by or involving the three defendants (see, as regards the conclusive nature of a grant of letters of administration, subject to the possibilities of revocation and rectification, *Williams Mortimer and Sunnucks on Executors, Administrators an Probate* paragraph 34-02).

30. An unfortunate side-effect of the defendants failing to raise a (counter)claim that the Disputed Will was valid and that the letters of administration granted to Colleen should be revoked, was that the proceedings were not technically probate proceedings and there was therefore no need for the defendants to comply with CPR Part 57 and lodge testamentary documents and evidence about them as required by CPR 57.5. This is relevant given the disappearance of the Original of the Disputed Will.

31. The parties having set out their respective cases regarding validity of the Disputed Will in their existing statements of case and there being no objection, I made an order permitting an appropriate counterclaim to be raised and served and for a defence to counterclaim to be served so that the matter of the validity of the Disputed Will was properly before the court for determination. The further statements of case were presented to me before my order was sealed. I dispensed with statements of truth as the new statements of case simply repeated by incorporation relevant earlier statements of case which were already the subject of statements of truth.

32. It was common ground that the only issue that I need deal with at this stage is the validity or otherwise of the Disputed Will. The question of the appropriate relief would follow on after this judgment. In particular, Mr Fletcher made clear that he was not at this stage expecting me to make findings that might more appropriately be dealt with on any account or enquiry regarding the assets, liabilities or value of the Deceased's estate other than so far as such matters were relevant to the issue of the validity of the Disputed Will.

The key matters relied upon by the claimant

33. Each side instructed a handwriting expert to opine as to the validity of the signatures on the Disputed Will. Unfortunately, the original of the Disputed Will was not made available to the Experts. Mark says that the original was destroyed in circumstances that I shall set out later in this judgment. The experts accordingly had to work with copies of the Disputed Will.

34. Each expert concurred in the opinion that the available evidence is inconclusive on the issues of whether the signatures of the Deceased and of Katie Fryer on the

Disputed Will are genuine or not and whether Mark wrote out the signature of the Deceased on the Disputed Will.

35. Colleen has no personal knowledge of the circumstances in which the Disputed Will came into being or not. In those circumstances, it is helpful to indicate at this point the factual matters that she relies upon in support of her case that the Purported Will is invalid. These matters include:

    i) Communications shortly after the Deceased's death between Mark and Lisa with the providers of an insurance policy to the Deceased, Aviva, to the effect that the deceased died leaving no will/intestate.

    ii) An exchange of e-mails between Mr Thackray and Mark on 7-8 September 2018 in which Mr Thackray threatened to reveal the falsity of the Disputed Will if Mark did not stop bullying Katie and Mark countered by asserting that Katie was "complicit" so that she would "be done just as much as me".

    iii) The evidence of Mr Thackray and Katie and the unlikelihood of them persisting in these allegations when, if they were wrong, there was at the least a serious risk they could be disproved.

    iv) The fact that the will refers to Elaine as a "partner", rather than "wife" in circumstances where Mark only knew that true status after Bernard's death.

    v) The improbability that the Deceased would have gifted almost the entirety of his estate to his comparatively wealthy daughter when his partner, Elaine, would have been of need after his death.

    vi) The manner in which the defendants have conducted their case and particularly regarding repeated failures to set out their case, in terms of explanations for certain central allegations of the claimant, so that these emerged at trial for the first time and, to some extent related to this point their withholding or attempted withholding of key evidence from the claimant.

36. At this stage I make two points about these matters. First is the obvious point that it means it is necessary to consider the manner in which the claim and the proceedings have developed in some detail and with some care. Secondly, Mr Fletcher accepts that some of the points that he raises carry greater weight than others. Indeed, some standing by themselves might carry little or no weight in support of the claimant's case. However, taken with other matters, submits Mr Fletcher, they add to the overall picture and to the conclusion that the Disputed Will is not valid.

37. There are four further points that I make at this stage. They relate to the burden of proof, the standard of proof, the dangers of hindsight and the assessment of oral evidence given by witnesses.

38. First, as regards the burden of proof, Mr Fletcher opened the case on the basis that the burden of proof lay on him to establish that the Disputed Will was false. I proceeded on that basis. As regards the burden of proof, I note that comparatively few cases turn upon the incidence of the burden of proof, though that does not mean that this case

might not have been one of those cases. As it happens, I do not consider that this case does turn upon the incidence of the burden of proof.

39. Secondly, although the case concerns allegations of fraud (in fact on both sides) the standard of proof remains the civil standard. In determining what the evidence establishes on the balance of probabilities, the court will have regard to the overall probabilities in all the circumstances and in the light of all the evidence. This approach is illustrated by the comments of Lady Hale regarding the probability of an animal seen outside the lion enclosure at Regent's Park being a dog rather than a lion in *Re B (Children)* [2009] AC 11:

> " *[72]. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."*

40. The need to consider the allegation against the probabilities in its full context is demonstrated by the facts in this case where the claimant asserts that the Disputed Will is a dishonest false will created after the Deceased's death and the defendants assert that, at the least, Katie and Mr Thackray have dishonestly conspired to harm Mark/Lisa by making up a case and giving false evidence that the Disputed Will is a false will, their case being adopted by the claimant. I accordingly do not approach the matter on the basis that the more serious the allegation the less likely it is to be true. To some extent, it might be said that the improbability of fraud as a general proposition does not assist in any event given the opposing contentions of fraud on each side. As regards the general issue of standard of proof and the seriousness of allegations, I gratefully adopt the analysis of HH Judge Richard Williams (sitting as a High Court Judge) in *Singh v Jhutti* [2021] EWHC 2272 (Ch) at [113]-[118].

41. As regards the dangers of considering matters after the event in the clinical atmosphere of the court, I take account of two matters in particular. First, certain events in this case took place at a time of great emotional stress for the relevant actors, that being the period following the death of Bernard. Secondly, the defendants, although having the benefit of legal advice, were not and are not themselves lawyers. Criticism of the manner in which they have reacted to the claim has to be judged in that light.

42. Finally, as regards the approach to the assessment of oral evidence, I have well in mind the very well-known passage from the judgment of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Rep 1 (which was described as "salutary" by Lord Mance in *Central Bank of Ecuador v Conticorp SA* [215] UKPC 11 at [164]): [57]:

> *"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."*

43. That passage is of course supported by more recent caselaw and studies as reflected by, and referred to in, passages in cases such as *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at paragraphs [39] to [41] (citing among other cases *Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3650 (Comm); Lachaux v Lachaux [2017] EWHC 385 (Fam) [2017] 4 WLR 57; Carmarthenshire County Council v Y [2017] EWFC 36 [2017] 4 WLR 136; Kimathi v Foreign and Commonwealth Office [2018] EWHC 2066 (QB) at [96])* and *R (on the application of SS (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391.

44. In addition, it is helpful to refer to, and bear in mind, paragraph 1.3 of the Appendix to Practice Direction 57AC which provides:

> "*1.3 Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:*
> *(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but*
> *(2) is a fluid and malleable state of perception concerning an individual's past experiences, and therefore*
> *(3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration."*

45. In this case, some of the witnesses made witness statements in 2021 at the time of the service of statements of case and then further witness statements in 2022.

The witnesses in this case

46. For the claimant I heard from Katie, Colleen and Mr Thackray.

Katie

47. As regards Katie, she was mainly cross-examined about (a) the reasons for her delay in telling Colleen about the allegedly false nature of the Disputed Will; (b) the circumstances in her life applying at the time, as supporting a case that she had made up the whole story of a false will out of spite against Mark and/or to further her position in divorce and/or custody battles (with Mark, over their children); (c) that Mr Thackray in some way controlled her and that Colleen was told the false story because of him and, finally, as regards her recollection and reliability, about a discrepancy in

what she had said in her witness statement compared with what she had told Colleen in September 2018.

48. Katie explained that she originally went along with the false will in the sense of not telling Colleen about it because at that point she was supportive of her husband, who was grieving and of his family and was a loyal wife who would not go behind her husband's back.

49. However, she said, her attitude changed as a result of various incidents leading up to and/or during the break-up of her marriage and the ensuing legal proceedings. I did not need to decide which version of events regarding the breakup and various alleged incidents were true. It is undoubtedly the case that the battles were bitter and quite nasty.

50. Katie was perfectly open that the threat to tell Colleen about the will was really a case of: "if you don't hand the children back and stop these games and incidents then Colleen will find out the truth".

51. So far as Mr Thackray's involvement was concerned, she accepted that she is not sure that, without Mr Thackray, she would have been brave enough to carry the threat out and tell Colleen and that it was Mr Thackray who contacted Colleen (which fits with the documentary evidence). I am not clear whether the suggestion of "control" of Katie by Mr Thackray was in some way to shift the blame for creating a false story about the Disputed Will to Mr Thackray or not. In a sense, if the story was false it does not matter who was primarily responsible for making it up and peddling it to Colleen.

52. Katie says that she did not sign the will as a purported attesting witness. On the balance of probabilities, I am satisfied that that is correct. If the Will was validly signed by Bernard, then the likelihood is that Katie did attest the signature. However, if I find, as I do, that the Disputed Will was created after Bernard's death, then Katie clearly did not sign it as true attesting witness. Although, in such circumstances, it is possible that Katie would have gone ahead with what her husband wanted, and signed the Disputed Will accordingly I am not satisfied that this is so on the balance of probabilities. Her evidence that she did not sign the will is believable because she accepts that she was aware of the forgery and did nothing about it and there is little reason for her not to admit falsely signing it too if that is what she had done.

53. However, and again, whether or not she did attest or purport to attest the will does not matter much for present purposes. Katie accepted that she knew about the falsity of the Disputed Will and did nothing about it so, in terms of her credibility as a witness, whether or not she actually purported to witness the Will or simply stood by knowing her name had been forged and that the Disputed Will was invalid makes little difference. She was just as much implicated in knowing about the falsity of the Disputed Will and doing nothing about it. Further, even if she did apply her signature, and she was lying when she said she did not, I have to remember that people lie for different reasons and the fact that they may lie about one matter does not mean that all their evidence is lies (see the classic criminal direction to juries referred to as the *Lucas* direction after the case of that name).

54. I will assess Katie's evidence against the written documentation and other evidence in the case but, in short, the explanations that she gave appeared to me to be open and convincing.

55. One telling point she also made was that, given the divorce and custody battles were now over and resolved, why would she expose herself to giving false evidence in this case now? I do not have any relevant court orders regarding custody before me but note that a decree absolute of divorce was granted on 4 May 2020 dissolving the marriage of Mark and Katie. Her evidence, that custody (and as I understood her access) was now all sorted, was not challenged.

56. As regards the question of the accuracy of her evidence, Katie was asked about a discrepancy comparing a conversation with Colleen on 10 September 2018, when she and Lee met Colleen to discuss the issue of the falseness of the Disputed Will, and her written evidence in this case. On the former occasion, the transcript says that she said that on the day she and Mark learned of Bernard's death and she took her daughter to hospital before going to the Property, whereas in her witness statement she said that, after taking the children to school, she went straight to the property to offer support, but did not mention the hospital visit. Her explanation for this discrepancy, that she may not have remembered the precise chronology of events at the time she made her witness statement, and that the latter might be wrong seemed to me a genuine answer which made sense, and which was a candid and convincing answer. I do not consider that this matter causes me to doubt her evidence on the substantive issues which, in any event, are not really matters where a faulty recollection is one of the realistic possibilities.

