



Neutral Citation Number: [2023] EWHC 546 (Fam)

Case No: FD21F00040

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/03/2023

Before :

**MRS JUSTICE THEIS DBE**

Between :

	<b>Sally Ann Dignam-Thomas</b>	<b><u>1<sup>st</sup> Claimant</u></b>
	<b>- and -</b>	
	<b>Julie Catherine Bebbington</b>	<b><u>2<sup>nd</sup> Claimant</u></b>
	<b>-and-</b>	
	<b>Paul Alexander McCourt</b> <b>(Personal Representative of the Deceased's Estate)</b>	<b><u>1<sup>st</sup> Defendant</u></b>
	<b>-and-</b>	
	<b>Stephen John Hooper</b>	<b><u>2<sup>nd</sup> Defendant</u></b>

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**Mr Mark Dubbery** (instructed by **Inspire Law Solicitors**) for the **1<sup>st</sup> Claimant**  
**Mr Ian Lamacraft** (instructed by **JNB Law Solicitors**) for the **2<sup>nd</sup> Claimant**  
**Mr Paul McCourt** appeared in person

Hearing dates: 15<sup>th</sup> & 16<sup>th</sup> February 2023

Judgment: 14<sup>th</sup> March 2023

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**Approved Judgment**

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MRS JUSTICE THEIS DBE

**Mrs Justice Theis DBE :**

**Introduction**

1. The matter concerns an application by Sally Dignam-Thomas ('first claimant') and Julie Bebbington ('second claimant') dated 5 June 2021 under the Inheritance (Provision for Family and Dependants) Act 1975 ('the 1975 Act') for reasonable financial provision from the Estate of Leslie Hooper ('the deceased'). The defendants to the application are Paul McCourt, personal representative of the deceased's estate ('first defendant'), and Stephen Hooper ('second defendant'), the claimants' brother and the sole beneficiary under the will.
2. The Estate consists of the property where the deceased had lived, which has a current value of about £355,000. Prior to the deceased's death the second defendant lived in the property and has remained living there since.
3. The claimants were represented at this hearing. The first defendant attended in person. The second defendant did not attend. He has not engaged with these proceedings at all, save by sending two emails, despite having been served with relevant documents and notice of hearing dates. As detailed below, those attempts continued during the course of this hearing, with no success save for an email sent after the court had heard submissions.
4. The deceased died on 26 November 2015, his last will was dated 30 July 2015 and probate was granted on 19 August 2019 with a net estate value of £329,827. Prior to probate the claimants had instructed solicitors, provided witness statements setting out their intention to apply for financial provision under the 1975 Act. The parties engaged in mediation and had legal representation. A standstill agreement was entered into in February 2020, whereby the parties agreed not to take any issue regarding the time limits for an application under the 1975 Act to enable the parties to continue to engage in mediation.
5. Regrettably, mediation was not successful. The second defendant's solicitors wrote seeking to postpone mediation in February 2020 and on 30 April 2021 wrote and said they were no longer instructed.
6. The costs of these proceedings are set out in the trial bundle. The first claimants costs of £145,390, the second claimants are £23,760. Part of the difference may be accounted for by the fact that the solicitor for the first claimant represented both claimants until June 2021 and has taken the lead on issues such as service and expert evidence. Even making allowance for those matters the level of legal costs are disproportionately high in relation to the size of the Estate, amounting to over half of the Estate value. Previous judgments (such as Ward LJ in *Shovelar v Lane* [2011] EWCA Civ 802 [61]) have expressed concern when this sort of situation arises. The Civil Procedure Rule Committee may wish to consider introducing a similar rule to rule 9.27 Family Procedure Rule 2010, which requires the level of costs to be recorded in the recital to the order made at every hearing in financial remedy proceedings. This has the benefit of the court and parties being reminded of the level of costs and how proportionate/disproportionate they are to the matters in issue in the proceedings.

