



Neutral Citation Number: [2024] EWHC 2554 (Ch)

Case No: PT-2024-000276

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

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 09/10/2024

**Before:**

**MR JUSTICE TROWER**

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**Between:**

**PHILIP DENNIS MORRIS**

**Claimant**

**- and -**

- (1) JAMES JONATHAN MORRIS**  
**(2) KATE ANNABELLE SHMUEL**  
**(3) GREGORY BEN WHITE**

**Defendants**

**TOBY BISHOP** (instructed by **Michelmores LLP**) for the **Claimant**  
**JOHN CRITCHLEY** (instructed by **Michelmores LLP**) for the **First and Second Defendants**  
**WILLIAM EAST** (instructed by **Dixon Ward**) for the **Third Defendant**

Hearing date: 3<sup>rd</sup> October 2024  
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**Approved Judgment**

This judgment was handed down electronically at 10.30am on 9<sup>th</sup> October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MR JUSTICE TROWER**

**Mr Justice Trower:**

1. In these Part 8 proceedings, the claimant, Mr Philip Morris (“Philip”), applies under section 2(2) of the Forfeiture Act 1982 (the “1982 Act”) for relief modifying the effect of the forfeiture rule as it applies to his interest in the estate of his late wife, Mrs Myra Morris (“Myra”). Without intending any discourtesy, I shall use first names when referring to Philip, Myra and other members of their extended family.
2. On 3 October 2024, I granted relief in the form sought by Philip, and indicated that I would give my reasons for doing so in writing at a later date. These are those reasons.
3. The record of an inquest into Myra’s death held on 14 December 2023 determined that she died on 5 December 2023 aged 73 at the Pegasos clinic in Liestal, Switzerland, having self administered an overdose of pentobarbital resulting in her death. At the time of her death Myra was suffering from Multiple System Atrophy, a rare and degenerative neurological disorder with no known cure. The coroner recorded that, during the period of two years prior to her death, Myra’s condition had deteriorated to the point where she had little enjoyment from life, was in constant pain and found it very difficult to cope.
4. It is accepted by all parties that Myra ended her own life, having obtained both the assistance of staff at the Pegasos clinic and the assistance of Philip. It is also accepted that the role played by Philip is sufficient to engage the provisions of section 2(1) of the Suicide Act 1961 (the “1961 Act”) because, despite his very great reluctance, he did acts capable of assisting Myra’s suicide with the requisite intention to do so.
5. Since 1 February 2010, section 2(1) of the 1961 Act has been in the following form:
  - (1) A person (“D”) commits an offence if—
    - (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
    - (b) D’s act was intended to encourage or assist suicide or an attempt at suicide.
  - ...
  - (4) ... no proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions”
6. Section 2 of the 1982 Act gives the court power to modify the effect of the forfeiture rule, which is itself defined by section 1 to mean the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing. The relevant parts of section 2 are in the following form:

“(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as “the offender” ) who has unlawfully killed another from

acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying the effect of that rule.

(2) The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.

...

(4) The interests in property referred to in subsection (1) above are

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased's will ...”

7. It was confirmed by the Court of Appeal in *Dunbar v Plant* [1998] Ch 412 at 425H - 426A (per Mummery LJ) and at 437D - 438C (per Phillips LJ) that the forfeiture rule applied to offences under section 2(1) of the 1961 Act. Since *Dunbar v Plant* was decided, section 2(1) has been amended but it is accepted by the parties that the amendment of the law has no effect on this part of the Court of Appeal's decision. The consequence is that, in the absence of the relief sought, the forfeiture rule as defined in section 1 of the 1982 Act will apply and Philip will be disabled from taking any beneficial interest under Myra's will.
8. Myra's will was executed on 9 December 2021. Its terms have a bearing on a procedural issue which has arisen, and so I shall give a brief summary of the position. She has left a number of pecuniary legacies to members of her extended family. They are given to her sister Susan Moss (“Susan”), to Susan's two adult children, Benjamin Moss (“Benjamin”) and Hana Freyd (“Hana”), to her great niece, a minor, and to each of her grandchildren living at the date of her death, all of whom are minors. Myra's will also provides that her residuary estate is to be held on trust for Philip absolutely and, subject to that, for Philip and Myra's two adult children, James Morris (“Jamie”) and Kate Shmuel (“Katie”) in equal shares absolutely. In the event of the death of either Jamie or Katie during Myra's lifetime, their children will take their respective share on attaining the age of 25 and, subject to that, the default residuary beneficiaries are Susan, Benjamin, Hana and Myra's great niece.
9. The evidence filed on the commencement of the proceedings comprises a detailed witness statement made by Philip and three further statements made by Jamie and Katie, who were joined as defendants, together with a friend of Myra's, Shobha Hartley. Jamie is an investment banker, Katie is a lawyer and Shobha Hartley is a housewife and hospice volunteer. If relief from the forfeiture rule were not to be granted, Jamie and Katie would benefit from Myra's will to the exclusion of Philip. Nonetheless, all three witnesses confirmed that they fully support Philip's application.
10. Since the commencement of the proceedings, further evidence has been filed for or on behalf of a number of other members of the extended family, all of whom support Philip's application. They are Benjamin, Hana and Susan. The bundles also include a

