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Case No: PT-2021-CDF-000052

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

**IN THE ESTATE OF GEORGE ALFRED ANNAN DECEASED
AND IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND
DEPENDANTS) ACT 1975**

Cardiff Civil and Family Justice Centre
2 Park Street
Cardiff CF10 1ET

Date: 28 March 2023

Before:

MR JUSTICE ZACAROLI

Between:

**(1) WAYNE ANTHONY LARSEN
(2) RUSSELL LESLEY ANNAN**

Claimants

- and -

HEATHER DIANE ANNAN

Defendant

Joss Knight (instructed by **Robertsons Solicitors**) for the **Claimants**
Oliver Wooding (instructed by **Red Kite Law LLP**) for the **Defendant**

Hearing dates: 22, 23 and 24 February 2023

JUDGMENT

Mr Justice Zacaroli:

Introduction

1. George Alfred Annan (“George”) died on 6 January 2021. He left behind three adult children: (1) the first claimant, Wayne Larsen (“Wayne”), now aged 58; (2) the second claimant, Russell Annan (“Russell”), now aged 59; and (3) the defendant, Heather Annan (“Heather”), now aged 61.
2. On his death, his estate consisted principally of an unencumbered property at 41 Allerton St, Cardiff, valued at £220,000, bank and building society accounts valued at £255,743, a few thousand pounds in cash, and household goods estimated to be valued at £1,000.
3. His last will was dated 26 March 2013. The will made a gift of £10,000 to each of his three children, with the residue being left to his wife Lilly, but if (as happened) she predeceased him it was left to Heather absolutely. It appointed Heather as executor.
4. Wayne and Russell bring this application for such reasonable financial provision as the court thinks fit, pursuant to s.1(1)(c) and s.2 of the Inheritance (Provision for Family and Dependents) Act 1975 (the “1975 Act”).
5. It is apparent from the attendance notes of the solicitors retained by George when making his will, that George was motivated to leave the residue of his estate (if Lilly died before him) to Heather because he regarded his sons as not having behaved well.
6. The solicitors’ attendance notes of their meetings with George show that it was George’s firm initial intention to leave nothing at all to his sons because they had “not been best behaved in past”. It appears he was then advised of the risk of a challenge by his sons under the 1975 Act, and that in order to deter them from challenging the will he decided to include a gift to each of them of £10,000.
7. So far as Wayne is concerned, the reference to his behaviour was almost certainly to the fact that a few years previous he had killed James Way, the partner of his niece Kelly (Russell’s daughter). He had been convicted of manslaughter and sentenced to two and a half years in prison.
8. So far as Russell is concerned, I find (for reasons which I develop in more detail below when addressing Russell’s claim) that this was a reference to Russell’s gambling habit which had led him in the past to steal money from other family members.
9. For the claimants, I heard evidence from Wayne, his wife Simone James and four of his children (Kai, Kodie, Alisha and Benjamin), Russell and Russell’s long-term friend in whose house he currently lives, Mary Gould.
10. In support of Heather’s defence of the claim (in addition to hearing from Heather herself), I heard evidence from Russell’s daughter, Kelly, and from Lilly’s sister, Carmel Cullen.

11. Each of the siblings in this case has lived independently from their parents for many years. Save for one point concerning payments made by George to Wayne over the last years of his life (which I deal with in detail below), there is no question of any of the siblings being maintained by, or being otherwise dependent on, George.
12. A large part of the evidence addressed the relationship between the siblings and between them and George. Heather sought to paint a picture of her alone, among the siblings, being close to her father, whereas Wayne and Russell (corroborated by Simone and each of Wayne's children who gave evidence) spoke of an extended mutually supportive family.
13. Ultimately, I do not think much if anything turns on the family dynamics, but I prefer the evidence of the claimants on this issue. That is, in particular, as it was corroborated by each of Wayne's children who gave evidence. Their evidence on this point was balanced and consistent. In order to reject it I would need to find that they had conspired together to paint a false picture of their family, and I do not so find. In contrast, I found Heather's evidence on this issue to be inconsistent and unsatisfactory. It is noteworthy that in her witness statement, she gave the impression that George and Wayne had fallen out at the time of his first wedding, which was some 40 years ago. Under cross-examination, she accepted that the relationship between Wayne and their father had in fact been "ok" in the years before he died. She also accepted that positive views expressed about Wayne by her parents, in a letter which they dictated for her to write at the time Wayne was sentenced in relation to his manslaughter conviction, accurately reflected her parents' views of Wayne.
14. In my view, her evidence as to the family relationships before their father died was tainted by events since his death. Following his death, there has clearly been a major falling out between Heather and the rest of the family. Both sides of the family acknowledged this but blame each other for it. Wayne has already instigated two sets of proceedings against Heather, one for damages for the state in which she left a flat rented from him and the other for reimbursement of certain funeral expenses he claims to have paid on behalf of the estate. He has also accused Heather of having found, and failed to account for, additional bundles of cash in their father's house. Heather denies this and has made allegations of offensive behaviour by both Wayne and Russell. These proceedings have themselves served to force the two sides of the family further apart. I do not find it necessary to reach any conclusions in relation to the conduct of the family members since their father's death, which does not bear on the issues I have to decide.