## **Relevant background**

7. The claimants are now age 61 and 67. They have four siblings. A brother who pre-deceased their deceased, a sister who is married to the first defendant, another sister who has not made any claim and the second defendant, age 72 years, the sole beneficiary under the deceased's will.
8. Their mother died in 2011 and the deceased remained living in the family home.
9. In about 1999 the second defendant was first convicted of a sexual offence. There followed other convictions for sexual offences after that, with both non-custodial and custodial sentences being given. In about 2002 the second defendant went to live with his parents and has largely remained based living there since, save for periods in custody or when subject to other restrictions about where he should live.
10. Prior to his death, the deceased had a number of medical conditions and needed support from his family. Both claimants have detailed in their statements the support they provided to the deceased and the financial support he gave them.
11. The deceased's will was executed four months prior to his death. Whilst there are concerns expressed in the claimant's statements about whether it did reflect his true wishes, there had been no challenge to the will.
12. Following the deceased's death and the provision made in his will becoming known the claimants sought legal advice. They each signed statements in 2018, which were sent to the defendants. The statements set out the basis upon which they intended to make a claim under the 1975 Act. At that stage all parties had instructed solicitors.
13. Initially a caveat was entered to prevent probate being granted. That was lifted and probate was granted on 19 August 2019. The first defendant informed the court that, in accordance with the provision in the will, a transfer was sent to the second defendant's solicitor in 2020. Although it is not known whether the second defendant signed that document, it has been confirmed with the Land Registry that no transfer has been registered and the Office Copy Entries reflect that the property remains unregistered. A letter from the second defendant's solicitors dated 28 January 2022 referred to outstanding legal costs owed to them of £42,000.

## **The proceedings**

14. The Part 8 application seeking provision under the 1975 Act is dated 5 June 2021. Leave to make the application out of time was sought.
15. The application first came before Roberts J on 11 August 2021. The order recited that the second defendant had not filed an acknowledgment of service and that his last known address was King Road. Directions were made for second defendant to be served personally and for him to file an acknowledgment of service by 3 September 2021 in accordance with Civil Procedure Rules r 57.16. ('CPR'). The first defendant filed an acknowledgment of service dated 6 October 2021. The second defendant was served with the proceedings at the King Road property but no acknowledgment of service was filed.

16. Keehan J's order dated 11 October 2021 gave permission for the claimants to pursue their claims out of time, made directions for the filing of updated evidence and the matter to be listed for a one and a half day trial. The trial date was fixed for 8 February 2022.
17. On 14 December 2021 the first claimant made an application for an order under CPR r57.10(5) for the claim to be tried on written evidence, and under CPR r35 to rely on written expert evidence. The expert evidence was from Dr Langstaff, regarding the claimants health and care needs, and Mr Stott, regarding the value of the first claimant's property, King Road and likely rental costs. The second claimant's application on the same day sought permission to rely on expert evidence.
18. Those applications came before Francis J on 17 January 2022. Both claimants were represented and the first defendant attended in person. The second defendant did not attend. The recitals to that order confirmed that the second defendant had been served with notice of the application and hearing by letter dated 4 January 2022, sent to his last known address. Francis J directed the hearing listed on 8 and 9 February 2022 should be listed before him and a letter should be written to the second defendant, to be served on him personally, enclosing a copy of the order, notice of the hearing on 8-9 February 2022 and inquiring whether he can access both a laptop/computer and the internet for the purposes of the remote hearing on 8 and 9 February 2022. The letter should explain that arrangements can be made if he cannot, provided he communicates with the author of the letter by 2 February 2022. Francis J directed both claimants can rely on the expert medical and valuation reports and the claim will be tried on the written evidence alone. In addition, he directed the claimants are to set out and send to all parties open proposals by 24 January 2022 with the second defendant to respond to those proposals by 31 January 2022.
19. The attempts to serve the second defendant are set out in the letter from the process server dated 26 January 2022. It describes attending the King Road property on 24 January 2022, being unable to get a response, when the agent attempted to call the second defendant and as he was introducing himself the second defendant hung up and would not re-answer any further calls. No response was gained on 25 January 2022 and the same position on 26 January 2022. As a consequence the documents were put through the letter box.
20. On 8 February 2022 the matter was listed before Francis J. The second defendant did not attend. The order recites that the judge raised issue of service upon the second defendant and his capacity to conduct the proceedings. It records the court was satisfied the second defendant was properly served, no party demurred from the court's concern regarding the second defendant's capacity and the court's view that there should be a capacity assessment of the second defendant. As a consequence, the trial was adjourned to 4 and 5 October 2022.
21. Following that hearing the first claimant's solicitor wrote to the second defendant, his GP and hospital to attempt to arrange a capacity assessment to which there was no substantive response received. An application was made for further directions from the court. Francis J considered the matter on the papers on 22 June 2022 and gave permission to issue a witness summons pursuant to CPR r34.3(2)(b) for the second defendant to attend the adjourned directions hearing. The order records that following service of the order and witness summons if there is still no attendance at the adjourned

hearing by the second defendant the first claimant intends to ask the court to proceed with the adjourned trial on 4 and 5 October 2022, taking into account the assumption of capacity provided by section 1(2) Mental Capacity Act 2005.

