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Neutral Citation Number: [2026] EWHC 505 (Ch)

Claim no: PT-2024-000890

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

BEFORE: DEPUTY MASTER HENDERSON

DATE: 9th March 2026

B E T W E E N:

MR LONAN DANIEL O'HERLIHY

Claimant

- and -

(1) MRS JENNIFER MARY TAYLOR

(2) MR KEITH EDWARD UPSDELL

Defendants

Counsel and solicitors:

The Claimant represented by Mr Hugh Jeffery, instructed by Myddletons.

The 1st Defendant represented by Mr Richard Wilson KC and Mr Harry Martin, instructed by Macfarlanes LLP.

The 2nd Defendant represented by Mr Matthew Mills, instructed by Michelmores LLP.

Hearing Dates: 16 - 17 December 2025.

JUDGMENT

Introduction and Parties

1. This is my judgment on the trial of a preliminary issue ordered by Master Kaye on 23rd June 2025. The preliminary issue is whether the Claimant should be permitted to bring

his claim under the Inheritance (Provision for Family and Dependants) Act 1975 more than 6 months after the issue of the grant of probate in the estate of the late Hugh Ian Taylor ("the deceased").

2. The deceased died on 2 June 2019.
3. The net value of the estate as sworn for probate was £38,540,357.
4. By his will dated 9 July 2015 ("the 2015 Will"), the deceased:
 - 4.1. Appointed the First Defendant (his widow) and the Second Defendant (his accountant) as his executors.
 - 4.2. Gave pecuniary legacies of £200,000 each to two of his former employees.
 - 4.3. Left his residuary estate to the First Defendant if she survived him. There were substitutional gifts of residue to the First Defendant's two daughters or their children.
5. The Claimant was born on 7 June 1989.
6. His mother ("Mrs O'Herlihy") was in a relationship with the deceased from in or around 1995 to in or around 2004.
7. The Claimant is the younger son of Mrs O'Herlihy and Gavan O'Herlihy.
8. The Claimant has an older brother, Rogan O'Herlihy ("Rogan"), who is about 5 years older than the Claimant.
9. The Claimant asserts that he was treated as a child of the family by the deceased and received emotional, educational, and financial support from the deceased during his childhood and into early adulthood. The First Defendant denies this characterisation. It is, in any event, common ground that there was no contact or financial support between the Deceased and the Claimant between about 2012 and the deceased's death.
10. The Claimant did not receive any benefit under the 2015 Will and contends that the 2015 Will fails to make reasonable financial provision for him. The First Defendant disputes this.
11. Probate of the 2015 Will was granted on 1 November 2019 to the First and Second Defendants.
12. The estate has been administered and distributed in full.
13. The claim was brought by way of a Part 8 Claim Form which was issued on 14th October 2024.
14. By the Claim Form the Claimant sought an order that provision be made for him out of the estate and that permission be granted for making the application notwithstanding that more than 6 months had elapsed since the issue of the Grant of Probate.

15. S.4 of the 1975 Act provides that an application for an order under s.2 of the Act shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out (but nothing prevents the making of an application before such representation is first taken out).

16. The provisions of the 1975 Act, as amended, material to this case are the following:

S.1(1):

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

- (a) the spouse or civil partner of the deceased;
- (b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;
- (ba) any person (not being a person included in paragraph (a) or (b) above) to whom subsection (1A) below applies;
- (c) a child of the deceased;
- (d) any person (not being a child of the deceased) who in relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family;
- (e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

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

1(2) In this Act “reasonable financial provision”—

- (a) in the case of an application made by virtue of subsection (1)(a) above by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a judicial separation order and at the date of death the order was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance;
- (aa) in the case of an application made by virtue of subsection (1)(a) above by the civil partner of the deceased (except where, at the date of death, a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force in relation to the civil partnership and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a civil partner to receive, whether or not that provision is required for his or her maintenance;
- (b) in the case of any other application made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

1(2A) The reference in subsection (1)(d) above to a family in which the deceased stood in the role of a parent includes a family of which the deceased was the only member (apart from the applicant).

2(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of [various orders].

2(4) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—

- (a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;
- (b) vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

[...]"

S.3:

3(1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say—

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased;
- (f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

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

was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 1(1)(d) the court shall also have regard—

- (a) to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;
- (aa) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;]
- (b) to whether in [maintaining or assuming responsibility for maintaining the applicant the deceased did so knowing that the applicant was not his own child;
- (c) to the liability of any other person to maintain the applicant.

3(5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

3(6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

S.4:

An application for an order under section 2 of this Act shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out [(but nothing prevents the making of an application before such representation is first taken out)].

S.5:

5(1) Where on an application for an order under section 2 of this Act it appears to the court—

- (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made under that section; and
- (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;

the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the court thinks reasonable; and the court may order that, subject to the provisions of this Act, such payments are to be made until such date as the court may specify, not being later than the date on which the court either makes an order under the said section 2 or decides not to exercise its powers under that section.

5(2) Subsections (2), (3) and (4) of section 2 of this Act shall apply in relation to an order under this section as they apply in relation to an order under that section.

5(3) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, have regard to the same matters as those to which the court is required to have regard under section 3 of this Act.

5(4) An order made under section 2 of this Act may provide that any sum paid to the applicant by virtue of this section shall be treated to such an extent and in such manner as

may be provided by that order as having been paid on account of any payment provided for by that order.

17. In the present case, the Claimant applies under s.1(1)(d) as a person (not being a child of the deceased) who in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family. Mr Wilson on behalf of the First Defendant conceded for the purposes of the s.4 application only, that the First Defendant was prepared to proceed on the basis that the Claimant had an arguable case that he fell within s.1(1)(d) because he was treated as a ‘child of the family’ between approximately 1996 and 2002.
18. The 6 month period specified by s.4 expired on 1 May 2020. The Claim Form was not issued until 14th October 2024.
19. The Claimant seeks permission under s.4. The 1st Defendant opposes the grant of that permission. The 2nd Defendant takes a neutral stance.
20. Mr Mills explained that the 2nd Defendant was represented at the hearing so as to deal with any criticism which might be made of him, and also to assist the court
21. On 23rd June 2025, in addition to ordering the trial of the preliminary issue, and amongst other things, Master Kaye ordered:
 - 21.1. The Claimant only of the various witnesses should attend the trial of the preliminary issue for cross examination and that such cross-examination was to be limited to (i) the Claimant’s delay in bringing the claim and (ii) the Claimant’s credibility in connection with the preliminary issue.
 - 21.2. The parties “have permission to use all witness statements filed and/or served in Claim Number FD04F00561 for all purposes in these proceedings if and insofar as permission is required.”
22. Claim Number FD04F00561 was a claim which had been brought by the Claimant’s mother (“Mrs O’Herlihy”) in the Family Division in 2004. The claim was under s.17 Married Women’s Property Act 1882 and s.14 Trusts of Land and Appointment of Trustees Act 1996 for a declaration that:
 - 22.1. Mrs O’Herlihy owned a 50% interest in the property known as Eastington Hall.
 - 22.2. She owned 50% of the chattels which had been purchased jointly by her and the Deceased.
 - 22.3. She should retain those chattels which had been gifted to her by the deceased.

23. Mrs O’Herlihy’s claim in FD04F00561 was compromised by an agreement and consent order (“the Separation Agreement”). The hearing bundle contains both:
- 23.1. A copy of the Separation Agreement and Order bearing court stamps. From this it appears that the order was made by District Judge MacGregor on 10 May 2005.
 - 23.2. A draft of the Separation Agreement and Order signed by Mrs O’Herlihy, the deceased and their respective solicitors and dated 29 April 2005. This is in identical form and terms to the copy which bears the court stamps except that the court copy is not signed by the parties or their solicitors; though both copies contain the deceased’s signature to Schedule 1 (a list of chattels) with the date 15th April 2005.
24. Before and during the hearing there were various complications in relation to the use of the Separation Agreement and reference to it and its contents in open court in the present proceedings. These arose mainly because of undertakings given in the Separation Agreement by Mrs O’Herlihy and the deceased to each other and to the court in respect of the confidentiality, disclosure or publication of the contents of the Separation Agreement. The difficulty with this undertaking was ultimately overcome at the start of the second day of the hearing, by Mrs O’Herlihy communicating to the court through the Claimant and by the executors of the deceased, by their counsel, stating that they released the undertaking in the consent order dated 24 May 2005 in FD04F00561 for the purposes of the hearing and determination of the preliminary issue, and the court (by me) accepting those releases.
25. There is a further relatively small point arising from the undertaking which requires to be considered. That is that by her order dated 10 January 2025 Master Kaye ordered:
- 25.1. By paragraph 1 of that order, that pursuant to CPR rule 5.4C the witness statement of the First Defendant dated 10th January 2025 together with exhibit JMT1 shall be kept confidential on the court file and shall not be provided to, or open to inspection by, a non-party without further order of the court.
 - 25.2. By paragraph 2 of her order, that paragraph 1 should remain in force until the first directions hearing in the claim, at which point the court shall consider whether it should be continued.
 - 25.3. By paragraph 3 of her order that any application by a non-party pursuant to paragraph 1 should be made on notice to the parties.

26. By her order dated 23 June 2025 the orders just mentioned were extended to two skeleton arguments and, with that extension to their scope, were extended as to time until the determination of the preliminary issue at which point consideration was to be given whether they should continue. These orders were made by reason of the undertakings in the Settlement Agreement. With those undertakings having been released for the purposes of the hearing and determination of the preliminary issue, the rationale for keeping the witness statement of the First Defendant dated 10 January 2025, its exhibit JMT1 and skeletons confidential fell away so far as the preliminary issue and its determination were concerned and they were both referred to in open court during the hearing before me.

27. By this judgment I will be determining the preliminary issue. Mrs O’Herhily made it clear, through the Claimant, that her release of the undertaking was only for the purposes of the hearing and determination of the preliminary issue. In the absence of a further release and in the absence of Mrs O’Herhily having the opportunity to be heard on the subject, my provisional view is that those parts of the witness statement of the First Defendant dated 10 January 2025, its exhibit JMT1 and the skeleton arguments which are covered by the undertaking should remain subject to Master Kaye’s orders. In so saying I appreciate that at least some of that content is available elsewhere. I will consider the matter further after hearing the views of the parties at the consequential hearing which I have directed and at which I intend to hand down this judgment.

Law as to the giving or refusal of s.4 permission

28. The law as to the giving or refusal of s.4 permission was almost entirely common ground.
29. S.4 does not give any guidance as to how the court should approach an application for permission. In *Berger v Berger* [2013] EWCA Civ 1305 Black LJ set out and applied what was not there in dispute was the correct approach to a s.4 application. It was substantially common ground before me that that was the correct approach. It was a distillation from *Re Salmon* [1981] Ch 167 and *Re Dennis* [1981] 2 All ER 140 resulting in the following propositions:

(1) The court’s discretion is unfettered but must be exercised judicially in accordance with what is right and proper. At paragraph 61 of her judgment, Black LJ expanded on this proposition, by quoting with approval the following words of Sir Robert Megarry VC in *Re Salmon, decd* [1981] Ch 167 at p.175:

“the time limit is a substantive provision laid down in the Act itself, and is not a mere procedural time limit imposed by rules of court which will be treated with the indulgence appropriate to procedural rules. The burden on the applicant is thus, I think, no triviality: the applicant must make out a substantial case for it being just and proper for the court to exercise its statutory discretion to extend the time.”

(2) The onus is on the Applicant to show sufficient grounds for the granting of permission to apply out of time.

(3) The court must consider whether the Applicant has acted promptly and the circumstances in which she applied for an extension of time after the expiry of the time limit.

(4) Were negotiations begun within the time limit?

(5) Has the estate been distributed before the claim was notified to the Defendants?

(6) Would dismissal of the claim leave the Applicant without recourse to other remedies?

(7) Looking at the position as it is now, has the Applicant an arguable case under the Inheritance Act if I allowed the application to proceed?

30. In *Cowan v Foreman* [2019] EWCA Civ 1336, [2020] Fam 129 the Court of Appeal endorsed the 7 propositions set out in *Berger v Berger* as above and considered the nature and purpose of s.4.

31. At para.44 of her judgment in *Cowan v Foreman* Asplin LJ said that it seemed to her that the concept of a stale claim was of little relevance in the 1975 Act context. She pointed out that it had been borrowed from and was more apposite to the consideration of matters under the Limitation Act 1980. She pointed out that s.4 did not contain a longstop provision. Furthermore, she pointed out that the assessment, for the purposes of the substantive claim, was made at the date of the hearing and, therefore, concerns about the loss of evidence and witnesses over time are of much less importance than they might be.

32. Still at para.44 of her judgment, Asplin LJ referred with approval to part of Briggs J's judgment in *Nesheim v Kosa* [2007] WTLR 149 where he said that s.4 existed for the purpose of avoiding unnecessary delay in the administration of estates which would be caused by the tardy bringing of proceedings and to avoid the complications which might arise if distributions from the estate are made before the proceedings are brought. Asplin LJ said that that dovetailed with s.20 of the 1975 Act. S.20, said Asplin LJ, provides express protection for the executors/personal representatives of an estate from any liability which might otherwise arise as a result of having made a distribution from the

estate more than six months after the grant of probate/letters of administration, on the ground that they ought to have taken into account that the court might permit a claim to be made after the end of that period.

33. Asplin LJ continued by saying that s.4 was not designed, therefore, to protect the court from stale claims as the judge had said. On the contrary, said Asplin LJ, if the circumstances warranted it, the power in s.4 could be exercised in order to further the overriding objective of bringing such claims before the court where it was just to do so, and, in such circumstances, the personal representatives had the protection afforded by section 20. The s.4 power had to be considered in the context in which it arose.
34. In para.45 of her judgment Asplin LJ said that it followed from what she had said earlier that she did not agree with the judge that what he had described as a robust application of the extension power was necessary. Asplin LJ said that there was nothing in s.4 or in the principles distilled in *Berger v Berger* which required such an approach to be adopted. Furthermore, it seemed to her that the paragraphs of the overriding objective to which the judge had referred were not relevant to the exercise of s.4. Those were CPR r 1.1(2)(d), (e) and (f) which are concerned with dealing with the case expeditiously, allotting the case an appropriate share of the court's resources and enforcing compliance with rules, respectively. They are all concerned with managing a claim proportionately and fairly once it has been commenced, whereas s.4 is concerned with whether, given all the circumstances of the case and the delay, it is appropriate to allow a claim to be issued more than six months after a grant of probate/letters of administration.
35. In para.46 of her judgment Asplin LJ said that it seemed to her that the judge's references to the ever-developing sanctions jurisprudence exemplified in *Denton* and the fact that the s.4 time limit was contained within the statute rather than in a procedural rule were for the most part inapposite. Asplin LJ said that there was no disciplinary element to s.4. Unlike the provisions of the Civil Procedure Rules, the six-month time limit in s.4 was not to be enforced for its own sake. The time limit was expressly made subject to permission of the court to bring an application after the six months had elapsed. It was designed to bring a measure of certainty for personal representatives and beneficiaries alike. When determining whether a claim should be brought outside the six-month period, nevertheless, the court had to consider all of the relevant circumstances of the case in question and the factors which were highlighted in *Berger v Berger*.
36. At para.49 of her judgment, Asplin LJ summarised how she said that the possible exercise of the s.4 power should be approached. She said that the power must be exercised for its

proper purpose taking account of the context in which it arises. The context was the making of reasonable financial provision for an applicant from the estate of a deceased, in the light of all of the circumstances of the particular case. The power was to be exercised in the light of all the circumstances of the particular case, having considered the *Berger* factors and to give them appropriate weight in the particular circumstances. In para.50 of her judgment Asplin LJ repeated that the proper approach was to consider all of the *Berger* factors and to give them appropriate weight in the particular circumstances. She then said:

“depending on the circumstances of a particular case, it may be appropriate to give great weight to an unexplained or extortionate delay and it would not be appropriate to exercise the section 4 power if the claim has no merit in the sense that it would not pass the test for summary judgment.”

37. In para.51 of her judgment Asplin LJ again emphasised the importance of the particular facts of a particular case. She said:

“It seems to me that although the applicant must put forward a substantial case, that it is not necessarily true that there must be a good reason for all delay in every case. Each case turns on its own facts and, in each case, the judge is required to weigh the *Berger* factors and to reach a decision. If, as in *McNulty v McNulty* [2002] WTLR 737 the applicant has a strong claim for reasonable financial provision, it may be appropriate, taking into account all of the other relevant factors, to exercise the section 4 power, despite the lack of a good reason for delay or some part of it.”

38. At para.52 of Asplin LJ’s judgment:

“it is necessary to decide whether an applicant’s claim has a real prospect of success rather than a fanciful one. If the claim has no real prospect of success, there is no point in considering the other relevant factors. The court will not entertain a claim with no merit which is commenced outside the six-month time limit, merely because the delays can be explained and no one is prejudiced. The corollary is not necessarily true. If the claim would pass the summary judgment test, it does not mean that the court will exercise the section 4 power to extend time. It is dependent upon an evaluation of all of the relevant factors in the circumstances.”

39. Asplin LJ went on:

39.1. To hold that on the facts of *Cowan v Foreman*, and contrary to the decision of the judge below, the applicant’s substantive claim under the Act did have a real prospect of success.

39.2. To consider the other *Berger v Berger* factors.

39.3. To allow the appeal and give permission under s.4 to commence the proceedings out of time.

40. Baker and King LJ agreed with Asplin LJ’s judgment.

Chronology

41. In summary, the relevant history covers the following four periods:

- 41.1. (1) From about 1995 when the deceased met Mrs O’Herlihy and she and her two sons, Rogan and the Claimant moved into the deceased’s house, Saddlewood Manor until about 2004 to 2005 when the relationship between Mrs O’Herlihy and the deceased substantially broke down and Mrs O’Herlihy, Rogan and the Claimant moved out of Eastington Hall (a house which the deceased had purchased in 1997) to a house which the deceased had purchased for Mrs O’Herlihy pursuant to the Settlement Agreement (Rhydd Gardens).
- 41.2. (2) From about 2004 to 2005 until about 2012 during which period the deceased and the Claimant remained in contact and the Claimant says he retained a bedroom at Eastington Hall.
- 41.3. (3) From about 2012 until the deceased’s death on 2 June 2019 during which period the Claimant and the deceased were not in contact with each other.
- 41.4. (4) From 2 June 2019 until the issue of the Claim Form on 14 October 2024 and onwards to the hearing before me in December 2025.

42. The chronology is important. It is as follows:

1989

- 7 June 1989: the Claimant’s date of birth.