The law

15. Section 1(1) of the 1975 Act provides as follows:

“(1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:

- (a) the spouse or civil partner of the deceased;

(b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;

(ba) any person (not being a person included in paragraph (a) or (b) above) to whom subsection (1A) below applies;

(c) a child of the deceased;

(d) any person (not being a child of the deceased) [who in relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family;

(e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.”

16. Subsection (1A) applies to persons who had been living with the deceased as if they were married or civil partners.

17. By s.1(2):

“In this Act reasonable financial provision:

(a) in the case of an application made by virtue of subsection (1)(a) above by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a judicial separation order and at the date of death the order was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance;

(b) in the case of any other application made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.”

18. Section 2 empowers the Court to make a variety of orders:

“(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by

his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage;

(g) an order varying any settlement made

(i) during the subsistence of a civil partnership formed by the deceased, or

(ii) in anticipation of the formation of a civil partnership by the deceased, on the civil partners (including such a settlement made by will),

the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership;

(h) an order varying for the applicant's benefit the trusts on which the deceased's estate is held (whether arising under the will, or the law relating to intestacy, or both).”

19. Section 3 of the 1975 Act provides that the Court shall have regard to various matters when exercising its powers under section 2:

“(1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased’s estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say:

(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;

(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.”

20. Subsection 3(3) provides, so far as is relevant to an application by children of the deceased:

“(3) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained...”

21. The burden of establishing that reasonable financial provision has not been made is on the applicant: *Francis on Inheritance Act Claims*, at §6[5].

22. These provisions were reviewed by the Supreme Court in *Ilott v Mitson (No.2)* [2017] UKSC 17; [2018] AC 545, from which the following matters, relevant

to this case, are derived (with references to the relevant paragraphs in the judgment of Lord Hughes, with whom the rest of the Court agreed):

- (1) The distinction made by the differing paragraphs of s.1(2) between claims by a spouse or civil partner (where reasonable financial provision means...) and claims by a child (where it is limited to that which is reasonable for their maintenance) shows that while “maintenance” is a broad concept, it cannot extend to any or everything which it would be desirable for the claimant to have (§14).
- (2) The word “maintenance” connotes only payment which, directly or indirectly, enables the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him; the provision that is to be made is to meet recurring expenses, being expenses of living of an income nature (although the award itself may be made by means of a lump sum, or indeed by paying off debts in order to enable the claimant to carry on a profitable business or profession for his maintenance) (§14, citing with approval the decision of Browne-Wilkinson J in *Re Dennis* [1981] 2 All ER 140, at 145-146, and §15)
- (3) The level at which maintenance may be provided for is flexible, and falls to be assessed on the facts of each case: it is not limited to subsistence level (§15), but is to be judged by the standard appropriate to the circumstances (§19).
- (4) For all claimants other than current spouses and civil partners, “need (for maintenance rather than anything else, and judged not by subsistence levels but by the standard appropriate to the circumstances) is a necessary but not a sufficient condition for an order” (§19).
- (5) Accordingly, “Need, plus the relevant relationship to qualify the claimant, is not always enough” (§19). Lord Hughes cited in this respect the much-cited observation of Oliver J in *Re Coventry, decd* [1980] Ch 461, at p.475:

“It cannot be enough to say ‘here is a son of the deceased; he is in necessitous circumstances; there is property of the deceased which could be made available to assist him but which is not available if the deceased’s dispositions stand; therefore those dispositions do not make reasonable provision for the applicant.’ There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made.”
- (6) Lord Hughes qualified the reference to “moral claim”, however, by saying that, while in many cases the presence or absence of a moral claim will often be at the centre of the decision under the 1975 Act, it is not a requirement as a *sine qua non* for all applications.

- (7) The words of the statute define an objective standard of financial provision. They do not say that the Court must make an order when it judges the deceased to have acted unreasonably. Nevertheless, the reasonableness of the deceased's conduct is capable of being a factor for consideration within s.3(1)(g) (§16-§17). At §17, Lord Hughes warned against applying the wrong test:

“If the will does not make reasonable financial provision for the claimant, it may often be because the deceased acted unreasonably in failing to make it. For this reason it is very easy to slip into the error of applying the wrong test. It is necessary for courts to be alert to the danger, because the two tests will by no means invariably arrive at the same answer. The deceased may have acted reasonably at the time that his will was made, but the circumstances of the claimant may have altered, for example by supervening chronic illness or incapacity, and the deceased may have been unaware of the full circumstances, or unable to make a new will in time.”

- (8) In considering whether reasonable financial provision has been made, and/or what it should be, the facts fall to be assessed as at the date of the hearing (§25).

23. I consider the application of the statutory test in the case of each of Wayne and Russell.

(a) & (b): The financial resources and financial needs which the applicant – and any other applicant – has or is likely to have in the foreseeable future

24. I address these two elements together.

25. I first consider whether the “necessary but not sufficient” condition (see above at §22(4)), that the need for maintenance judged by the standard appropriate to their circumstances, is met by Wayne and/or Russell.