22. The witness summons, requiring the second defendant to attend the directions hearing on 13 September 2022, was personally served on 14 July 2022. With the summons a cheque for £350 was provided to cover any travel costs. The statement from the process server confirmed the second defendant identified himself and accepted the papers without issue.
23. The second defendant did not attend the hearing on 13 September 2022, although he cashed the cheque for £350 on 11 August 2022.
24. On 18 September 2022 the second defendant sent an email to the solicitor for the first claimant dated 17 September. The email confirms the second defendant's address is King Road. It states he is *'unfortunately unable to accommodate your kind offer of visiting London'* and then states that his *'physical health'* precludes him from anything other than a brief bus ride for probation appointments. He then lists what he says he is suffering from, including long covid and heart and respiratory difficulties. The email then refers to limitations with his sight with no vision in one eye and 20% in the other eye and that he had been offered treatment from the eye hospital on 5 October 2022. He details needing to undergo another pre op assessment and had only just received written confirmation of the date of the operation. He apologises for not having contacted before as he had had a fall and bruised his ribs. He concludes *'I will return your £350 as soon as I can get to my bank'*. The email attached a number of letters since 2020 to the second defendant about his medical condition including a letter dated 5 September 2022 regarding a cataract day case surgery on 5 October 2022.
25. The claimant's solicitor responded by email on the same day raising various practical matters, such as whether the second defendant could attend a hearing remotely and attaching the open proposals inviting the second defendant to respond. I was informed at this hearing that email was not responded to, neither were the emails sent to the second defendant before that date or since.
26. Francis J's order dated 13 September 2022 (sealed on 24 September 2022) recites that the email from the second defendant had been seen by the court and notes the information that the second defendant is undergoing surgery on one of the dates which the trial is listed. The order vacates the trial listed on 4 and 5 October 2022 to be relisted for two days after 1 November 2022 and proceeds *'taking into account the assumption of capacity provided by section 1(2) of the Mental Capacity Act 2005'* in relation to the second defendant. It is directed that the second defendant should be personally served with the order and that the second defendant could attend the trial remotely.
27. Attempts were made to serve the second defendant with the order on 27 September 2022 and 3 October 2022 by attending at the King Road property with no response. The documents were put through the letterbox on 3 October 2022.
28. The hearing notice for this hearing is dated 12 October 2022. That was sent by the court to the parties (including the second defendant) by email on 8 November 2022. The first claimant's solicitor sent it again to the second defendant by email on 16 January 2023.

29. On 27 January 2023 the first claimant made an application for leave to rely on an updated statement, which was attached to the application.
30. A hard copy of the trial bundle was sent by first class post on 30 January 2023. It has not been returned to the first claimant's solicitor undelivered. The bundle included the recent application.
31. At the start of this hearing I raised the issue of service on the second defendant with notice of this hearing. Save for the court bundle recent documents had been sent to him by email, to the address he emailed from on 18 September 2022. In the light of the information the court had about the lack of recent response to the email address, that the court bundle had not been served personally and there had been no recent contact from the second defendant further steps should be taken to try and serve the second defendant.
32. Enquiries were made as to whether the process server used previously was available. He was and steps were taken to serve the second defendant with an order I made informing him that the matter was listed that day and the following day, stressing the importance for him to get in touch with the first claimant's solicitor immediately and that if he didn't the court may make orders in his absence. The statement from the process server confirms he attended the King Road property on 15 February 2023 at 12.30pm but could get no response. He details in his statement that his enquiries with neighbours confirmed they knew the second defendant (one described him as a 'good friend'), one had last seen him a couple of days ago and said that he usually went out for a walk mid- afternoon. The process server returned mid-afternoon, stayed for just over half an hour, was unable to get any response and did not see the second defendant. In the light of that the documents were put through the letter box.
33. At the end of the first day of the hearing the court was updated regarding service and a final attempt was made to contact the second defendant with an email sent to him at 4.38 pm. It stressed the need for him to contact the first claimant's solicitor (providing a mobile number) with a clear warning in bold type that if he didn't act on that message the court may make orders in his absence which could include an order for the property he is living in to be sold.
34. The court was updated on the second day of the hearing that there had been no response to any of the attempts to communicate with the second defendant.
35. Due to the enormous delays in dealing with this claim and bearing in mind the background of the lack of engagement by the second defendant, save for the relatively lucid email from the second defendant in September, I concluded all necessary steps had been taken and the most proportionate course was to hear the submissions in the case on behalf of the claimants whilst the further attempts were made to engage the second defendant in these proceedings. That course was supported by the claimants and Mr McCourt did not disagree.
36. The hearing concluded on 16 February 2023 and judgment was reserved.
37. The court was informed on 20 February 2023 that the first claimant's solicitor had received an email from the second defendant earlier that day. The email refers to the second defendant being aware from a neighbour that the solicitor had sent some