1994

- The deceased and his first wife were divorced in about 1994.
- The Claimant says that he met the deceased in 1994 when he was 4 years old. It does not make any real difference to the issues I have to determine whether the Claimant first met the deceased when he was 4 or when he was 5.
- The Claimant says that the deceased was in a quasi-matrimonial relationship (“engaged throughout”) with Mrs O’Herlihy between 1994 and late 2005.
- The deceased and Mr Reeves say that the deceased only met Mrs O’Herlihy and the Claimant for the first time in August 1995 or mid-1995.
- It does not make any real difference to the issues which I have to determine whether the deceased’s relationship with Mrs O’Herlihy began in 1994 or 1995 or whether it ended in 2004 or 2005. There is conflicting written evidence as to whether they were ever engaged and as to whether or the extent to which they tried to have a child of their own.

1995

- Mrs O’Herlihy and her two sons (the Claimant and his brother, Rogan) moved into the deceased’s home, Saddlewood Manor, in 1995 or early 1996.

1997

- In September 1997 the Deceased purchased Eastington Hall, Worcestershire and moved there with Mrs O’Herlihy and her sons. Eastington Hall was a very large Grade 1 listed building which dates from the 13th Century. It had many rooms, outbuildings and large grounds. It was staffed by, at least among others, an estate manager, a gardener and a housekeeper/cook.
- In or around 1997 the deceased made a will leaving Eastington Hall and £3 million to Mrs O’Herlihy and told her that he had done so. In his 2004 statement in FD04F00561 the deceased said this was because he did not want Mrs O’Herlihy or her children to be made homeless if he died.

2004

- 27 April 2004 is the date of a letter from the deceased to Mrs O’Herlihy, apparently in response to a letter from her solicitor.
- 2 June 2004: Mrs O’Herlihy issued her s.17 Married Women’s Property Act 1881 claim against the deceased. Under it Mrs O’Herlihy sought a declaration under s.17 Married Women’s Property Act 1882 that she owned 50% of Eastington Hall; 50% of the chattels which were purchased jointly; and that she should retain those items gifted to her by the deceased.

2005

- April 2005: the Settlement Agreement was made compromising Mrs O’Herlihy’s claim under the Married Women’s Property Act 1881 and other claims.
- The Settlement Agreement was embodied in an agreement and Court consent order sealed by the court on 24 May 2004. Key terms of the Settlement Agreement so far as the preliminary issue before me is concerned were:
 - The compromise was in full and final settlement of Mrs O’Herlihy’s claims under the 1881 Act, s.14 Trusts and Appointment of Trustees Act 1996 and all other claims which either she or the deceased might be entitled to bring against the other in relation to their relationship.
 - The contents of the deceased’s homes in London and at Eastington Hall would remain the deceased’s, except for the items listed in a Schedule

which would remain Mrs O'Herlihy's and be removed by her on her vacating Eastington Hall.

- The deceased would purchase a new home for Mrs O'Herlihy to be held in her sole name, with a purchase price of no more than £925,000. As at the time of signing it was anticipated that (as eventuated) the new home was Rhydd Gardens.
- The following provisions would apply to that purchase:
 - Mrs O'Herlihy would provide a contribution towards the purchase equal to the amount by which the purchase price exceeded £850,000.
 - The property would be purchased with the aid of a mortgage, the extent of the mortgage to be decided by the deceased at the time of the purchase, but not to exceed £700,000.
 - The deceased would guarantee the mortgage and would repay the mortgage within 5 years of the purchase, and until then would pay the repayments due under it as they fell due.
 - The deceased undertook to leave by will to Mrs O'Herlihy such sum as was required to repay the mortgage and to enter into a deed of covenant to that effect binding on his executors.
 - Mrs O'Herlihy undertook not to increase the mortgage.
 - Provision for the possible future sale of the new home and the purchase of a substitute.
- Mrs O'Herlihy would vacate Eastington Hall on the earlier of completion of the purchase of the new home or 30 September 2005.
- Mrs O'Herlihy would within 14 days execute a deed of covenant in the form of a draft in Schedule 2 to the Settlement Agreement to leave her new home (in the event Rhydd Gardens) by will to Rogan and the Claimant and would keep that provision unchanged until the repayment of the mortgage.
- The deceased would pay:
 - Any school fees incurred by the Claimant, to include the costs of boarding, should the Claimant decide to board.

- The university tuition fees incurred by the Claimant and Rogan in relation to their first degree course, to include the tuition fees (only) at an American University as part of a first degree course.
 - The deceased would pay Mrs O’Herlihy lump sums of £10,000 each totalling £200,000, on the basis that each lump sum should only be payable if Mrs O’Herlihy had not predeceased the deceased prior to the date of payment. The first payment of £10,000 was due on the earlier of the date of completion of the purchase of the new home and the last was due 4 years and 9 months after that.
- Late 2005: Mrs O’Herlihy, Rogan and the Claimant left Eastington Hall and moved to Rhydd Gardens; though the Claimant says he retained his bedroom at Eastington Hall and stayed there from time to time.

2006

- The Claimant says in his statement dated 24 January 2025 that the deceased bought him his first car in 2006.
- The First Defendant says she met the deceased.

2007

- The Claimant says that for his 18th birthday in 2007 and before the deceased met the First Defendant he bought him a £5,000 watch and, as a surprise, the Claimant paid for him and ten friends to stay in a house in Florida for a fortnight.
- The Claimant says that “soon after that” the deceased financed trips to Australia, New York and St Lucia to help with his future in property.

2008

- Mr Hargreaves (a long term friend of the Claimant’s) says that in 2008, he and several old school friends, including the Claimant attended a Kanye West concert at the O2. At the deceased’s invitation he, the Claimant and a couple of the Claimant’s other friends stayed in the deceased’s house in South Kensington.

2009

- The Claimant says things only began to change in 2009 when the First Defendant came onto the scene.
- The Claimant says that at Christmas 2009, his mother, his brother, and he, together with his two cousins, spent Christmas with the deceased at Eastington.

2010

- 19 February 2010: email from Mrs O’Herlihy to the deceased. In this email she asked him for about £3,500.
- 7 June 2010. At or around that date, the deceased bought the Claimant an Audi S5 for his 21st birthday.
- The deceased and the First Defendant married in November 2010.
- The Claimant says that from around 2010, the deceased’s mental capacity appeared to decline and he started to behave erratically.
- In his statement dated 11 October 2024 the Claimant said that the deceased fell asleep at the wheel when driving “on many occasions”. In Farrer & Co’s letter dated 2 December 2022 it was said that the Claimant recalled that, in 2010, the deceased drove him between Oxford and London, and the deceased fell asleep twice whilst driving.

2011

- Farrer & Co’s letter dated 2 December 2022 on behalf of the Claimant alleges that:
 - In 2011 the deceased requested that meetings between him and the Claimant take place in private because it would be more difficult to meet with the First Defendant now in the picture. They arranged to meet each other in Ledbury on around 10 occasions every few weeks.
 - In late 2011 the codes to Eastington Hall were changed by the First Defendant, who instructed the Claimant to return his keys.
- In or around 2011 there was a meal at Eastington Hall at which there was an argument between the Claimant and the First Defendant. The Claimant says that in the course of the argument the First Defendant “screamed” at the Claimant that “it was all for her girls now.” The Claimant says that on that occasion the deceased congratulated him afterwards for standing up for himself to the First Defendant.

2012

- 19 February 2012: long email from Mrs O’Herlihy to the deceased. Includes:
 - “I am going to be in town in the week so will drop in to the London house. Not sure of day yet. Hope to find you in, and to see Jenny [the First

Defendant]. She has welcomed my children to her new home and I would like to thank her. We also have a few things to discuss.”

- The Claimant had told her that he (the deceased) wanted to sell his Hurricane aeroplane and that the price was £10 million. Mrs O’Herlihy had someone who was genuinely interested. Mrs O’Herlihy offered an introduction through her “introducer friend and his partner”.
- “I know you have been good to Lonan, intended to do something nice for Lonan, and in helping him to buy a flat, and doing this right now when he urgently needs you, puts you in my good books. So I am prepared to do something nice for you.”
- Proposal that deceased should part fund the Claimant’s purchase of a flat.
- 22 February 2012: email from deceased to Mrs O’Herlihy in reply to hers of 19 February. Includes:
 - Rejection of her suggestions in respect of the Hurricane.
 - “Pamela, please do not under any circumstances visit Eastington or the London house, I have my reasons for saying this and I cannot underline how much I do mean it.”
 - “Whilst you refer to Lonan as my stepson, you must not give the boy incorrect beliefs, I protected both Lonan and Rogan while they needed money but I'm afraid this requirement has come to an end from my side. I did say to Lonan that I would help him if your house was sold and half of the proceeds given to Lonan to buy a flat in London. I indicated to him that if this were the case and he had the capital to put down 50% of the purchase price I would be able to help him arrange a mortgage for the remaining 50% with an independant [sic] mortgage provider, obviously he would need a job that would cover the repayments.”
 - “I would like to make it very clear, Pamela, that I do not have spare cash at the present time, may I suggest that your ex husband for once in his life picked up a job that he could help his children with. Neither Rogan nor Lonan have a legal relationship with me and my donations to date have been because I was concerned about the future of two young men who lived in the same house. It behoves to you to explain to them that I am going to stop the facility as I am afraid I need it as much as they do. Maybe their father would care to accept his responsibilities and look after them as indeed he should.”
- 8 May 2012: will made by the deceased. This will was prepared by Wilmot & Co. By it the deceased:
 - Appointed the First Defendant, Michael Grenfell and the Second Defendant as executors and trustees.

- Gave a pecuniary legacy of £2,000,000 to the First Defendant.
 - Gave pecuniary legacies of £500,000 to each of the First Defendant's daughters.
 - Gave a pecuniary legacy of £1,000,000 to Mr Lakin, with a substitutionary gift to his widow and surviving children.
 - Gave a pecuniary legacy of £200,000 to his housekeeper, Ms N, with a substitutionary gift to her daughter.
 - Gave a pecuniary legacy of £200,000 to Ms C. with a substitutionary gift to her daughters.
 - Gave his personal chattels to the First Defendant.
 - Gave the residue of his estate as to 2/3rds to the First Defendant and one sixth to each of the First Defendant's daughters, with substitutionary gifts and provision for cross-accrual.
 - The will was witnessed by two Wilmot & Co members of staff.
 - The Claimant and his brother were not named as beneficiaries and indeed were not mentioned at all in that will.
- The First Defendant says that in 2012 the deceased and she encountered some difficulties in their marriage and contemplated a possible divorce, but did not divorce.
 - The Claimant alleges that the deceased informed the Claimant that he was no longer allowed to spend time with him.
 - The Claimant says that for around the last six months that he and the deceased were in contact the deceased and he had to meet in secret in a different town, Ledbury

2013

- Gabriella Turello says that in 2013, during a visit to Rome together in 2013, when the Claimant was 23, she was surprised that he was “doing fitness.”
- Ms Dawes says she visited the deceased at Eastington Hall and was shocked at his appearance and his changed behaviour.
- The First Defendant says the deceased was diagnosed with early stage Alzheimer's Disease. She says that in the early days the condition was very manageable; the deceased was sometimes forgetful, but he continued to operate his business and continued to drive.

- The Claimant says that he was driving and saw the deceased walking down the Cromwell Road into oncoming traffic, dressed in shorts and an overcoat. This was the last occasion on which he saw the deceased.

2014

- 10 July 2014: a Lasting Power of Attorney was executed by the deceased appointing the First and Second Defendants his attorneys jointly in respect of his property and financial affairs. The Lasting Power of Attorney named Michael Grenfell as the person to be told when the lasting power of attorney was being registered.
- 10 July 2014: Part B of the Lasting Power of Attorney signed by Stephen Shelley-King. Mr Shelley-King declared that he had the relevant professional skills to certify as Part B required by reason of his being a registered mental health nurse with seven years experience of assessing mental capacity in line with the MCA (2005) and associated guidance. Mr Shelley-King:
 - gave the required statement as to his independence;
 - certified that in his opinion at the time of signing: (i) the deceased understood the purpose of the lasting power of attorney and the scope of the authority conferred under it; (ii) no fraud or undue pressure was being used to induce the deceased to create the lasting power of attorney; there was nothing else which would prevent the lasting power of attorney from being created by the completion of the form.
- July 2014: the First Defendant says the deceased bought himself a Bentley for his birthday.
- 27 August 2014 Dell Quay House near Chichester was purchased for £2,499,999 in the deceased's and the First Defendant's joint names.
- 4 September 2014: Lasting Power of Attorney registered by the Office of the Public Guardian.

2015

- 9 July 2015: Deceased's will. Witnesses to its execution: Dr A Thakore and Georgina Heffron. The will:
 - Appointed the First and Second Defendants to be executors.
 - Gave his housekeeper, Ms N, a pecuniary legacy of £200,000.
 - Gave a second employee, Ms C, £200,000.

- Gave the net residue of his estate to his widow, the First Defendant.
- Contained a substitutional gift of the residue in the event that the deceased died before the First Defendant to the First Defendant's children or, in the event of their pre-deceasing him, to their children.

2016

- July 2016: the First Defendant says the deceased continued to drive until July 2016.

2017

- Sophie, the First Defendant's daughter by her first marriage died.

2019

- 2 June 2019: the deceased died.
- 6 June 2019: the Claimant learns of the deceased's death from his mother, who had been informed of it by Rosalie Dawes.
- 7 June 2019: contents of an email from Mrs O'Herlihy to Patrick Ansell of Taylor Rose forwarded to the First Defendant. Contents of Mrs O'Herlihy's email include:
 - "I see that Hugh is dead. The service is at Tewkesbury Abbey next Thursday. A local friend is going and asks me to go with her. I intend to go. I have spoken to both my sons accordingly. I am intending to speak to Jenny then about my chattels. Perhaps she would be so good as to bring them to the funeral to make it easy all round. You could instruct her, so closing that door."
- 24 September 2019: £10,000 received by the Claimant from his father.
- 25 September 2019: £10,000 received by the Claimant from his father.
- 1 November 2019: Grant of probate of the deceased's will granted to the First and Second Defendants. The Grant records that the application for probate stated that the gross value of the estate in the UK was £51,610,000 and that its net value was £38,540,357.
- 20 December 2019: Ms N's £200,000 legacy paid in full.
- December 2019: Farrer & Co state in their letter dated 23 December 2023 that it was in December 2019 that the Claimant became aware of the terms of the deceased's will and that it had on 1 November 2019 been admitted to probate.

2020

- 1 May 2020: 6 month time limit under s.4 of the 1975 Act expires.

- 5 May 2020: £4,800 received by the Claimant from his father.
- 21 May 2020: deceased's shares in Worth Avenue 1 Limited distributed to the First Defendant.
- 19 June 2020: Ms C's £200,000 legacy paid in full.
- 1 September 2020: deceased's shares in Northwolds Limited distributed to the First Defendant.
- 20 November 2020: 26, Queen's Gate Place Mews transferred to the First Defendant.
- 11 December 2020: letter from Sinclair Gibson LLP on behalf of the Claimant to Wilmot & Co Solicitors LLP. This letter, among other things:
 - Says the Claimant only discovered that the deceased had died "sometime after his death".
 - Says the Claimant was concerned that the deceased did not have testamentary capacity to execute his will in July 2015.
 - Makes a *Larke v Nugus* request for a complete copy of any files in relation to any wills made by the deceased held by the firm.
- 16 December 2020: letter Wilmot & Co to Sinclair Gibson, copied to Bryan Cave Leighton Paisner ("BCLP"). The letter suggests queries be directed to Berwin/Bryan Cave Leighton Paisner/the executors as Sinclair Gibson's issue was with the will that had been admitted to probate. Wilmots said they would be happy to release information about any of the wills which they had prepared, subject to the agreement of the parties involved.
- 21 December 2020: letter Sinclair Gibson to BCLP. This letter, among other things:
 - States that the Claimant believed that the deceased's 2015 Will departed very significantly from the deceased's previous pattern of testamentary giving.
 - States that Sinclair Gibson were instructed that Wilmots prepared a will(s) for the deceased under which the Claimant and his brother were due to benefit substantially and that it was understood that charities stood to benefit from these wills and now no longer featured in the deceased's 2015 Will.

- States that the Claimant was concerned that the deceased did not have testamentary capacity to execute his will in July 2015.
- In many ways alleges the same factual case as was case put on behalf of the Claimant before me. In summary that:
 - The Claimant who had no relationship with his own father, was treated in every way as a son by the deceased who paid for his school fees, for his gap year travels and then subsequently his university fees to study construction management as well as an allowance of £500 per month “since” the Claimant opened his first account in Malvern after leaving school in 2007.
 - The Claimant continued to treat Eastington Hall as his home after the relationship ended between his mother and the deceased and was welcomed there together with his friends by the deceased.
 - The deceased encouraged the Claimant to study property/construction at university and they had a shared interest in property development.
 - The allowance was stopped by the deceased in 2012, the Claimant was told by the deceased whom he continued to meet secretly, that the stopping of the allowance was at the insistence of the First Defendant.
 - If that last was true, it illustrated the extent to which, by 2012, the deceased, a “previously assertive businessman had become entirely submissive to his new wife’s wishes in relation to relatively small sums of money which can have meant nothing to either Mr or Mrs Taylor.”
 - From around 1995 and after 2005, as well as financial provision for the Claimant’s education and maintenance, the deceased also gave the Claimant many gifts; for example, watches worth over £5,000 and suits costing £1,000 plus throughout his school days and life after. On the Claimant’s 21st birthday, Mr Taylor bought him an Audi worth in region of £45,000.
 - There were many more gifts to the Claimant from his “stepfather”, which was how the Claimant always spoke of him and how the

Claimant's friends viewed him, and the way the deceased treated the Claimant suggests that he also viewed the Claimant as a son/stepson.