Wayne

26. Wayne is married with six adult children, three from a former marriage. Only two of these continue to be part of his household: Kodie who has left university and is in full time employment and Kai, who is at university.

Assets/Liabilities

27. Wayne owns three properties, each subject to a mortgage, with combined equity of £244,000:

- (1) His matrimonial home, valued at £245,000, with an outstanding mortgage of £113,000 and a statutory charge (relating to legal aid bills) of £40,000, leaving equity of £87,000;
- (2) 4 Clive Street, valued at £90,000 with an outstanding mortgage of £50,000, leaving equity of £40,000;

- (3) 84 Clive Street, valued at £260,000, with an outstanding mortgage of £143,860 as at December 2022, leaving equity of £117,000.
28. The mortgages are interest only, with a remaining term of between 3 and 4 years, subject to any agreed extension or refinancing.
29. He and his wife own between them various vehicles, including a Range Rover and Mercedes, each worth £9,000.
30. In addition to the statutory charge on the matrimonial home, he took out a £20,000 “bounceback” loan in June 2020. Although this was described in his witness statement to be needed because of the impact of the pandemic on his business, almost the whole of the proceeds of the loan were used in October 2020 to help repay a longstanding debt (of approximately £30,000) to a relative who had helped him and his business out some years earlier when he had been in prison. He accepted that the relative was not pressing for payment. The bounceback is being paid off in regular instalments, and the amount currently outstanding is in the region of £12,000. I infer that it is being treated (as it should be) as an expense of the business, as it is not identified within Wayne’s monthly expenditure.

Income/expenditure

31. Wayne’s evidence is that the two rental properties currently produce an annual gross income of £27,200 (£5,220 from a tenant of 4 Clive Street, and £21,600 from three different tenants of 84 Clive Street). One of the tenants of 84 Clive Street has, however, not paid rent since October 2022 and Wayne has had to commence eviction proceedings.
32. In his witness statement, he said that annual expenditure on these properties, including mortgage repayments, is £10,200. Since then, however, the monthly mortgage repayments have increased as a result of interest rate rises, and the annual income from the rental properties is now estimated to be in the region of £15,000 to £16,000 (although this does not factor in the possibility of rent increases to reflect the greater mortgage costs).
33. He owns his own business, originally as a sole trader under the name L&S Gas Care Services, and latterly as a limited company, LS Gas Cardiff Limited. The profits from that business have fluctuated over the years 2017-2022 between £12,814 for the year ending 5 April 2017, to £27,377 for the period 20 June 2020 to 30 June 2021. In that year, Wayne received dividends totalling £19,000. In the following year, although the turnover was only slightly less, the profit was reduced to £13,809, of which Wayne received dividends totalling £8,720. He also, however, took a salary from the company in that year of £7,600.
34. He estimates that his income from the business in the current year will also be in the region of about £15,000.
35. His wife has an income from benefits of £505.40 per month (approximately £6,000 per annum). His (and his wife’s) evidence was that she uses this to pay for her own expenditure, rather than contributing to the household expenses.

The water bill of approximately £95 per month is in fact paid from her account, but Wayne said that he would provide cash to his wife to cover this.

36. Currently, therefore, his own annual income is in the region of £30,000 to £31,000. With his wife's income that increases to £36,000 to £37,000.
37. This is on the basis that the income from the business remains as low as it is projected to be in the current year. It is his hope, and plan, that the business will be built up again over the coming years. He explained that it has faced particular problems in the past year or two, as a result of becoming less competitive after registering for VAT, steep increases in the prices of parts and boilers and having to pay more to subcontractors.
38. In his first witness statement, Wayne estimated his monthly household expenses to be £2,069.21 (£24,830.52 annually). That was easily covered by his own income. In his third statement, a year later, however, he estimated that it was now £3,308.31 per month (£39,699.72 annually).

Wayne's needs

39. Wayne identifies his needs, for which reasonable financial provision is not made under the will, as: (1) a lump sum to clear his two major debts of £20,000 (the bounceback loan) and £40,000 (the statutory charge on his house) and (2) a lump sum to cover a monthly deficit between his income and expenditure of £1,100 for a period of three years until his children are not dependent on him.
40. In my judgment, a lump sum to clear the two debts does not fall within the concept of need relevant for determining whether reasonable financial provision has been made.
41. In the case of the statutory charge, this is not relevant to maintenance, as it is not something that needs to be paid until the property is sold, and does not impose any financial burden in the meantime. The payment of a past debt does not fall within the broad concept of maintenance unless the payment of that debt enables the claimant to derive a future income, or the debt represents living expenses since the death: *Baynes v Hedger* [2009] EWCA Civ 374, per Morritt C at §45. The statutory charge falls within neither exception.
42. In the case of the bounceback loan, as I have already noted, that is properly to be treated as a business expense. It is a type of loan that was made available to businesses; it is not something which Wayne identifies as a monthly expense for him personally; and it appears to be something the business is capable of repaying over time (it has already been reduced by 40%). Payment to discharge that loan, therefore, is not something that falls within the concept of maintenance.
43. That leaves a lump sum to cover the supposed shortfall between monthly income and expenditure for a period of three years. Mr Knight accepted that the claimed shortfall of £1,100 per month (£13,200 per year) was overstated, as it ignored the income from one of the rental properties. Based on the revised numbers contained in Wayne's third witness statements, and the increased

mortgage costs since then, the shortfall is more in the region of £9,000. There are, however, a number of reasons to be sceptical that Wayne is not in fact able to meet his ongoing needs from his income.