Colleen

57. I found her evidence persuasive, clear, cogent and consistent with the documents before me. She, of course, could give little evidence as to the validity or otherwise of the Disputed Will. However, it was alleged by the defendants that she was a knowing party to a dishonest conspiracy to make up a story that the Disputed Will was invalid and to seek to benefit thereby.

58. One of the matters that she dealt with, in response to allegations of Lisa that she was not Bernard's natural daughter, was her relations with Bernard over the years. It is not a relevant issue in the proceedings before me as to whether Colleen is or is not Bernard's natural daughter. I therefore do not decide the issue save to say that for the purposes of this judgment I assume that she is his daughter. She has obtained letters of administration on that basis and her position is supported by her birth certificate. Nothing less than a relevant DNA test demonstrating Bernard's paternity will apparently satisfy Lisa on this issue.

59. As regards the allegation of fraudulent conspiracy to which Colleen was a knowing party, one difficulty of this analysis was the defendants' own pleading that, on an intestacy, Colleen would not be entitled to very much at all. If the defendants' sums are correct then it seems quite possible, if not likely that, even if Colleen wins and costs are awarded in her favour, she will be out of pocket.

60. The defendants cross-examined Colleen to undermine her position by suggestion that this was not the outcome that she was aiming for. Because, at an early stage, she had

suggested she would settle if she received a sum equal to one half of the estate (after payments of its debts) (and not some smaller percentage that she would obtain on intestacy, given there were siblings other than herself and Lisa), it was suggested to her that it was her intention to cut out other entitled siblings from participation in any distribution from the estate and that, as administratrix, she would not search out the other siblings and ensure that they received their proper share. In my judgment, settlement discussions where monetary compensation is in issue is a very different situation to that where the administration of the estate is in issue. Further, I accept Colleen's evidence that, as administratrix, she would (and will) in fact administer the estate properly in the sense of taking steps to ensure all beneficiaries entitled on intestacy received their proper share of the estate.

61. It follows that I reject any suggestion that Colleen, in bringing the proceedings, was doing so knowing that the Disputed Will was valid and that the case that she had brought was a dishonest one and that she was party to any conspiracy with Katie and/or Mr Thackray falsely to impugn the Disputed Will. This is so even if I am incorrect in my findings that there was no conspiracy between Mr Thackray and Katie to make false claims.

Mr Thackray

62. Mr Thackray gave evidence in a clear and convincing manner. Nothing in his cross-examination caused me to doubt his version of events. However, as with Katie's evidence, the real issue is the extent to which the documents support that case. I analyse that position later in this judgment.

63. For the defendants, I heard oral evidence from Lee Dimberline, Elaine and Lisa.

64. As regards Lee Dimberline, his witness statement was made on 20 July 2021. In that witness statement, he asserted that he had no doubts about the authenticity of the Disputed Will and that it had always been known within the family that upon his father's death he would leave any money to Lisa.

65. In cross-examination, he was asked whether anyone had told him prior to his making his witness statement that Mark had told the insurers the day after Bernard's death that there was no will. His answer was telling: no, because everyone knew there was a will. I will address this point later in the judgment, but it is a key part of Mr Fletcher's submissions that, if indeed everyone knew there was a will then Mark would not have made the relevant statements that he made to Aviva (and neither would Lisa), in each case regarding there being no will.

66. Apart from this, I found Lee's evidence unconvincing. In cross-examination he moved from a general statement that everyone knew that his father intended to leave everything to Lisa to one that his father had mentioned, on at least one but possibly more occasions (but which he was not really able to contextualise or explain how they came about or even when in broad terms they had occurred) that he had made a will leaving everything to Lisa. He said that he, Lee, had no reaction to this news and that he didn't even think about whether there might be any impact on his mother, Elaine. He also stuck blindly to the fact that everyone always knew there was a will and did not engage with the issue of why Mark would have told Aviva there was no will. Indeed, Lee seemed rather inclined to deny that Mark had told Aviva that there was

no will, even though he had been in court when the tape of the relevant conversation had been played. His final position was that that news simply did not impact on his belief there always had been a will. He accepted that he had never seen a will.

67. At the end of the day, I came to the conclusion that Lee was blindly sticking to the line of supporting Lisa (and Mark) and that his evidence carried little or no weight.

Elaine

68. As regards Elaine, she had not presented a substantive witness statement in the proceedings for the purposes of the trial as ordered but only, as ordered, a witness statement regarding disclosure. That witness statement was dated 12 July 2022. However, it was used as a vehicle to set out substantive evidence in the case. A great deal of that evidence was directed to how Colleen did not have close relations with Bernard.

69. In her witness statement, Elaine, rather tellingly, did not suggest that she knew about the will prior to Bernard's death. Rather she asserts that it was "her belief" that he purchased a will for and asked Mark to help him complete it and that he discussed his intention to prepare a will and his wishes with his brother Laurence (but not with her).

70. Elaine gave evidence in a dignified and cogent manner. She was primarily cross-examined about her financial needs and whether Lisa in fact facilitated use of the residue of the estate monies for her, Elaine's, benefit. She of course also maintained the position that the Disputed Will was valid. I shall have to evaluate her evidence in the light of the other evidence in the case. She was unable to offer any explanation as to why Mark and Lisa would have told Aviva that there was no will. She also confirmed, as was in any event fairly obvious, that the dealing with the financial side of the estate (identifying and getting in the assets in particular) and with the proceedings before me had largely been left to Mark and Lisa.

71. Elaine was recalled to be cross-examined regarding bank statements of an account maintained by Lisa. The bank statements had been disclosed in a heavily redacted form. They were provided in an unredacted form during the trial but after Lisa and Elaine had given evidence. That was why they were each re-called. I found her evidence on this issue to be unreliable.

Lisa

72. I found Lisa to be an unconvincing witness. I will explain this in more detail as I go through various events or documents later in this judgment. In particular, at this point, I note that she was unable or unwilling to tell the court what her understanding was (and indeed what her case was) as regards why Mark had told Aviva that there was no will, or why he had written to Mr Thackray apparently suggesting that Katie would also "go down" over the creation of a false will if Mr Thackray made the matter public. The excuses that she made as to her own position regarding contact with Aviva was also unconvincing, as I explain later in this judgment.

73. I should also say that I regard Lisa as an intelligent, literate, organised person with a clear grasp of the case, the evidence and the various issues and points being made in argument and their significance. That is revealed not just by the telephone

conversations and documentary evidence that I will come onto but by my observation of her in court. The trial bundle had clearly been carefully marked up and stickers attached. She was in constant communication with Mark as to what he should say either to the court or in cross examination and indeed at one point made an interjection to disagree with a witness while they were giving evidence. On a number of occasions, she suggested that during the course of proceedings she had done things or not done things in reliance on her solicitors and thought they had done everything necessary. I am however satisfied that she has taken this case very seriously from the start and has kept a close monitoring role over what the solicitors were doing. In particular, from the cross-examination conducted by Mark with her assistance and her more recent phone calls to Aviva asserting that the letters of administration granted to Colleen were wrongly, if not dishonestly, obtained and that Aviva should not reveal documents to the claimant's solicitors, Newtons, it is clear that she has a great eye for detail and an assertive nature which is not consistent with the picture that she sought to paint of someone who simply blindly relied on her solicitors who led the whole process with little input from or understanding by her or that she has been confused and bewildered through much of the time.

74. As I have explained, Lisa was recalled for further cross-examination once she had disclosed unredacted versions of bank statements for an account in her name. I deal with that evidence later in this judgment.

Mark

75. As he had been in addressing me, Mark gave his evidence in a calm and collected manner. As with Elaine and Lisa, his evidence has to be weighed against the other evidence, especially the contemporaneous documentary evidence, and the probabilities. As I shall explain, I found that the substance of his answers was unconvincing on a number of points, most especially regarding his explanations of certain documents or telephone conversations and his explanations as to why such explanations were being heard for the first time in the course of his cross-examination.

Other witnesses for the defendants

76. The defendants relied on a witness statement from Mr Laurence Timberline, the younger brother of Bernard. I was told that Laurence was ill in hospital though there was no medical evidence before me. By agreement, the statement was admitted as hearsay evidence. In his statement, Mr Laurence Dimberline says that Bernard visited him in February and stated his intention to make a will and "to leave his estate to his only surviving daughter, Lisa" (paragraph 4) and "that Lisa and Elaine would both receive his estate upon his death" (paragraph 6). I attach little weight to this statement. No will is ever said to have been seen by Mr Laurence Dimberline, he is at least prima facie inconsistent (or very unclear) as to who was to receive his estate and it is unexplained why Bernard would have referred to Lisa as his "only surviving daughter".

77. A number of other witness statements had been served by the defendants, but they did not call the witnesses and did not rely upon the statements.

The history in this case up until the letter before claim

78. When Mrs Cropper was about 4 to 5 years old, the Deceased married his then girlfriend Betty in 1974. He obtained custody of Mrs Cropper and she lived with him and Betty. The Deceased and Betty split up in about 1981-1982 over the deceased's relationship with Elaine, Mrs Cropper was then about 11 or 12. Mrs Cropper continued to live with Betty until she was about 15 or 16, at about the time when Betty and the Deceased were divorced. Subsequently, Mrs Cropper went to live with the Deceased and Elaine for about a year. She then returned to live with Betty and thereafter rented a flat on her own.

79. There is a dispute as to how close Colleen was to her father and to what extent she remained in touch with him after her teenage years. This evidence, as I understand it, is directed to whether Bernard was Colleen's natural father (it being more likely he was if there was close contact between them) and/or whether it was likely he would leave property to Colleen by will.

80. I do not need to resolve the dispute about the closeness of relations between Bernard and Colleen over the years. I have already explained that the issue of whether or not Colleen was Bernard's daughter does not arise as being relevant to the issues that I have to decide, So far as the matter was raised or addressed by the defendants to counter any argument by the claimant that Bernard would have intended to leave part of his estate to her on an intestacy, the point again does not arise. Failure to make a will is not the same as making a will. The claimant does not suggest that her father wanted to leave her part of his estate. The fact (she says) that she had good and close relations with her deceased father is not something that she relies upon as making it less likely that the Disputed Will is valid. In fact, her position is that it is more likely that the Deceased would have wanted to leave the residue in his estate to his partner, Elaine rather than (as the Disputed Will provides for) to Lisa.

81. Of course, the evidence could also be relevant to general credibility, but this issue was a satellite issue which would not have assisted me on credibility.

2017

82. I have dealt with the making of the will in May 2017 earlier in this judgment and Mark's explanation of what he says occurred.

83. As I have said, Bernard died on 11 October 2017.

84. According to Katie, early that morning Mark's phone rang. He took the call while he was in the bedroom. Katie was elsewhere in the home, getting the children ready. He shouted out something along the lines that his mother was on the phone and that she thought his Dad was dead. Mark then went over to his Mum's (the "Property"). He later rang Katie to tell her that the paramedics were still there but that his father had passed away. Katie delivered the children to school. She then went to the Property. As I have explained, she may have gone to the hospital on the way to the Property but other than as a matter going to the credit of her testimony, resolution of that issue is not relevant for present purposes.