- From at least 2012 onwards the Claimant "and many witnesses" noted a decline in Mr Taylor's cognitive faculties. Also, at this time the deceased's personality changed from being an assertive successful businessman to being cowed and being told what to do by the First Defendant. The fact that he accepted the exclusion of those he previously treated as family, friends and solicitor as instructed by the First Defendant was indicative of the extent of his cognitive deficit. It was completely out of character. The deceased became isolated from all his friends and family, including crucially Sinclair Gibson would say, terminating his retainer with Michael Grenfell at Wilmots whom he had instructed for many, many years and who had become a personal friend. I comment that the Lasting Power of Attorney made in July 2014 named Michael Grenfell as a person to whom notice of its creation should be given.
- The deceased's phone blocked the Claimant's number. This was not something the deceased would have been capable of organising – with or without cognitive deficit.
- The deceased was then compelled to meet the Claimant secretly for lunches in Ledbury before he eventually told the Claimant that he was being compelled to cut him off by the First Defendant and that he was no longer allowed to communicate with him or support him. This was apparently after the First Defendant discovered from bank statements that the deceased was continuing to support the Claimant to the tune of £500 a month.
- Sinclair Gibson suggested that this support was withdrawn for a number of reasons, none of them relating to a need to economise by the deceased or to a breakdown in the close paternal relationship between the deceased and the Claimant.
- The last time the Claimant saw the deceased was at the end of 2013 when he drove past him walking down the middle of the Cromwell Road like a deer in headlights. He looked confused. It was

difficult to tell whether he recognised the Claimant, he appeared to look through him; his actions were those of someone who was seriously mentally unwell to the point where he was a danger to himself and others.

- Alleges that the pecuniary legacies to Ms N and Ms C, one a housekeeper, the other a part-time cleaner, were so disproportionately large that what they described as “the inescapable conclusion” was that the legacies were given because by reason of their size Ms N and Ms C would be unlikely to provide unhelpful evidence as to the deceased’s cognitive state of mind at the time the 2015 will was executed.
- States that as a result of what they had set out, Sinclair Gibson believed there were questions to answer and that they had been instructed to investigate the position and as a start, to make enquiries as to the extent to which the deceased’s 2015 Will admitted to probate differed from his earlier will making pattern. Therefore, they asked for:
 - A complete copy of BCLP’s will files in relation to the preparation and execution of the 2015 will, as well as any earlier wills. Also, any medical reports into the deceased’s capacity at that time.
 - Confirmation that BCLP were still acting for the executors and their instructions to the release the Wilmot & Co’s will files.
- 24 December 2020: letter from BCLP to Sinclair Gibson. This letter, among other things:
 - Confirmed that BCLP continued to act for the executors.
 - Stated that the deceased married the First Defendant on 13 November 2010.
 - Stated that they were instructed that the Claimant and his brother were never mentioned as beneficiaries under any will made by the deceased after his marriage. Accordingly the Claimant had no standing to dispute the 2015 will.
 - In the circumstances the executors had not authorised BCLP to provide the requested papers or to answer Sinclair Gibson’s questions. Also that they had given similar instructions to Wilmots.

- In the circumstances no purpose would be served in the executors responding to the factual assertions in the Sinclair Gibson letter of 21 December, but they were instructed that they were not accepted. However, they were surprised that Sinclair Gibson said that the Claimant only became aware of the deceased's death through a third party. They (BCLP) understood that the Claimant's mother was aware of his death at the time.

2021

- 14 January 2021: letter from Sinclair Gibson to BCLP. This letter only contains two substantive paragraphs.
 - The first says that their client “must accept” BCLP’s “carefully worded letter” that neither he nor his brother were “mentioned as beneficiaries under any will made by Mr Taylor after his marriage in 2010”, but that it did leave open the question of whether or not at the time of the deceased’s marriage the Claimant and his brother were indeed beneficiaries of his estate. They did not expect Sinclair Gibson to confirm or deny that inference. It might also be (Sinclair Gibson wrote) that the deceased was not aware of the fact that marriage revoked a will. They said that they did not expect BCLP to confirm or deny that view either. However, in the circumstances they said that they could see why BCLP’s clients would give the instructions they had to BCLP and to Wilmot & Co.
 - The second addresses what Sinclair Gibson say was the unusual size of the pecuniary legacies to Ms N and Ms C.
- 19 January 2021: letter from BCLP to Sinclair Gibson. Its one substantive paragraph provides:
 - “For the avoidance of doubt, we write to say that your client and his brother have no standing to challenge the deceased’s 2015 will because the deceased had made an earlier will dated 8 May 2012. This was drawn by Wilmot & Co and appointed Michael Grenfell as one of the executors. The will was witnessed by two Wilmot & Co members of staff. Your client and his brother are not named as beneficiaries and indeed they are not mentioned at all in that will.”
- 17 May and 16 June 2021: The Claimant paid US\$25 to the host of his “joke” on-line clothing shop.
- December 2021: deceased’s beneficial half share in Dell Quay House transferred to the First Defendant.

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2022

- 30 May 2022: the Claimant first instructed Farrer & Co.
- “Summer 2022”: in the letter to Macfarlanes dated 23 December 2022, Farrer & Co say it was only when instructing them “in Summer 2022” that the Claimant was advised of the possibility of a claim by the Claimant under the 1975 Act.
- 6 October 2022 email from Martin Bridger of BlueLight Global Solutions to Roger and Sharon Wheeler, forwarded by them to the First Defendant on 10 October 2022. In the 6 October email Mr Bridger said that BlueLight Global Solutions had been instructed by Lonan O’Herlihy to undertake some research into Jenny Taylor (nee Sharpe) [the First Defendant] and to try and establish what her characteristics/personality were/are.
- 2 December 2022: email letter from Farrer & Co on behalf of the Claimant to BCLP. This letter’s expressed purpose was to set out the Claimant’s claim under the 1975 Act and to constitute a formal letter before claim. In this letter Farrer & Co:
 - Alleged that the circumstances in which the relationship between the deceased and the Claimant came to an end – “amounting to the sudden and inexplicable loss of his only father figure – caused immense personal trauma for” the Claimant and also had “significant personal consequences”. The letter stated:
 - “The path which Lonan has pursued for himself from school into early adulthood was almost entirely the product of Hugh’s influence, positive encouragement, and regular assurances.”
 - “Lonan committed to this path wholeheartedly on the understanding that he and Hugh would eventually work together in property investment. Following the death of their relationship, Lonan’s professional trajectory has been fundamentally and permanently changed.”
 - “It is Lonan’s firm belief that his relationship with Hugh only deteriorated in the way that it did as a result of Jenny’s [the First Defendant’s] isolation of Hugh from his friends and family.”
 - “Lonan considers that if it were not for Jenny’s behaviour, he and Hugh would have maintained a close relationship, developed the property business together as they had always planned and he would not have been disinherited.”
 - “As a coping mechanism, and to try and dissociate himself from Hugh and his old life, Lonan has pursued an entirely different career path as a fitness trainer.”

- The deceased made various promises to the Claimant that he would be well provided for. He informed Mrs O’Herlihy that the Claimant would receive significant sums under his last will.
- Stated that the Claimant only learned about the deceased’s death from third parties.
- Alleged that the Claimant was in a position of financial need for the following reasons:
 - The Claimant worked as a personal trainer. His income fluctuated but he expected it to be in the sum of c. £70,000 net of income tax.
 - As a result of the events from 2010 onwards the Claimant had not been in a position to pursue a career as a property developer as he had hoped and expected.
 - Given the nature of his current employment, the Claimant’s earning capacity was significantly more limited. Having not worked in any other field since leaving university, the Claimant’s lack of experience meant that he was not likely to obtain well-paid professional employment in the near future. This was in contrast to the career in property that he had hoped for, which he considered would have been much more lucrative.
 - The Claimant currently rented a property with his girlfriend, Millie, but he would like to be able to own his own home in the future.
 - Currently, the Claimant and Millie shared most of the household expenses.
 - The Claimant’s annual expenditure was about £120,000 comprising his housing costs, personal expenditure and expenses.
 - As a representative example of expenditure, the Claimant’s annual housing costs, which included rent, council tax, bills and insurance were about £25,000 which made up over a third of his annual net income.
 - Taking his annual income and expenditure, the Claimant was left with an income shortfall of about £50,000.
 - The Claimant had no capital. He therefore had no capital cushion, or means of meeting his income shortfall.

- In order to meet his then current expenditure, the Claimant had been relying on personal loans (from friends and family members) which was self-evidently unsustainable.
 - Noted that the claim fell outside the s.4 time limit.
 - Stated that with regard to the factors articulated *Berger v Berger* and *Cowan v Foreman*: (i) the Claimant had only very recently become apprised of a potential claim under the Act; (ii) they considered that his claim was a meritorious one and (iii) there could be no suggestion of the First Defendant facing prejudice as a result of the prior distribution of the estate to the beneficiaries. Therefore they said that they considered that the Court was likely to extend time.
 - Ended by saying:

“We are expecting a response from or on behalf of Jenny within 21 days of this letter. Failing a response within that timescale, our client intends to issue proceedings under the Act. Our client is committed to taking matters further. However, in accordance with the pre-action protocol, we can confirm that we are willing to engage in ADR, including a WP meeting or similar format.”
- 14 December 2022: letter from Macfarlanes on behalf of the First Defendant to Farrer & Co. The letter requests further information, including:
 - Specifically what provision the Claimant was requesting and on what terms he proposed such provision should be made.
 - Why the Claimant had instructed private detectives to investigate the First Defendant.
 - In respect of the time limit under s.4, an explanation in detail of the trigger for the Claimant’s claim and why he said it could not have been brought within the time limit.
- 23 December 2022: email letter from Farrer & Co to Macfarlanes. The letter provided some responses to Macfarlanes’ requests and said that Farrer & Co were compiling some of the information / documentary evidence, which would follow under separate cover as soon as possible in the New Year. Amongst other things, the letter:

- Stated in respect of the request as to specifically what provision the Claimant was requesting, that the evidential picture was “not yet clear” and that the First Defendant had yet to set out her position on the s.3 factors in a substantive response.
- Continued:

“Notwithstanding the impossibility, in those circumstances, of identifying a specific figure, we can say at this stage that Lonan’s primary objective (at present) is for a capitalised sum to mitigate his very significant income shortfall, and to assist with the purchase of a home. Such indication is strictly without prejudice to his position based on circumstances as at the date of trial.”
- Stated that the Claimant’s gross income was in the region of £100,000, though it fluctuated and was significantly lower “last year”.
- The Claimant had no other businesses or sources of income.
- The Claimant had no capital assets.
- The Claimant had liabilities of approximately £80,000. The largest single item being a loan with HSBC outstanding in the sum of £27,000.
- The Claimant had not received funding from his mother and did not expect to do so. He had received no maintenance or capital amounts from his biological father and / or his estate and did not expect to do so. He was not named in his biological father’s will.
- Stated in relation to the delay in bringing the claim that:
 - It was in December 2019 that he became aware of the terms of the deceased’s will, and that it had, on 1 November 2019, been admitted to probate.
 - It was only when instructing Farrer & Co in Summer 2022 that he was advised of the possibility of a claim.
 - Upon becoming so apprised, the Claimant acted promptly in commencing negotiations.
 - Proposed a standstill agreement in order to facilitate constructive pre-action discussions.
- 23 December 2022: email letter from Macfarlanes to Farrer & Co. This letter was expressed to be further to Farrer’s letter of 14 December. It does not refer to Farrer’s letter of 23 December 2022. It refutes the claim in the following terms:

“Having now had the opportunity to take full instructions from our client, and for the avoidance of any doubt, she does not accept that there is any merit whatsoever in the claim which your client is threatening. Our client regards it as nothing more than opportunistic and would like to inform your client that his claim will be vigorously defended and costs sought against him. Further, any other outstanding amounts due to the Estate from him or from members of his family will be pursued and all rights legally enforced. In that context, we would like to remind your client that a loan was made by Hugh Taylor to your client’s mother, Pamela in the sum of £45,000 (with interest repayable)...”

2023

- 17 January 2023: letter from Macfarlanes to Farrer & Co. This letter was expressed to be further to Farrer’s letter of 23 December 2022 and Macfarlanes’ own letters of 14 and 23 December 2022. In this letter, among other things Macfarlanes:
 - Noted that numerous document and information requests from their 14 December 2022 letter remained outstanding.
 - Stated that their client was not willing to enter into a standstill agreement.
 - Stated that she did not accept that there was any merit whatsoever in their client’s claim.
 - Stated that she did not consider, based on the information provided by Farrer & Co to date, that a court would exercise its discretion to allow the claim to be brought substantially out of time.
 - Stated that it was unclear how the Claimant proposed to fund the claim which he threatened. Stated that that was relevant to the First Defendant’s concerns regarding the recoverability of her costs, which, as noted in their 23 December 2022 letter, she would be pursuing from the Claimant should he issue his claim
 - Asked again “therefore”, for an explanation as to how the Claimant was funding his case.
- 8 February 2023: letter from Farrer & Co to Macfarlanes. This letter stated:

“We are still in the process of taking instructions. In the meantime, our client has been collating evidence in support of his claim including liaising with new and existing witnesses, many of whom have already confirmed they are willing to provide formal written evidence in support of his case.”
- 15 February 2023 letter, Macfarlanes to Farrer & Co. Includes:

- “The following outstanding requests do not require detailed instructions and we therefore ask (again) that they are answered with urgency.
 - 1 An explanation as to why your client has engaged private detectives to investigate our client and confirmation that any such engagement has now been terminated.
 - 2 An explanation as to how your client is funding his case, which is relevant to the recoverability of her costs in circumstances where she considers his claim to be unmeritorious and will be seeking her costs from him.”
- Around February 2023: the Claimant said in his statement of 11 October 2024 that he had exhausted the funds he had available to pursue his claim through Farrer & Co.
- 23 March 2023: properties at 11-13 Whiteladies Road transferred to Northwolds Limited.
- Mid-2023: the Claimant said in his statement of 11 October 2024 that he had “accrued some funds” to instruct new, less costly, solicitors – Harrison Clark Rickerbys (“HCR”).
- 26 June 2023: email letter from HCR to Macfarlanes. The letter is headed “without prejudice save as to costs”. HCR refer to Farrer & Co having previously had the conduct of the matter and that the First Defendant had refused to engage in potential settlement discussions with the Claimant in respect of his claims of proprietary estoppel and under the 1975 Act. HCR state that they “now” act for the Claimant. There was an issue between the parties as to whether without prejudice protection attached to this HCR email letter and Macfarlanes’ response dated 26 July 2023. For the reasons given below I rule (i) that they were not protected by the without prejudice principle and (ii) if they were, then that protection has been waived. The HCR email letter of 26 June 2023 was 14 pages long. In this letter, among other things HCR:
 - Made many allegations, many, but not all of which, were repeated in the evidence.
 - Referred to the Claimant as having claims in proprietary estoppel and under the 1975 Act.
 - Set out why the Claimant had instructed private investigators and some of their reported findings.
 - Alleged that the First Defendant caused the Claimant to be excluded from the deceased’s life.

- Alleged that the deceased was or may have been lacking capacity for the period of his marriage to the First Defendant or part of it.
- Contained the following two paragraphs which Mr Wilson put to the Claimant in cross-examination as showing that he was attempting to get money from the First Defendant by any means:
 - “Our client remains highly motivated to seek justice for the Deceased and ensure his true wishes are fulfilled. Our client remains committed to do this by all reasonable means, whether that be by settlement, court proceedings or a documentary focusing on the events that happened, the behaviour of your client.”
 - “Our client considers it appropriate to inform you that he has had numerous discussions with journalistic and potential film documentary professionals, who feel that the life of the Deceased as a self-made millionaire and the behaviour of your client would be of significant public interest.”
- Made an offer of terms in full and final settlement of all claims the Claimant had or might have against the deceased’s estate.
- On the question of the extent to which the Claimant may have been in debt, confirmed that he met all his debts monthly.
- 26 July 2023: email letter from Macfarlanes to HCR. This letter also is headed “without prejudice save as to costs”. In this letter, among other things, Macfarlanes:
 - Rejected the Claimant’s claims in proprietary estoppel and under the 1975 Act.
 - Pointed out that a claim under the 1975 Act was by then more than 3 years out of time and that more than 6 months had passed since Farrer & Co’s letter before action in respect of a 1975 Act claim.
 - Described HCR’s letter of 26 June 2023 as containing inappropriate and ill-judged threats of publicity.
 - Reserved the First Defendant’s rights as to whether the correspondence was properly to be considered without prejudice “in light of the tone, content and true intent” of HCR’s letter.
 - Did not accept that the First Defendant had any claim to answer and was not obliged to and would not discuss settlement or mediation with the Claimant.

- Late July/August 2023 the Claimant said in his statement of 11 October 2024 that he had again exhausted the funds he had available to pursue his claim.

2024

- Summer of 2024 the Claimant meets Mr Najinder Klear of Myddletons Legal Ltd.
- 14 October 2024: Claim Form issued.
- 11 November 2024: email from Mr Klear of Myddletons to BCLP. This stated that Mr Klear was instructed to act for the Claimant in relation to a claim under the 1975 Act. It asked BCLP to confirm whether they were still acting for the First Defendant and, if they were, whether they were able to accept service by email on her behalf.
- 13 November 2024: Mr Klear's email of 11 November was forwarded to Macfarlanes. By an email dated 13 November 2024 from Macfarlanes to Mr Klear, Macfarlanes, amongst other things:
 - Stated that they acted for the First Defendant and had done so since December 2022.
 - On the basis of the information provided in Mr Klear's email of 13 November 2024 they were not at that stage instructed to accept service by email of the claim.
 - Asked Mr Klear, in order that they could advise their client as to service, to confirm whether the claim referred to in his email of 11 November was the same as that which his client had intimated previously.
- 22 November 2024: email from Mr Klear to Macfarlanes. In this email Mr Klear said, amongst other things, that the email to BCLP was an administrative error on his part and that the First Defendant's address had been updated with the court as the address for service in place of Macfarlanes. Mr Klear said that he attached a copy of the application and that a copy of the issued application had been sent to the First Defendant's address to effect personal service.
- 3 December 2024: email from Macfarlanes to Myddletons. This email set out Macfarlanes' contentions in relation to the admissibility of the "without prejudice save as to costs" letters of 26 June and 26 July 2023.
- 3 December 2024: second email from Macfarlanes to Myddletons. This email of 3 December 2024 did not raise any points about service. It stated that the First

Defendant contested both the substantive claim and the application for leave to bring the claim. It requested various documents and information.

- 9 December 2024: email from Myddletons to Macfarlanes. This set out Myddletons' contentions in relation to the admissibility of the "without prejudice save as to costs" letters of 26 June and 26 July 2023.
- 12 December 2024: email from Macfarlanes to Myddletons. This email requested various information and documents.
- 17 December 2024: letter from Macfarlanes to Myddletons addressed further the question of the admissibility of the "without prejudice save as to costs" letters of 26 June and 26 July 2023.
- 19 December 2024: consent order made by Master Kaye, amongst other things:
 - Permitting the Claimant to file and serve a supplemental witness statement, limited to answering the questions raised by the First Defendant in an email timed at 19:24 on 17 December 2024; such supplemental witness statement to be filed and served by 4pm on 20 December 2024.
 - Extending time for service of the Defendants responsive evidence to 4pm on 10 January 2026.