44. The increase in expenses (from approximately £24,800 to approximately £39,700) between his first and third witness statements is not adequately explained. In part, it is no doubt due to the increased cost of living resulting from the increases in inflation (particularly in relation to energy and food costs) over that period, but that cannot explain all of it.
45. Second, a substantial part of the outgoings (£3,600 per annum) is represented by voluntary increases in monthly mortgage repayments. Wayne has chosen to begin repaying an element of capital each month. That is because he believes if he can reduce the amount of capital outstanding it will improve his chances of re-mortgaging when the current loan term expires in three years time. His belief is not based on any specific advice to that effect. It is far from clear to me that the relatively small reduction in the outstanding capital would have any marked effect on his ability to refinance. It needs to be set against the fact that, across all of his properties, Wayne has a substantial amount of equity. I do not consider that funding these capital repayment elements of his mortgage are necessary for his current maintenance.
46. Third, the stated need for a lump sum to cover the shortfall is to cater for the three years until his children are not dependent on him. Both of the children still associated with the household, however, are adult and largely financially independent. His daughter Kodie lives at home, but is in full time employment. His son Kai is at university, funded largely by a student loan, and is capable of working in his spare time to support himself. In fact, he works in Wayne's business at weekends and in the holidays and, for work done during the last six months of 2022, the company's bank statements show that he was paid £3,500.
47. I consider that amounts of expenditure referable to the adult grandchildren of George (Kai and Kodie) capable of maintaining themselves do not constitute amounts reasonably needed for George's own child (Wayne). Accordingly, this reduces the annual amount of household expenditure listed in Wayne's third witness statement by at least £1,200 (being the amount listed as payment for Kodie's car insurance), plus whatever proportion of the general expenditure relates to Kodie, and by around £4,200 (being the amount said to be necessary to assist Kai with additional expenditure at university and for his car insurance and petrol).
48. Fourth, Wayne said in his third witness statement that all of his income and that of his wife "is used to run the family home and expenditure as set out below". In the witness box, however, he said his wife used her own money for her own expenditure, and did not contribute this towards the household expenses. I am not persuaded that the division of responsibility is so clear. I have already noted that Simone paid the water bill from her account. While I have no doubt that Wayne, as the main source of income in the house, provided his wife with cash from time to time, I do not accept that he would do so specifically to reimburse her each month for the amount spent on the water bill. Simone's own bank statements show regular expenditure at supermarkets. I also note that the

company's bank statement identifies sporadic payments to Simone for wages, including £760 paid in December 2022.

49. Where, as here, the needs identified by a claimant include those of his family household, I consider it is appropriate to consider the income of others comprising that family household, so that some account does need to be taken of the additional £6,000 per year received by Simone.
50. The second and third points above themselves eliminate the shortfall between income and expenditure needed for Wayne's maintenance identified in his third statement. Standing back from the detail (recognising that estimating expenditure for separate household items is not a precise science) I consider that as an adult child approaching 60, who owns his own profitable business (albeit that those profits are currently less than usual because of the difficult economic circumstances), who owns his own home and two other properties (in which the total equity is in the region of £240,000) and who is currently earning in excess of £30,000 (before taking into account his wife's additional income of £6,000 per year), Wayne is able to meet his own reasonable financial needs, both now and in the foreseeable future.

Russell

51. Russell's situation is very different. He is chronically disabled, suffering from Crohn's disease, anxiety and spondylitis. He is dependent on help for many ordinary daily tasks.
52. In his most recent witness statement, dated 8 November 2022, he claimed to have no property or savings. His bank statements show, however, that he had built up savings of £2,500 by 3 October 2022, although there are no statements in evidence for the relevant account thereafter, and for reasons I explain below those savings may well have been spent by now.
53. Until June 2021 he was living in rented accommodation (one of Wayne's properties), the rent for which was covered by housing benefit. He says that he had to move out because he could no longer afford to live there. Since then, he has lived in a housing association property tenanted to his long term friend, Mary Gould ("Mary"). Heather contends that they are partners, but Russell and Mary contend that they are in a purely platonic relationship. I accept Russell's and Mary's evidence on this. The DWP has investigated this very question on more than one occasion and concluded that the relationship is indeed platonic. Mary is herself unwell, having been diagnosed some years ago with terminal cancer.
54. Russell receives benefits of £784 per month. In addition, he receives £257 per month car disability, which he says he pays to Mary for the use of her car. He also receives £240 towards his costs of care, which he says he pays to Wayne and his family who look after him, by visiting him three times a day to make sure he is ok. I am sceptical that he does in fact make payments to his relatives in this way, but in any event I do not accept that there is any need for him to do so. It was not corroborated by Wayne or any other family member. On the contrary, Wayne said that he had helped out Russell from time to time with cash.