substantial amount of contemporaneous documentation referred to in the witness statements. Of particular importance is the provision to the court of a witness statement made by Myra herself shortly before she died. This was supported by a witness statement made at the same time by her solicitor, who assessed Myra as having the mental capacity to make an informed and voluntary decision to end her own life according to the principles contained in the Mental Capacity Act 2005. She said that she was satisfied that Myra was able to understand the decisions she was making and was under no undue influence, pressure or encouragement when she did so.

11. The evidence also included two witness statements made by Mr Gregory White, a solicitor and partner in Dixon Ward, who has consented to act as a representative of any individual (apart from Susan) who is interested in Myra's estate in the event that the interests of Philip, Jamie and Katie are forfeited. Both Mr White's involvement and the reference to the relevant class as including those who are interested on any forfeiture of the interests of Jamie and Katie require a little explanation, not least because, as at the commencement of the disposal hearing, the court had not made a representation order under CPR 19.9(2)(d).
12. Under the terms of Myra's will, both Jamie and Katie took their interest in her residuary estate absolutely and the interests of Myra's grandchildren were only capable of arising if either Jamie or Katie died before her. That cannot now occur in fact, although the law will treat it as having occurred if either Jamie or Katie are themselves precluded by the forfeiture rule from acquiring an interest under Myra's will (section 33A of Wills Act 1837). This would be the case if they were to have done acts capable of encouraging or assisting Myra's suicide with the requisite intention to do so and were not themselves then granted relief under section 2 of the 1982 Act.
13. Neither Jamie nor Katie have issued an application for relief equivalent to that sought by Philip. It is submitted on their behalf that it is unnecessary for them to do so, because nothing they did amounted to the commission of an offence under section 2(1) of the 1961 Act.
14. However, when the papers were first considered by the court, Master Brightwell asked whether the correct defendants should not in fact be those next in line to inherit in the event that Jamie's and Katie's interests under Myra's will were to be forfeit. He said that the reason he raised the point was that the evidence disclosed that both Jamie and Katie (together with Susan) accompanied Philip and Myra to Switzerland, and that it was not obvious to him that travelling to Switzerland with Myra was incapable of constituting assistance in her suicide.
15. It is apparent from the correspondence that one of the reasons the Master asked the question he did was because of the way in which Chief Master Marsh had expressed himself in a judgment delivered in 2019 (*Re Ninian deceased, Ninian v Findlay* [2019] EWHC 297 (Ch) at [45]). The Chief Master said that, anyway on the facts of that case, the very act of travelling to Switzerland in the company of the deceased was of itself an act of assistance within the meaning of section 2(1) of the 1961 Act. Master Brightwell was evidently concerned that if, in travelling with their mother to Switzerland, they were doing an act capable of encouraging or assisting Myra's suicide, and intended to do so, Jamie's and Katie's interests under Myra's will were also liable to forfeiture. Master Brightwell was concerned that, if this passage were to be treated

as applicable, it may be necessary or appropriate to join those next-entitled under Myra's will as defendants to the proceedings.