Admissibility of the contents of the letters dated 26 June 2023 and 26 July 2023

43. In their letter dated 3 December 2024 Macfarlanes gave notice that the First Defendant would be referring in her evidence to the letter dated 26 June 2023 and to Macfarlanes' letter in response dated 26 July 2023, both of which were headed "without prejudice save as to costs". In their letter dated 3 December 2024 Macfarlanes contended that the contents of the letters were not privileged because:

- 43.1. The HCR letter was not a genuine attempt to settle the dispute.
- 43.2. It was within the exception to the "without prejudice" rule for blackmail or unambiguous impropriety.
- 43.3. The letters were within the exception to the without prejudice rule in respect of contents which were relevant to the issue of delay. Macfarlanes said that the Court would not be able to judge the rights and wrongs of the delay simply by being told that 'without prejudice' letters were exchanged on 26 June 2023 and 26 July 2023. Macfarlanes said that would give a misleading impression of what in fact happened.

43.4. Any privilege in the letters had been waived by the Claimant in his witness statement dated 11 October 2024 in which he described Macfarlanes' letter of 26 July 2023 as "*entirely dismissive of [the Claimant's claim] having any merit and threatened to fight it aggressively and pursue costs orders against [him] (rather than seek to negotiate or engage in any form of alternative dispute resolution)*". Macfarlanes averred that there the Claimant was relying on the content of the letters in support of his position that he had acted promptly in the circumstances and that the First Defendant had acted unreasonably, and therefore the Claimant should have leave to bring his application out of time. Consequently, averred Macfarlanes, they considered that the Claimant had sought to waive any without prejudice protection that the letters might have attracted; which waiver their client intended to accept.

44. In their email dated 9 December 2024 Myddletons contended as follows:

44.1. It was clear that there was a dispute under discussion, attempts were being made to achieve settlement and litigation was also contemplated. The without prejudice rule could not be waived unilaterally and the Claimant did not consent to any waiver. The correspondence also did not come under the exceptions mentioned in *Unilever Plc v The Proctor & Gamble Co* [2000] 1W.L.R. 2436. Specifically, they averred that:

44.1.1. The correspondence between the parties was at times heated but it did not amount to an unwarranted demand. The basis of a claim was set out as early as 2nd December 2022.

44.1.2. The Claimant set out at paragraphs 32, 33 and 34 of his witness statement of 11 October 2024 that he was not in a financial position to pursue his claim. Specifically at paragraph 34 he confirmed that he would not have been able to pursue his claim were it not for the Conditional Fee Arrangement under which he was [now] being represented.

44.1.3. In those paragraphs the Claimant did not refer to the substance of the letter dated 26 July 2023. The reference was to Macfarlanes' letter dated 23 December 2022 exhibited at page 81 of his witness statement dated 11 October 2024.

45. In their letter dated 17 December 2024 Macfarlanes repeated and expanded upon their case as to the admissibility of the letters. They said:

- 45.1. HCR's letter was not a genuine attempt to settle a dispute on various grounds, including that the letter requested confirmation that Macfarlanes accept service of the Claimant's claim, that 14 of the 15 pages of HCR's letter amounted to a statement of the Claimant's claim, and that the relief demanded purportedly by way of settlement exceeded what the Claimant was demanding under the proceedings.
- 45.2. Myddletons' contention that paras.32 and 33 of the Claimant's statement dated 11 October 2024 referred to Macfarlanes letter to Farrer & Co dated 23 December 2022 was untenable. Macfarlanes' reasoning was that paragraphs 32 and 33 were concerned with the Claimant's impecuniosity in June and July 2023 and the reference there to Macfarlanes being entirely dismissive of the Claimant's intimated claim and their threat to fight it aggressively and pursue costs orders against him in its context could only have referred to the rejection of the demands in the HCR letter of 26 June 2023. Macfarlanes said that they remained of the view that the Claimant had sought to waive any without prejudice protection in the letters, which waiver the First Defendant accepted.
- 45.3. That they remained of the view that the letters were admissible and that the First Defendant intended to refer to and exhibit them in her evidence.
- 45.4. They suggested that in the event that Myddletons maintained their disagreement with the First Defendant's position on the letters, the Claimant would need to make an application seeking to exclude the letters from evidence.
46. In a letter dated 6 January 2025 from Macfarlanes to Myddletons, Macfarlanes said that they had received no response to their letter of 17 December 2024. They said that they presumed that the Claimant did not disagree with their analysis on the admissibility of the letters and that they would include the letters in their client's evidence which was due on 10 January 2025, with redactions in respect of those parts of them that referred to HCR's engagement by the deceased.
47. On 10 January 2025 the First Defendant's statement exhibiting, amongst other things, copies of the letters (redacted as stated by Macfarlanes) was filed. In that statement the First Defendant set out the particular passages from HCR's letter of 26 June 2023 on which she relied.

48. In the Claimant's statement dated 24 January 2025 he referred to the letters. He said in paragraph 27 of that statement that his legal representative had made it very clear in correspondence that privilege in them was asserted and was not waived. He said:

"I understand the First Defendant cannot use the letter in her evidence and that I may need to make an application in this regard so I do not want to say too much about it except that the evidence BGS had uncovered was clearly relevant to my potential claims at that time and the possibility of such evidence becoming public in the course of proceedings or otherwise would obviously be a relevant consideration for any litigant. I had no part in Shannon Productions approaching the First Defendant."

49. BGS were BlueLight Global Services.

50. In a letter dated 10 March 2025 to Macfarlanes, Myddletons stated that they had previously stated their position regarding the HCR correspondence, and their stance remained unchanged.

51. No application was made to exclude the letters.

52. Both letters were included in the trial bundle.

53. Mr Jeffery's skeleton argument for the trial before me referred to the HCR letter of 26 June 2023. He submitted that the letter was sent on a without prejudice save as to costs basis reiterating the Claimant's claims and making a genuine offer of settlement. He says that again the offer to engage in constructive discussions was dismissed.

54. Mr Wilson cross-examined the Claimant on the letters.

55. I was not taken to the correspondence as to the constitution of the trial bundle, but, as my recital of the correspondence on the subject of the admissibility shows, the Claimant, by his legal representative had objected to the admissibility of the letters. Accordingly CPR PD32 27.2 does not automatically provide for the admissibility of the letters.

56. I consider that the HCR letter dated 26 June 2023 did constitute a genuine attempt to settle contemplated litigation and, when it was written it was, subject to the next point, protected by the without prejudice principle. Although much of the letter was taken up with the kind of statements and material which one would expect to see in a letter before action; I consider that that is consistent with an attempt to settle because it sets out what might have been considered to have been the Claimant's strongest case and then makes an offer. I agree with Macfarlanes and Mr Wilson that the offer made far exceeded anything that the Claimant could reasonably hope to have been awarded by way of maintenance in a claim made only under the 1975 Act; but the letter also indicated a claim in proprietary estoppel. The offer was in respect of that, and the 1975 Act claim and all other claims.

There is no reason why, if an offer is made in respect of several different claims under the “without prejudice” principle, the without prejudice protection should not apply to all the individual claims covered by the offer, even if, subsequently, only one of them is litigated. That position is in accordance with the rationales for the without prejudice principle and I hold that was the position in respect of the HCR letter dated 26 June 2023.

57. I consider that the 26 June 2023 HCR letter was, though only just, within the exception to the “without prejudice” rule on the ground of blackmail or unambiguous impropriety. That exception is closely circumscribed. What the court is concerned with in relation to this exception is the abuse of a privileged occasion. I consider that in substance what was said in the two paragraphs of the letter set out above was to the effect that: unless you compromise with the Claimant, I will take steps which are likely to cause you to be subject to unwelcome and unattractive publicity. What the Claimant says in paragraph 27 of his statement of 24 January 2025 as to the evidence BGS had uncovered having been clearly relevant to his potential claims at that time is not inconsistent with that interpretation. I agree that generally what the Claimant said about the possibility of such evidence becoming public in the course of proceedings or otherwise obviously being a relevant consideration for any litigant is correct. However, what is said in the 26 June 2023 letter as to a documentary focusing on the events that happened and the behaviour of the First Defendant goes considerably further than that and to my mind is a threat which abuses the privileged occasion.
58. I do not consider that the 26 June 2023 letter was within the exception which exists to the “without prejudice” principle where the contents are sufficiently relevant to the issue of delay as to require this exception to apply. The mere fact that there were two without prejudice letters in June and July 2023 establishes the chronology of the attempted negotiations. The engagement of private investigators by the Claimant; their cost and the Claimant’s impecuniosity from time to time is sufficiently dealt with in other documents and evidence.
59. Even if I am wrong on the blackmail or unambiguous impropriety point, I consider that the without prejudice protection otherwise attaching to the letters has been waived by reason of the references to them by the Claimant in his statements of 11 October 2024 and 24 January 2025, which waiver had been accepted by the First Defendant.
60. The protection was also waived by the reference to the contents of the 26 June 2023 letter in Mr Jeffery’s skeleton argument.

61. I am not impressed by the unilateral exhibiting of the letters to the First Defendant's statement dated 10 January 2025; that being a time when at least her solicitors knew that their admissibility was objected to. However, after that the Claimant made no application to exclude the letters from the evidence.

Waiver of Privilege in respect of (i) Sinclair Gibson's advice as to whether or not they had advised as to a claim under the 1975 Act or as to alternative costs funding methods; (ii) Farrer & Co's advice as to whether or not they had advised as to alternative costs funding methods; and (iii) HCR's advice as to whether or not they had advised as to alternative costs funding methods.

62. In the course of the hearing I ruled that, by reason of the Claimant's statements that the answers to all those questions was "no", I considered that the Claimant had waived privilege in the advice given by those firms, at least to the extent of whether or not they had advised on those questions.

63. Direct evidence from the solicitors as to whether or not they had advised as to a claim under the 1975 Act or as to alternative costs funding methods was not put before me and no adjournment was sought either by Mr Wilson or by Mr Jeffery so as to enable that to occur.

64. Ultimately before me Mr Wilson made do with relying on what he submitted was the inference from the Claimant's refusal to permit his former solicitors to answer those questions because, submitted Mr Wilson, the Claimant knew that the former solicitors' answers would contradict his evidence in that regard. I consider that that inference by itself is not very strong because it is quite possible that there is an alternative explanation for the refusal. That is that if the Claimant had been advised that he did not have to permit his solicitors to answer those questions, possibly coupled with the risk that allowing them to do so might result in his having to disclose more and possibly all of the advice which was given to him.

Conflicts of evidence

65. Insofar as there are conflicts of evidence on various points, generally I am limited in the extent to which I can resolve them because, except to the extent of the cross-examination of the Claimant permitted by Master Kaye's order in respect of delay in bringing the claim and the Claimant's credibility in connection with the preliminary issue, the Claimant has not been cross-examined. The other witnesses have not been cross-examined at all.

66. In that context I consider that some of the principles set out by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] are applicable. Specifically, subject to exceptions on the subjects on which the Claimant has been cross-examined, I should not conduct a “mini-trial”. That does not mean that I must take at face value and without analysis everything that is said in the witness statements. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents. However, in reaching my conclusions on “real prospect of success”, I can and should take into account not only the evidence actually placed before me, but also the evidence that can reasonably be expected to be available at trial.
67. The following witness statements made in these proceedings were before me:
- 67.1. Claimant’s statement dated 11 October 2024. In this statement the Claimant said that “in the interest of costs, this witness statement refers to my substantive application so [far] as is necessary for the Court to consider whether to grant me permission to bring it but, in the event it does so, I may well have further evidence to give.” Given (i) the importance of establishing a real prospect of success on the substantive claim if there was to be any prospect of permission being granted under s.4, and (ii) the possibly increased prospect of permission being granted if the substantive case appeared strong, that was quite a high risk strategy.
 - 67.2. Claimant’s statement dated 20 December 2024.
 - 67.3. Stephen Clive Lakin’s statement on behalf of the 1st Defendant dated 9th January 2025.
 - 67.4. First Defendant’s statement dated 10 January 2025.
 - 67.5. Second Defendant’s statement dated 10 January 2025. The Second Defendant is a chartered accountant. He says that one of his clients introduced him to the deceased around 40 years ago. The client told him that the deceased was a property lawyer and was moving into the property market. The Second Defendant did not work for the deceased at that stage. He and the deceased moved in similar circles. Over a period of around 5 years the Second Defendant would see the deceased at dinners and drinks receptions. He had also met the deceased’s first wife. After this he and the deceased drifted apart. He did not see the deceased for the next 15 years or so. Around 20 years ago he came back in to contact with the deceased. In around 2004 the deceased asked him to deal with HMRC on his behalf. After that he gained the

deceased's trust and managed his accountancy and tax affairs with the assistance of Bryan Cave Leighton Paisner ("BCLP"). BCLP's involvement was required as some of the deceased's affairs were particularly complex. He quickly learnt that the deceased led a busy life making quick business decisions which then needed organising for him. The deceased also had a bookkeeper. The Second Defendant used his records to prepare company accounts for the deceased's property business, Northwolds Limited, as well as dealing with his personal tax returns.

- 67.6. Elizabeth Frances Doherty's statement dated 10 January 2025. Ms Doherty is a solicitor and a partner in the firm instructed by the First Defendant. Ms Doherty's statement principally dealt with the confidentiality undertaking in the Settlement Agreement. Except in appropriately neutral terms, it did not deal with the facts relevant to the issues before me.
- 67.7. Claimant's statement dated 24 January 2025.
- 67.8. Ms Doherty's statement dated 25 April 2025. This was made in support of an application by the First Defendant for an unless order in respect of the production of documents by the Claimant.
- 67.9. Claimant's statement dated 10 June 2025. This was made in support of an application by him for disclosure by the Defendants of various documents, including the deceased's medical records. By Master Kaye's order dated 23 June 2025 this application was adjourned to the determination of the Preliminary Issue Trial.
- 67.10. Ms Doherty's statement dated 18 June 2025. This was made in response to the Claimant's disclosure application.
- 67.11. Gabriella Turello's statement on behalf of the Claimant dated 24 January 2025.
- 67.12. Michelle Brocklebank's statement on behalf of the Claimant dated 24 January 2025.
- 67.13. Robert Hargreaves's statement on behalf of the Claimant dated 24 January 2025.
- 67.14. Rosalie Joan Dawes's statement on behalf of the Claimant dated 24 January 2025.
- 67.15. Laurie Brocklebank's statement on behalf of the Claimant dated 24 January 2025.

68. In addition, there were before me the following affidavits or statements made in Mrs O’Herlihy’s claim against the deceased in FD04F00561:
- 68.1. Affidavit of Trevor Reeves on behalf of the deceased dated 27 August 2004.
 - 68.2. Affidavit of Michael Gerrard Grenfell on behalf of the deceased dated 31 August 2004. Mr Grenfell was a solicitor and partner in the firm of Wilmot & Co. He was a commercial litigation lawyer specialising in classic and historic cars and aircraft, which is how he came to meet the deceased. He met the deceased in about 1996 and the deceased became a client of him and his firm.
 - 68.3. Affidavit of the deceased dated 14th September 2004.
 - 68.4. Affidavit of David William Aspin dated 14th September 2004. Mr Aspin said he met the deceased in 1994 and since that time they had been firm friends and business colleagues, although they were no longer involved in business together.
69. By Master Kaye’s order dated 23 June 2025 she ordered that the parties have permission to use all witness statements filed and/or served in Claim Number FD04F00561 for all purposes in these proceedings if and insofar as permission was required. The documents were in fact affidavits, but before me the parties, in my view rightly, treated Master Kaye’s order as applying to the affidavits.
70. When I wrote my draft judgment I thought that Mrs O’Herlihy’s own affidavit in her claim FD04F00561 against the deceased was not before me. After circulating my draft judgment I was informed by the parties that it was in the correspondence bundle. I was not directed to it in the course of the trial. Some of its contents could be deduced from the terms of the statements or affidavits in FD04F00561 which were before me. In his statement dated 24 January 2025 the Claimant said that his mother no longer had papers from the FD04F00561 proceedings; but that he had asked her to make enquiries of the solicitors who acted for her to see whether they had copies of the witness statements on which she relied, which doubtless (said the Claimant), if read with the statements the First Defendant had chosen to exhibit, would give a much more rounded picture. Very possibly they would have done, but I was not directed either Mrs O’Herlihy’s affidavit, or copies of any other witness statements or affidavits on which she relied in her claim FD04F00561.
71. No statement has been made by Mrs O’Herlihy in these proceedings or, if one has, it was not before me.

72. The Claimant says that the deceased was in a quasi-matrimonial relationship (“engaged throughout”) with Mrs O’Herlihy between 1994 and late 2005. The Claimant also alleges that the deceased and Mrs O’Herlihy attempted to conceive a child for themselves, but failed.
73. The Claimant relied on an episode or episodes involving rings as showing an intention that the deceased and Mrs O’Herlihy should be engaged. The evidence relied upon by the Claimant in that regard is that contained in the deceased’s affidavit in FD04F00561 which refers to what Mrs O’Herlihy had said in her affidavit to which the deceased was responding. In that affidavit the deceased denies that he and Mrs O’Herlihy were ever engaged and gives detailed refutations of the various allegations apparently made by Mrs O’Herlihy that they were. In respect of the rings the deceased said that he gave two rings to Mrs O’Herlihy, but they were not engagement rings. He says one was given as a 50th birthday present in October 1997 and another as a 52nd birthday present in October 1999.
74. Mrs O’Herlihy’s claim against the deceased in FD04F00561 was made under s.17 Married Women’s Property Act 1882. That was a procedural provision aimed at enabling property disputes between husband and wife to be determined in a summary way. By s.2 Law Reform (Miscellaneous Provisions) Act 1970 it was extended to engaged couples whose engagement had been terminated. The fact that Mrs O’Herlihy made her claim under s.17 of the 1882 Act is an indication that she at least thought that she could establish that she and the deceased had been engaged and that their engagement had ended before she made her claim under s.17.
75. In his affidavit sworn on 14th September 2004 in FD04F00561 the Deceased says that he did not ask Mrs O’Herlihy to marry him and that they were never engaged. I cannot determine that issue on the existing evidence. If they were engaged that would strengthen the claim that the Claimant was treated as a child of the deceased’s family. I proceed on the footing that the Claimant has a real prospect of establishing that the deceased and Mrs O’Herlihy were engaged down until Mrs O’Herlihy brought her claim under s.17 Married Women’s Property Act 1881.
76. The originating summons in FD04F00561 was dated 2 June 2004. It was issued by Mrs O’Herlihy against the deceased. Under it Mrs O’Herlihy sought a declaration under s.17 Married Women’s Property Act 1882 that she owned 50% of Eastington Hall; 50% of the chattels which were purchased jointly; and that she should retain those items gifted to her by the deceased.