55. Beyond this, the evidence as to his financial affairs is sketchy, at best. In his first witness statement, he claimed to have monthly outgoings of £1,282. This was based on estimates, as he keeps no record of the amounts he spends on various things, paying mostly in cash, and he has no bills for things such as utilities, because these are in Mary's name.
56. In his third witness statement, he claimed to have monthly outgoings of £2,183, an increase of just over £900. In cross examination, however, he said that the figures in his first statement were correct, because he was able to live within his modest means, and that these totalled approximately £1,300 per month. When asked why the third statement, which he confirmed in evidence in chief was true to the best of his belief, contained increased figures he said "I must have done the figures wrong." This in itself shows that his evidence on financial matters must be treated with caution.
57. Initially Russell did not disclose any bank statements in support of his claim for reasonable financial provision. In December 2022, Russell provided statements from two accounts (with numbers ending 4689 and 7491). It was apparent from the various transfers identified in these accounts, however, that there must be a further bank account. Heather therefore asked for further bank statements, in response to which Russell provided statements for a further account (ending 9166).
58. These statements provide no help in identifying Russell's financial needs, but do corroborate his evidence that he paid his way mostly in cash. They also corroborate that he was living comfortably within his means. That is shown, first, by the fact that between March and September 2022, from regular transfers from other accounts into account 7491, he was able to build up a savings balance of £2,500 as at 3 October 2022 and, second, by the numerous gambling related payments.
59. Heather contends that Russell has a serious gambling habit, costing him hundreds of pounds each month, which shows that he has more than enough to maintain himself.
60. Russell accepted that he did once have a gambling addiction, but sought to downplay its significance and says that that it is in the past. His daughter, Kelly, gave evidence as to her father's past gambling problems. She said that he brought her up to help her steal and keep secrets from her mother in order to fund his gambling habit, referring to specific instances such as pawning her gold jewellery and raiding her savings account. Kelly has been estranged from him and his brother for many years, after her partner was killed by Wayne as I have noted above. She was understandably visibly agitated to be in the same room as Wayne when giving evidence. Although she remains on friendly terms with Heather, I can see no reason why she would make up this evidence, and I accept it as true.
61. I also heard evidence from Carmel Cullen, Lilly's sister, who lives in Ireland. She corroborated Kelly's evidence as to Russell's past gambling addiction. She holds strong and very negative views about Wayne and Russell. I consider that much of what she said (for example, about Wayne only visiting George when

he needed something, or Wayne never having had a conversation with Lilly – both of which are inconsistent with the evidence I have accepted from members of the family who were much closer to George, Lilly and Wayne) was exaggerated and coloured by these negative views. I nevertheless accept her evidence as to Lilly’s knowledge of, and shame caused by, Russell’s past gambling problems.

62. The last of the bank account statements which he disclosed, in December 2022, showed a large number of small online payments to Skybet.com, as well as intermittent much larger payments to “LCC”, a casino in Cardiff.
63. Russell said nothing of his prior gambling problems in his witness statements, and no explanation was given in them for any of these payments. In cross-examination, he said that he does continue to place online bets with Skybet.com, but that he does this as part of a syndicate of ten people, and it is purely recreational. He says that he places the bets online because he has the account with Skybet, and the other members of the syndicate provide cash to him. He said that there is a running “float” so that when the syndicate receives any winnings, these are usually re-invested.
64. In addition to there being no explanation of any of this in his own witness statement, there is no evidence from anyone else to corroborate it, such as from any of the other syndicate members. There is also no record in Russell’s bank statements to any payments into his account to reflect the cash contributions of the other syndicate members, or any payments out to any of them. Finally, the number and frequency of bets placed means that the process of keeping tabs on who has paid what, and who is owed what, within the syndicate would not have been straightforward, but there is no evidence of any running account being kept by him.
65. As to the payments to LCC, in cross-examination Russell said that these were simply a way of obtaining cash. He said that because of his disabilities he was often unable to get to a bank during opening hours, so he would use the casino as a surrogate cashpoint when he was there socialising with his friends.
66. I do not accept this explanation. In the first place, ATM machines are open outside of banking hours. Secondly, the payments made to LCC were considerably larger than the typical amount withdrawn by him from ATMs. His bank statements reveal a number of withdrawals from cash machines up to about £250. Taking the latest payments to LCC as an example, those made in November 2022, these are £600 and £500 on consecutive days. Russell has not provided any explanation for such large cash needs on those days. Third, the explanation that he was unable to get to a cash machine is demonstrably false so far as the payments in November 2022 are concerned. The two payments to LCC totalling £1100 were made on 11 and 12 November 2022. On 11 November 2022 he made three separate visits to a Capital Retail ATM, to withdraw first £50 and then £140 from account 9166 and to withdraw £250 from account 4689.
67. I have already noted the build up of savings of £2500 in account 7491 by 3 October 2022, and the absence of any statements for that account beyond that

date. It is no coincidence, in my judgment, that the statements for account 9166 for October and November 2022 show the largest payments by far to Skybet.com and LCC: a gross outlay of nearly £2,700 to Skybet.com (resulting in a net outlay of £700 after winnings) and £1,100 to LCC.