85. Katie says that, once at the Property, Elaine was (understandably) very upset but that one of her concerns, at least as made manifest by what she said, was reflected by what she was saying about "what was she going to do now, she would be forced to go out

to work and she needed to find out what money she had". This makes perfect sense in Elaine's circumstances, though Elaine denied it in cross-examination. It is also consistent with the fact that immediate attempts were made to identify bank and other accounts and very speedily contact was made to collect in assets of the Deceased (e.g., the call to Aviva by Mark was made the following day). I find that Elaine was concerned about her financial position and did make that manifest at the time. That does not in any way detract from the position that I am satisfied that she was also grief stricken and that money at that point was not the priority issue. As Katie put it, Elaine said something along the lines of "I know it sounds bad, but I need to find out what money I have, please don't think I'm only bothered about the money, but I need to know". At this point, Elaine owned the Property which was worth about £100,000 but was subject to a mortgage of about £39,000. She received carer's benefit and was not in receipt of other income. She had limited savings of, perhaps, a few thousand pounds. She was also caring for her mother.

86. Katie remembers that Lisa arrived by train that afternoon. That is corroborated by a text message between Lisa and Mark. That text message suggests that Lisa arrived at Leeds by train at about 2pm and that Mark went and picked her up from the railway station.

87. Katie says that she remembers that once Lisa had arrived, Elaine took Lisa, Mark and Lee to one side in the living room saying that she needed to speak to them in private. Katie and Lee's wife, Laura, remained in the Kitchen. When they returned, Elaine told Laura and Katie that she had needed to tell them that she had not in fact been married to Bernard as everyone had believed for a number of years, at least since Mark had been a young child.

88. In cross-examination, Elaine remembered this conversation with her children and essentially corroborated it. She denied that she told the children the true position because she was worried that, not being married to Bernard, she would not receive anything on an intestacy. She said that she told the children because she did not want to lay Bernard to rest on a lie. I accept this evidence.

89. Katie was the only person who dealt with the timing of this conversation. The evidence of others was consistent with the conversation having occurred later but before the funeral. On the balance of probabilities, I consider that the conversation did take place later than remembered by Katie. Most importantly, that is consistent with the position revealed by the conversations with Aviva. On 12 October, Aviva was told over the telephone that Elaine was Bernard's wife, but that position was corrected in a call on 18 October. I consider therefore that the conversation took place after the first Aviva call and before the second one that I have just mentioned. It also seems likely to me that this would not have been the first thing on Elaine's mind on the day of Bernard's death and that the reference about not laying him to rest under a lie also suggests that this was a point that wouldn't immediately have occurred but was more connected with an impending funeral.

90. On 12 October 2017, Aviva received a phone call from Mark. The transcript of this conversation is not formally admitted by the defendants. As I understand it, the transcript was prepared from a recording of the telephone conversation. The tape recording of the phone call was played in court at the trial. The only variations between the transcript and the tape recording were, in my judgment, minor and

irrelevant. Any discrepancy was not on a key part of the transcript, nor did it undermine the general accuracy of the transcript. I had understood this to have been agreed by the defendants after the tape recording had been played in the court room. Subsequently, however, they denied that, in a key respect, the transcript was accurate.

91. The telephone call went through routine matters such as the policy number, policyholder name and address, whether the policyholder died on the UK mainland and whether he died from natural causes. I was provided with a further electronic recording of the telephone call and, in preparing this judgment, I listened to the recording through headphones when played through my laptop.

92. The transcript mentioned a female being with Mark and making background comments which are occasionally picked up by the transcriber. What became clearer to me on further listening through headphones was that, in the background there was a female voice, being that of a person with Mark, making comment, prompting or confirming what Mark was saying at various stages. These background comments are not all recorded on the transcript but can clearly be heard, for example when Mark read out the customer reference number, the policy number and when he was answering a question as to whether his father's passing was a result of natural causes, both when he was talking about the possibility of a coroner's report and when he was talking about his father having had an accident at work some three months previously.

93. After the matters that I have referred to, the transcript then goes on to deal with the question of a will and surviving spouse as follows. Jordan is the name of the Aviva employee.

> *"Jordan: Er and did your father have a Will in place at all.*
> *Mark: No…no he didn't.*
> *(Female voice in the background: he didn't do one)*
> *Jordan: And is there a surviving spouse?*
> *Mark: There is yes.*
> *Jordan: And can I ask the spouses full name?*
> *Mark: Its Kim Elaine Dimberline.*
> …….
>
> *Jordan: ……If it was natural causes, what we can do is complete the claim over the phone with Mrs Dimberline. All that she would require on the call back would be the registrar's death certificate and the bank details in her name.*
>
> *Mark: Yeah, ok yeah.*
>
> *Jordan: And then if the passing of your father was not due to natural causes, we can then look at the other route, which would be just to send a claim out to Mrs Dimberline to fill in and send back to us."*

94. Mark then asked what the sum insured was. Jordan told him that it was £7,280. Jordan asked if there were any more questions. The transcript refers to a female voice in the background saying, "*we want to cancel*". Mark then says "*Erm obviously we need to cancel this policy now as well.*" Jordan then explained that, once the claim was complete, the policy would be "shut down" as well as suggesting that the direct debit be cancelled before the claim was complete, if that was possible.

95. As regards the tape recording, I note that there are no obvious signs of distress, muddled thinking or the like on the part of Mark.

96. Having listened to the tape through headphones I find that the more accurate record of the same at the point at which the issue of the will was being raised would be as follows (I show the changes form the transcript in tracked change):

> "*Jordan: Er and did your father have a Will in place at all.*
>
> *(female voice in background: No, he didn't agree with that)*
>
> *Mark: No…no he didn't.*
>
> ~~*(Female voice in the background: he didn't do one)"*~~

97. As the transcript records the female intervention as being "he didn't do one" and cross examination proceeded on that basis, I am prepared to assume that that is in fact what the female voice said. What is clear, on any view, is that the female voice was, in effect, saying that there was no will which Mark then confirms directly to Jordan.

98. Elaine was not sure whether or not she was present when the call was made. Lisa also was uncertain. On the balance of probabilities, I consider that Lisa was the female whose voice can be heard in the background. It is consistent with Elaine's evidence that, by and large, the sorting out of the financial position was left to Mark and Lisa while she was dealing more with letting people know and taking the lead on the funeral arrangements. The prompting from the background also strikes me as being more consistent with the role that Lisa took throughout the trial and with regard to financial matters in the period post issue of proceedings.

99. In giving their respective oral evidence, neither of Elaine nor Lisa were able to explain why Mark said that there was no Will. After all, he had, so he says, effectively written the Disputed Will for Bernard just under 5 months earlier and had been given the physical will to safeguard (although why he should have been given that function was also unexplained). Further, if everyone in the family knew there was such a will then why did Elaine go along with the position that there was no will and not remind him that there was?

100. The first time in the proceedings that an explanation as to why Mark told Aviva that there was no will was given was when Mark proffered the same in cross-examination. He said that at the time his mother was with him. He had not yet told her about the will. He did not want to upset her. He wanted to sit down with her face to face and tell her about the will. When it was suggested to him that this made no sense, his response was to say that everyone was very upset and maybe not thinking straight.

101. In my judgment, the explanation makes no sense at all. If Elaine was present (which I have found she was not), the position of the defendants and their witnesses was that everyone in the family knew that Bernard intended, in effect i.e. save possibly for a few minor items, to leave his property to Lisa and that he intended to make a will to that effect, further everyone knew or believed that he had done so. How, in those circumstances could it have been thought "upsetting" to reveal to an insurance company in the presence of Elaine that there was indeed a will? Furthermore, why

was this explanation and the then factual circumstances never put forward and properly confirmed in witness statements, not just from Mark but from Elaine and possibly Lisa? This is especially so given the history of the proceedings where, as I shall go onto explain, this conversation was one of the lynchpins (or as Mr Fletcher put it in submission, pillars) of Colleen's case. It was also that case that at an early stage the defendants' solicitor openly acknowledged that the question of whether Aviva had been told that there was no will was a very important point but kept asserting, on instructions, that Aviva were wrong in saying that this was what they had been told and simply mistaken in suggesting they had ever been told that there was no will.

102. Further, I reject the suggestion that even if the explanation was odd with the benefit of hindsight it is understandable given Mark's grief at the time.

103. Further, this explanation was surprising in the following context. When asked about this (before Mark gave oral evidence), Lisa suggested that in a situation of shock we all make mistakes, everything was a blur an absolute shock and she herself made errors later in giving the number of her bank account to Aviva (by one digit). She did not suggest that she had any understanding of the explanation about not upsetting her mother that Mark later put forward. That there would not have been discussions as to what the explanation was in the light of the history of the proceedings is not credible. The explanation consistently put forward by the defendants' solicitors (on instructions) was that Aviva was simply wrong in saying that they had been told that there was no will. That position was never formally corrected. The documents and tape recordings showing this to be untrue were only produced to the claimant's solicitors by Aviva days before the trial (though some of the truth, in the form of a claim form relating to the Aviva policy, completed by Lisa and also asserting no will, had been revealed to the defendants' solicitors some years earlier).

104. On 18 October 2020, Mark phoned Aviva about the Aviva policy. Again, there is a transcript of the telephone call taken from the sound recording. The sound recording was played in court. The defendants agreed that the transcript is accurate even if there are some minor matters where it is not 100% accurate.

105. In the telephone call, Mark informed Aviva that they now had the cause of death. The employee at Aviva, Emma, informed him that once there was a death certificate then he could call Aviva back and the claim could be done over the telephone. The conversation continued:

> *"Emma: Now I see from the notes there was a surviving spouse, is that correct?*
> *Mark: Nah they weren't married actually.*
> *Emma: They weren't married?*
> *Mark: No. Does that cause a problem?*
> *Emma: Yes, well if she is not his legal spouse then it wouldn't be her we would need to deal with.*
> *Mark: Would it be his daughter then?*
> *Emma: Yeah it would be his children, so how many children did he have?*
> *Mark: Well me and my brother are his step-children but he does have my sister who is his biological*
> *daughter.*
> *Emma: So then that's you, your brother, your sister –*

Mark: Yeah, and my sister is his biological daughter.
Emma: So, I'm sorry, how many children does he have sorry?
Mark: So he has three, but me and my brother are his step-children. So my sister is his biological daughter.
Emma: Right, so in terms of that they're not married so you're not his legal step-children so then his biological daughter, right ok –
Mark: - Would need to deal with it yeah?
Emma: Yes, so can I ask what's her name"

106. This confirms that by then Mark was aware that Elaine and Bernard had not been married. It is also notable that at this stage the earlier position Mark had taken, that there was no will, was not corrected.