77. A considerable amount of the written evidence concerned the nature of the relationship between the deceased and Mrs O’Herlihy during the period from 1994 or 1995 until about 2004. So far as the Claimant’s claim is concerned, the detail of the relationship between his mother and the deceased, including whether or not they were engaged and, if so, for how long, is of peripheral relevance. The evidence is clear and it is common ground that they lived together for at least some years in the period 1995 to 2004
78. The First Defendant’s case, based on what the deceased said in his affidavit in FD04F00561 is that between 2000 and 2002 the relationship between the Deceased and Mrs O’Herlihy began to break down, and it was over by 2002. The Claimant said that the relationship continued until late 2005. Whether and to what extent the relationship between the deceased and Mrs O’Herlihy continued between 2002 and 2005 is not something which I can or should determine without cross-examination of the relevant witnesses. Nor do I need to do so for the purpose of determining the s.4 application. My focus is on the relationship between the deceased and the Claimant.
79. The Claimant’s evidence is that he and the deceased grew very close, very quickly. The Claimant says that he would introduce him to people as his son. He says that all of his friends through prep and secondary school knew the deceased as his father and were all very close to him.
80. The Claimant says that the deceased tutored him in the things that mattered to the deceased and that he considered important for him, like his business and the sports he enjoyed, such as shooting, cricket, polo and racing, as well as the manners of a young man. He says that he and the deceased would go clay pigeon shooting together and on many quiet walks alone, during which they discussed property business and the Claimant’s education, in particular the subjects he should pursue to be best placed to inherit the businesses which he promised the Claimant he would.
81. The Claimant says that the deceased had a large, impressive, and extremely valuable classic car collection, about which both of them were passionate. He says that some of the fondest memories from his youth are the time he and the deceased spent in the garages together with the cars.
82. The Claimant says that he knew from the age of ten that his destiny was working with the deceased in his property ‘empire’. He says he felt like the deceased’s protégé. He says he and the deceased talked endlessly about the deceased’s property empire and discussed which AS/A-Levels he should take to lead into a degree course to be best placed to take over the deceased’s business.

83. The Claimant says that the deceased was keen for him to gain practical experience and make important contacts in the property sector. The Claimant gives as an example that in 2007/08, when he was aged 18 to 19 and between school and university, the deceased arranged for him to undertake work experience with Peter Musgrove of Lambert Smith Hampton, property consultants in Bristol working specifically with what the Claimant called “our Bristol property portfolio”. The Claimant says that went very well and as a result the deceased was sure that he wanted him to join the business and ultimately inherit it. He says the deceased also introduced him to various banks and bankers with whom the deceased worked.
84. The Claimant says that even though the deceased and his mother had separated, his relationship with the deceased continued as a father and son relationship as it had for the years they were together. He says that in fact, his relationship with the deceased was even stronger than the relationship with his mother. The Claimant says he continued to spend a “huge” amount of time at Eastington when not at school or university. The Claimant says they continued to pursue their shared interests together, and that the deceased continued to talk about the Claimant’s joining and then taking on his property empire.
85. The Claimant says he and the deceased continued to spend Christmases together including Rogan and his mother, and even sometimes their cousins. He says the deceased continued to buy his mother gifts and support her. He says Christmas Day was split between Rhydd Gardens and Eastington.
86. The Claimant says the deceased went much further than what was required by the Settlement Agreement. In addition to paying his school and university fees, the deceased gave him an allowance of £500 per month, all living costs, and money each time he used the London house with friends beyond university until 2012, when he was around 22. He says he gave him generous birthday and other gifts as set out in the chronology above.
87. The Claimant says things only began to change in 2009 when the First Defendant came onto the scene.
88. The Claimant says that he only became aware “much later” that the deceased and the First Defendant had married in November 2010, after the deceased had told him that the First Defendant had forbidden “our” attendance at the wedding.
89. The Claimant says that the First Defendant progressively cut him, as well as several other old friends/business partners of the deceased, out of the deceased’s life. He says the First Defendant engineered false feuds with “us”, installed CCTV all over Eastington, changed

the gate codes, demanded his keys and his Eastington logoed clothing back and blocked phone calls.

90. The Claimant says that when the deceased and he did manage to speak by telephone, they would discuss the business, including the properties the deceased planned for him to takeover. He says the First Defendant would call him immediately afterwards saying it could not happen, the properties were hers and her daughters' now.
91. The Claimant says that the deceased had been clear for "some time", they being some of his earliest memories, that the London home would be his and that he would have the riverside flats in Hammersmith too.
92. The Claimant says that things got so bad that for around the last six months he was in contact with the deceased that he and the deceased had to meet in secret in Ledbury.
93. The Claimant says that around the time the First Defendant was interfering in his relationship with deceased in the way in which he said, he was noticing that the deceased's mind was much worse; he was becoming forgetful and even fell asleep at the wheel when driving on many occasions; he appeared to lack the standards and resilience he had always shown, and seemed terrified of the First Defendant, who would often shout and rail at him, and of angering her at all or further so he did not stand up to her. Ultimately, says the Claimant, he understood that the deceased was diagnosed with Alzheimer's disease and for the last few years quickly and steadily lost his mental faculties and deteriorated in health. The Claimant does not state the source of that understanding.
94. The Claimant says that "noticing his ill health and [the First Defendant's] bad intentions", the deceased tried to divorce her "soon after marriage in 2012". He says that that was when his relationship with the deceased really disintegrated as the First Defendant took complete control.
95. The Claimant says that he has no doubt that were it not for the combination of the deceased meeting the First Defendant and his failing mind and body, their strong father-son relationship would have survived and thrived and the deceased "would have kept his word" as to the Claimant's taking over the business.
96. The Claimant says that "certainly", the deceased would not have left Rogan and him out of his will altogether.
97. There are number of problems with that. First the Claimant's claim is a claim under the 1975 Act. It is not a claim based in proprietary estoppel. Nor is it a claim as to the invalidity of any will. Secondly, the deceased did meet the First Defendant.

98. The deceased's own evidence in his affidavit in FD04F00561 and the evidence of the First Defendant and Mr Lakin paint a different picture of the period from about 1995 to 2012. As also, in respect of the period to 2004, do the affidavits in FD04F00561 of Mr Grenfell and Mr Aspin.

99. In his affidavit of 14 September 2004, the deceased says, among other things:

99.1. In about late 1999 Mrs O'Herlihy told him that she was unhappy that she had no interest in property and asked him if he would consider buying her something. In that context he said that by then there were difficulties in his relationship with Mrs O'Herlihy and that he did not get on with her children.

99.2. When Mrs O'Herlihy and her children first began spending time with him at Saddlewood Manor, they would only stay for the weekend.

99.3. It was unfortunately true that he did not like Mrs O'Herlihy's children. He thought they were undisciplined, rude and spoilt. They resented any attempt by him to introduce routine and manners into their lives.

99.4. When they moved to Eastington in October 1997 (by which time the Claimant was 8 and his brother Rogan was 13) matters became worse.

99.5. He had hoped that in a larger house he would find the boys less intrusive. However, he had problems with them having many of their friends around and running and jumping about.

99.6. He says there was an occasion when he found several 6 foot lengths of plaster about 2-3 inches thick had fallen down from the ceiling of his study. He says his study was below the Claimant's bedroom and that he and his friends had been jumping off his bed onto the floor which had caused the ceiling below to collapse.

99.7. There were numerous other difficulties in his relationship with the Claimant and his brother.

99.8. Now (i.e. at the time of the affidavit in September 2004) that Rogan was 20, he had grown up to be a perfectly pleasant man.

99.9. The Claimant was now (i.e. at the time of the affidavit in September 2004) much quieter and calmer.

99.10. He could consider them as adults and did not bear them any ill-will.

99.11. He referred to an allegation by Mrs O'Herlihy that in 2000, 2001 and 2002 he refused to go on holiday with herself, Rogan and the Claimant. In that context he said that he had never gone on their family holidays because he did not

enjoy the company of Rogan and the Claimant. He said he went on one or two trips with Mrs O’Herlihy, Rogan and the Claimant in the early days of their relationship, but that was it.

99.12. By 2002 his relationship with Mrs O’Herlihy was clearly over.

99.13. In the summer of 2002 Rogan was taking his A-levels and whilst he “did not get on with” Rogan and the Claimant, he did not want to disrupt Rogan’s life at that important time, as he had no pressing need formally to end the relationship which he then believed to be to all intents and purposes over.

99.14. He was aware that Rogan’s education was very important and had maintained to Mrs O’Herlihy throughout their relationship that he would keep the children in private school.

99.15. He had made a will leaving Eastington to Mrs O’Herlihy (together with £3 million), and he believed that he had informed her of this after they had moved to Eastington Hall.

99.16. He had made such provision because he did not want Mrs O’Herlihy or her children to be made homeless if he died.

100. Mr Grenfell refers to an event in 1997, in which context he said that he knew that the deceased did not get on at all well with Mrs O’Herlihy’s children whom he regarded as overindulged and did not want any part of his property to fall into their hands. I comment that the Claimant was only aged 7 or 8 in 1997.

101. Mr Grenfell says that the deceased complained to him on a number of occasions of Rogan and the Claimant’s bad behaviour at his house, treating him and his money with some contempt; not bothering to look after things in the house or grounds, leaving all the lights on and being dismissive and insulting to him when he suggested that they might exercise more economy. However, this part of Mr Grenfell’s statement is unparticularised and again must refer to a period before Mr Grenfell’s affidavit was made on 31 August 2004 when the Claimant was 15 or younger.

102. Mr Aspin describes a dinner he had at a restaurant with the deceased in May 1996 at which they discussed the deceased’s future with Mrs O’Herlihy. He says that at that dinner the deceased said:

102.1. That he was confident that Mrs O’Herlihy was not seeking financial benefit from their relationship.

102.2. That he was going to help her educate her children, but that he had absolutely no intention of marrying her.

103. Mr Aspin says that he had many conversations with the deceased about what he says were the difficulties endured by the deceased in supporting Rogan and the Claimant and financing their education, whilst at the same time feeling very strongly that this help was not appreciated by them. This must relate to a period before Mr Aspin made his affidavit on 14 September 2004 when the Claimant was 15 or younger.
104. Mr Aspin says that he had met Rogan and the Claimant on a number of occasions and found their bad behaviour and rudeness towards the deceased was unforgivable, given the financial help he was providing to them. He says he recalls one particular occasion in late 1998 when the Claimant was appallingly rude to the deceased. I comment that the Claimant was only aged 9 or 10 at that time.
105. In an email to the Claimant's legal representative, Mr Klear, dated 26 November 2025 Mr Aspin says that he would like an opportunity to provide a witness statement "as of today", as whilst he considered his 2004 witness statement accurately reflected the relationship between Mrs O'Herlihy and her family with the deceased at that specific moment of time, it was not reflective of their continuing friendship in the later years of the deceased's life, and he thought it was important that the historic position was therefore updated.
106. The First Defendant says, amongst other things:
- 106.1. She first met the deceased in October 2006.
 - 106.2. Her general understanding from the deceased was that he did not consider the Claimant as a son or stepson or address him in that way, and that any relationship that existed was strained. The deceased told her that he would often lock himself in the library to avoid the Claimant when he was at Eastington Hall.
 - 106.3. After the deceased and she began their relationship, they had various interactions with the Claimant and his family. Occasionally these were pleasant. However very often they were unpleasant.
 - 106.4. The Claimant also begged the deceased to buy him presents for his birthday, to which the deceased acquiesced.
 - 106.5. The Claimant would invite friends around to the deceased's property for parties, at which the Claimant and his friends would 'trash' the property.
 - 106.6. In around 2011, the Claimant came to dinner with the deceased and the First Defendant at Eastington Hall at which the Claimant was incredibly rude to the First Defendant. The Claimant spent the whole evening goading and

provoking the First Defendant in response to everything she said or did. It made her feel extremely uncomfortable, especially in her own home. The deceased noticed this and asked the Claimant to leave. After this, the deceased chose to remove the Claimant from his life out of loyalty and respect for the First Defendant. It was entirely the deceased's decision to do this – the First Defendant did not require or even suggest that he should do it.

106.7. After all the parties at which the Claimant and his friends 'trashed' the deceased's property the deceased requested the keys back from the Claimant. This was entirely the deceased's decision and he made it without any prior discussion with the First Defendant.

107. In his statement dated 9 January 2025 Mr Lakin says:

107.1. He worked for the deceased as estate manager of Eastington Hall for 1997 until the deceased's death in 2019. Since then, he has continued to work for the First Defendant as the estate manager at Eastington Hall and the First Defendant's property at Dell Quay House.

107.2. He had a very good relationship with the deceased and spent a lot of time with him, especially when he was at Eastington Hall.

107.3. When the deceased arrived at Eastington Hall with Mrs O'Herlihy and her sons, Rogan and the Claimant, it quickly became apparent the deceased had very little interest in Rogan and the Claimant. For example, Eastington Hall is a rather large property, and the deceased's bedroom was at the furthest opposite side of the house to the boys' bedrooms. Furthermore, it wasn't long after the deceased and the O'Herlihys had arrived at Eastington Hall that Mr Taylor told him he would rather let Mrs O'Herlihy and the boys go on holiday alone as Mrs O'Herlihy had no control over the boys.

107.4. He and the deceased would spend lots of time in the garages talking about the cars and property. In all the time that the Claimant was living at Eastington Hall he never once saw him (the Claimant) in the car garages.

107.5. He never saw Mr Taylor give either boy a driving lesson, nor did he see him take the boys to play polo or go shooting, despite the fact the deceased often went shooting from Eastington Hall.

107.6. Mrs O'Herlihy often asked him and John Hodge (who came to work at Eastington Hall as a gardener for two days a week) to play football or cricket with the boys. However, the deceased did not like the boys playing sports on

- the lawns and when this happened the deceased apologised to John and him because he recognised that playing football or cricket with the boys was not their job, and he (Mr Lakin) would have preferred to have been working.
- 107.7. He remembers the Claimant's father, Gavan O'Herlihy, coming to Eastington Hall to take his sons out many times.
 - 107.8. Mrs O'Herlihy and the boys finally left Eastington Hall in around 2005.
 - 107.9. From that moment on, he never heard the deceased speak of the Claimant unless it was to complain. This happened mostly when Mrs O'Herlihy was trying to get money out of the deceased for herself or the Claimant. He cannot recall Rogan being mentioned. His understanding is that Rogan didn't harass the deceased for money.
 - 107.10. Throughout his time working for the deceased, he never heard the deceased mention the Claimant being in any way connected to his properties or business.
108. In his reply evidence, by his statement dated 24 January 2025 the Claimant says:
- 108.1. The deceased and he had a very close father-son relationship and Mr Lakin's claim that the deceased had little interest in him (or Rogan) is just wrong.
 - 108.2. The deceased taught him to drive in a grey Mini around the Eastington estate.
 - 108.3. He was extremely surprised Mr Lakin purported to have spent a lot of time in the garages and never to have seen him there: much of Mr Lakin's day at Eastington was a working day, which did not involve being in the car garages while he (the Claimant), of course, was very often at school. The deceased and the Claimant shared a great love of cars, especially his cars, and the Claimant spent a great time with the deceased in and around them.
 - 108.4. The relationship between the deceased and his mother did break down but his relationship with the deceased grew stronger as he grew older.
 - 108.5. He did not know of any occasion when he was rude to the First Defendant at Eastington and the deceased was disappointed or disapproving of him. There was a dinner at which the First Defendant and he had an argument engineered by her and the First Defendant screamed at him that "it was all for her girls now" – but on that occasion the deceased congratulated him afterwards for standing up for himself to the First Defendant. This may be the same dinner the First Defendant described in her statement. If it was, then the deceased had

unexpectedly called him (the Claimant) while he was en route asking him to delay his arrival by 2 hours without explanation.

- 108.6. Regardless of the breakdown in the relationship between the deceased and his mother and notwithstanding the family proceedings between them or his mother's requests of him, the deceased and he continued to be as close as ever, sharing their mutual interests; he supporting and encouraging the Claimant and his future with him. Their father-son bond was not damaged.
 - 108.7. Contrary to what the First Defendant says, he never asked for gifts from the deceased or expected them as of right – quite the contrary – but the deceased continued to be very generous to him, buying him his first car in 2006, a £5,000 watch for his 18th birthday in 2007 and an Audi S5 for his 21st birthday in 2010.
 - 108.8. At Christmas 2009, his mother, his brother, and he, together with his two cousins, spent Christmas with the deceased at Eastington.
 - 108.9. The father-son relationship between him and the deceased was undimmed by the deceased's separation from his mother.
 - 108.10. The deceased was a very successful, self-made businessman and in the family proceedings he was faced with a financial claim by the Claimant's mother. He has "no doubt that Hugh [the deceased] would have been prepared to say whatever would be necessary in order to defend as vigorously as possible that claim and so strike the best deal he could. That degree of calculation and positioning can be seen in" the deceased's letter to Mrs O'Herlihy of 27 April 2004, which was after she had issued her family proceedings.
 - 108.11. The deceased and his mother settled their dispute on generous terms to his mother, Rogan, and him, generous terms which the deceased, in fact, voluntarily exceeded.
 - 108.12. Whatever the deceased claimed after their separation to defend his mother's financial claim, before they separated and there were legal proceedings, the deceased and his mother considered themselves engaged and, regardless, it is absolutely untrue that the deceased did not consider or treat him as a son or stepson. That was "absolutely" their relationship, including the deceased at times finding a young him a little too boisterous and needing some peace.
109. The Claimant's witnesses whose statements were put in as part of his reply evidence support his case on the facts for the periods which they cover.

110. Gabriella Turello says:

110.1. She went to live as an au pair for Mrs O’Herlihy, Rogan and the Claimant in September 1995. It is unclear how long she lived with them, but the implication is that it was until about the end of December 1995.

110.2. At that time, it was early in the relationship of Mrs O’Herlihy and the deceased.

110.3. She remembers the deceased as a shy man who was very interested in Italy.

110.4. In 1997 she went to see Mrs O’Herlihy who had moved to Eastington and stayed at the house for a couple of weeks. She twice went to London where the deceased used to work until Thursday. They all had supper together, and the deceased then came back to Eastington for long weekends with the boys, especially the Claimant, because Rogan was at boarding school at that time. She saw the deceased and the Claimant together many times and it was clear to her that the deceased had taken the role of the Claimant’s absent father.