16. On referral from Master Brightwell, Mr Justice Zacaroli directed that the question of the appropriate defendants for the claim ought to be determined at a directions hearing to be heard by a judge. Initially it was contemplated that this would take place before the disposal hearing, but the parties have been able to ensure that Mr White was able not just to confirm that he was willing to act for the relevant class, but also to make a decision on whether or not to consent to relief being granted if he were to be appointed. His position is that he would consent if he were to be appointed, because he was satisfied that it was for the benefit of the represented class not to oppose the claim. He has reached that conclusion having considered the evidence, the views expressed by the adult members of the relevant class (Benjamin and Hana) and the measured and detailed opinion of counsel, Mr William East, which I have read. Mr East has also appeared for Mr White at this hearing.
17. This sensible and practical approach has enabled the court to hear both the application for directions and the application for final disposal on the date originally fixed for the directions hearing. In the particular circumstances of this case, and given the directions given by Master Brightwell and Mr Justice Zacaroli, this was the most appropriate and proportionate course to adopt. In the event, I joined Mr White and made a representation order under CPR 19.9(2)(d) at the conclusion of the hearing. The implications of this for other assisted death cases where the forfeiture rule may apply by reason of section 2(1) of the 1961 Act is matter to which I shall briefly return at the end of this judgment.
18. I should add that, in circumstances in which she also travelled to Switzerland, Mr White, concluded that he could not represent Susan's interests as a default beneficiary under Myra's will. Susan was given an opportunity to be a defendant to the proceedings, but has confirmed that she did not wish to be joined. Philip's solicitors have also been in contact with HMRC to ascertain whether they wished to be joined as a party to the proceedings, in circumstances in which the court's refusal to grant Philip the relief he seeks would mean that Myra's estate would pass to persons other than her spouse, with the different consequences for taxation of her estate which would then follow. They confirmed that they did not wish to be joined.
19. Against that procedural background, I can set out the facts relatively shortly, restricting my description to what is required to enable a reader of this judgment to understand the conclusions I have reached. Before doing so I should record that the evidence which has been filed is detailed, comprehensive and candid and it is only necessary for me to make specific reference to a small part of it. I should also record that there are no material conflicts on the face of the evidence, and the picture with which the court has been presented is both credible and a tragic reflection of the situation in which the Morris family has found itself, faced as they all were with a much-loved family member wanting to take her own life because she was suffering from an increasingly unbearable condition from which there was no hope of recovery.
20. Myra and Philip first met in November 1974 and married on 28 August 1977 when they were both in their late 20s. The evidence from Philip, Jamie, Katie, Susan and Shobha Hartley is consistent and clear: Myra and Philip had a long, happy and loving marriage.

Philip is now 76 and was a successful businessman. Myra was a highly intelligent and decisive woman who devoted herself to their family.

21. Myra initially suffered from dizziness in 2016, but began suffering from a series of more disorientating symptoms in 2018. However, it was only in 2021 that she was diagnosed as suffering from a condition called Multiple System Atrophy, cerebella type (commonly called MSA-C). This is a rare neurological disorder caused by degeneration of nerve cells in different areas of the brain which can result in problems with movement, balance and autonomic functions of the body. Susan explained that in Myra's case her cognitive faculties remained unimpaired.
22. The evidence from Philip, Jamie, Katie and Susan is compelling and describes the course of the deterioration in Myra's condition in great detail. In her own witness statement, Myra explained that since the diagnosis she had known that her condition was incurable and that its impact on her would only continue to worsen. It is not necessary to describe the many physical manifestations of her condition but I am satisfied that they were becoming increasingly difficult for her to bear. By the end of August 2022 she had decided and recorded in an urgent care plan that if the issue arose she did not want to be resuscitated and that any treatment was only to be given to her in the setting of her home or a hospice.
23. On 28 April 2023, Myra was admitted to hospital after breaking her hip in a fall. After an operation and a period of recuperation in hospital, she was transferred to a care home. The evidence is clear that, from then on, her condition continued to get worse and her decline became more pronounced. Philip visited her every day, and, on a number of occasions during this period, Myra told Philip that she wanted to die. It came to a head when she said to him that she wanted to go to Switzerland, but did not want Philip to go to jail. Philip explained that his response was "I don't want you to do it" and that what Myra wanted was "too horrendous". He said that his brain could not cope with it. However, he also said that the subject came up again and again and eventually he realised that he could not ignore it, because it was what she wanted.
24. Philip managed to move Myra back to their own home in August 2023 but, at some stage before she returned home, a number of material events occurred.
25. The first was that, although Myra was very reluctant to see anyone else apart from her immediate family, Philip persuaded her to see her very close friend, Shobha Hartley. Myra told her that she did not want to be around any more, that she wanted to go to Switzerland and that her big worry for Philip was that he would get into trouble.
26. The second was that Philip spoke to a friend of Shobha Hartley's, whose own husband had gone to a Swiss clinic called Pegasos, and obtained what she called an assisted voluntary death. This friend also told Philip that it was important for him to get a good solicitor, as a result of which Philip approached the firm which had drafted their wills and lasting powers of attorney. Philip came away from his discussions with the solicitors with a degree of confidence that, in the light of the guidance produced by the DPP (to which I shall refer a little later), it would not be considered in the public interest for him to be prosecuted if he were to give assistance to Myra in fulfilling her wish to end her own life. He was not given any advice in relation to the forfeiture rule, an omission which, when discovered after Myra's death, has caused Philip very considerable distress.