107. On 19 October 2017, the death certificate for Bernard was issued.

108. On 20 October 2017 there was a call between Aviva (Emma) and Lisa. Lisa telephoned Aviva. Having gone through a number of questions to identify the policy and so on, Emma went through a number of statements:

E: and we begin there are some statements that need to be read out first of all
L: Okay
E: these are just to advise that in order for us to deal with this claim over the telephone we are assuming that you are the person entitled to be dealing with your father's affairs, therefore, you are following his wishes to the full and you will deal with his proceeds fairly and in full accordance with the rules of intestacy. Is that correct?
L: That's correct
E: and that you understand that by having this conversation replaces our requirement to provide the written notice that would normally require us in order to pay out the claim. It just means that by doing this over the telephone, agreeing to that statement it overrides the fact that you have to write in and explain that to us.
L: Right okay.
E: and just lastly, we use third parties to carry out electronic identity checks and bank account verification. Now we keep a record of this information but we carry out these checks to verify our customers identity and for the prevention of financial crime. Now its not a credit check we run, nor does it affect your credit rating in any way, it just allows us to validate your details and basically prove you are who you say you are.
L: Okay
E: Is that okay with yourself?
L: Yeah
E: Okay, so to be able to continue, the details I'll will need are in regards to yourself"

109. Lisa did not say that there was a will and that Mark, as executor, was the person entitled to deal with Bernard's affairs.

110. In the course of the conversation, Lisa gave Emma details of a new bank account that she had opened that day on the basis that "*my only other bank account is a joint one*". This bank account was opened in Leeds, though the relevant branch is in Oxford Street, London. Emma was however unable to verify that account on-line (or Lisa's joint account at Coutts) and as a result she explained that the claim would have to proceed via a paper claim, meaning that Lisa would have to fill in a claim form which could be sent to Lisa electronically by email for Lisa to complete and return.

111. Lisa filled in the Aviva claim form. She returned it, apparently on Saturday 21 October (according to a later conversation that she had with Avia on 25 October 2017). The claim form was quite simple.

(1) First there was a table comprising one row for the policy number to be filled in.

(2) Then there was a table for contact details of the signatory: should we need to contact you regarding the claim. There was a row for each of Name, address and telephone number.

(3) Then there was a table for "Account you would like the monies to be paid in" with separate rows for sort code, account number, account holder's name and account holder's date of birth

(4) Then there was a table for "Signature of all surviving children" with first a box seeking confirmation of the number of existing children followed by a table for the name of the child and the signature of the child. The box was filled in with the number "1" and in the table Lisa wrote her name and inserted her signature. Immediately above the table and underneath the box for the insertion of the number of children, the following appeared:

"*I/We confirm that there has been no Will and no surviving widow(er).*"

(5) Then there were tick boxes regarding enclosing the original death certificate and the original policy schedule (or confirmation that there had been an inability to locate the same).

112. On 25 October 2017, Lisa made a further telephone call to Aviva (Steve). She explained that she was telephoning to explain that, when she had telephoned previously to complete a claim by telephone, the bank account had not been verified and that that she had got one of the numbers of the account wrong and that this mistake had been carried forward into the claim form that she had sent in. Steve was still unable to verify the account (or her joint account at Coutts) over the telephone. He explained that the claim form had not then been received but the bank account number that Lisa had then given would be noted on file so that the money was paid to the correct account.

113. Mr Fletcher relied heavily upon the telephone conversations that Lisa had with Aviva, as well as the claim form. These involved Lisa confirming that she was responsible for administering the estate, that she would do so in accordance with the laws of intestacy and that Bernard had left no will.

114. Again, for the first time in the proceedings, explanations for these matters were first given in cross-examination. As regards the children of Bernard, Lisa took the position in cross-examination that she had believed that Colleen was not the natural daughter of Bernard and that this was something she had been told by Bernard when she was very young. Despite a birth certificate of Colleen showing her to be the daughter of Bernard, in the absence of DNA testing Lisa did not accept this. She did know that Susan had been his biological daughter and that Susan had died leaving at least one child. As regards Mark's role as executor under the Disputed Will which, on the face of it meant that he not she should be dealing with the policy with Aviva, she said that he had her that she needed to deal with Aviva and that he as executor could not. The basis for this was not satisfactorily explained other than that she said that she didn't know anything about this area of the law and also made a suggestion that she might not have seen the Disputed Will at that point. As regards the formal matter read out over the telephone call, and especially the reference to the laws of intestacy, she said that she did not understand that reference and she did not ask to have it explained, even though she realised that it was an important point being put to her. As regards the claim form, she suggested that the writing confirming that there was no will was small, she may not have had her spectacles and that everything was a blur at that point and that she was just trying to get through things. She accepted that she received and filled in the claim form at home under no pressure of time or immediate circumstances.

115. I did not find these explanations satisfactory or to be convincing.

116. Bernard's funeral appears to have taken place on or about 27 October 2017 as that is the date relevant photographs were shared on a family group chat that Katie had created.

117. By letter dated 30 October 2017, Aviva confirmed that the amount payable under the policy was £7,280 and that a credit had been made that day to an identified bank account, but that it could take up to 7 days for the money to reach that account.

118. According to Mr Thackray, sometime in October 2017 Mark had telephoned him. He explained that on the morning of Bernard's death (in fact it was probably the afternoon) he and Elaine had been going through Bernard's bank statements and found large sums of money there. He explained that he was going to make a will (for Bernard) and wanted Mr Thackray to witness it. He explained that Bernard had not left a will and that he and Elaine had not been married and that without a will, Elaine would not receive anything. Mr Thackray says that he refused because he knew that this was wrong and that a will could not be prepared for a person after that person had died. He says that Mark told him not to worry and he would sort something out. As will become clear, I am satisfied that this conversation took place and that this reflected a realisation that Elaine would not take on intestacy and that a will would get round this problem and the decision to forge such a will.

119. At the start of Lisa's oral evidence, Mr Fletcher asked about the widescale redactions to the bank statement provided by Lisa relating to the bank account opened by her in Leeds shortly after Bernard's death and covering November 2017. That showed payments out of just under £4,900. I was told by Lisa in cross-examination that these redactions had been done partly by the defendants' solicitors and partly by her, in particular she wished to keep confidential transactions relating to one of her children.

An unredacted copy was obtained overnight. It was shown to Mr Fletcher who agreed that the recipient of sums in relation to one transaction could be redacted, which was in the sum of £199. The remainder went into evidence. Lisa and Elaine were then recalled to be further cross-examined as to whether transactions related to the purchase of items by or for Elaine. This was in support of the claimant's case that the Disputed Will was made in the terms that it was so as to preserve Elaine's benefits position.

120. The bank statement only covered the period of November 2017 and Mr Fletcher had little time to prepare his cross-examination or to obtain further information. The statement shows some cash being withdrawn in Armley, Leeds and at Lloyds Briggate. A debit card was used to pay Tong Road Carpet (probably Tong Road Carpets and Beds in Leeds). There are also payments to Sofology Limited, Dunelm Limited and the Range, all of which fall within the category of furniture/home, leisure Garden stores/home furnishing stores.

121. Lisa's starting point was that the items purchased at Sofology were for her home in Epsom, that the carpet purchase was for her grandmother as a Christmas present and that other items could be for Christmas presents. When asked whether the Sofology payments (and indeed other store purchase)s were not for Elaine's new home, she denied that as at November 9 (the date of a payment of £385 to Sofology) her mother had moved: there had, she said, simply been enquiries looking into a new property and they had only just had a valuation of the Property. However, on being shown text messages she accepted that her mother had moved by 29 October 2017. The move was to a different size property which would explain why her mother would have been likely to want some new furniture.

122. She was also asked why there had been the redactions in question which did not seem to bear out her position that they had to be kept confidential. Her answer was that she was mainly concerned about, as I understood it, what turned out to be one entry concerning her child. She said that the remainder had been expunged because she was told that she only had to show sums arriving from Mark. Her witness statement, opposing the orders sought, had referred to the order as being "intrusive" and irrelevant. It was suggested to her that it was highly relevant to the claimant's claim that the Disputed Will had been forged when it had been realised that Elain would not take on an intestacy and that although the Disputed Will had been drafted as giving the residue to Lisa, in fact the intention had been that she would make the money available to her mother and had done so. Why, she was asked, did she not turn round and say, "Katie is talking nonsense, here is the proof that I spent the money on myself." She suggested that she had found it all very difficult and confusing. When receiving requests for documents or information, she would get angry and go on the defensive. I do not accept this explanation. In my judgment, Lisa is much more in control and intelligent than that. As regards the application for disclosure that was made by the claimant, she had the benefit of legal advice and time to consider the matter. Nevertheless the application was contested. I am satisfied that she concealed items on the statement because she knew that they would confirm the claimant's case.

123. Elaine largely stuck to the version of events given by Lisa. Although she had needed to buy things for her new flat, and being accompanied By Lisa or her mother on most occasions, she denied that the specific payments in the bank statement benefitted her, <u>as far as she was aware</u>. This was not very clear and concrete evidence.

124. For present purposes, I do not need to identify precisely which payments were directly payments for the benefit of Elaine, but I am satisfied that a considerable number, in percentage and amount, were in fact for Elaine's benefit.

125. Mr Fletcher submits that, to some extent, it might be thought to be natural that Lisa would assist her mother financially from estate monies that she had obtained and that, to some extent, the significance of the matter lies in the fact of an attempted concealment of the same.

126. It is probably worth making the point at this stage that I do not accept the rationale, as put forward in the particulars of claim in support of the proposition that the Disputed Will is a forgery, that Bernard would have wanted to leave his assets to provide for Elaine and that the Will, in leaving the majority of his assets to Lisa, is therefore likely to be false. In my judgment, Bernard would have wanted his assets to go to Elaine. However, he might have achieved that by a will leaving his assets to Lisa in the belief she would look after Elaine and that this method of proceeding would protect Elaine's benefit status. As such though I accept the premise put forward I do not accept the conclusion.

September 2018

127. In about June/July 2018, Katie and Mr Thackray started having a relationship. Mark says that as a result he moved out of the matrimonial home and left the original of the Disputed Will in the matrimonial home together with other personal documents. He says that Katie destroyed the same.

128. The absence of any detailed explanation of how or when he found out Katie had destroyed it and the oddity of leaving the Disputed Will behind coupled with a failure openly to tell the claimant's solicitors at an early stage that the Disputed Will had been destroyed or that Katie was thought still to have it, point to this explanation being suspect. By itself, I would not have considered this enough to demonstrate that the Disputed Will was a forgery, but it is a matter that goes into the scales in favour of that conclusion.

129. On 7 September 2018, there was a message sent by email from Mr Thackray to Mark at 23:48. It was in the following terms:

> "*Listen to me u little prick, leave Katie alone or else this isn't a threat this is a promise. u don't need to be scared of Katie any more, it's what I know and the police u need to worry bout. any more bull shit I won't give a second thought bout fuckin the lot of u. I've done nothing but try and get Katie to make sure u have seen the kids. If u have a problem bulling Katie why don't u be a man and confront me*"

130. In reply, an email was sent from Mark's email on 8 September 2018 at 00:15 in the following terms:

> " *The problem is that your girlfriend is complicit (it means she was involved) and only me and her knew about it. So you do the math, here il help, she would be done just as much as me.*

Heres one just for you x"

131. I did not understand Mark to deny that the first email from Mr Thackray was a reference to the version of events that the Disputed Will had been forged after Bernard's death. Indeed, in his witness statement dated 7 July 2022, he in terms refers to a threatening message from Mr Thackray that unless he stood back and allowed his relationship with Katie that he would have Katie say that the Will that he (Mark) and Katie had both witnessed was a forgery. Although this passage refers to a facebook message rather than an email and although it suggests it was sent in November (though at about the same time, says Mark, as Katie and Mr Thackray were making the same allegations of a false will to Colleen, which was of course September). I am satisfied that this was a reference to the September messages that I have just referred to.