110.5. She “knew” (her word in her statement): that the deceased was very generous to the Claimant and showed him deep affection and “referred to him as Lonan did about Hugh [the deceased]: as a father and son relationship.” The deceased took the Claimant to many places and events as a father would and bought him “relevant expensive gifts”. She could say watches, expensive clothes and a sports car. She met “the family” at Rhydd Gardens but Mrs O’Herlihy and the deceased were not a couple any more at that time. Despite this, she “knew” (her word in her statement) that the Claimant continued to see the Deceased and they were very close, and that the Claimant continued to intend to follow in his steps.

110.6. She was particularly surprised during a visit to Rome together in 2013, when the Claimant was 23, that he was “doing fitness” and she wondered why he was no longer doing property with the deceased because she had understood in earlier years that they were working together, “and that was a known fact during many evolving discussions over the intervening years.”

111. Michelle Brocklebank says, among other things:

111.1. She was employed by the deceased as Housekeeper/Cook. She worked for him, Mrs O’Herlihy, Rogan and the Claimant at Saddlewood Manor. She did not continue to work for the deceased when her husband, Laurie, and she moved with the family to Eastington Hall, but Laurie did.

- 111.2. Her main recollection of the relationship between the deceased and the Claimant was when she would cook the boys' meals and especially at dinner times when she would cook for the boys first then prepare dinner for the deceased and Mrs O'Herlihy later. A particular favourite meal of the boys was sausages, mash, and baked beans, and the deceased would often arrive back from London on a Friday in time to spend time with the boys eating their dinner. On several occasions, she recalls the deceased sneaking a sausage off the Claimant's plate, ruffling his hair, both having fun banter about him eating one of his sausages and often a hug after: a reoccurring joke between the two. My comment is that this was when the Claimant was only some 5 – 7 years old, because the move to Eastington Hall was made in October 1997.
- 111.3. The deceased's attention was often focussed on the Claimant.
112. Robert Hargreaves says, among other things:
- 112.1. He has known the Claimant for 22 years. He first met the Claimant in his first year at Malvern College when they joined in 2002.
- 112.2. He recalls a number of specific events relating to the father-son relationship between the Claimant and the deceased and as to the deceased and the Claimant planning to go into business together.
- 112.3. In 2008, several old school friends got together in London to attend a Kanye West concert at the O2. At the time, he did not live in London. The deceased offered that he could stay in his house in South Kensington, along with a couple of the Claimant's other friends. Having returned late from the concert, they slept where they could. As the beds were taken, he curled up on a free sofa and wrapped a cosy blanket around himself. On waking up in the morning and joining the deceased, the Claimant, their other two friends, and the deceased's personal assistant for breakfast, the deceased asked him, pointedly, how he had slept and whether the blanket was cosy. He responded that he had slept well, to which the deceased said, "I should hope so, that was a £10,000 Persian rug you were sleeping under!" He was very good-natured about it and found the whole thing quite funny.
- 112.4. Another example of the deceased's good nature towards the Claimant was his offer to allow the Claimant and him (Mr Hargreaves) the option of borrowing one of his classic cars to partake in the 'Mille Miglia' – the classic car rally in Italy. When the deceased generously offered this, he was genuinely taken

aback. he thinks he was 19 at the time, and he certainly was not to be trusted with really any vehicle, let alone a priceless classic. The Claimant and he did not take the deceased up on the offer.

- 112.5. The deceased's and the Claimant's shared love of cars was further apparent when the deceased bought the Claimant an Audi S5 for his 21st birthday.
- 112.6. More generally, he remembers plenty of visits to Eastington. He with the Claimant was a regular visitor to the house between the years of 2002 and 2007.
- 112.7. He remembers when the deceased bought the Claimant his first car.
- 112.8. Whether it was going round for supper or spending afternoons in the summer on the trampoline in the garden, or terrifying school friends by turning off the lights in the main house when they had visited the bathroom, Eastington was always a great place to visit. The deceased was generally present on these visits and enjoyed their company.
- 112.9. Having left school, he remained in close contact with the Claimant.
- 112.10. He (Mr Hargreaves) was working one summer for a business based on Whiteladies Road in Bristol. The Claimant contacted him to let him know that he was going to be in Bristol working for his dad and learning the ropes of the property as that was where he told Mr Hargreaves he felt he would ultimately end up working – this tied in with his undergraduate degree in property as well. The office he was working in was also based on Whiteladies Road. During this time, he and the Claimant would meet up after work either on Whiteladies Road or near the flat the deceased had arranged and paid for the Claimant to stay in during the duration of his work experience.
- 112.11. After Mrs O'Herlihy and the deceased were no longer together, the Claimant and the deceased maintained a close relationship. He and the Claimant continued to visit Eastington even after Mrs O'Herlihy had moved into her own house.
- 112.12. In 2013, his family acquired their own property in Chelsea. When he mentioned this to the Claimant, the Claimant said that he was due to inherit the property they had stayed at back in 2008, courtesy of the deceased, nearby in South Kensington.
- 112.13. In the final paragraph of his statement:

“I know Lonan’s and Hugh’s relationship was incredibly strong. Hugh was clearly a wealthy man but his affection for Lonan was shown in so many other ways than purely through money. His help with Lonan’s direction in business, their general playfulness and comfort in each other’s presence around the dinner table, and his interest in Lonan’s schooling, his school friends and his sporting endeavours al [sic] pointed to a relationship not just between a man and his wife’s son but more akin to that of a father and son.”

113. Laurie Brocklebank says, among other things:

- 113.1. He is a gardener. He worked for the deceased from 1995. First at Saddlewood Manor and then at Eastington Hall through to November 2004.
- 113.2. He worked principally in the position of gardener but he would often be pulled to do other things, including school runs, errands, dog-walking, or playing football with the Claimant and Rogan.
- 113.3. It was a lovely time with the family and everyone seemed very happy.
- 113.4. It was particularly apparent how close the Claimant and the deceased were. If there was ever a time you could not find one of them, Eastington being a very large property, it was safe to assume they were with each other.
- 113.5. The deceased and the Claimant had a connection through cars from a young age that he first witnessed at Saddlewood where the deceased would spend time with the Claimant.
- 113.6. As he was leaving Eastington there was talk of the Claimant choosing subjects the deceased recommended to help with a life in property.
- 113.7. That there was one Christmas when the deceased asked him to dress up as Father Christmas for the Claimant. The deceased found the whole thing hilarious and went over and above to make sure the day was special for the Claimant.

114. Rosalie Dawes says, among other things:

- 114.1. The deceased was a friend who she had known for many years.
- 114.2. She first met Mrs O’Herlihy with the deceased at her (Ms Dawes’s) home on a social visit. She subsequently met the Claimant and Rogan at Eastington Hall when they were aged about 8 and 12.
- 114.3. The deceased, Mrs O’Herlihy, Rogan and the Claimant were a family unit for several years including all their public school education at Malvern College. The deceased paid for all of Rogan’s and the Claimant’s education at The Elms and Malvern College.

- 114.4. The Claimant and Rogan were boarders, so she saw little of them in term time, seeing them only in the holidays at Eastington. They had an activity room off the Great Hall so they could be close to the swimming pool.
- 114.5. The deceased seemed to be close to the Claimant. They would see each other at Eastington Hall and in London after he left school.
- 114.6. At one time there was talk of the Claimant joining the deceased in his business.
- 114.7. She was at The Rhydd (Mrs O’Herlihy’s next home after Eastington Hall) when the Claimant came in upset that he had visited Eastington and was not allowed to see the deceased. That must have been in about 2012 but dates are difficult after so long.
- 114.8. Her husband was telephoned several times asking him to make a model of one of the deceased’s racing cars. Eventually, she and her husband were able to go and see the deceased at Eastington. It was a shock. He had always been so beautifully turned out, but this time he had long straggly hair and was shabby. He mentioned nothing about a model and wanted just to take them into his house and show them all his new purchases of pictures and furniture. He was not the man we knew all those years. It was a very strange experience. To the best of her recollection that visit was in 2012/2013.
115. The Claimant’s written evidence was in some respects misleading, albeit not strictly untrue.
116. In his statement dated 11 October 2024 the Claimant said that he did not learn about the deceased’s death “until some time after the event.” A very similar phrase was also used in Sinclair Gibson’s letter to Wilmot & Co dated 11 December 2020 where they wrote that the Claimant had only discovered that the deceased had died “sometime after his death”.
117. By an email from the 1st Defendant’s solicitor dated 17 December 2024 and a consent order dated 19 December 2024, the Claimant was required to confirm as near as possible the date on which he learnt about the deceased’s death.
118. In his statement dated 20 December 2024 the Claimant said that he learned of the deceased’s death on 6 June 2019 “through a third party”.
119. The deceased died on 2 June 2019, so the “some time after” referred to in the Claimant’s statement was only a period of 4 days.

120. Mr Wilson cross-examined the Claimant about this. He put to the Claimant that his intention in using the words “some time” was to indicate that there was a significant period of time between the deceased’s death and his learning of it.
121. The Claimant’s first answer was that he remembered saying “some time” because he had no exact date of when he first found out. Mr Wilson suggested that four days was not “some time”. The Claimant repeated that he remembered thinking that it was some time after, but he did not remember the detail. He said he remembered not knowing straight away, but that it was before the funeral. Mr Wilson suggested that 4 days was not “some time”. The Claimant said in effect that if a father dies, only finding out 4 days later would surprise some.
122. Mr Wilson continued to press the point. He reminded the Claimant that he knew the date by the time he made his witness statement on 20 December 2024 and put to him that if he knew the date, he could have said it. The Claimant’s initial response to this was that it took him some time to think. He said the first time he said it he did not realise the actual date of finding out would be too important. He said it was after death and before the funeral, which to him was some time.
123. The context in which “some time” was used was in explaining the Claimant’s delay in making the claim. The delay was of the order of 4 to 5 years. In that context, I consider that the average reader would consider that the use of “some time” indicated a significant period of time and certainly more than 4 days; that is how I read the relevant passage in the Claimant’s statement of 11 October 2024 the first time I read it. Further, when taken together with the next point and what in my view were somewhat evasive answers to Mr Wilson’s questioning on the point, I consider that it was the Claimant’s intention in using those words to indicate a significant period of time, certainly more than 4 days.
124. That next point was the use by the Claimant of the words “through a third party”
125. Mr Wilson put to the Claimant that that was a slightly odd way to describe his mother. The Claimant’s response was that “Rosalie” (who I understand to have been Mrs Dawes) told his mother who told him. So, said the Claimant, a third party was the one that told the family, not the First Defendant which you’d expect to have told them. I am far from convinced that one would expect that, but be that as it may, the words “through a third party” convey the meaning that there was some sort of formal process; when the Claimant could quite simply have said, if he needed to say anything at all on the subject, and as he did in the witness box, that he heard of the deceased’s death from his mother who had been told by a friend, Rosalie Dawes.

126. Broadly in respect of the last two points, I consider that the Claimant or whoever drafted his statement was trying to be too clever by half. The statement although strictly true was intended to give the false impression that there were more than a few days between the deceased's death and the Claimant finding out about it and that then he only found out about it because a third party chose to tell him. Given the long period after the deceased's death before the claim was started, whether the Claimant found out about the deceased's death 4 days, 4 weeks or 4 months after it occurred is of very little relevance; what the giving of the false impression does do though is to mean that statements made by the Claimant which may be open to more than one interpretation have to be regarded with some circumspection in case their less obvious but literally true meaning is their true meaning.
127. In his statement dated 11 October 2024 the Claimant said that he did not learn that a grant of probate had been made at all "until some time thereafter."
128. Mr Wilson put to the Claimant that he was trying to suggest that it was a long period of time after the grant of probate that he learnt of it. There was some cross-examination about exactly when the Claimant obtained a copy of the Grant. The Claimant explained that he did not know how to find "it". He went on to explain that he remembered thinking "After death, what happens now?" So he Googled it. He thought he had to apply for it or something, and then he found out about it, he believed around early December or late November. On Mr Wilson saying to him that the grant of probate was in November the Claimant adjusted his answer to early December.
129. After a fair amount more cross-examination on related points, Mr Wilson took the Claimant to (i) a statement in a letter from Farrer & Co to Macfarlanes dated 23 December 2022 which stated that the Claimant became aware of the deceased's will in December 2019 and (ii) to one of his bank statements which showed a payment out of £1.50 to a HMTCS Gov UK reference on 21 November 2019 which Mr Wilson suggested indicated the date on which the Claimant paid for a copy of the will. The Claimant then disagreed with Mr Wilson's suggesting that that meant that he obtained a copy of the will by downloading it on 21 November 2019 when he paid for it. The Claimant said he had to wait for it to be sent to him; he said he had to keep searching for it and it never appeared, so the end of November or early December made sense to him.
130. I consider that line of cross-examination was inconclusive as to whether the Claimant first obtained a copy of the will on 21 November, later in November or in early December 2019. Further, even if it was 21 November, the "some time" point does not have the same

force here as it does in relation to what was said about finding out about the deceased's death. That is because by the time of the Claimant's statement, Farrer & Co had already written to Macfarlanes specifying December 2019 as the time when the Claimant became aware of the terms of the will and that it had, on 1 November 2019, been admitted to probate.

131. A more serious point arises in relation to the Claimant's statement, in his statement dated 20 December 2024, where he said that his friend Robert Hargreaves had loaned him £10,000.00 for counsel's fees. The Claimant said he was currently repaying this at £249.00 per month, which he did by providing Mr Hargreaves with his health programming. The balance outstanding on 20 December 2024 was £8,506.00.

132. In relation to this, the Claimant's bank statements show:

132.1. 9 October 2024: £10,000 received from Mr Hargreaves at a time when the balance was £11.78.

132.2. 14 October 2024: £3,000 paid out to Mr Baxter, who was the Claimant's counsel before Mr Jeffery.

132.3. By 1 November 2014 the balance had reduced to £326.62. Except for Mr Baxter's £3,000, all of the payments out between 9 October 2024 and 1 November 2024 are identified in a way which indicates otherwise than that they were payments to or for the benefit of counsel.

133. Thus, £7,000 of the loan for counsel's fees appeared not have been used to pay counsel's fees. In cross-examination the Claimant appeared to accept this, saying that the intention had been to use the £10,000 for counsel's fees.

134. The clear implication from the statement that £10,000 was loaned to the Claimant for counsel's fees was that the £10,000 was spent on counsel's fees. It was not. Only £3,000 of it was. If indeed Mr Hargreaves loaned the £10,000 for counsel's fees, it might be possible to justify the Claimant's statement as being literally true; but such literal truth is not how the statement would ordinarily be read. The Claimant did not say: Mr Hargreaves loaned me £10,000 for counsel's fees, but I spent £7,000 of it on court fees, and on my business and living expenses or anything similar. I consider that it was an attempt to mislead the Defendants and the court into thinking that the Claimant had spent more on his legal costs than he had done. The Claimant's legal costs and his ability or otherwise to pay them were relied upon by the Claimant as relevant factors in considering the reasons for his delay in starting the proceedings, and in assessing the strength or

otherwise of his substantive claim. Hence the misleading statement about these is more significant than the “some time” after the death point.

135. In his statement dated 24 January 2025, in dealing with what the deceased had said in his affidavit of 2004 in FD04F00561, the Claimant said:

“I have no doubt that Hugh would have been prepared to say whatever would be necessary in order to defend as vigorously as possible that claim and so strike the best deal he could. That degree of calculation and positioning can be seen in Hugh’s letter to my mother of 27 April 2004 exhibited by the First Defendant (pages 1 to 2 of JMT1), which she accepts was after my mother had issued her family proceedings.”

136. Mr Wilson cross-examined the Claimant as to whether that meant he was saying that the deceased would lie to the court. The Claimant initially avoided giving a straight answer to that question by saying that the deceased was a businessman who would try to make the best deal. He then said that the deceased would “not lie outright” to get the best deal. The concept of a lie which is not outright does not square with an obligation to tell the whole truth. However, the distinction between (i) a lie or a failure to tell the whole truth and (ii) an “outright lie” appears to be a concept which the Claimant endorsed.

137. In a letter dated 21 December 2020 from Sinclair Gibson to Macfarlanes it was said that the Claimant had “no relationship with his own father”. In Farrer & Co’s letter dated 2 December 2022 they said that the Claimant had received no maintenance or capital amounts from his biological father. In cross-examination the Claimant said that he had not had financial help from his father except when his grandmother died, when his father gave him some money.

138. Mr Wilson took the Claimant to his bank statements. These showed payments from the Claimant’s father into the Claimant’s account of £10,000 on 24 September 2019 and another £10,000 on 25 September 2019. They also showed a payment in from the Claimant’s father of £4,800 on 5 May 2020. In cross-examination the Claimant said that all those payments were not asked for by him, but represented an inheritance from his grandmother. The bank statements indicate that the payments were made by the Claimant’s father. The Claimant was not cross-examined as to whether they were gifts from his father or gifts or legacies from his grandmother to him which his father was paid and paid on to him. I give the Claimant the benefit of any doubt on that and proceed on the footing that they were gifts or legacies from his grandmother to him.

139. Mr Wilson took the Claimant to some screen or snap shots of a website under the name or address of “Lonanfit”. The First Defendant had exhibited these to her statement of 10 January 2025. In his statement of 24 January 2025 the Claimant said:

“I created this as a joke with my friends. My friends and I were discussing another friend of ours who had set up a real online shop. As a joke, I used an available ‘shop’ function of my businesses website to mock-up a shop selling ridiculously overpriced goods that lauded the sort of oblivious, ‘trust fund’, privileged lifestyle that is lived by some people my friends and I do know. It is obvious this is not a commercial Lonan Fit enterprise because none of the (quite badly) photoshopped ‘goods’ bear any Lonan Fit name or branding at all. None of it ever existed or was for sale.”

140. Mr Wilson took the Claimant to his bank statements for May and June 2021 which showed payments out to Shopify of the Sterling equivalent of US\$25 on 17 May and 16 June 2021. The Claimant said he archived the website, then after 3 years he remembered it and took it off. This line of questioning did not get anywhere in terms of possibly showing that the Claimant had sources of income which he had not disclosed. However, the Claimant’s approach to the effect that it was fine to create misleading websites or place misleading posts, albeit as a “joke” does, in my view, indicate a willingness to tell untruths.