*'enforcement [sic] agency to further Harass me'* the email continues to refer to the fact that the second defendant is going into hospital in the coming week for *'preliminary tests'* to see if he has bowel cancer, he refers to his eyesight getting worse and that he was diagnosed with sinusitis the previous week. He asked for the time it was sent to be noted as it is only in darkness that he can see the screen of his mobile to compile communications which takes him some time. He signs off *'Regards Stephen Hooper'*.

38. In the light of that I directed written representations from the claimants and first defendant. The claimants submit that the communication demonstrates his email account is still active, he is clearly still living at the property where he has been served at, he has not filed an acknowledgment of service and is consequently precluded from taking part in the trial without permission (CPR r 8.4) and is not entitled to adduce any evidence without relief from sanctions (CPR r 8.3(3)), which he has not sought, even by implication. There is nothing in the email to suggest the second defendant is prevented from responding by his health issues (he seems to respond when he chooses to) or taking part in the proceedings. They submit the prejudice for the claimants of any further delay is significant. The first defendant raises the issue of the second defendant's mental capacity due to the reference in the email of him feeling harassed and the listing of his various health problems.
39. Having considered the history of these proceedings, the different and creative ways the court has embarked on to serve the second defendant with these proceedings and the limited response from the second defendant I am satisfied that the second defendant has had notice of these proceedings, this hearing and no further steps need to be taken regarding his mental capacity. The two emails from him are largely coherent and comprehensible. They confirm he has understood what the communications relate to, they confirm his email account is still active and he remains living at the King Road address where everything has been served. Whilst he appears to have some medical issues it is not suggested those have or would have prevented him from engaging with or communicating with the court or the parties in relation to these proceedings.

### **Legal framework**

40. Pursuant to section 1 of the 1975 Act, a child of the deceased may apply to the court for an order under section 2 of the Act on the ground that the disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant. The burden of proof is on the claimant to show that the will did not so provide. If the court is satisfied that reasonable financial provision was not made, the court may then vary the dispositions of the estate. Section 1(2)(b) 1975 Act defines reasonable financial provision for any claimant other than a spouse as "*such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance*".
30. The relevant principles applicable to claims under the 1975 Act were considered in *Illot v The Blue Cross* [2017] UKSC 17; [2018] AC 545. This was a claim by an adult child and the court provided helpful guidance on how the court ought to approach a 1975 Act claim. The following general principles can be drawn [from paras.16-25] helpfully summarised by Moor J in *Paul v Paul and others* [2022] EWHC 1638 (Fam) at [30] as follows:

- “(a) The test is not whether the deceased acted unreasonably. The correct test is an objective one: whether the deceased's dispositions, in not making greater financial provision for the applicant, have produced an unreasonable result. Thus, an unreasonable or indeed spiteful testator may have made reasonable financial provision for an applicant. Equally, a reasonable and caring testator may have failed to make reasonable financial provision.*
- (b) For similar reasons, it is not the purpose of the 1975 Act to correct unfairness or provide rewards for good conduct. Testamentary freedom remains paramount outside the limited ambit of the statutory provisions.*
- (c) It has become conventional to treat the consideration of the claim as a two-stage process, namely (1) has there been a failure to make reasonable financial provision, and if so, (2) what order ought to be made? However, in most cases, there is a large overlap between the two stages, to which the s.3 factors are applied equally. It is open to a judge to address both questions arising under the Act without repeating them. A broad-brush approach is required.*
- (d) If the conclusion is that reasonable financial provision has not been made, needs are not necessarily the measure of the order to be made. Regard must be paid to each of the s.3 factors, such as beneficiaries' needs and the Estate's size and nature.*
- (e) Provision is to be judged based on evidence at the date of the hearing, not death [see s.3(5) of the Act].*
- (f) Whether best described as a value judgment or a discretion (and the former is preferable), each case turns on its own facts.”*

31. In determining whether reasonable financial provision was made and, if not, whether and in what manner to exercise its powers, the court must consider the following matters set out in section 3(1), namely:-

- (a) the resources and financial needs which the claimant has now and 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 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 the claimant 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; and
- (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.

## **Submissions**

41. Mr Dubbery, on behalf of the first claimant, focussed his submissions on her three statements. They set out the detail of the financial support the deceased had provided to her over the years. This included financial support after her divorce from her first husband including payments for food, as well as other household and car related costs. Following her marriage to her second husband, the business they ran together got into financial difficulties and in 2012 the deceased made direct financial payments to them, including a sum of £7,000, to try to keep the business going.



42. Her statement describes the regular trips she made to see the deceased and what she did to support him, particularly as his health deteriorated. What Mr Dubbery described in his submissions as a ‘two way street of kindness and to help out’. After the first claimant’s mother died she states she did up to 30,000 miles one year due to the number of trips she made to visit the deceased to help support him. In her second statement, she lists the various ways she provided support for the deceased including going on holiday with him, taking him to medical appointments, helping with his personal care and staying in regular contact by telephone.
43. According to the first claimant the deceased said to all his children that he wanted to ensure the second defendant had a roof over his head, but once that was no longer required the house was to be sold and split equally between all of them.
44. Turning to her own circumstances, Mr Dubbery summarised them as follows.
45. First, her husband’s health needs, which are considerable. He is now age 68. He suffers from enduring personality change after catastrophic experience and PTSD arising from his previous work, multiple physical health needs including osteoarthritis, spondylosis, fibromyalgia and is going blind in one eye. The first claimant says she became his unofficial carer due to his health needs in 2012 and that role has been more formally recognised on receipt of a carers allowance since 2017.
46. Second, the first claimants own health needs. They are described in her statement and in the report from Dr Langstaff, who summarises the position as follows ‘...*ME, Chronic Pain secondary to widespread osteoarthritis, golfer’s elbow and shoulder instability, bilateral carpal tunnel syndrome, pre-diabetes, asthma, hypertension and gastro-oesophageal reflux*’ continuing ‘*she suffers from significant depressions that has evidently worsened following the death of her deceased*’. Dr Langstaff concludes that the first claimant is likely to suffer with these conditions for the rest of her life and her symptoms are likely to be exacerbated by the burden of her other conditions.
47. Mr Dubbery submits the impact of her own health needs together with the caring needs for her husband significantly impact on the first claimant’s ability to undertake basic household tasks. He relies on the photographs exhibited to her statement to illustrate the deteriorating condition of the first claimant’s home.
48. The first claimants financial position can be summarised as follows. The total household income is about £3,353.62 per month, of which just over £2,500 is made up of her husband’s pensions and other benefits. The list of outgoings is £4,413 pm, a monthly deficit of £1,059. They have unsecured debts of about £43,428, made up of credit cards/loans in both their names. They don’t have any other assets apart from the property they live in which has a ‘desktop’ value of £385,000 and an outstanding interest only mortgage of £230,435. The mortgagee has agreed to hold off taking any possession proceedings pending the outcome of this application.
49. Mr Dubbery relies upon the analysis at the end of the first claimants most recent statement, namely they will sell their home, pay off their debts and expect to be left with a fund of about £86,000, although the first claimant is concerned whether the property will reach the estimated value due to its very poor condition. When the property is sold they will save £2,271 pm from their expenses, as they will no longer be servicing the debts, but will need to rent a property, which is estimated to cost about

£950 per month. He submits that the claim outlined in her open proposals in January 2022 and in her statement in January 2023 of a lump sum of £117,600 is maintained. The first claimant's husband is now 68 years, his life expectancy is limited by his significant health needs. She is younger and even with her health needs has a longer life expectancy. The impact of the loss of her husband's income will be significant (about £2,500 pm), and is a financial need she has for her future maintenance.