68. It is for Russell to prove that the will fails to make reasonable provision for him, and it is accordingly for him to provide an adequate explanation of his needs. I have already noted that his evidence in the witness box was – contrary to the claims made in his most recent witness statement – that he is currently able to cover his modest needs. Moreover, there is no material difference in respect of his needs, or the extent to which he is able to meet them from his needs, as compared to the time before George died.
69. Prior to Russell's answers in cross-examination, and in the absence of any explanation by him for the substantial and regular payments made to Skybet and LCC, the inferences to be made from those payments included that they were indeed related to his continuing gambling and that this showed he has more than enough to meet his current needs. For the reasons given above, I do not accept that his explanations given in the witness box are sufficient to negate those inferences. I do not need to decide whether Russell's current gambling constitutes a problem. It is enough to conclude, from the fact that he has sufficient spare money to spend on gambling, that he has more than enough to meet his current needs.
70. Mr Knight correctly points out, however, that the question is not simply whether Russell currently has enough to meet his needs, but includes whether he is likely to do so in the future. He makes the point that Russell's current living arrangements are unlikely to last indefinitely.
71. The evidence as to his likely housing needs is as follows. In his first statement Russell said that he had to move out of his rented property in June 2021, where he had lived for 10 years, because he could no longer afford to stay there. In his third witness statement, he said that he had found suitable properties to purchase at around £125,000, and that he would need a further £10,000 to purchase white goods.
72. This is plainly inadequate evidence to demonstrate that his housing needs would not be met in the future. He gives no explanation as to why, after ten years living in the same property (which was in fact, although he did not mention it in his witness statement, one of Wayne's properties) he could no longer afford it. He accepted in cross-examination that his rent was previously covered by housing benefit and that he would be entitled to housing benefit again if he were to leave Mary's flat, but said that private rents in Cardiff were now too high to be fully covered by housing benefit. He has provided, however, no details as to the levels of either the rent he could expect to pay or the housing benefit he could expect to receive. Without such evidence, it is simply impossible to demonstrate either that his needs will not be met by state benefits, or – if they would not be fully met – that the £10,000 left him by the will is insufficient to meet any likely shortfall.

73. In considering his needs in the reasonably foreseeable future it is also necessary to take account of his disability, which I address further below.

(c) The financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future.

74. The only other beneficiary of the estate is Heather. Unlike her brothers, Heather is not required to justify why any provision should be made for her from her father's estate, by reference to her maintenance needs. She is entitled to her inheritance because that was her father's wish.

75. It is relevant to consider her financial resources and needs so as to assess the extent to which she would be disadvantaged by any order which made financial provision for either of her brothers.

76. She too is reliant on benefits for her income, which is around £1,000 per month. These – to the extent they are means tested – will be lost upon receipt of her inheritance. She has no other property, and currently lives in the house which forms part of the estate. Accordingly, she will be reliant on her inheritance for her maintenance for the rest of her life. It was her unchallenged evidence that the house is in need of repair and will require expenditure to update the domestic essentials such as the bathroom and kitchen. She estimates that £20,000 will be needed for this. She has already used a proportion of her inheritance to pay electricity bills and daily living expenses.

(d) Any obligations and responsibilities which the deceased had towards any applicant or towards any beneficiary of the estate

77. As I have already noted, this case involves adult children who had lived independently from their parents, and latterly from George, for many years. There is no evidence that George was providing any funds to either Russell or Heather, notwithstanding their straightened circumstances. It is not contended that any of the children were caring for George to such an extent that gave rise to any obligation or responsibility on the part of George towards them.

78. Wayne alone appears to have been provided with some financial assistance by his father. He said that for about the last eight years of his life, George had given Wayne lump sum payments totalling between £6,000 and £20,000 each year. He has provided receipts for payments from the last five years, apparently signed by him but not by his father. These purport to evidence payments, mostly by way of cash totalling: £14,500 during 2020; £7,000 during 2019; £6,000 during 2018; £6,500 during 2017; and £7,100 during 2016. The principal point of such receipts would have been to record the payments, for George's benefit, but none of the receipts have been located among George's possessions.

79. There is no evidence of any funds being debited from George's various bank accounts to fund these cash payments. Wayne said that this was because these gifts were all made from cash that was literally lying around in George's house, left over from the time he stopped working many years ago.