132. Although this exchange had been referred to in terms by Mr Thackray as long ago as his witness statement of 3 February 2021, served with the claim form, it was only for the first time, in cross-examination, that Mark suggested that he had not been the author of the reply to Mr Thackray's email. The reason for this was plain, the reply suggesting that Katie would be brought down with him if matters were taken further was a clear admission of the forging of the Disputed Will. Mark suggested that someone (probably Katie) had accessed his email account and sent the reply. It is simply incredible that, if he really had not written the email apparently in reply to Mr Thackray's and the Disputed Will was genuinely made prior to Bernard's death as he says, Mark would not have challenged the assertion that he had ever accused Katie of complicity in the matter at a much earlier date and taken steps to attempt to prove the same through forensic computer evidence or the like.

133. I find that this version of events by Mark is simply untrue. There was no attempt to cross-examine Katie on this point and no attempt had been made to investigate the position though a computer expert or the like and the point had, as I have said, emerged for the first time in cross-examination. Secondly, the reply was sent very shortly after the original message from Mr Thackray and shortly before Mr Thackray then messaged Colleen, as I refer to next, clearly as a reaction to the email reply that he had received. The suggestion that Mr Thackray and/or Katie had created the reply e-mail from Mark as part of a cunning conspiracy makes little sense.

134. The evidence of Lisa as regards this matter is also unsatisfactory. She was asked if she had asked Mark about his email and why he had sent it. At this point Mark had not given oral evidence and therefore his explanation that he had not sent the email in reply was yet to come. Lisa's response was to say that she had not asked him (even though it was clearly relied upon as a major plank of the claimant's case) because she did not want to return to that difficult time for Mark when he was very vulnerable, and it was upsetting to hear how he had been then. When asked again, why she had not asked Mark about the email she said that it (the email) was "a matter for him to answer". Quite frankly this evidence was simply not credible.

135. By text message, which I understood to have been sent through Facebook Messenger, on 8 September 2018 at 00:44, Mr Thackray wrote to Colleen as follows:

> "*Sorry to break this to you Collen but there is something important you need to know. When your dad passed away, I'm sure you know that he and Elaine were never legally married. Bernard had over £30,000 savings in one bank account, plus thousands in various others, and a life insurance policy.*
> *Because he wasn't married to Elaine, she wasn't legally entitled to it, and under normal circumstances this would have gone to probate, and any inheritance would have gone directly to his biological children.*
> *However, Elaine, Mark and Lisa cooked up a plan. They bought a print out will from WHSmith a few days after your dad's death. They made Mark executor of it, and everything to be left to Lisa.*
> *Lisa then came up to Leeds and made a new bank account, which Mark transferred all the inheritance into. She gave the card to Elaine and she has been living off that money ever since.*
> *All her holidays and meals out, that's your Inheritance she's been spending right in front of your eyes! The whole lot of them have committed fraud and money laundering, to fleece you out of thousands, and to make sure Elaine never has to lift a finger to work.*
> *Happy to go to court regarding this. Will be easy to trace via bank transactions and handwriting on the fake will*"

136. This clearly came as a bolt out of the blue to Colleen. First, she texted back at 07:46:

> "*Hi thank you for your message.*
> *Can I ask who you are?"*

Once that was explained, she went on to say that she thought that she would need to speak to both Mr Thackray and Katie.

137. Mr Thackray made the point:

> *"We haven't told before as they would all do a long jail sentence if I could make a suggestion I would ask them for the money that's owed too u there are kids involved and they would loose there parents that's the last thing I would want but that's tottaly up to u*"

138. Over the next day or so, an arrangement was made to meet on 10 September 2018, at a Starbucks just outside Leeds at Birstall. There is a transcript of that conversation, recorded by Colleen, in evidence. The defendants deny its accuracy and say that it is riddled with inaccuracies. Mr Fletcher did not rely upon it. However, in cross examination it was relied upon by the defendants as against Katie and Colleen in the respects that I have already referred to. I rely on it in a negative sense: that there is nothing in it undermining the evidence of Katie or Colleen (leaving aside the matters that I have already dealt with separately). I do not rely upon it in any positive sense.

139. On 11 September 2018, Colleen met with Mark at Wetherby Service stations. This followed Mark texting Colleen and asking to meet sometime.

140. Colleen made a recording of that meeting. There are clearly gaps in it and large sections are said to be inaudible by the transcriber. Again, its content was hotly

disputed by the defendants. Colleen had however verified the same in her witness statement on 11 July 2022 and no steps were taken to put forward a different/corrected transcript even though the audio files had been disclosed to the defendants in February 2022. This is another example of denials of matters that, on examination, cannot be controverted.

141. According to Colleen's oral evidence, at that meeting although not in terms admitting to forging the Disputed Will, Mark apologised and explained that nothing had been done maliciously. Colleen's understanding (as clarified in re-examination) was that this was a reference to the forging of the Disputed Will. On many occasions, she said, Mark asked what Colleen thought her Dad would have wanted and he suggested that the estate would have to be divided between himself, Lee and Elaine. Colleen says she pointed out that was not right because Lee and Mark were not the biological children of her father. She says that at one point, he went off saying he wanted to phone Lisa and came back with an offer of £1,000. Then he said he would ring her again and came back with an offer of £3,000. Colleen said that she said she would not play that game and would be doing nothing without a solicitor. The transcript of the telephone conversation, even though not complete, confirms her version of events.

142. In his written witness statement of 7 July 2022, Mark did not mention the meeting with Colleen even though the audio files of this meeting had been disclosed by her in February 2022. He said that at about the time that Katie and Mr Thackray were threatening him with making up a story that he had forged Bernard's will, he "believes" that they also began making allegations to Colleen. Again, the failure to deal with this matter earlier is telling.

143. In cross-examination, Mark accepted that the meeting had taken place. He said that he knew at the time what Katie was saying about the forged will and that Colleen repeated that version of events as having been told to her by Katie. When asked, he did not deny that he had not told Colleen that all of this was made up and that the Disputed Will was genuine. When asked why he did not cross-examine further when Colleen clarified in re-examination that her understanding was that Mark's apology was for forging the Disputed Will, he suggested that he had been quite outraged but put his response down to lack of knowledge/experience of the trial process. Mr Fletcher suggested that it would be human reaction to challenge what, according to Mark, were simply lies about him, but Mark said that he had at some point managed to get focussed on getting through the ordeal of the trail and hiding his emotions and keeping in control. I note also that Lisa did not prompt him to ask questions.

144. On 12 September 2018, there were messages between Colleen and Mark as follows:

"[Colleen]: *£28,000*
[Mark]: Where do you get that number from?
[Colleen]: *1/2 of £56,000*
There is only me and Lisa.
Take it or leave it.
As you know I'm at the solicitors tomorrow.
So all up to you lot which way this goes.

Sorry to take so long getting back to you as I have been on to the solicitors and her advice is 1/2"

145. This message supports Colleen's version of events. It also makes little sense for Mark to have agreed to entertain some form of payment to Colleen if he was firm that the Disputed Will was valid and that was the beginning and end of the situation.

146. On 15 November 2018, Newtons wrote a letter to Elaine stating that they acted on behalf of Colleen, they were aware of the existence of a will and asked for a copy and set out Colleen's belief that the will was forged after the death of Bernard and asking for any information that would assist with their investigation. An answer was sought within 14 days, by 18 October 2018. The letter made clear that if an answer was not received proceedings would follow.

147. On 19 December 2018, Newtons again wrote to Elaine noting that there had been no response to their letter of 19 December 2018. A threat of a subpoena under s122 Senior Courts Act 1981 was made. The original of the Disputed Will was now sought.

2019

148. By 2019, Newtons were in touch with banks where Bernard had formerly held an account and with relevant insurance companies including Aviva.

149. Limited information, in the form of bank statements, was provided by Lloyds Bank plc to Newtons under cover of a letter dated 11 April 2019 covering the period prior to his death.

150. An undated letter from Aviva received by Newtons in about April 2019 confirmed that the policy in question had already been paid out to Mrs L Hirst in the sum of £7,283.76.

151. By letter dated 23 August 2019, Leeds Building Society wrote to Newtons sending various statements for accounts maintained by Bernard. Apart from some earlier accounts closed in 2009 and 2014, the accounts were closed on 12 October 2017 and 16 November 2017.

152. By letter dated 27 August 2019, Yorkshire Bank (being a then trading name of Clydesdale Bank plc) sent Newtons various details regarding Bernard's accounts maintained with that institution as at his death.

153. By letter dated 30 August 2019, Lloyds Bank plc sent Newtons further information regarding Bernard's accounts maintained with that bank.

154. Letters of administration to Colleen were issued, as I have said on 6 September 2019.

155. In September 2019, following the obtaining of the grant of letters of administration, Newtons apparently wrote follow up letters to various financial institutions.

156. By letter dated 23 September 2019, Leeds Building Society sent Newtons, among other things, a copy of the Disputed Will.

157. By letter dated 2 October 2019, Lloyds Bank plc (referring to a letter from Newtons dated 23 September 2019) thanked Newtons for the Letters of Administration document but said (somewhat surprisingly in my view) that they were unable to

provide a copy of the will as "it is a private document" and that the explicit consent of the executor would be needed. A request to that end had been made by the Bank on behalf of Newtons. In addition, a request had been made for return of a sum of just over £9,250 representing the closing balance released on 6 November 2017.

158. By letter dated 4 October 2019, Aviva wrote to Newtons as follows:

> "*Upon checking our records, we were advised by Mark Dimberline (step-son), there was no Will, no legal spouse and the only child was Lisa Hirst We sent claim forms to Mrs Hirst which were signed to state there was no widow and only one surviving child (herself), therefore the claim was paid out on that basis.*"

159. A letter before claim dated 5 December 2019 was sent by Newtons to each of the defendants. Among other things the letter referred to the claim form submitted to Aviva by Lisa and the contents of the letter from Aviva dated 4 October 2019. Among the documents listed under the heading "Relevant Documents" was the Disputed Will. The letter asked that proper and appropriate steps should be taken to ensure no relevant documents were altered, lost, destroyed or disposed of.

2020

160. By email dated 2 January 2020, Aviva informed Newtons that an instruction had been given to pay Colleen as administrator and that they had asked for the monies back from Lisa.

161. By email dated 12 February 2020, Mr Andrew Gillett of Bowles & Co, solicitors based in Epson, confirmed that he was now instructed by all three defendants. He promised a full reply to the letter before claim when in a position to do so. As regards the letter from Aviva dated 4 October 2019 he said:

> *"I am making enquiries with regard to the concerns you raise regarding the letter you have received from Aviva dated the 4 October 2019. I anticipate requesting their full file of papers and specifically the documents that have been relied upon in order to set out the contents of that letter. It is certainly not beyond the realm of reason that the comments are mistaken and / or inaccurate. They are certainly inconsistent with my clients reliance upon the provisions of the will in addressing other assets."*

162. As regards the authenticity of the Disputed Will, which he described as being "*at the centre of the dispute*" he suggested that:

> "*the next logical step would be for its authenticity and the signatures of those relevant parties to be assessed. Please confirm what steps and or enquiries you have made in this regard*".