50. Mr Dubbery submits in leaving the first claimant nothing in the circumstances of this case meant she did not receive reasonable financial provision. In considering the matters under section 3 1975 Act he recognises the court needs to consider the second defendant's circumstances, although the court is hampered by the total non-engagement in these proceedings by him. He has chosen not to defend the proceedings or provide any evidence. Mr Dubbery made the bold submission that, as a consequence of his non-engagement, the second defendant should be taken as having no competing needs that the court needs to weigh in the balance. He recognised in answer to a question from the court that on the first claimant's proposals, on the limited information the court has about the second defendant's income (c£19,000 in 2020) and the costs of rental accommodation (c£8,340 pa), it would leave limited income to meet the second defendant's day to day living expenses.
51. Mr Lamacraft, on behalf of the second defendant, outlined his position from the written evidence. The second claimant is age 68 years, her husband died in 2018, they had four children, all now adults. Her day to day care needs are supported by her children, in particular the two eldest. She is almost blind and requires help dressing and feeding. In her statement she describes the care and support she gave to the deceased prior to his death, similar to that provided by her sister, the first claimant. Over many years the deceased helped her out with financial support for such matters as household bills (including food), household white goods, funding works required to her property. She estimates the support over the years averaged out at about £100 pm. She provided practical and emotional support to both her parents, and since her mother's death in 2011 to the deceased. This included providing daily personal care for them both over the years as their health deteriorated. She describes sharing such tasks with the first claimant, although it is accepted that as she lived nearer she provided the bulk of the day to day support.
52. Turning to her health needs they are summarised by Dr Langstaff as follows '*[she] is partially sighted due to diabetic retinopathy, She additionally suffers from Type 2 diabetes, hypertension, foecal and urinary incontinence and osteoarthritis. The severity and longevity of these conditions mean that the claimant has reduced mobility, i.e., requiring a wheeled walker to move and has reduced visual acuity making all of her activities of daily living limited and meaning that she is incapable of performing the vast majority of independent activities of daily living*'. Dr Longstaff anticipates '*she may well go on to suffer further complications of diabetes in time such as heart disease, neuropathy (nerve damage) or kidney disease*' and that her mobility will reduce over time and likely to need increased care. If the care was not being provided by her family Dr Longstaff estimates it would require 4 visit per day on a private basis, equating to about 5 – 6 hours a day and possibly leading to 24 hour care. She considers the second claimant's estimated life expectancy of about 10 years to be '*entirely reasonable*'. Mr Lamacraft said his instructions are these conditions have not changed significantly.

53. Turning to the second claimant's financial position he set out that the lump sum she had received on her husband's death had been spent on meeting a number of different expenses such as repairing the stairlift (now no longer works), undertaking essential repairs to the home (such as central heating), meeting the monthly deficit, replacing white goods and helping keep her daughter's mobile so they can continue to provide the high level of daily support that they do. She describes her main financial need is for care and assistance. It is being provided by one of her daughters on a daily basis, which with her daughters own commitments is not a long term position.
54. Her income from her state pension and personal independence payment (PIP) is about £936 per month. Her expenses total £1,532 per month. There is a monthly shortfall of £596 pm (£7,152 pa). She has no debts, owns her property which is mortgage free and is valued at about £365,000. In her statement she estimates her needs as follows: private care 6 hours per day at £10 ph equates to £21,900 pa, allowing for a life expectancy of 7 years she estimates at £153,300. Her income deficit is £7,152 pa and she estimates house refurbishment costs at £50,000 (based on a handwritten list of works provided by her daughter), electric wheelchair (£1,000) and what is termed a 'contingency fund' of £10,000. She estimates this totals £214,300, refers to the fact that she could get an equity release of £100,000, which results in her claim being £114,300.
55. Mr Lamacraft did not depart from this analysis in his submissions. He submitted that it would not be reasonable to expect her to move out of her home if that could be avoided. It was a home she had lived in for many years. He submitted the second defendant's position is not comparable as the property he is living in has come to him by way of a 'windfall', he recognised he has lived there as it has been the family home but it was not his own home as the second claimant's is.
56. The first defendant wished to make a few points. He had known the second defendant for over 30 years, although he had not seen him for 5 years and all his dealings with him regarding the estate were through the second defendant's solicitors. His experience of him is that he '*can't face things*', he likes a routine (such as the reported regular walk each day) and in his experience can't be expected to respond in a way other people may. He was concerned about the impact of what is being proposed on the second defendant who risks ending up with insufficient means to meet his housing needs.