27. The third was, that at about the same time as Philip was speaking to Shobha Hartley's friend and the solicitors, he and Myra told Jamie and Katie that Myra had said that she wanted to die and that they had been discussing voluntary assisted dying in Switzerland. Philip and Myra had what must have been very difficult discussions with Jamie and Katie separately, and the evidence is that they were both devastated by what they were told. Katie said that she tried to discourage it and expressed the view that Myra would feel much better when she was home and asked her to reconsider. Katie said categorically that she did not believe in assisted dying and that, although she would not judge her mother for wanting it, was adamant that she did not want it to happen. It was Jamie's evidence that they all hoped that new living conditions when she left the clinic would change her mind, but he was equally realistic that her quality of life would continue to deteriorate and that the condition from which she was suffering was both humiliating and degrading.
28. The fourth relates to the new living conditions referred to by Jamie. Philip spent a significant amount of money on conversion works at their house, because Myra would not be able to live upstairs when she came home. There is detailed evidence which explains the efforts to which Philip went in order to make Myra's surroundings as comfortable as possible. It was Philip's evidence, which I accept, that he hoped that when she moved back home after leaving the care home all thoughts of going to Switzerland would go out of her head because she would be able to lead a rather more normal life.
29. In the event that did not occur and, on her return home, Myra's condition continued to deteriorate. She became more rather than less determined to go to Switzerland. I accept Mr Bishop's submission that by this stage the evidence is clear: Philip sacrificed his own happiness and put himself at risk of prosecution to honour the heartfelt wishes of his wife. It is clear to me that this was not because he wanted her to die, far from it, but rather because he loved and respected his wife too much to disregard her wishes.
30. In late October or early November 2023, Philip made contact with Pegasos and he and Myra had further discussions with solicitors, which led amongst other things to the preparation of the witness statements I referred to at the beginning of this judgment. They were made by Myra and her solicitor on 21 November 2023.
31. Myra's witness statement described what she had come to regard as the intolerable nature of her life in graphic detail. She also explained that she had a settled wish to travel to Pegasos in Switzerland for an assisted death as soon as practically possible, that she was unable to travel to Switzerland on her own, that she was daunted by the prospect of the journey but that she knew that she was unable to take her own life unassisted. She said that Philip, Jamie and Katie had agreed to accompany her and that it was her strong wish that they should not get into trouble as a result.
32. The witness statement from Myra's solicitor confirmed that when she took instructions for the purpose of preparing Myra's own witness statement, Philip had left the room (without reluctance) and she and Myra were alone together. She had no suspicions that any undue influence, pressure or encouragement had been exerted on Myra. She also confirmed that from a subsequent conversation she had with Philip she found him to be careful and thoughtful and apparently motivated only by compassion in his intent to assist Myra in carrying out her wishes.

33. This evidence on Philip's motive is corroborated by many other pieces of evidence, including the following clear statement from Shobha Hartley, which in my view summarises the position very well:
- “I think Philip assisted Myra with her plans because it's what she wanted, and he absolutely loved her to bits. They had a strong marriage, they loved each other, and he absolutely doted on her. Philip was a fabulous husband and did everything Myra asked him to do.”
34. Throughout the period, Philip assisted Myra in making the necessary administrative arrangements for her to travel to the Pegasos clinic. The evidence is all consistent with a finding that Philip did it out of his deep love and compassion for Myra, having managed to overcome his original view that, although he totally understood her wishes, he could not be part of it. Katie confirmed in her witness statement that she was not involved in Myra's plans to go to Switzerland. As she put it, she did not want to be involved, she was in denial and was praying that it would not happen. She also said that she did not need to be involved because her father was doing it all. Jamie said that he too had no involvement in his mother's plans and went on to explain how, even during the journey he (and the same applied to Katie and Susan) did not have to assist with her physical needs because they travelled by private taxi and private plane with people around her all the time – there was never any need for them to provide any functional or physical assistance to enable her to travel.
35. In the event, and accompanied by Philip, Jamie, Katie and Susan, Myra left for Switzerland on 4 December 2023. Philip completed all the necessary paperwork on their arrival at the clinic the following day. Myra then committed suicide with the assistance of the staff at the clinic. All four members of the family were with Myra when she died.
36. Both Jamie and Katie gave clear and compelling evidence that right up to the end they continued to say not just that they loved her but that she did not have to do this. Susan's evidence was to the same effect. Jamie said that he tried to talk her out of it even at the end, but she was resolute. Katie said she pleaded with her for it not to happen even when they were in the clinic. Susan continued to say to her that it was not too late. Both Jamie and Katie said that, if they had begged her not to do it in more forceful terms, she would still have gone ahead with her plan. I am sure that they are both right about this and I also think that Katie's statement that she had never seen her mother so sure of something, and so brave, rings true.
37. They also all described in moving terms what occurred as she took her own life and they all described the experience of being with her as she did so in terms which made clear that they found it both devastating and horrific. Katie said that her only job was to try to bring comfort and love to her mother and to offer her food which in the end she would not eat. Jamie described how he was there because he wanted to hold her hand and be with her and tell her he loved her. The overwhelming impression is that they were there to comfort her at the end, in the knowledge that she was resolute in her desire to commit suicide. Neither of them did anything tangible to assist her in taking that course.
38. Philip, Katie, Jamie and Susan then flew back to this country that evening. The following day, Philip attended Colindale police station accompanied by Susan's