163. On the same date, he sent a letter to Aviva, apparently in response to an undated letter from Aviva to Lisa seeking repayment of the £7,283.76 made on 30 October 2017

under the relevant policy. In my index the letter is stated as being dated 30 January 2020. In that letter Aviva said (among other things):

> "*We have recently been contacted by the solicitors who are administering your late father's estate who have provided legal documents confirming they hold authority to act the executors of the estate.*
> *At the time you made the claim on your fathers plan we acted on the information provided by yourself during this process and your confirmation that you were acting as the legal executor of your father's estate. As this has proven not to be the case we require the monies paid to you of £7,283.76 to be returned urgently to us.*
> *In order to avoid further action by ourselves, please return the payment you received to us to the below details within the next 14 days."*

164. The letter dated 12 February from Bowles & Co to Aviva sought to rebut the claim that Colleen had any capacity regarding Bernard's estate. It confirmed that the claim under the policy was genuine and made in good faith "*in support of which we have been provided with a number of receipts as they relate to funeral expenses and provide these for your reference*".

165. The letter went on to refer to the Aviva letter to Newtons dated 4 October 2019 and in particular the comment that Mark had informed Aviva that there was no will, no legal spouse and the only child was Lisa and that the form submitted by Lisa stated there was no widow and only one surviving child. The Bowles & Co letter continued as follows:

> *"Your comments under cover of this correspondence are inconsistent with the instructions that we have received. In order to get to the base of the current inconsistency we request that you provide us with a copy of your file as it relates to the deceased's policy and the claim that has been presented under*
>
> *Specifically, we require copies of the records you are referring to in support of your assertion that you were advised by Mr Mark Dimberline and also a copy of the claim form that you assert was completed by Mrs Hirst.*
>
> *Your file of papers and these specific documents are clearly disclosable as relevant to the existing enquiry that we are undertaking in addition to the common fact that the assertions that are made have been attributed to our clients and as such they would be entitled to disclosure."*

166. These letters from Aviva to Lisa and from Bowles & Co to Aviva only came to light, from the claimant's perspective, when Aviva handed over documents to Newtons, days before the trial, between 8 and 13 July 2022.

167. By letter dated 25 February 2020, Aviva wrote to Newtons informing them that Aviva had been informed by Bowles & Co that they were disputing the letters of administration granted to Colleen.

168. On the same day, Aviva sent a letter to Bowles & Co enclosing the claim form signed by Lisa:

"*As stated in our previous correspondence, the claim on this policy was paid in good faith to Mrs Lisa Hirst on the basis that there was no Will, no surviving spouse, and only one surviving child.*

Please find attached to this correspondence the payment request form signed by Mrs Lisa Hirst. Please note on this form, above Mrs Lisa Hirst's printed name and signature, there is a statement which states:
I/We confirm that there has been no Will left and no surviving widow(er)'

Please also note that that the form asks for confirmation of the number of surviving children, and requests that all surviving children sign the form.

If you require any further information, please feel free to contact on [telephone number]"

169. Neither this letter nor the claim form were disclosed by Lisa. They came to light, from the claimant's perspective, when Aviva released documents to Newtons who received them between 8 and 13 July 2022.

170. By letter dated 30 March 2020, Bowles & Co replied to the letter before claim. The letter started by saying that the position was maintained that they were not in a position formally to respond to the letter as a result of a failure by Newtons to have provided disclosure of relevant documents relating to key issues. In broad terms, the letter asserted that the Disputed Will was valid and that the estate had been administered in accordance with its terms. All allegations of deceit were denied. As regards the matters set out in Newtons letter reporting the position stated by Aviva in its 4 October 2019 letter, the response was:

"With regard to the fourth bullet point we have written to AVIVA requesting clarification from them in relation to the nature of their comments and how they came to be made. As soon as we have received a response from them in this regard we shall address our client's position in relation to your allegations more fully."

171. It is wholly unclear why the letter of 25 February from Aviva, enclosing the claim form signed by Lisa, was not taken account of in correspondence with Newtons, either then or later. If it had not been received, there is no explanation as to why the original request by Bowles & Co was not chased. Later developments in 2022, when, as I explain, Lisa telephoned Aviva to try to get them not to release papers to Newtons suggests that she, at least, well knew the true position.

172. By email dated 22 June 2020, Newtons were again in contact with Aviva. I have been unable to locate the letter sent in the trial bundle but it was clearly asking for information, in effect Aviva's "file" regarding the payment out on the policy or at least information regarding calls made to Aviva resulting in the payment out under the policy in 2017.

173. By email of 27 July 2020, Aviva informed Newtons that the information sought could not be provided due to GDPR as neither Newtons nor Colleen were "subject of the

request". A court order would be required.

174. By email of the same date, Newtons wrote to Aviva saying that as administrator Colleen was entitled to the information as the person with authority to deal with the estate. The information was in relation to the Deceased's estate. On what basis were Mark or Lisa afforded rights under GDPR, when they were not a customer of Aviva?

175. The response of Aviva was that the persons who had made the calls would need to give consent or a court order would be required. "*All individuals whether a customer of Aviva or not's* [sic] *rights are protected by GDPR*". As will be seen, this line apparently did not apply when in 2022, Lisa sought disclosure of communications to Aviva from Newtons on behalf of Colleen.

176. By letter dated 8 October 2020, Newtons again took up the cudgels. Among other things in that letter:

(1) Pursuant to PD 51U a request was made for initial disclosure of various categories of documents including:

> "*all documentation regarding the Aviva policy..all written correspondence, transcripts of telephone calls between your clients and Aviva and the declaration which…Mrs Hirst signed on the basis that there was no will and that she was the sole biological child of the deceased*";

A form of authority (as required by Aviva to and) to enable Aviva to release documents to release documents to Newtons was said to be enclosed.

(2) In addition, initial disclosure was sought of all bank statements relating to the deceased's accounts and showing an audit trail of payments into Lisa's accounts and thereafter showing what had become of the money;

(3) A full explanation was required as to why it was explained that to Aviva that there was no will and that Lisa was the sole biological child and the declaration by Lisa was signed in the form that it was;

(4) As regards handwriting experts, a willingness of Katie to engage in such process was confirmed.

(5) Transcripts of the two meetings Collen had, first with Katie and Mr Thackray and secondly with Mark, were disclosed by way of initial disclosure and it was asked whether Bowles & Co clients would contribute to the cost of an expert to enhance the quality of the recordings. If Mark considered that the recording as a whole would shows that he had refuted the allegations of forgery one might have expected the defendants to leap on this opportunity.

177. In reply, Bowles & Co made a number of points including:

(1) The form of authority for Aviva had not been sent by Newtons but could the form be provided so that signatures could be obtained from their clients;

(2) As regards disclosure, it was for Colleen to obtain the same;

(3) The claim was still not particularised nor clearly evidenced;

(4) There would be co-operation in enabling a handwriting expert to opine but the costs would have to paid by Colleen.

(5) No contribution to enhancement of the sound recordings would be made: if the claimant wished to rely upon the recordings to prove her case she would have to pay for this exercise.

178. A form of authority for Aviva was sent by Newtons to Bowles & Co under cover of an email dated 10 November 2020.

179. On 16 November 2020, in response to a chaser from Newtons regarding the form of authority Bowles & Co confirmed that it had been sent to his client (Lisa) for her to sign and obtain the other two signatures. Mr Gillett said he would return it as soon as he received it.

180. On 1 December 2020, Newtons again chased regarding return of a completed form of authority for Aviva.

2021

181. The claim form was sent to the court for issue on 9 June 2021.

182. The claim form was issued on 17 June 2021. The claim is for declaratory relief that the defendants have become executors de son tort and that they are liable to account to the estate and restore monies assets or their value to the estate. Consequential accounts and enquiries are also sought, including one that not less than £56,000 to be returned to the estate.

183. As I have said, it was agreed before me that in the event that I pronounced against the Disputed Will there would have to be relevant directions given and that this was not the occasion for me to attempt to determine any question as to quantum or further relief.

184. The particulars of claim are dated 28 May 2021 (being the date of the signing of a statement of truth by the claimant). In that statement of case, it is asserted that the Disputed Will is a forgery made after the death of the deceased. It is also alleged that the signature of Katie as a witness has been forged and that therefore the formalities requirements for execution of a will laid down by s.9 of the Wills Act 1837 have not been met.

185. The particulars of claim go on to assert that the following matters are relied upon by the claimant in support of her claim regarding the Will.

186. The Disputed Will came to the attention of the claimant when Lee Thackray contacted her in about September 2018 by way of Facebook Messenger. It is pleaded that he informed her as follows.

i) The first defendant had never been legally married to the Deceased.

ii) In the days after the Deceased's death, the First Defendant had contacted various of the relevant banks and building societies at which the Deceased had maintained one or more accounts. She had informed them of the death of the Deceased and sought to have positive balances transferred to herself.

iii) The relevant procedures of the financial institutions concerned required provision of a copy of the Deceased's will or marriage certificate recording marriage to the first defendant.

iv) The defendants, knowing that neither will nor marriage certificate existed, obtained a will packet from the well-known retailer WH Smith. The will was handwritten, with the contents that I have described. That will was then provided to the relevant financial institutions and funds were transferred into a bank account that the third defendant opened. That bank account was in reality held for the first defendant secretly so as not to affect the state benefits payable to the first defendant.

187. The particulars of claim go on to plead that after this meeting, enquiries were made by or on behalf of the claimant of relevant financial institutions in about 2019. The results of those enquiries were as follows:

(1) Leeds Building Society confirmed that the sum of £17,338.75 was sent to the executor named in the Disputed Will (the second defendant) in or around November 2017.

(2) Lloyds Bank Plc confirmed that upon receipt of the Disputed Will, £9251.18 was transferred to the second defendant.

(3) Yorkshire Bank confirmed that the relevant account of the deceased was closed on 16 November 2017. The balance as at the date of death of the deceased being £30,181.16.

(4) The well-known insurance company, Aviva (for present purposes the precise company within the Aviva group does not matter), confirmed that the second defendant had made contact and informed the company that there was no will, no legal spouse and the only child was the third defendant. Claim forms were sent to the third defendant who signed the same. Those claim forms, when returned, stated there was no widow and only one surviving child (herself). The claim was paid out on that basis.

188. The particulars of claim continue that, in addition to the evidence of Lee Thackray and Katie Fryer and the evidence concerning Aviva, the claimant relies upon the following matters as supporting her case that the Disputed Will is not a genuine nor valid testamentary document.

(1) No person has ever attempted to obtain a grant of probate in respect of the Disputed Will.

(2) No person has ever attempted or threatened to revoke the grant of letters of administration to the claimant.

(3) No account has ever been offered by the defendants as to the circumstances of the execution of the Disputed Will including the date time, location, persons present nor as to which persons purchased and subsequently drafted the Will document.

(4) There is no good and/or honest reason why the Deceased would genuinely intend the third defendant to be the principal beneficiary of his state, leaving only his personal belongings to the first defendant.

(5) The Disputed Will was produced subsequent to the insurer, Aviva, being told that there was no will.

(6) The Deceased, first defendant and other family members wrongly believed that the first defendant would inherit all of the Deceased's estate as his long-term, live-in partner. They only came to appreciate that without a valid will the first defendant would inherit nothing from the estate after the death of the Deceased.

(7) The estate's monies and assets have been retained by the third defendant for the use of the first defendant.