80. While this may seem unlikely, if Wayne was not in receipt of these gifts it necessarily follows that the receipts that he produced in evidence have been deliberately falsified by him, as they each purport to show the date on which the payment was received. No notice under CPR 32.19 was given challenging the authenticity of the receipts, and it was not pleaded (or alleged in witness statements) that they had been falsified. In those circumstances, it was not open to Heather to contend that the receipts are other than genuine.
81. The unlikelihood of George having kept large quantities of cash around the house is mitigated by the fact that his various bank statements reveal hardly any withdrawals other than for direct debits and standing orders. Instead they show a steady increase in the balance held in the accounts until George died (resulting in the substantial balance in the estate I have already referred to). Moreover, the fact that George might assist Wayne – certainly in relation to his business – is corroborated by the fact that George paid cash to buy a van for Wayne in January 2019, as demonstrated by a receipt dated 5 January 2019 signed by the seller of the van, a Mr S Miller. Heather contended that this could not be genuine, since Mr Miller was on remand at the time. There is no evidence of this, however. Mr Miller was indeed later on remand, as disclosed by an online newspaper article, but that article shows that the date of the incident for which Mr Miller was arrested post-dated the receipt of funds from George.
82. In these circumstances, I accept that Wayne was indeed in receipt of cash gifts from time to time from his father. I do not accept, however, that these gave rise to any responsibility or obligation on the part of George towards Wayne relevant for the purposes of considering whether reasonable financial provision is made for him by the will. It is not suggested that Wayne was being maintained by George, so as give rise to a separate ground for claiming financial provision under s.1(1)(e) of the 1975 Act. There is no explanation for the timing and amounts of the payments, other than that Wayne says they were to help him with household expenditure or for his business or to assist with his children, and that some of the money (about £1,000 a year) was used to help Russell.
83. The idea that these payments were made because of a sense of parental responsibility towards his children makes no sense in circumstances where Wayne was by far the most financially successful of George's children, and nothing was given to Heather and only very small sums were made available (via Wayne) to Russell. It is more understandable that gifts might have been made to Wayne to assist with his own children, given that he alone among George's children had children who were dependent on him. There is, as I have already indicated however, no continuing need for Wayne to maintain his own children. Insofar as payments were made to the business, then those are irrelevant in considering whether George had any responsibility or obligation towards Wayne himself. In relation to the largest single payment (£9,000 in October 2020), not only is there no evidence as to the purpose of this gift, but it was made at a time when Wayne had sufficient surplus funds to be able to use the proceeds of the coronavirus bounceback loan, plus another £11,000 of his own funds, to repay a long-standing, but non-urgent, family debt. It is difficult to see, therefore, how that payment was needed for Wayne's recurring household expenses.

84. Accordingly, the fact that these payments were made to Wayne does not assist his claim for reasonable financial provision.
85. The fact, which I accept, that relatively small sums – from the amounts paid by George to Wayne – were used by Wayne to help Russell, might suggest that George felt some pity for Russell’s situation. It is not surprising, in view of Russell’s past gambling addiction, that he did not make gifts directly to Russell. The sums involved are small and do not indicate in my view that there was any responsibility or obligation on the part of George towards Russell.

(e) The size and nature of the estate

86. The estate is of a relatively modest size. Approximately half of it, by value, consists of the house. It is a relevant consideration that given Heather’s own financial circumstances, and the modest size of the estate, any significant award to either of the claimants would impact negatively on her, potentially leaving her insufficient for her own needs. That would certainly be so if awards were made in the size sought by the claimants. In total, they seek in excess of £250,000, which would not only leave no cash available for Heather but would require the house to be sold.

(f) Any physical or mental disability of any applicant or beneficiary of the estate

87. Both Heather and Russell suffer from disabilities. Heather suffers from diabetes, recurring abscesses and has previously suffered from cancer of the womb. She is unemployed and unable to work.
88. Russell, as I have already indicated, also suffers from debilitating illness. He describes this in his first witness statement as follows:

“7. I am chronically disabled. I have been suffering with my disabilities from the age of 30.

8. I suffer from advanced Chron's disease, anxiety and spondylitis. I require heavy dosages of medication, some 20-30 pills daily. I have been suffering with my disabilities from the age of 23.

9. I struggle getting up in the morning as the pain in bending and lifting my body is unbearable. I cannot lift my head to walk in a straight line being forced to walk looking downwards restricting my view.

10. I am double incontinent which leaves me having to wear nappies. I cannot clean myself without help. I am restricted in cooking as I cannot lift pots. I find it almost impossible to wash my cloths as it involves bending to complete the task. I cannot walk for long periods. I am restricted to where I can go as I need to be close to a lavatory. I take pain killers daily which merely takes the edge off the pain leaving me to deal with constant pain. I take 13 Imodium to stop me from constant bowl movements.

11. I am prone to abscesses and have had numerous invasive operations to remove them. I have had to have part of my intestines removed. I have had to spend long spells in hospital as my conditions worsen without warning.

12. I live from day to day not knowing if I have enough money to go on. I rely on the help of my brother and his family to exist.”

89. This last paragraph is a reference to the fact that Russell is visited each day by one or other member of his brother’s family to help him with basic tasks. There is in evidence a letter from a consultant gastroenterologist dated 16 June 2022. This corroborates Russell’s condition, but notes that his symptoms are intermittent: “The nature of the Crohn’s means he might have symptoms of good days and bad days and can have flare without notice which can affect his quality of life significantly.”
90. I accept that Russell’s condition is likely to deteriorate, such that when considering his needs in the reasonably foreseeable future, account should be taken of the likely increase in his care needs. I consider the financial consequences of this below.