husband who is a recently retired JP. He spoke to a police constable and said that he wanted to report his wife's voluntary assisted death in Switzerland and that he had documents about his involvement. The constable went to speak to her supervisor and returned 10 minutes later to say that there was nothing to report. Philip expressed surprise and asked to have more of a discussion about it, which they did. During the course of this discussion Philip explained that he had a whole dossier of documents explaining everything, including various statements from Myra, her solicitor and him. He asked the constable whether she wished to see them, but the police constable said she did not, that there was nothing to report and confirmed the position in writing.

39. There was an inquest a few days later, the findings of which I have already summarised. This took place because Myra's body was repatriated to the UK. It was not until February 2024, when Philip was discussing the administration of Myra's estate with his solicitors, that he was first informed about the forfeiture rule. He was understandably upset that neither he nor Myra had been informed of the position at an earlier stage, but having taken further advice, these proceedings were commenced.
40. The parties have agreed that there are four issues, three of which are for determination by the court. The first issue does not require determination by the court, but describes the parties' acceptance that the common law forfeiture rule is engaged. This is a reference to the position of Philip and acknowledges that the steps he took to arrange the journey to the Pegasos clinic, including such matters as giving assistance in relation to the payment of the clinic's fees, were all acts capable of assisting Myra's suicide within the meaning of section 2(1) of the 1961 Act. This issue also acknowledges that the administrative acts he carried out to facilitate Myra's journey to the clinic were also intended by him to be such acts of assistance.
41. I should also deal with the issue of whether anything Philip did amounted to an act of encouragement. This is an objective question. However, it seems to me that the combination of Myra's determination to proceed and Philip's reluctant willingness to assist (but only because she was so determined) are clear indicators that the assistance he gave cannot be characterised as encouragement and I so find. In any event, the acts which he did were certainly not intended by him to be such, so as to fall within section 2(1)(b) of the 1961 Act.
42. The second issue is whether, having regard to Philip's and Myra's conduct, and all the material circumstances, the justice of the case requires the effect of the forfeiture rule to be modified pursuant to section 2(1) of the 1982 Act.
43. There are very few reported decisions on the approach the court should take to an application to modify the forfeiture rule, but the statute requires the court to have particular regard to the conduct of Myra and Philip when determining the justice of the case. However, *Dunbar v Plant* (see above) also gives important and helpful guidance on these and such other considerations as the court may consider material. The case was not concerned with an assisted voluntary death, but rather was concerned with a suicide pact in which the offence committed by the surviving party was aiding and abetting suicide contrary to the pre-2010 version of section 2(1) of the 1961 Act.
44. In that context, Phillips LJ explained (at 437F-G) that there were clear indications in the legislation (most especially section 2(4) which requires the consent of the DPP for a prosecution) that there were circumstances in which the public interest did not require

the imposition of any penal sanction, a consideration which he linked directly to the proper application of the forfeiture rule:

“Where the public interest required no penal sanction, it seems to me that strong grounds are likely to exist for relieving the person who has committed the offence from all effects of the forfeiture rule.”

45. Having explained (at 438F) that the first and paramount consideration for the court on exercising its discretion under the 1982 Act was an assessment of whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all, Phillips LJ recognised that, although assessing the blameworthiness of an offender was a familiar exercise for a sentencing judge in the criminal jurisdiction, the exercise was not one much welcomed by a judge exercising a civil law jurisdiction as the test for determining entitlement to property. He went on to make clear that an assessment was required nonetheless, but reiterated that it was likely to be appropriate to relieve the unsuccessful party to a suicide pact of all effect of the forfeiture rule. He stressed that each case must be assessed on its own facts.
46. In a judgment in which he dissented on the facts rather than the principles to be applied, Mummery LJ took a consistent, but nonetheless slightly different approach. He identified a broad range of relevant circumstances (see 427H), which are generally referred to by courts of first instance when exercising the jurisdiction. In my view they are a helpful checklist for any court required to do so:

“The court is entitled to take into account a whole range of circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what has happened; the nature and gravity of the offence; the intentions of the deceased; the size of the estate and the value of the property in dispute; the financial position of the offender; and the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule.”
47. In the present case, there has been no formal determination by the Crown Prosecution Service that Philip's conduct was such that the public interest did not require any penal sanction. As I have explained, Philip did all that could have been expected from him in order to report his role in Myra's death, but was told by the police that there was nothing further for him to do. It is plain that the police took the view that there were no grounds for further investigation and that it was not in the public interest for there to be a prosecution. But the circumstances of what occurred mean that proper consideration of the principle reflected in the citation from Phillips LJ's judgment I have set out above requires the court to consider for itself the published public interest factors which tend in favour of and against prosecution (Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide (issued by the DPP in February 2010 and updated in October 2014) (the “Policy”)).
48. It is not necessary for me to list the 16 public interest factors which tend in favour of prosecution, but I have considered each of them in the light of the evidence, and I am satisfied that none of them are present in the current case. There are fewer public interest factors tending against prosecution and they are listed in paragraph 45 of the Policy. In a number of instances they are the converse of the factors which tend in

favour of prosecution and I think it is helpful to set them out in full. The Policy makes clear that the evidence to support them must be sufficiently close in time to the encouragement or assistance to allow the prosecutor reasonably to infer that the factors remained operative at that time. They are as follows:

- “a. the victim had reached a voluntary, clear, settled and informed decision to commit suicide;
- b. the suspect was wholly motivated by compassion;
- c. the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor encouragement or assistance;
- d. the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide;
- e. the actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide;
- f. the suspect reported the victim's suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.”

49. As to the first factor, I am satisfied from the evidence I have already summarised, that Myra had made a voluntary, clear, settled and informed decision to commit suicide prior to the time at which Philip started to take any steps capable of amounting to assistance. She maintained that decision throughout the period up to her death. In reaching that conclusion I find that Myra had full capacity throughout. At the time Myra made her own witness statement confirming her decision, she was advised by an experienced private client solicitor who had interviewed Myra and Philip separately and who was able to set out her opinion in a witness statement by reference to the Mental Capacity Act 2005. All the other evidence is consistent with that opinion.
50. The other factors relate to Philip’s conduct. As to the second factor, there is no doubt that Philip was wholly motivated by compassion – this shines through in all of the evidence.
51. Mr Bishop does not rely on the third factor because he accepts that the practical and administrative actions which Philip carried out in order to organise for Myra’s trip to Switzerland could not be characterised as only of minor assistance. However, looked at in the round, I do not think that the nature of what he did indicates any enhanced level of legal culpability when set against all of the other circumstances. In particular, Philip had never encouraged Myra to take her own life and indeed had sought to dissuade her from doing so (the fourth factor). The fact that, for reasons of compassion and because he loved and cared for her and realised how resolute she was, he did not try to talk her out of it at the end does not in my view detract in any way from the manner in which he reconciled himself to, and dealt with, what Myra wanted to do.
52. Myra’s determination to proceed is also highly relevant to the fifth factor tending against prosecution. Philip’s witness statement speaks eloquently of why it is right to

characterise what he did as reluctant assistance in the face of that determination. I can quote two short paragraphs from his statement:

“For a woman of such beauty, intelligence, dignity and grace, being so physically incapacitated and reliant on others made life intolerable for Myra. I was desperate for Myra to change her mind, but she was solid in her decision that she wanted to be dignified to the end which is why she chose to end her life. She faced a future that she did not want.

“Myra was my soulmate for nearly 50 years, and it is very hard to cope with losing her. Everything that I did for her I did because she asked me to and because I loved cared for her too much to refuse.”

53. The final factor tending against prosecution is also satisfied in the present case. As I have explained, Philip reported Myra’s suicide to the police and offered to assist them in making such enquiries into the circumstances of Myra’s death as they considered appropriate. In the event, the fact that the police took no further steps by way of enquiry does not affect the weight to be attributed to this factor in the present case.
54. For these reasons it is clear to me that the public interest factors against prosecution are clearly made out in this case. The application of Phillips LJ’s statement of principle in the passage of his judgment from *Dunbar v Plant* I have cited above means that strong grounds are likely to exist for relieving Philip from all effects of the forfeiture rule.
55. Before reaching a final determination that this is the right answer, I must also give consideration to such of the factors identified by Mummery LJ as I have not already mentioned. The first of these is what might properly be described as a conclusory assessment as to “the degree of moral culpability for what has happened”. In a case such as this, I think that the right approach to this question is to consider whether there is anything about the conduct or state of mind of the person whom the statute calls the ‘offender’, apart from the bare commission of acts of assistance with intent, which indicates a higher level of culpability than that which flows from the fact that an offence has been committed. Anything to that effect might give rise to the moral culpability which Mummery LJ had in mind. In my view there is no such culpability in the present case.
56. In reaching that conclusion, I have also had regard to the other factors mentioned by Mummery LJ, which are essentially financial: the size of Myra’s estate, the value of the property in dispute (were there to be a dispute), the financial position of Philip and the wishes of those who would be entitled to take Myra’s property if Philip’s claim were to fail. In my view the first of these are not particularly material considerations in the present case. Myra’s net estate originates from assets she received from Philip and is valuable, but Philip is independently financially comfortable. Mr Bishop is justified in submitting that the grant of relief in these circumstances will have no material bearing on his standard of living or the opportunities available to him. The relief is being sought because all concerned consider that it is not right for the wishes expressed by Myra in her will to be ignored, and for Philip to be denied access to Myra’s estate. It follows that consideration of this factor, like the factors concerned with the conduct of Philip and Myra, also points in favour of the grant of relief.