### **Discussion and decision**

57. It is, of course, accepted that the burden of proving whether there had been a failure to make reasonable financial provision and, if so, what order ought to be made lies on each of the claimants.
58. I consider the will did not make reasonable financial provision for the claimants. I accept their evidence about what the deceased said about how he intended to make provision that included them, in the context of the previous support he had provided to them and they to him, with his wish to provide a home for the second defendant and provision would be made for the rest of the children. I recognise that is not what he provided in the will he signed. However, I consider when looked at with the wider evidence in the claimants' statements, which I accept, including the background of the two way street of support for the deceased provided by the claimants and the financial support he provided to them over the years, as they describe, reasonable financial provision was not made for them.

59. Turning to consider what reasonable financial provision should now be made for them, I need to carefully consider the relevant matters set out in s 3 of the 1975 Act.
60. The task of the court has been made more difficult by the non-engagement in the proceedings by the second defendant. The information the court does have about his circumstances are relatively limited. In 2020 he had an income of about £1,590 pm (£19,000 per annum) made up of state pension £612 pm, DLA £319 pm and BT Pension £658 pm. No details are given of any debts. He has health needs outlined in his email in September 2022 and the attachments to it, which accords with more generalised earlier references to his health needs, again reflected in his more recent email to the court. What is clear is that despite his non-engagement the emails from him are relatively lucid and clear, as well as attaching some relevant documents. The information the court has is that he remains living at the property and despite the documents having been served on him in different ways, he has failed to properly participate in the proceedings, provide an acknowledgement of service or any effective defence to the claim or updated information regarding his circumstances. I am satisfied the court could do no more and the claim will need to be determined on the information the court has available.
61. The first claimant's position is very difficult. Due to her own health needs she has enormous difficulties in carrying out very basic household tasks. The pictures of her home provide a graphic illustration of the state of the property. Her health needs are compounded by the caring obligation she has for her husband. She accepts the reality in her written evidence that the property is going to need to be sold. This is wholly realistic bearing in mind her circumstances and the size of the estate.
62. Looking forward her husband is older than she is, has more complex medical needs, with the result that if he does pre-decease her there is a risk her income will reduce. However, I do not consider it will reduce as much as she maintains as there would be no reason why she would not be entitled to any widows pension regarding his work related pensions and/or be able to recalibrate her PIP entitlement in the light of her changed financial circumstances. Having said that I recognise that if her husband does pre-decease her overall income is likely to reduce by more than a nominal amount and will have a financial impact on her. In relation to her list of expenses, I acknowledge there is no allowance for some items such as holidays and entertainment although there is about £345 pm relating to pet/animal expenses. On the first claimant's own analysis if the home is sold and they move to rented accommodation, their monthly expenses will be £3,092 pm (£37,104 pa) taking into account the payment of rent, their monthly income remains at £3,353 pm (£40,236 pa) and they will have a capital sum of around £86,000 from the sale of their property. Her husband's life expectancy is about 17 years, probably less in the light of his medical position, and the first claimant's is about 25 years, again probably less in the light of her medical condition. Assuming there may be a life expectancy gap of about 8 years some years ahead, when the first claimant may have an income shortfall which could be quite significant that will be met, to some extent, by the capital reserves from the sale of the property.
63. Turning to the position of the second claimant her position is equally very challenging. Her chronic health needs impact on her daily life in a very significant way. She requires a high level of daily support to manage and is heavily reliant on her family, which she does not regard as sustainable in the long term. I agree it does leave her vulnerable in the event of her family not being available.