189. Accordingly, the claimant asserts that the Disputed Will is a forgery which was fraudulently written, dated, and executed by the defendants or any of them.

190. The particular of claim had annexed to them various documents which included copies of the Letters of Administration, the Disputed Will, a witness statement of Katie dated 22 January 2021 and a witness statement of Mr Thackray dated 3 February 2021.

191. The claim form, particular of claim and other documents were served (with among other things the Particulars of Claim) under cover of letters dated 21 June 2021. Issues were then raised by Bowles & Co regarding non-service of Elaine as they had each moved address and also regarding references to documents in the Particulars of Claim that had not been provided or were incorrectly referenced.

192. Defences and Acknowledgements were sent to Newtons by Bowles & Co under cover of an email dated 9 August 2020, extensions of time to do so having been agreed earlier.

193. I have already noted the surprising feature that no counterclaim for pronouncement in favour of the Disputed Will and the setting aside of the Letters of Administration was included.

194. The other very surprising feature is that, while setting out a positive case that the Disputed Will is valid and in accordance with Bernard's wishes, the defence almost entirely fails to engage with the allegations made in the particulars of claim on a paragraph by paragraph basis. Indeed, the Aviva communications are simply not pleaded to at all. The only matter that is dealt with is the reason for not taking out a grant of probate in relation to the Disputed Will, the reason given being that but the net estate was small and did not require a grant of probate to be obtained for the purposes of administering the estate. For the avoidance of doubt, I accept that the absence of an application for probate initially is not in itself a matter for suspicion.

195. A number of witness statements were served with the defence. Neither that of Mark nor that of Lisa touched upon the communications with Aviva.

196. In September 2021, directions questionnaires were lodged. The proceedings were allocated to the multi-track in November 2021 and directions given for a costs and case management conference (the "CCMC") on 4 January 2022.

2022

197. On 4 January 2022, at the CCMC, orders were made for, among other things, costs budgeting and the directions given to trial. The Disclosure Pilot under PD 51U was disapplied and standard disclosure by list was ordered by 11 February 2022, with inspection to follow by 11 March 2022.

198. By email dated 28 February 2022, Mr Gillett indicated that he was leaving Bowles & Co after that day and enclosing an unsigned list of documents from the defendants. A signed list was subsequently sent on 1 March 2022.

199. By email dated 2 March 2022, Newtons noted that Mr Dimberline had the original of the Disputed Will. It was pointed out that Newtons would need it to give to the expert and arrangements needed to be made for its collection. In fact the list referred to a copy of the Disputed Will but in the box regarding "documents which are no longer in my control" the original of the Will was not mentioned.

200. Notice of the trial date was received by Newtons on 11 March 2022.

201. Provision of the original will was chased by Newtons by emails dated 9 March, 28 March, 5 April.

202. The email dated 28 March also noted that the disclosure given by the defendants made no mention of the Aviva documentation, that Mr Gillett at the CCMC had commented that the authority document for Aviva was with his clients to sign and that the Aviva documentation would be disclosed and asked for confirmation of the position.

203. Newton's email of 5 April 2022, chased again the question of the original will, there having been no reply to their earlier emails. It also chased the position regarding Aviva. Full disclosure of the Aviva documentation was requested plus confirmation of whether a request had been made to Aviva and when. In each case applications to the court were intimated if there was no response by 12 April 2022.

204. By email of the same date Ms Malik of Bowles & Co asked for a few days time while she read the file and took instructions.

205. By letter dated 8 April 2022, Bowles & Co confirmed that their clients did not hold the original Disputed Will but that Katie had disposed of much of Mark's personal effects and this must have included the original of the Disputed Will. As regards Aviva, it was said that their clients understanding was that all the documents had been obtained from Aviva by Colleen and that Newton's should ask her for them. In any event, as administrator, it was said, she could get hold of them. This was quite an extraordinary position to take in light of previous communications.

206. By email dated 27 April, Newtons made a number of points:

(1) As regards the original of the Disputed Will, Newtons had only just found out from the 8 April letter from Bowles & Co that Mark's case was that Katie had retained the Disputed Will and disposed of it. This made no sense as Katie was a witness for the claimant. An affidavit from Mark explaining the position was requested and in default court applications were threatened.

(2) As regards Aviva, the earlier communications were referred to in which Bowles & Co had said they were obtaining a letter of authority and further version of the letter of authority was sent.

207. By letter dated 16 May 2022, Bowles & Co, having taken instructions, reverted to repeat the position of Mark regarding the original of the Disputed Will and asserted that it was authenticated by an independent solicitor, which was nothing to the point. Secondly, and as regards Aviva, reiterated that Colleen could approach Aviva as administratrix without the co-operation of the defendants but said that they would sign the form of authority and said that the firm would send it on "in due course".

208. By letter dated 17 May 2022, Newtons referred to CPR Part 57 regarding evidence but as the proceedings at this point were not probate proceedings that provision had no effect. As regards the Aviva authority, it was pointed out that this had been promised for 2 years, it was 4 months since the CCMC when it had been promised, three months since disclosure was due and only two months from trial.

209. By email of 19 May, Ms Malik of Bowles & Co said she was meeting her clients at around 2pm that day. In particular, she said she would speak to them regarding a longstanding request from Newtons to agree to adjourn the trial and re-fix it.

210. On that day there was a telephone conversation between Ms Malik of Bowles & Co and Ms Noone of Newtons. The attendance note of the latter shows that the conversation took place before the meeting of Ms Malik and her clients. Among the matters discussed was the urgency in obtaining the Aviva authority. "ASAP".

211. By email dated 23 May 2022, the Aviva authority was again chased by Newtons. By reply, Ms Malik said that she had been unable to take instructions for her clients the week before but was asking for more time as she was arranging a conference with Counsel on 25 May.

212. On 30 May 2022, Newtons served Bowles & Co with an application for specific disclosure and the supporting witness statement of Ms Noone. The latter made clear that among the specific disclosure sought was "all documentation in the Defendant [sic] possession relating to" the relevant Aviva Policy "*together with the authority to obtain formation from Aviva*" and bank statements from Mark and Lisa showing the audit trail as to what had happened to the estate funds. As regards these two matters:

(1) *"The requirement for disclosure of the above documentation is self-explanatory. The Aviva enquiry stems from a letter received from Aviva attached and marked* ***[ ]*** *stating that Mark Dimberline confirmed to Aviva that there was no Will and Lisa Hirst was the sole child of the Deceased. The Second Defendant states within his Witness Evidence that it was him that prepared the purported Will for the Deceased. Further the Defendants were*

aware that the Deceased had five other biological children (one having predeceased) including the Claimant";

(2) *"In respect of the Bank Statements, it is the Claimants case that the Will was prepared in such a way following the Deceased death to avoid conflicting with the First Defendants Benefit's therefore the Defendants named Lisa as the sole residuary beneficiary, and she opened up a bank account in her name and provided the First Defendant with the bank card. In providing this disclosure there will be an audit trail of the funds."*

213. By response of the same day, Bowles & Co suggested that the application was "a little premature."

214. On 6 June, Newtons emailed Bowles & Co asking, again, if there was any update with regard to the Aviva Authority.

215. By email dated 7 June, Bowles & Co said they would speak to their client regarding (inter alia) the Aviva authority and hoped to get back later that day.

216. By email dated 13 June, Newtons confirmed that the hearing of their application had been listed for 24 June 2022. They made the point that the specific disclosure, relating to the audit trail of what had happened to the estate assets, was required as it was an issue in the proceedings. As regards Aviva they expressed bewilderment as to why the authority had not been signed and returned.

217. On 14 June 2022, Lisa signed a form of authority for Aviva. On the same day she telephoned Aviva. Aviva provided a transcript of that conversation which was received by Newtons between 8 and 13 July 2022. The recording was played in court. The transcript is in all essential entirely accurate. I set out below relevant parts of the transcript:

"*L: Lisa Hirst*
R: Ruth, Aviva Customer services

R: Thank you for calling Aviva, this is Ruth speaking, how can I help?
L: Oh, hi there. You paid out my father's erm life insurance quite a while ago, but the Will's kind of being contested and things so I was just wondering if I could get erm the telephone records or the transcripts, err because we might need to use them in Court?
…..
[Security questions and answers]
….
R: Okay then, and just to make sure I've understood this correctly, you are looking for the erm, phone recordings for the calls ahh, just have a look, and did you have a list of specific calls specifically orrr…
L: Just any calls we made at the, at the time
R: at the time of the claim, all right then, okay then. Erm if I could make note of your contact number and email address, just for me to check that with the team and then get back to you on this one.
…..

218. By letter dated 21 June 2022 to Newtons, dealing with a number of matters, the position regarding Aviva was stated by Bowles & Co to be as follows:

> "*AVIVA:*
>
> *Our client has sent this authority to us and we will forward the same to you upon receipt. However, she has also made contact with AVIVA and asked them to provide her with all the communication with them to try and expedite matters. These will also be forwarded to you upon receipt. Nonetheless, all the relevant communications between Aviva and our clients have already been disclosed and this will be borne out when Aviva reply, which as I have said it will be forwarded to you.*"

As regards disclosure of all documents, that was simply untrue.

219. By a further email of that day to Newtons, Bowles & Co sent a copy of the form of authority signed by Lisa alone and dated 14 June 2022 (but not signed by Mark or Elaine). They also enclosed an email from Aviva to Lisa saying that the team was processing her request. The email from Bowles & Co asserted that the authority sent to Aviva asks that they respond to you. The "request" by Lisa to Aviva was unexplained.

220. By email dated 22 June 2022, Newtons pointed out that the authority was not signed by Mark or Elaine and asked for an authority signed by all three clients.

221. By email dated 23 June 2022, Bowles & Co sent a witness statement for the application. They also enclosed the signed authority for Aviva though, in light of an email of 27 June sending an authority signed by all 3 defendants and the court order of 24 June, it appears that this was the one signed solely by Lisa and not the other two defendants. They said that a copy had been sent to Aviva "to send whatever you need to you by way of expediting matters".

222. Lisa's witness statement, so far as concerned Aviva and bank statements made the following points:

(1) *"I am not sure what bank statement the Claimant seeks….. I am not willing to disclose my personal bank statements as these are intrusive and having no bearing on whether the Will was forged or not the main issue in this claim"*

(2) *"As for the Aviva authority it has been provided to them, albeit late. I did not see what more information they could ask for that i have not already disclosed to them from Aviva. In fact, I sent the Authority to Aviva and asked them to disclose whatever they have by way of communications between us and to the Claimant Solicitors. I have not kept anything back and I have nothing to disclose other than that which has already been disclosed and the Claimant will see that to eb [sic] the case when they send her the duplicate copies"*

223. The hearing of Colleen's application took place on 24 June 2022. The District Judge (among other things) ordered that:

(1) the form of authorisation for Aviva to provide relevant documents should be signed by Mark and Elaine and delivered to Newtons by noon on 27 June 2022.

(2) The second defendant was to file and serve a signed list of documents for standard disclosure by 4pm on 4 July 2022.

(3) The defendants were by 4pm on 4 July to carry out reasonable searches and give specific disclosure by way of list in respect of (a) all documents including correspondence relating to the policy and (b) all bank statements in respect of the transfer of funds from the deceased's estate identifying the payee of all payments made from such funds and where any of the defendants were recipients, such bank statements and/or documents evidencing their receipt of such funds.