141. On 16 June 2025 the Claimant made a disclosure statement. In this he said among other things, that he understood that it was his duty to the court to provide a fair and accurate account of the documents in his control which were relevant to the issues in the proceedings. The statement included a list of bank and credit card statements. That list did not include statements for a United States Chase account, in respect of which an Instagram Snapshot for 25 May 2025 showed a debit card. In cross-examination the Claimant said that that was a very new account which he might have missed when making his disclosure statement. The account was only created some 3 weeks before the Claimant made his statement of 16 June 2025 and it is quite possible that early drafts of the statement might not have included a reference to it simply because they were made at a time when it did not exist. I accept the Claimant’s evidence that he overlooked the account when he came to make the statement; but such overlooking undermines to some extent the reliability of the Claimant’s statements which are not corroborated by documents or other witnesses or which fit in with the general chronology.

142. When giving his oral evidence the Claimant explained that he had some hearing difficulties, but when Mr Wilson, who was cross-examining him, spoke up the Claimant said he was fine with hearing him and did not need the hearing assistance system which was offered to him by the court usher. That hearing difficulty coupled with the way in which the trial bundles were organised caused there to be significant delays and confusion in respect of the preparation for and answers to some of Mr Wilson’s questions. The

Claimant was polite and superficially appeared to be helpful. However, on many occasions he did not give a clear positive or negative response to questions which Mr Wilson was putting to him, but rather gave an explanation or answer which sometimes bore on the question being put, but which did not answer the question Mr Wilson was putting.

143. Mr Wilson submitted that I should find the Claimant to be a dishonest and unreliable witness. Mr Jeffery submitted the opposite.
144. Overall, and having regard in particular to the examples given above I did not find the Claimant to be a very convincing witness. I consider that his approach was to treat it as part of business or negotiation to make a statement which was literally true, even if it was in fact misleading. I consider that approach fed across into his written and oral evidence. Coupled with the “overlooking” point, where the Claimant’s evidence was not corroborated by documents or by other witnesses or was consistent with the context of the matters to which it referred, I have serious doubts as to its reliability.
145. In terms of the Claimant’s disputed and non-corroborated evidence on the facts which were relevant to the issues before me the only really significant disputes were on the following:
 - 145.1. Whether he did not know that about the possibility of making a claim under the 1975 Act until he instructed Farrer & Co in the summer of 2022. In particular whether Sinclair Gibson had failed to advise him about that possibility during the period of their instruction which was about two months around December 2020 to January 2021.
 - 145.2. Whether all of Sinclair Gibson, Farrer & Co and HCR had failed to advise the Claimant as to the possibility of funding a claim under the 1975 Act by way of a Conditional fee Agreement (a “CFA”).
146. Mr Wilson submitted that I should infer from the Claimant’s refusal to permit Sinclair Gibson, Farrer & Co and HCR to disclose whether or not they had advised the Claimant in respect of those matters, that, in contradiction of the Claimant’s evidence, they had so advised.
147. When pressed on that by Mr Wilson in cross-examination, the Claimant said that he had not done so because the First Defendant was refusing to permit the disclosure of earlier wills of the deceased. That sort of tit for tat approach may be contrary to the parties’ duty to assist the court to further the overriding objective, but is understandable at a personal level in the light of the hostility which existed between the Claimant and the

First Defendant. More substantially, given the confidentiality which the Claimant's former lawyers were maintaining and the privilege which Myddletons maintained applied in respect of the advice, I consider that the inference which Mr Wilson asked me to make is weakened because:

147.1. Although on the one hand:

147.1.1. If the advice was not given on the subject, what could be easier than for the Claimant to ask the solicitors concerned to confirm that it was not given?

147.1.2. If the advice was given on the subject, but the Claimant had also been advised that he did not have to consent to his former solicitors revealing anything, that may have given the Claimant confidence to tell lies about his non-receipt of the advice.

147.2. On the other hand, there could well have been a concern in the Claimant or on his behalf that if the fact of the giving or not giving of the advice was disclosed, that could open the door to wider disclosure of the advice which the Claimant had received.

148. I did not rule on whether or the extent to which privilege in the advice given, or not given by Sinclair Gibson, Farrer & Co and HCR had been waived before the Claimant was cross-examined. I was given a written submission on the subject by Mr Wilson and Mr Martin; Mr Jeffery in his skeleton maintained that the advice was privileged. Both Mr Wilson and Mr Jeffery made submissions on the subject before the Claimant was cross-examined.

149. Mr Jeffery drew my attention to the categories or levels of waiver described by Anthony Mann J in *USP Strategies PLC v London General Holdings Limited* [2004] EWHC 373 (Ch) at para.8. Those were:

Level 1 – this was a reference which merely referred to the fact of getting solicitors advice, without indicating the instructions, advice or even the subject matter.

Level 2 – these were indications that advice had been obtained from solicitors, and indicating its subject matter but not its content or the instructions given.

Level 3 – written advice, or written instructions, or paraphrases, summaries or extracts from that advice.

150. In their written submissions on the subject, Mr Wilson and Mr Martin submitted that the Claimant could not claim legal professional privilege in respect of Level 2 material; but did not go further and submit that there was waiver of Level 3 material.

151. Mr Jeffery was content that questions could be asked about Level 2 material, but was insistent that any questions asked in cross-examination should not risk extending to Level 3 material.

152. On the facts of the *USP* case Anthony Mann J said at para.27:

“It follows from the above that, subject to waiver, communications by the Defendants to Powerhouse which contain or refer to the content of legal advice are capable of being privileged. This includes Level 3 communications. Whether or not it includes Level 1 and Level 2 communications I do not have to decide, because on any footing there has been a waiver of such privilege as might otherwise have existed in those references.”

153. Similarly in the present case: insofar as the Claimant has referred in his statements to what he was or was not advised, he has only done so to Level 2, and insofar as he has done so he has, to the Level 2 extent, waived such privilege as might otherwise have existed on the question of whether or not advice was given on a particular subject.

154. Prior to the cross-examination of the Claimant, the position was left that Mr Wilson would need to restrict his cross-examination on the subject of the advice given or not given to what was within the scope of any waiver, but that the question of where the boundary lay would be ruled upon by me in the event that Mr Jeffery submitted that any particular question risked straying across the boundary.

155. Neither Mr Wilson nor Mr Jeffery asked for an adjournment so that the Level 2 material (if any) and, if necessary, suitably redacted, could be produced.

156. In the event Mr Wilson restricted his cross-examination to questions at Level 2. Mr Wilson’s questions and the Claimant’s answers on the issue of whether or not Sinclair Gibson advised as to the possibility of a 1975 Act claim, as set out in the transcript, were as follows:

Q. You say you instructed Sinclair Gibson, 10 December, and you say you were not advised that you could make a claim under the Inheritance Act. Correct? That's your evidence.

A. I'm on page 32. What number?

Q. Paragraph 8. First few lines.

A. Yes.

Q. Now, you've been in court, I think, when we've been discussing the correspondence that's been sent to Farrer - not to Farrer - to Sinclair Gibson, about this matter. You said

they didn't advise you on this matter. Macfarlanes wrote asking them to say whether that was true or not. You're aware of that?

A. Yes.

Q. They said they wouldn't give an answer without your consent.

A. Okay.

Q. You're aware of that?

A. Yes.

Q. You have refused to give your consent to that?

A. Yes.

Q. Isn't the reason why you have refused to give that consent, that you know they won't back up your story, because they did advise you on the 1975 Act?

A. No, I've given my statements, and I believe that to be the truth.

Q. I suggest to you that it's clear you've given your statements, I'm just suggesting to you that they're not true. If they had been true, you'd be perfectly happy to Sinclair Gibson to give what would be confirmation of what you've said in evidence.

A. I've given my statements; they are the truth. It doesn't need backing up. But also, if Jenny was willing to waive legal privilege, then that'll be a whole 'nother story. This is my, this the truth.

Q. It's not. It's not a tit for tat measure, Mr O'Herlihy. You are the one who is seeking to rely on the legal advice, or lack of legal advice, you say was given by your solicitors. It's there in black and white, at paragraph 8.

A. Yeah.

Q. You say I had these solicitors. I think the court will take notice, judicial notice, they are an experienced firm in this field, of wills.

A. Yes.

Q. And in 1975 Act claims. And, you are asking this court to believe that they gave no advice about even the possibility of a 1975 Act claim. That's your case, isn't it?

A. Yes. I'm sure if they had, I would have said, yes.

Q. You are the one who is relying on that lack of advice, and won't allow us to verify it with you?

A. Yes.

Q. And I've already suggested to you, we know why that is. It's because they won't confirm your story.

A. No, I. (Pause).

Mr Wilson then moved on to a different subject.

157. If the Claimant did lie when he said that he had not received advice from Sinclair Gibson in relation to a 1975 Act claim that would, on his approach to the truth outlined above, be an outright lie and be beyond what he appeared to me to consider, albeit wrongly, to be acceptable.

158. In relation to the giving of advice by Sinclair Gibson in relation to the possibility of a 1975 Act claim, I bear in mind (i) my concerns set out above as to the reliability of the Claimant's uncorroborated evidence; (ii) that Sinclair Gibson "only" charged £1,800 for the work done by them for the Claimant; (iii) that although their letter dated 21 December 2020 contains many of the factual allegations relevant to a claim under the 1975 Act which were repeated in the later correspondence and in the Claimant's evidence, their letter did not in fact mention a possible 1975 Act claim, only a possible lack of testamentary capacity; and (iv) that a competent solicitor asked to advise about a possible probate claim and presented with the facts alleged in Sinclair Gibson's letter to BCLP dated 20 December 2020 would be likely at least to have thought about the possibility of a 1975 Act claim and to have mentioned it to their client, even if only to dismiss it. I do not go as far as Mr Wilson submitted I should, and hold that it would have been Sinclair Gibson's duty to advise about a possible 1975 Act claim in those circumstances. Whether or not they were under such a duty would depend primarily upon what their instructions were.

159. Overall, after careful consideration of the above factors, I consider on the balance of probabilities that the Claimant was not advised by Sinclair Gibson about the possibility of a 1975 Act claim.

160. As regards Sinclair Gibson, Farrer & Co and HCR all failing to advise about the possibility of funding a 1975 Act claim by way of an CFA or otherwise:

160.1. A solicitor is generally obliged to discuss with the client how his litigation is to be funded. It would be surprising if Farrer & Co and HCR failed to do that, particularly given that their letters dated 2 December 2022 and 26 June 2023 respectively both made statements to the effect that the Claimant was impecunious.

- 160.2. In his statement dated 20 December 2024 the Claimant says he was not advised by Sinclair Gibson that he could make a claim the 1975 Act. He says that “as such,” he was not made aware of any applicable time limits. He says he was also not informed of any alternative funding arrangements (such as conditional fee arrangements or third-party funding) in relation to bringing a possible claim under the Act. Thus, the question of whether Sinclair Gibson discussed possible alternative funding arrangements for a 1975 Act claim falls away with my conclusion that they did not advise about a possible 1975 Act claim.
- 160.3. In relation to Farrer & Co the Claimant says in his statement dated 20 December 2024 that he “was not advised of alternative funding arrangements for bringing a claim under the Act.” In relation to HCR he says “I was also not advised of alternative funding arrangements for bringing a claim under the Act”. He says he was not aware until he met his current representative in the summer of 2024 of the possibility of being represented under a CFA for bringing a claim under the Act.
- 160.4. In cross-examination of the Claimant Mr Wilson asked him whether his evidence was that Farrers didn’t advise him of any ability to use a conditional fee agreement or any other sort of alternative source of funding. The Claimant’s response was a slightly cautious: “not to my knowledge, no.”
- 160.5. Mr Wilson also asked about the possibility of applying for an interim order under s.5 of the Act. The relevant parts of the transcript read as follows:

Q. On this question of finances, you say that Farrer didn't advise you of any ability to use a conditional fee agreement or any other sort of alternative source of funding. That's your evidence.

A. Not to my knowledge, no.

Q. No. Again, Macfarlanes have asked to be able to ask Farrer to confirm that they didn't give you that advice --

A. Okay.

Q. -- and you've refused to allow them to do so, haven't you?

A. Yes.

Q. And I suggest to you that that is because you know full well that they did advise you that, and you know that they will not confirm what you say in evidence?

A. No, I don't believe that to be true. I've given my statements and they were the truth. If I was -- if anyone ever offered me a CFA, I would have taken it. It's quite obvious.

Q. We'll come on to what you did after that, but are you aware under the 1975 Act that you can make an application for interim relief, under section 5 of the act?

A. No, I don't -- not to my knowledge, no.

Q. So that's something else Farrer didn't advise you on. Is that what you're saying?

A. No, I don't know what that is. I think. I might have to be reminded, but no, I'm not sure on that one.

- 160.6. In relation to HCR when it was put to the Claimant that there was no good reason why HCR could not have issued the claim, the Claimant's answer was that he could not afford to do so.
161. In the light of the above, and in particular the Claimant's approach to the acceptability of a lie which in his view was not an "outright" lie; the background of the solicitors' duties to discuss funding; the drawing to Farrer & Co's attention of questions as to funding in Macfarlanes letters of 17 January 2023 and 18 February 2023; and the Claimant's less than absolute responses in cross-examination to the questions about whether his evidence was that Farrer & Co did not advise the Claimant of any ability to use a conditional fee agreement to fund a claim under the 1975 Act and about the possibility of an interim order under s.5, I consider that Farrer & Co probably did mention the possibility of alternative funding arrangements to the Claimant. Possibly they did so in vague or general terms without specific examples or offers so as seriously to impinge on the Claimant's consciousness, beliefs or conscience in saying what he did about it in his statements.
162. The Claimant was not asked about that and whether that was the case I cannot determine because that would cross the line from Level 2 to Level 3 (as per Anthony Mann J's categorisation above), albeit that his answer recorded above that if anyone ever offered him a CFA, he would have taken it, at least hints that that might have been the case.
163. The Claimant was not cross-examined about whether HCR mentioned the possibility of alternative funding; but if, as I have held, Farrer & Co did; the Claimant would have known of the possibility at the time when he instructed HCR.

The Berger considerations:

(1) What is the right and proper way to exercise the discretion?

164. I will deal with this after considering the other considerations.

(2) Has the Claimant shown sufficient grounds for the granting of permission to apply out of time?

165. I will deal with this after considering the other considerations.

(3) Did the Claimant act promptly and what were the circumstances in which he applied for an extension of time after the expiry of the time limit?

166. The short answer is that the Claimant did not act promptly after the expiration of the s.4 time limit on 1 May 2020. He did not act promptly after he became aware of the possibility of his making a claim under the 1975 Act when he instructed Farrer & Co in the summer of 2022. Nor did he act promptly even after his Part 8 Claim form had been issued on 14 October 2024 and his statement in support of it made on 11 October 2024. It was not until about 22 November 2024 that the Claim Form and evidence in support were served.

167. For the approximately two year period from 1 May 2020 down to his instruction of Farrer & Co in the summer of 2022, the Claimant relies upon his not having known about the possibility of his making a claim under the 1975 Act. I have accepted that as a matter of fact. Lack of knowledge of the ability to make a claim under the 1975 Act during that period is of material weight when considering that period in isolation. However, it cannot be considered in isolation and weighs to some extent with me when looking at the overall delay and the reasons for it. Once the possibility of a claim and the expiration of the s.4 time limit were realised in early summer 2022, then given the delay which by then already existed, it behove the Claimant and his advisers to act promptly.

168. They did not do so. Farrer & Co were first instructed on 30 May 2022. It took 6 months until 2 December 2022 for Farrer & Co to prepare and send their letter of that date, setting out the claim as a formal letter of claim. That was notwithstanding that many of the background facts, particularly those going to the question of whether the Claimant had been treated as a child of the family by the deceased, had already been set out by Sinclair Gibson in their letter of 21 December 2020.

169. That period of delay by the Claimant (i.e. the 6 month period from 30 May 2022 to 2 December 2022) cannot be explained by an inability to pay Farrer & Co's fees for producing and sending the letter of 2 December 2022. The Claimant's bank statements show that the only payment which he made to Farrer & Co before 2 December 2022 was £4,513.50 on 16 August 2022. He then paid them £5,000 on 18 December 2022; £5,000 on 8 January 2023 and £6,800 on 13 January 2023. After he had ceased to instruct them, he paid them £17,500 on 7 May 2023 and £4,500 on 25 May 2023.

170. Farrer & Co continued to act for the Claimant from 2 December 2022 until about 8 February 2023 when they sent the letter of that date to Macfarlanes saying among other things, that they were still in the process of taking instructions. Having regard to the Christmas and New Year period, in circumstances where Farrer & Co were requiring more payments and instructions and the Claimant was short of funds, that 2 month period of delay is understandable but, having regard to what at that time was the overall delay of some 2 $\frac{3}{4}$ years since the s.4 time limit expired, is still not wholly excusable.
171. The correspondence from Farrer & Co ceased with their letter of 8 February 2023 with no explanation to Macfarlanes. From the Defendants' perspective no attempt to progress the claim appeared to be being made until HCR sent their letter of 26 June 2023. A delay of some 4 $\frac{1}{2}$ months.
172. The Claimant said in his statement dated 11 October 2024 that by the time of Macfarlanes' letter dated 23 December 2022 he had exhausted the funds he had available to pursue his claim through Farrer & Co. He then said that in mid-2023 he "had accrued some funds to instruct new, less costly solicitors", HCR.
173. The Claimant's bank statements show that he started to pay HCR in February 2023. He paid HCR £1,500 on 21 February 2023; £324 on 22 February 2023; £1,500 on 10 March 2023; £712.80 on 28 March 2023; £1,500 on 8 April 2023; £4,023 on 16 June 2023 and £1,551 on 24 July 2023.
174. Mr Wilson put to the Claimant that with the payments to HCR starting in February 2023 it was untrue and misleading to say, as he did in his statement dated 11 October 2024 that he had only accrued funds to instruct HCR in mid-2023. I agree that in that context the statement was misleading, but as from 20 December 2024 the sting was removed by the Claimant's statement dated 20 December 2024 where he said that he instructed HCR on 20 January 2023.
175. It was apparent from the cross-examination of the Claimant that the early part of HCR's retainer was spent trying to deal with the costs which Farrer & Co were claiming. That would fit with a hypothesis that Farrer & Co insisted on their lien over the documents held by them pending payment of their fees and the times when the payments were made by the Claimant to Farrer & Co in 2023, so that it was only after Farrer & Co had been paid their last payment on 25 May 2023 that HCR could turn to substantive work for the Claimant.
176. In those circumstances as a matter of substance, having decided that he could not afford to continue to instruct Farrer & Co in around early February 2023, the delay in

dealing with the Claimant's substantive claim until Farrer & Co had been paid their last payment on 25 May 2023 was understandable. However, understandable though it was, that delay was because the Claimant had chosen to instruct Farrer & Co. That choice was the Claimant's decision and it led to delay because he could not afford to continue to pay them.