64. Her financial position is also parlous. She has a significant monthly shortfall which has meant the capital inherited from her husband has been used. There is limited room to further reduce her expenses. She has no financial security other than her home which she has lived in for many years. Her reasonable needs do include provision of care and assistance and the figure she suggests of 6 hours a day is not unreasonable, her needs are assessed to be more but she recognises the continuing role of her daughter to help her. She assesses the costs of that to be about £21,900 pa, which I accept. This would increase her monthly shortfall to £2,421 pm (£29,052 pa). She has only limited ways of funding her income shortfall, including a possible equity release scheme, although limited details are provided other than a generalised reference to it in her statement. Her life expectancy is about 19 years, which may be reduced through her health needs and the possibility she may require full time care in a nursing home.
65. Having stood back and considered the evidence as a whole and balanced the matters set out in s 3, I have reached the conclusion that reasonable financial provision to meet their maintenance needs should be made for the first claimant in the sum of £70,000, the second claimant in the sum of £90,000 with the balance to the second defendant, likely to be in the region of £173,000. I have reached that conclusion for the following reasons:
- (1) As regards the first claimant this will mean she has a capital reserve in the region of £150,000 to meet her income needs and wider maintenance costs. She will not need to draw on that capital immediately. The sale of their property will mean in the short term they will largely be able to manage on their joint income. There is a real risk her husband will pre-decease the first claimant and the consequent income risks for her if that happens. At that time, at its highest she will need around an extra £24,000 pa to make up for the loss of her husband's income and she could live for up to 8 years longer than him. In addition, if they sell they will need to manage the inherent uncertainty of living in rented accommodation over and above the rental costs and need to have provision to cover the costs of any moves, including the payment of a deposit. I do not regard her income deficit now or in the foreseeable future as being as significant as the second claimant as I consider further savings could be made longer term (such as animal related costs) although I recognise that the second claimant will retain ownership of her home, subject to the risks of any equity release scheme and/or nursing home costs.
  - (2) Turning to the second claimant, due to a combination of her considerable health needs and financial situation her circumstances are very difficult. Her health is likely to deteriorate with a consequent increase in her financial needs. Her family provides some support for her care needs, but it is not sustainable for the family to meet all her care needs. Her income shortfall is going to be in the region of £29,000 over the next 7 years. The combination of an equity release scheme and the sum paid as a result of this order will amount to about £190,000 and will provide some security for the financial resources necessary to meet her maintenance needs for the foreseeable future.
  - (3) The information the court has about the resources and financial needs for the second defendant is limited due to his non-participation in these proceedings. I do not accept Mr Dubbery's submission that as a result of his non-participation the court should conclude the second defendant should be taken as having no competing needs. It is known he had an income in the region of £19,000 pa in 2020, there is

no information that he was working then or working now or has any other source of income or capital. It is likely, on the information the court has, that the level of income has been maintained. He has a need for housing now and going forward, that was something the deceased wished to provide for. It is recognised he has been living in the current property for a number of years, although he has lived in other accommodation. The information the court has is that it would be possible to secure rented accommodation for about £695 per month in the same area. The second defendant has health needs that the court does have some information about, although there is nothing to suggest he could not move to live in other accommodation. The sum he will receive, subject to costs, will enable him to live in rented accommodation. He has a life expectancy of about 14 years and the Duxbury sum for someone his age to provide the sum of £10,000 for the rest of his life, about the expected annual cost of rent, is £30,000.

- (4) I have weighed in the balance the provision the deceased made in his will and what are reported to be his expressed wishes about provision for the adult children.
- (5) I have also weighed in the balance the deceased intentions expressed in the will, as expressed to the claimants and his wish to secure the second defendant's housing.
66. Turning to the question of costs. In their submissions during the hearing both claimants propose that from the proceeds of sale of King Road the lump sums should be paid to the claimants of £117,600 to the first claimant and £114,300 to the second claimant, a lump sum of £10,000 is paid to the second defendant, then the claimants legal costs are paid and if there is any remaining sum after that, it is paid to the second defendant. Lower sums than the claimants sought have been ordered as a result of this judgment.
67. Although Mr Dubbery helpfully submitted generalised information about costs after the hearing, including a reference to CPR r 44, it is right that I give the claimants and first defendant the opportunity to make any written representations about what costs orders they seek in the light of the court's conclusions, and whether they seek an order for indemnity costs and, if so, why.