(g) Any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant

91. As I have already noted, I do not accept Heather’s claim that it was her alone that remained close to her father during the last years of his life. This is not a case, therefore, where there was any period of estrangement between George and either of the claimants. Nor is this a case, however, where either claimant cared for George in a way which led to any reasonable expectation of benefitting under his will.
92. One factor which is of some, but in the circumstances little, relevance is the fact that George had positive reasons for wishing to exclude both sons from the will, and that it cannot be said that he was acting unreasonably in making only minimal provision for them.

Conclusions on reasonable financial provision

93. Taking into account all of the above matters, I reject Wayne’s claim that the will fails to make reasonable financial provision for him. I find that the necessary condition that his needs (as explained in *Ilott*) are not already met has not been made out.
94. Even if his needs were not already met, then taking account of all of the discretionary factors I have identified above, I find that the gift of £10,000 under the will is reasonable financial provision for Wayne. The estate is relatively small, such that any significant provision for Wayne – certainly if similar or greater provision were to be made for Russell – would impact negatively on Heather, who (as I have pointed out) has no need to justify the gift in her favour. There is nothing in the case of Wayne which might constitute any reason why he should be maintained at the expense of the estate, or which might provide

any additional ground for a claim beyond the mere fact of blood relationship. Even if I am wrong that his financial resources are such that he cannot show that his needs are not already met, those resources, when set against the other factors I have identified, lead me to conclude that reasonable financial provision is made for him by the will.

95. The position is different in relation to Russell. For the reasons set out above, I find that his reasonable financial needs are currently met by his, admittedly low, income. I also consider that he has failed to provide sufficient evidence to demonstrate that his reasonable housing needs will not be met from his income, and further state support, in the foreseeable future.
96. I nevertheless consider that taking into account his disabilities he is unlikely to be able to cover such care costs as will arise in the foreseeable future as his condition worsens so, to that extent, he has satisfied the necessary condition that his needs are not met. No evidence was produced as to the level of state care that would be available for him, but I am prepared to accept that it is unlikely to rise above a level of subsistence and that some expense is likely to be needed to maintain Russell's quality of life.
97. Further, looking at the matter in the round, I find that for this reason the will does not make reasonable financial provision. I acknowledge that it is a relevant factor that George had positive reasons not to leave Russell anything in his will, and that there is no question here of George having any obligations or responsibilities towards Russell. Nevertheless, I have concluded that it is unreasonable in all the circumstances for Russell's particular needs relating to his disabilities not to be recognised in the will.
98. As to what would amount to reasonable financial provision in this respect, the evidence is extremely thin. There is no evidence of the likely cost of care, save that private care visits are said to cost in the region of £30 per visit. The only quantification of any amount in Russell's evidence is that he says he would like to have a fund of £25,000 so that he could afford to pay his relatives £10 per visit they make to him for the next 20 years. There is no evidence that his relatives require payment, or would not be prepared to look after him if they could not be paid. On the other hand, I do not think that it is fair to assume that such family support will continue indefinitely. His nephews and nieces are likely to develop their own lives and families, and may move away.
99. In these circumstances, arriving at an appropriate figure is far from an exact science, and while I do not accept the reason given by Russell to justify provision in the sum of £25,000, I consider that is the appropriate sum to order (over and above the £10,000 gift already made by the will), so as to make reasonable financial provision for Russell in light of his disabilities. In so doing, I take account in particular of the following matters. The size of the estate could never realistically support the full cost of private care for Russell for the remainder of his life. While I have found that, because of his future likely needs in light of his disabilities, the will fails to make reasonable financial provision, that does not mean that I think that reasonable provision is only made if his full likely care costs are met. Rather, I consider that the unreasonableness lies in there being no recognition at all of Russell's current and future needs arising

from those disabilities. In the absence of any other reason to expect George to have provided for his adult and independent children, I consider that reasonable provision is therefore met by there being *some* amount set aside to meet at least part of those needs, which will supplement, as needed, the care he can expect from family members and from the state. I also take into account the position of Heather, as the person *entitled* to the residuary estate, and the extent to which a deduction from the cash part of her inheritance will negatively impact on her. I consider that the sum asked for (albeit not for the reasons it is asked for) strikes the correct balance between all these factors.

100. That leaves the form in which such provision should be made. Mr Knight submitted that the sum should be placed in trust so as not to diminish Russell's entitlement to state benefits. In the absence of any evidence or submissions as to the impact of a trust on Russell's entitlement to benefits, I am prepared to accept that if the money is placed into a discretionary trust then it would achieve that objective. In any event, I think that such an arrangement is justified for the separate reason that making a gift outright to Russell would be inappropriate in light of his admitted past gambling problems, and my finding that when he has the funds to do so is he still spending a significant amount on gambling.
101. Accordingly, I will order that the sum of £25,000 is to be held on discretionary trust, the terms being that it is to be made available where in the discretion of the trustee it is required to cover care costs for Russell. In the event of Russell's death before the trust fund is exhausted, then the fund will revert to Heather. I will hear further from counsel on the precise terms of the trust and the identity of the trustee.