(4) By 4pm on 8 July, the defendants were each to file a witness statements setting out what searches they had carried out as regards (2) and (3) above.

224. By email dated 27 June 2022, Bowles & Co sent the Aviva form of authority "from all three defendants".

225. By email dated 27 June 2022, Newtons sent the authority to Aviva asking for documents, attendance notes and the like. They pointed out that the trial was starting on 19 July and the matter was urgent.

226. Also on 27 June 2022, Lisa telephoned Aviva. Extracts from the transcript prepared from the telephone recording, which was played in court and which is for present purposes accurate, are set out below. In short, Lisa was suggesting that because Aviva had written to Bowles & Co saying that letters of administration had been obtained by Collen at a time when they had not yet been granted, there had been a false representation by either Colleen or Newtons as regards her status, as a result of which Aviva had passed information incorrectly to Newtons/Colleen. The representative of Aviva explained that the Aviva letter of 2020 was incorrect in saying that in 2019 Aviva had been told that letters of administration had at that point been obtained. The relevant letter from Newtons had in fact said that an application for letters of administration was then in preparation. Further, in the particular circumstances, the limited information which Aviva had then provided Newtons with was in line with Aviva's policy and perfectly proper. Lisa then took the position that letters of administration had not in fact been applied for until August but in any event, the grant had been obtained by Newtons by "deceiving the court" and that "we" are in the process of having it revoked. She then used this as a backdrop to seeking to thwart the court's clear order by asking that no information be shared by Aviva with Colleen or her lawyers.

227. Relevant extracts from the transcript are as follows:

"*Inbound Call – Lisa Hirst to Aviva 27.06.2022*
L: Lisa Hirst
M: Michael, Aviva Customer services

M: Good morning you are through to Aviva you are speaking with Michael today how may I help

[Security questions and answers]

M: right okay and that was paid out to yourself right okay, and how may I help you today?
L: Erm basically, erm, we've got a bit of an issue er somebodies, you weren't contacted either by a Colleen Cropper or Newtons Solicitors erm who told you that in April 2019 that they had a letter of administration granted
M; okay
L: erm, they didn't have a letter of administration granted until erm 6th September 2019, so after they contacted you so I am wondering if you could tell me if it was Newtons Solicitor that contacted you or Colleen Ann Cropper herself.
M: right okay
L: the letter that I am referring to is dated 10th March 2020 and in it states "however in April 2019 we were informed that a letter of administration had been granted" erm obviously as I have explained it hadn't.
M: right lets see.
M: lets see so we had a letter in from Bowles & Co Solicitors
L: yeah, Bowles & Co Solicitors is my Solicitors that's who they (Aviva) sent the letter too but it said that they had been informed in April 2019 of the letters of administration. So I wondered who informed you in April 2019 of that, was it Colleen Cropper or was it Newtons.
M: Okay so the letter that we had in April 2019 was from Newtons Solicitors
L: from Newtons okay that's perfect, and they said that there was a letter of administration then?
M: they were in the process of preparing an application for that
L: they were in, ah see, this letter to us says in 2019 we were informed a letter of administration had been granted
M: it says "we are in the process of preparing an application for the grant of administration in the Deceased's estate, we hereto attach certified Death Certificate
L: okay, was there any information shared with them then at that time
M: we would have, hold on. We would have probably sent out claim forms for that.
M: so, there was a letter 15th April "thank you for your recent correspondence upon checking our records I can confirm that this policy has already been paid out to yourself"
L: yep
M: in the sum of £7280"
L: so you gave them the sum and who it had been paid out to
M: that was all yes
L: on the basis of them saying they were applying
M: yes
L: right okay because they didn't actually apply until the 28th August 2019 and they didn't receive it until September 2019 but they have actually obtained it by deceiving the Court so we are in the process of having it revoked and it is going to have to be investigated because they have provided mis-information knowingly
M: right okay obviously I cannot comment on that
L: so it is usual to provide that kind of information based of somebody going to apply for example without actually seeing it
M: yes so for example when we get, basically when we get a letter, especially from a Solicitors, with a death certificate, at that point data protection for the

policy holder is null and void, so we will provide information on how the claim is to be made and tax information valuation statement etc and in this case, obviously, with it being a claim which has already been claimed, we do confirm, basically we do confirm any basic information, i.e. its already been claim for such and such amount and who has claimed on it. We don't provide as it says Mrs L Hirst, we don't provide any further information other than that.
L: right okay because they misled you too obviously, by saying they were in the process, they weren't they didn't do anything until August and receive it till September and they have lied on those forms like I say
L: is *there any way we can get copies of correspondence between you or would we need to have their authority for that.*
M: I don't know this would be something that I would need to refer.
M: what would be the best telephone number to call you back on
L: its this one, has it come up
M: yes it has, [repeats number]
L: yes that's correct
L: I was just going to say is there any way, because obviously they have lied to get this letters of administration and we are getting it revoked, is there anyway that if they contact you again that something can be put on the system that until this is resolved no more information is shared.
M: erm well as we have confirmed that payment has been made thats really all we would do with them, we wouldn't do anything else because this is a claim that has already paid out
L: yeah I know, but I mean they are trying to get transcripts of all the calls and everything. I mean I have requested them so until I have received them I don't want them to have them. Do you know how long it takes to receive those because I put in a request last week.
M: transcripts of calls, I think it is about a month off the top of my head.
L: a month?
M: yes
L: okay perfect so I can expect those in about three weeks. Its just that we have previously given consent because we didn't find out until recently about this mis-information about the letters of administration so we are just trying to deal with that and get that revoked at the moment. So we have given authority for them to have access to the phone call but I don't think they have applied for it yet so we should get ours first, its just I don't want anymore information shared with them until we have resolved this. It has all just been completely dishonest.
M: right okay
L: yeah if you could just find out if we could get any of the communications between yourself and Newtons or if we need to apply for it and then let me know that would be great.
M: that's fine, I will give you a call back on that….."

228. On 28 June 2022, Michael from Aviva rang Lisa and informed her that Aviva would get a copy of the two letters (apparently the ones between Newtons and Aviva) discussed the previous day to her by 13 July at the latest. Apparently consent of Newtons or Colleen and GDPR was of no concern to Aviva, although, as I have said, in 2020 Aviva had refused information about the estate to the lawfully appointed

administrator on the basis of GDPR and that consent of the individuals concerned was necessary.

229. On 5 July 2022, Newtons sent a further email to Aviva in the light of the person at Aviva with whom they had previous been dealing having left Aviva. A copy of the court order and the authority signed by all three defendants was attached.

230. Also on 5 July 2022, Bowles & Co sent copy bank statements to Newtons. Those of Lisa were heavily edited in terms of entries being entirely blacked out. No explanation was given.

231. On 7 July, Aviva acknowledged receipt of the email from Newtons dated 5 July 2022 and said that the position was now being checked with the legal department to see if information could be released but also asking for any court production order.

232. A copy of the order of 14 June was sent by return.

233. On 8 July, Aviva was sent by email by Newtons a whole swathe of documents including a chain of emails, letters and the letters of administration in the hope that that would assist.

234. On 8 July, at about 17:18 Aviva made certain documents available to Newtons by a link with more to follow. On 12 July they sent a further email saying that they were in the process of sending the rest of the documents. As I understand it, the last documents/materials were received on 13 July.

235. A document dated 14 July 2022 recorded a notice of change of legal representative, signed by Lisa on behalf of all defendants, and confirming that they would thereafter be acting in person.

Conclusions

236. I have dealt with the evidence concerning the telephone calls with Aviva conducted by Mark and Lisa and the claim form completed by Lisa. I consider those matters, taken in context, including the lateness of the explanations offered for them and Lisa's late attempt to prevent further disclosure by Aviva to Newtons, despite having signed a consent form and despite a court order, confirm that the Disputed Will was false.

237. I have also explained why I consider that Mark did write the relevant email in the exchange between Mr Thackray and Mark in September 2018 and that that email is effectively an admission of the falsity of the Disputed Will.

238. I have also explained why I consider that the meeting between Colleen and Mark in September 2018 involved admissions by him that the Disputed Will was a forgery.

239. I have also explained why I consider that in reality significant sums were made available from the estate by Lisa to Elaine and that this is consistent with the Katie's explanation as to why the Disputed Will was drawn up as it was.

240. I also consider that it is significant that the Disputed Will refers to Elaine as being the deceased's partner rather than his wife, given that at the time when the Disputed Will

is said to have been made everyone (including Mark) thought that the two were married.

241. I have also set out the history of the conduct of the Defence which I consider justified Mr Fletcher's description of an attempt at stonewalling as long as possible and hoping that something would turn up. I reject the defendants' position that they have simply made errors of judgment in their conduct of the proceedings due to lack of knowledge, experience or because of incompetent solicitors. In particular, I note that much of the relevant public positions and strategy were taken at a time when Mr Gillett still had conduct of the case and that he was someone in whom the Defendants have said they had full confidence (he was described as "brilliant" by Lisa). It was only after he had left that they felt that their case had not been handled satisfactorily. This was exemplified by evidence from Lisa that the reason that relevant explanations as to communications with Aviva and emails with Mr Thackray and the meeting of Mark and Colleen only emerged in cross-examination for the first time was because their solicitor had probably not asked witnesses the relevant questions when the witness statements were prepared. Again, I find this not to be credible. Witness statements were first put in with the defence at a time when the "brilliant" Mr Gillett was still acting. In any event, it does not need the expertise of a lawyer to realise that the points made by the claimant (which Lisa confirmed she understood) called out for answers and explanations.

242. The contemporaneous evidence and the conduct of the defence largely supports the versions of events put forward by Katie and Mr Thackray, I accept their evidence. This conclusion is supported by the further consideration that, in September 2018, when they first communicated their version of the making of the Disputed Will to Colleen, they were in a dangerous position if they were making the facts up. As Mr Fletcher pointed out, if the Disputed Will was genuine there were all sorts of possibilities arising which might quickly show their version of events simply not to be true, for example a photograph or scan may be made of the will at or about the time it was purportedly made. They did not know whether the Will may have been shown to one or more other members of the family prior to Bernard's death. If exposed as a liar this would have had severe consequences for Katie in the dispute over her children's custody and contact. On the other hand, neither she nor Mr Thackray stood to gain financially if the Disputed Will was established to be false.

243. I am satisfied that the Disputed Will is a forgery. I am also satisfied that Lisa and Mark were parties to its creation. I do not need to decide whether Elaine was the leading force in its initial creation, but I am satisfied that she well knew that the Disputed Will was a forgery.

244. I have little doubt that Lisa and Mark felt they were doing the right thing in giving effect to what they thought would have been Bernard's intentions with regard to his property. However, the law lays down formalities as to how property is to be disposed of on death and it is not for persons after a deceased's death to try and put in place documents which will give effect to what they think the deceased's intention would have been.

245. It follows that the counterclaim should be dismissed, and judgment given for the claimant. The precise form of order, which will also have to deal with consequential accounts and inquiries (as well no doubt as costs and other matters), will need to be

dealt with at a separate hearing. The parties should contact the court office within 7 days of this judgment being formally handed down to arrange a date for the relevant hearing. I reserve all matters consequential to this judgment (including permission to appeal) to that further hearing and extend the time for filing any notice of appeal for a period ending 21 days after that hearing.