57. Mummery LJ also referred in his judgment to the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule. This factor is clearly in favour of granting the relief sought so far as the adult beneficiaries are concerned because all of them have been consulted on the proceedings and all of them support Philip's application. However, as I mentioned at the beginning of this judgment, not all of the default beneficiaries of the residue of Myra's estate are adults. This gives rise to the third and fourth issues which the parties agreed were before the court for determination.
58. The third issue is whether Jamie, Katie's and Susan's interests are forfeit as a result of their travelling with Myra to Switzerland. This issue is not raised in the context of an application for declaratory relief, because no such application was made. Rather, it arises in the light of Philip's application for the appointment of Mr White to be joined as a party to these proceedings in order to represent the interests of any individual (apart from Susan) who is interested in Myra's estate in the event that the interests of Philip, Jamie and Katie are forfeit. Whether or not to appoint Mr White a representative party pursuant to CPR 19.9(2)(d) was itself the fourth issue. I can, therefore, consider the two issues together.
59. The context in which these points arise is that if the interests of Philip, Jamie and Katie were to be forfeit, some of those intended to be represented by Mr White would be next-entitled under Myra's will. To that extent, it might be thought that they would have some sort of interest in asserting not just that Philip's interest in Myra's estate was forfeit, but that the interests of Jamie and Katie were as well. It was this possibility which Master Brightwell was concerned to resolve when he saw from the evidence that Jamie and Katie had travelled to Switzerland with their mother and were present at her death. Did the fact that they too had travelled to Switzerland mean that they, like their father, had assisted in Myra's suicide?
60. It is not in issue that the act of accompanying a person to travel to Switzerland in the knowledge that they intend to take their own life in a place such as the Pegasos clinic might be an unlawful act capable of encouraging or assisting that suicide if that person has the intent referred to in section 2(1)(b) of the 1961 Act. This was the context in which Chief Master Marsh made the following finding in *Re Ninian deceased* (see above) at [45] when asking himself the question whether Mrs Ninian did an act that was capable of encouraging or assisting Mr Ninian's suicide:
- “In this case, Mrs Ninian has at all times made it clear that she did not wish her husband to go to Switzerland to take advantage of the local laws under which Dignitas operates. She never provided any encouragement to her husband to commit suicide and I do not consider that her acts could be construed as doing so. However, she provided assistance to him ranging from what are described as acts of administration to more fundamental acts such as travelling with Mr Ninian to Switzerland and then to meetings with Dignitas on three occasions. Her involvement was essential to enable him getting to Zurich and getting to his appointments with Dignitas. Looked at objectively, such acts were plainly capable of assisting his suicide. It is equally plain that although she did not wish him to commit suicide, she intended to assist him in that enterprise.”
61. Of course every case must be assessed on its own facts, but there are some similarities between the acts of Mrs Ninian as described in this passage and the acts of Philip

preparatory to Myra taking her own life. To that extent, the conclusion reached by Chief Master Marsh in the *Ninian* case is consistent with the decision by Philip in the current case to accept that, in the absence of the relief he seeks, his interest in Myra's estate would be forfeit. However, I have reached the clear conclusion that the same cannot be said about any acts of Jamie or Katie.

62. The question for the court is always whether any particular acts, whether or not part of a course of conduct, are "capable of encouraging or assisting the suicide". This is an objective question and it is, of course, correct that accompanying a person to a clinic in Switzerland in the knowledge that they intend to take their own life is capable of being part of a course of conduct which constitutes assistance within the meaning of section 2(1)(a). Indeed, and depending on the circumstances and what occurred on the journey, the mere act of accompaniment may in itself need to be construed as an act of encouragement or assistance. But to the extent that the Chief Master concluded that this will always be the case (and I am far from convinced that he did), I consider that he was wrong to do so.
63. In particular, I do not think that the use of the word "capable" is intended to mean that the court is only required to consider whether accompaniment might in some theoretical circumstances constitute an act of assistance. In my view, the act of accompanying may or may not be assisting the suicide depending on the circumstances. Doubtless it often will, more particularly where the only way in which the deceased is able to travel is with the person who is said to have given the assistance.
64. But the present case is very different so far as Jamie, Katie and Susan are concerned. I am satisfied that all of the arrangements were made by Philip (who accepts that he assisted) and that they did not, and did not need to, participate in that process. I am also satisfied that the resources available to the Morris family meant that the means by which they travelled, including those who assisted during the course of the journey, meant that Jamie, Katie and Susan were not themselves required to take any steps to assist Myra during that process, nor did they do so. Those who did assist were either Philip who accepts that he assisted with intent or third parties against whom no allegation of intent could possibly be made.
65. In short Jamie, Katie and Susan were there as comforters and, as Myra's children and sister, were concerned to be there with her when she died, but they did not commit acts capable of assisting, because they did not have to. I am also satisfied that the way in which they behaved could not properly be treated as acts capable of encouraging Myra's suicide. Indeed, quite the contrary; it is clear that Myra would have gone anyway whether or not they had come as well and to an extent she encouraged them not to do so. They were on the journey as Myra's children and sister, concerned to provide support to their terminally ill mother and sibling at the end of her life. Throughout their time with her at the end of her life, they continued to hope that she would not bring it to an end and continued to make that clear by what they said and did. On the evidence, nothing they did was capable of encouraging her suicide.
66. In any event, I am also satisfied that no act done by Jamie, Katie or Susan was intended to encourage or assist in Myra's suicide. Their position is different from Philip's (who accepts that he intended to assist) because they were not involved in making any of the arrangements and did not intend anything they did before and during the journey to assist Myra in her desire to take her own life. They also continued to tell her that she

did not have to go ahead with it. Their only intention in being there was to provide comfort to Myra by their presence.

67. For these reasons, I reached the clear conclusion that the evidence established that Jamie and Katie's interests in Myra's estate are not forfeit as a result of anything they did before she took her own life (and nor is Susan's more remote interest). It is right that I should express that conclusion even though Jamie, Katie and Susan do not seek a declaration to that effect. The consequence of this is that I am able to answer the third issue in the negative. Whatever the position may have been when the papers were first considered by the court, it is now clear to me that, by travelling with Myra to Switzerland, Jamie, Katie and Susan did not encourage or assist Myra's suicide nor was anything they did during the course of the journey intended by any of them to have that effect.
68. That does not mean, however, that I consider that Master Brightwell or Mr Justice Zacaroli were mistaken in taking the course that they did. In my view, where an application is made for modification of the forfeiture rule in a case of this sort, and those next-entitled under the will accompanied the deceased to the place where they took their own life and were present when they did so, the court will always need to give very careful consideration to the evidence bearing on the role which they played before satisfying itself that all necessary parties have been joined. It will sometimes be difficult to reach the conclusion that the proceedings have been properly constituted without having a short directions hearing and in my view this was such a case.
69. That does not necessarily mean that the court should now join Mr White as a representative party for the purposes of representing the more remote beneficiaries under Myra's will. In some cases, the court may well consider that the overriding objective is not best served by taking that course, most particularly if it is not possible to make a decision on the correct parties and have an effective disposal hearing at the same time.
70. However, in the present case, the parties have all ensured that Mr White has been able to investigate the circumstances and reach a clear conclusion as to what is in the best interests of the class he would be appointed to represent prior to any appointment being made. As that has now happened, and as all of the necessary work has been done on a prospective basis, I reached the conclusion at the end of the hearing that for reasons of certainty the right course was to make the appointment and to confirm the court's approval of Mr White's decision on behalf of the class he represents not to oppose the relief sought by Philip.
71. I had no doubt at the end of the hearing that this is a case in which I should modify the forfeiture rule by excluding its application in full. Philip had made a clear and compelling case for such an order to be made, having particular regard to his own conduct and that of Myra. That this was the right order to make was further confirmed by the answers I have given to the third and fourth issues and to the fact that all beneficiaries of Myra's will, including those now represented by Mr White, consent to the relief sought.
72. In conclusion, I express the court's gratitude for the clear manner in which this tragic case has been presented and argued, and the candid and comprehensive manner in which the members of the Morris family have given their evidence. It is very much to

be hoped that they will be able to get on with the process of grieving for Myra, now that the burden of these proceedings has been lifted.