177. When HCR became involved, their work was far from restricted to continuing from where Farrer & Co had left off in preparing a claim under the 1975 Act but, as is apparent from HCR's letter dated 26 June 2023, extended, among other things, to a possible claim in proprietary estoppel, a critique of the first Defendant and the making of an offer to cover all the claims which the Claimant might have. I consider that to be of some significance in considering delay in bringing the 1975 Act claim because, despite having solicitors acting for him, the Claimant chose to dilute his approach by doing and paying for things which were not relevant or were not of significant relevance to his 1975 Act claim.

178. After Macfarlanes' firm response to HCR dated 26 July 2023, the Claimant said in his statement dated 11 October 2024:

“Unfortunately, I had again exhausted the funds I had available to pursue my claim. Particularly in light of the First Defendant's response, through Macfarlanes, to my intimated claim – which was entirely dismissive of it having any merit and threatened to fight it aggressively and pursue costs orders against me (rather than seek to negotiate or engage in any form of alternative dispute resolution) – I was not in a position financially or otherwise to pursue my claim.”

179. I consider that the statement that he had again exhausted the funds available to pursue his claim is somewhat misleading. It implies that the Claimant had the funds to pursue his claim under the 1975 Act before he instructed HCR. However, after Farrer & Co had been paid off on 25 May 2023, the Claimant only paid £5,574 to HCR which must have covered the preparation and sending of the 26 June 2023 letter and perhaps some further advice after that, but would have been nothing like sufficient to enable the claim to be pursued as a privately funded claim. Effectively after instructing HCR and their receiving Macfarlanes' response dated 26 July 2023, the Claimant was back to where he was before he instructed HCR, but £5,574 out of pocket.

180. Moving on, so far as the claim was concerned:

- 180.1. From the Defendants' perspective there was silence after Macfarlanes' letter of 26 July 2023 for about 1 ¼ years until Mr Klear's email of 11 November 2024 was sent to BCLP.
- 180.2. From the Claimant's perspective, the CFA must have been arranged and agreed; insofar as not done previously, the Claim Form must have been prepared for its issue on 14 October 2024 and issue; the Claimant's statement dated 11 October 2024 and its exhibits must have been prepared and made; and the Claim Form and the evidence support must have been served.
181. Of this period, the Claimant says in his statement dated 11 October 2024:
- “Fortunately, my now legal representative, Najinder Klear of Myddletons, and I have a mutual friend who, being aware of my position, put us in touch with each other this summer. Najinder agreed to represent me on a Conditional Fee Arrangement as I would not otherwise be able to bring the litigation. Najinder recognised that I had a claim under the 1975 Act but that I had run out of time to bring it as of right and instead would require the Court's permission. Accordingly, Najinder instructed counsel on my behalf to assist with the preparation of this application.”
182. It is unclear when, after meeting Mr Klear in the summer of 2025, the Claimant instructed Mr Klear under a Conditional Fee Agreement.
183. Be that as it may, there was a delay of about a year and four months from Macfarlanes sending their letter of 26 July 2023 until service of the proceedings at or around the end of November 2024 of which, at the very least, the 10 months from July 2023 to May 2024 were spent without the Claimant taking any steps to pursue his claim. During that period he was, according to his statement dated 11 October 2024 not in a position financially or otherwise to pursue his claim.
184. One theme in Mr Wilson's cross-examination of the Claimant was the suggestion that the Claimant had caused his inability to fund the making of his claim by choosing to instruct BGS to investigate the First Defendant. After some considerable confusion about how much the Claimant had paid for BGS's services and when, the position was eventually clarified.
185. Near the beginning of his cross-examination on the subject, the Claimant said a figure for the total amount spent by him on BGS of about £35,000 was about correct. That matches the figure of £35,767 which was the aggregate figure of payments to BGS out of the Claimant's bank accounts for the period 16 July 2020 to 3 December 2024.
186. The Claimant exhibited to his statement dated 11 October 2024 a schedule (“C's Schedule”) which he said he had prepared. He said the first column of this set out his

income, outgoings, assets, and liabilities as they then currently were. This showed around £27,000 as remaining owed to BGS, with it being paid off at the rate of £500 per month.

187. In cross-examination the Claimant said that the £27,000 was on top of the amount which as at 11 October 2024 he had already paid to BGS.

188. £1,000 of the £35,767 figure shown by the bank statements as payments down to 3 December 2024 was paid after 11 October 2024, so on the footing that about £27,000 was still owing to BGS as at 11 October 2024, as at that date the aggregate of what had been paid and what remained payable to BGS was $£34,767 + £27,000 = £61,767$.

189. Mr Wilson put it to the Claimant that £61,000 was an extraordinary amount of money to spend on investigators and that the Claimant could have very easily spent it on legal advice and on bringing the claim sooner.

190. The Claimant said that the expenditure on BGS was affordable at the time when he first instructed Farrer & Co (30 May 2022); then, he said, the Farrer & Co costs became too much and he couldn't keep up. When he got his bills from Farrers and they were "sort of saying the cost it would be to issue" the claim; it got too much and he couldn't go on. He said that when he first spoke to Farrers, he was safe; he said at that stage he was spending an affordable amount. It was when he was given unexpectedly high bills that he couldn't carry on the claim. When he was told how much it would cost to get to the stage of the hearing before me it was too much.

191. Ultimately the Claimant accepted Mr Wilson's proposition that if he had not spent the money on BGS he would have had more money to spend on lawyers and on making his claim; but the Claimant did not accept that even if he had had the money which he spent on BGS to spend on lawyers that he would have been able to carry on to the current stage.

192. The Claimant said that if he had been able to carry on, he would have done.

193. In fact the Claimant has, with the assistance of a CFA, been able to start and carry on the proceedings down to date, in substance without putting any more money into them than he had by the time he had finished paying Farrer & Co.

194. By the time of and by Farrer & Co's letter of 2 December 2022 the Claimant's claim under the 1975 Act had been formulated. I consider that if the Claimant had really wanted to start the claim from about February 2023 when he ceased to instruct Farrer & Co he could have done so under a CFA, just as well then as he could and eventually did do in the summer of 2024. He could have made his own enquiries, if only by internet searches, as to the availability of alternative funding for litigation. Alternatively, the

Claimant could have started the claim and applied for an interim order under s.5 of the 1975 Act for funds to enable him to pursue the claim.

195. Except that (i) the Claimant was when he started the claim and is now deeper in debt than he was on 1 May 2020 when the s.4 time limit expired and (ii) he has, since the claim was started, broken up with his girlfriend and has become homeless; there has been no substantial change in his circumstances since 1 May 2020 when the s.4 time limit expired.

196. Overall, the third *Berger* consideration weighs fairly heavily against the Claimant.

(4) Were negotiations begun within the time limit?

197. Negotiations were not begun within the time limit. The first communication which indicated a willingness to negotiate was Farrer & Co's letter of 2 December 2022. Those and Farrer & Co's subsequent approaches were not acceded to by Macfarlanes. Macfarlanes' letters of 23 December 2022, 17 January 2023 and 15 February 2023 make it clear that the First Defendant refuted the claim.

198. HCR's letter of 26 June 2023 contained an offer which was rejected by Macfarlanes' letter of 26 July 2023.

199. There was no evidence before me of any other or further negotiations.

200. The fourth *Berger* consideration weighs against the Claimant, though not very heavily because of the First Defendant's unyielding refusal to negotiate.

(5) Was the estate distributed before the claim was notified to the Defendants?

201. The first notification of a possible claim, albeit relating to the validity of the 2015 Will, not to a claim under the 1975 Act, came with the forwarding of Sinclair Gibson's letter of 11 December 2020 to BCLP on 16 December 2020. In his statement the Second Defendant, as executor, says that the primary assets of Hugh's estate were distributed by 2020. He states that Ms N's legacy was paid in full on 1 November 2019; the deceased's shares in 1 Worth Avenue Limited were distributed to the 1st Defendant on 21 May 2020; Ms C's legacy was paid on 19 June 2020; the deceased's shares in Northwolds Limited were distributed to the First Defendant on 1 September 2020 and 26 Queen's Gate Mews was transferred to the First Defendant on 20 November 2020. The deceased's half share in Dell Quay House was distributed to the Claimant in December 2021 after Sinclair Gibson's notification of a possible claim as to the validity of the will. Properties at 11-13 Whiteladies Road were transferred to Northwolds Limited on 23 March 2023. Mr Mills told me that Whitefield Court Farm and Carriage House had been liquidated to pay the estate's debts.

202. The Second Defendant said that the administration of the estate was complete; all assets had been identified, liabilities discharged and distributions made to the relevant beneficiaries.
203. The First Defendant says that since she began to receive the residue of the deceased's estate, she has used "a significant portion of it" in the following ways:
- 203.1. She has invested significant sums.
 - 203.2. She has continued to pay her staff.
 - 203.3. She has used around £4 million to complete over a number of years extensive and important building works to Dell Quay House.
 - 203.4. She has annually invested sums into Sophie's Boatyard (a boatyard at Dell Quay at which her late daughter Sophie worked one day a week) for its general upkeep and maintenance, and has continued to pay the boatyard manager.
 - 203.5. She has advanced a significant portion to her daughter Holly, including the property at Queens Gate Place Mews, which she also renovated at a cost of over £85,000. This was later sold by Holly in January 2023 for £5.8 million.
 - 203.6. She has made, and continues to make, significant charitable donations.
204. Nevertheless it was accepted by Mr Wilson on the First Defendant's behalf that given the value of the estate, Mrs Taylor was not in a position where she has changed her position so substantially that she simply could not afford to refund assets to the estate to meet an award made in the Claimant's favour.
205. Mr Wilson submitted that the test under the fifth *Berger* consideration was whether the estate had been distributed. Mr Jeffery submitted that there had to be serious prejudice. Taking the fifth *Berger* consideration literally, Mr Wilson was correct. However, the *Berger* considerations are not a statute. As Asplin LJ said in *Cowan v Foreman* at paras.46 and 49, 51 and 52:
- "When determining whether a claim should be brought outside the six-month period, nevertheless, the court must consider all of the relevant circumstances of the case in question and the factors which were highlighted in *Berger v Berger*." [46]
- "The power must be exercised for its proper purpose taking account of the context in which it arises, namely, in making reasonable financial provision for an applicant from the estate of a deceased, in the light of all of the circumstances of the particular case, having considered the *Berger* factors." [49]
- "It seems to me that although the applicant must put forward a substantial case, that it is not necessarily true that there must be a good reason for all delay in every case.

Each case turns on its own facts and, in each case, the judge is required to weigh the Berger factors and to reach a decision.” [51]

“The court will not entertain a claim with no merit which is commenced outside the six-month time limit, merely because the delays can be explained and no one is prejudiced. The corollary is not necessarily true. If the claim would pass the summary judgment test, it does not mean that the court will exercise the section 4 power to extend time. It is dependent upon an evaluation of all of the relevant factors in the circumstances.” [52]

206. Whether the beneficiaries will suffer prejudice and how much appear to me to be relevant considerations, whether they come within the fifth *Berger* consideration or the more general circumstances of the case.

207. Mr Wilson submitted that the First Defendant would suffer substantial prejudice if she were now required to refund money to the estate to meet any award made in the Claimant’s favour. He submitted that to require her to do so would be particularly unjust in circumstances where the Claimant’s conduct has reasonably led the First Defendant to believe at various times that the claim had been abandoned. In this context Mr Wilson referred me to what Sir Robert Megarry said in *Re Salmon* at 176A-D:

“So far as beneficiaries are concerned, there will usually be a real psychological change when the estate is distributed. Before the distribution, they would have only the expectation of payment ... After the distribution, they have the money itself, and know the exact amount. If an order is made under the Act, the difference will be the difference between the prospect of receiving in due course less than they had hoped, and on the other hand having something that they had already received and regarded as their own taken away from them ... If it is always prejudicial to claimants not to receive money that they are entitled to receive at the earliest possible moment, it is likely to be even more prejudicial to have taken away from them money that they have actually received and begun to enjoy.”

208. Mr Wilson’s submission that the Claimant’s conduct had reasonably led the First Defendant to believe at various times that the claim had been abandoned is supported by the chronology. Specifically by the following gaps in the correspondence:

208.1. Some 22 months from 19 January 2021 when BCLP stated that the Claimant had no standing to challenge the will to 2 December 2022 when Farrer & Co wrote to BCLP.

208.2. Some 4 months from 15 February 2023 when Macfarlanes wrote to Farrer & Co to 26 June 2023 when HCR wrote to Macfarlanes.

208.3. Some 16 months from 26 July 2023 when Macfarlanes wrote to HCR to November or December 2024 when the proceedings were served.

209. In her statement dated 10 January 2025 the First Defendant said:

“The Claimant has made a number of efforts to obtain payment out of Hugh’s estate, as set out in the legal correspondence the Claimant has exhibited to his witness statement. After the first round of correspondence in 2020 to 2021 had concluded with no claim brought by the Claimant [LDOH 1, 48-57], I had thought this matter was finished. It was then a cause of surprise and concern that the Claimant resurrected his efforts to demand payment in December 2022 [LDOH 1, 58-70]. However, after this correspondence concluded in summer 2023 [LDOH 1, 71-81 and JMT 1, 95-113], again with no claim brought by the Claimant, I again thought the matter was settled. I was then shocked when in November 2024 my former solicitors received an email indicating that the Claimant had issued this claim [JMT 1, 117]. I had long thought that this matter was concluded and that I was free to move on from the Claimant and his demands for payment.”

210. Furthermore, submitted Mr Wilson, one should not lose sight of the fact that the First Defendant had lost her husband and was entitled to grieve and to achieve closure on the administration of the estate. He submitted that there was substantial prejudice to the First Defendant in having to continue to deal with the Claimant’s unsavoury allegations and litigation some 6 ½ years after her husband’s death.

211. Mr Jeffery submitted that the First Defendant did not particularise any change of position defence and admitted that she retained sufficient funds to meet any award likely to be made in the Claimant’s favour. I agree, but, I disagree with the follow up submission which Mr Jeffery made in his skeleton argument that the First Defendant would not be prejudiced by my permitting the claim to be decided on its merits. I consider that the First Defendant would suffer all three of the following kinds of prejudice:

211.1. To have taken away from her assets that she had actually received and begun to enjoy. Albeit that given the size of the estate which the First Defendant inherited and her acceptance that that she retained sufficient assets to meet any award likely to be made in the Claimant’s favour, in the circumstances of this case I do not put as much weight on this element of the prejudice as I might do in other circumstances.

211.2. The repeated disillusionment of the First Defendant from her belief that the claim had been abandoned.

211.3. The prejudice to the First Defendant in having to continue to deal with the Claimant’s allegations and litigation some 6 ½ years after the deceased’s death.

212. Mr Jeffery submitted that the prejudice had to be severe in order for it to be relevant. In that context he relied upon parts of Ormerod LJ's judgment in *Adams v Schofield* (1981), reported at [2004] WTLR 1049 at pp.1058G – 1059E. I disagree. When the Court of Appeal was considering prejudice to beneficiaries in *Adams v Schofield* it was considering it in the context of the issue before that court which was what weight should be given to the existence of a claim for damages against the applicant's solicitors when the court was considering whether or not to grant permission under s.4 of the 1975 Act. In that context at p.1059A-C Ormerod LJ said:

“When it comes to considering what is the weight to be given to the existence of a claim for damages against solicitors in these cases, it seems to me that the right approach is to consider the justice of the case as between the parties, first of all, and to take into account all the matters set out very helpfully by the Vice-Chancellor in *In re Salmon*. It is only if, having done that computation, one finds that the plaintiff on the one hand has suffered severe prejudice and the defendant on the other has suffered severe prejudice, or will if the limitation period is extended, that the claim for damages against the plaintiff's solicitors becomes relevant. In other words if, as in this case, all the indications are on the plaintiff's side and all point to extending time, and prejudice on the defendant's side is what I would call purely formal in the sense that they have lost the benefit of such protection as s.4 gives them, then the claim for damages against solicitors is of little weight.”

213. The three kinds of prejudice which I have held that the First Defendant would suffer are more than the “purely formal” prejudice of losing the protection of s.4.

214. The fifth *Berger* consideration weighs against the Claimant though without taking prejudice to the First Defendant into account, it does not weigh very heavily. It weighs more heavily when the prejudice element is combined with it.

(6) Would dismissal of the claim leave the Claimant without recourse to other remedies?

215. On the evidence before me, the most that I could hold in this regard is: “possibly”. A claim based on a failure to advise as to the possible existence of a 1975 Act claim against Sinclair Gibson would turn on what their instructions were. Causation and quantum in a claim based on an alleged failure to advise as to alternative funding arrangements would be difficult to assess.

216. Applying Ormerod LJ's approach in *Adams v Schofield* (above), I consider that if the Claimant had a real prospect of success on his substantive claim, then the possible lack of alternative remedies for the Claimant would result in severe prejudice to him if I did not permit his 1975 Act claim to be made out of time. On the other hand I consider that the prejudice which I have found above and which the First Defendant would suffer if the

claim was allowed to proceed would not be so severe as to make the possible existence of alternative remedies for the Claimant relevant.

217. I therefore find that the sixth *Berger* consideration would weigh to some extent in the Claimant's favour if his substantive claim had a real prospect of success.

(7) Looking at the position as it is now, has the Claimant an arguable case under the Inheritance Act if I allowed the application to proceed?

218. Mr Wilson's concession that, for the purposes only of the s.4 application, the Claimant had an arguable case that he fell within s.1(1)(d) because he was treated as a 'child of the family' between approximately 1996 and 2002 is sufficient to establish for the purposes of this judgment that the Claimant has a real prospect of success on the issue of standing to make a claim under s.1(1)(d). That concession does leave the following questions unanswered:

218.1. How strongly arguable the case that the Claimant has standing is. As per Asplin LJ in para.51 of her judgment in *Cowan v Foreman* set out above, if the Claimant has a strong claim for reasonable financial provision, it may be appropriate, taking into account all of the other relevant factors, to exercise the s.4 power, despite the lack of a good reason for delay or some part of it.

218.2. Whether the treating of the Claimant as a child of the family extended beyond the conceded period of approximately 1996 to 2002. The threshold test for qualification under s.1(1)(d) only has to be satisfied "at any time"; so I do not have to determine this question for that purpose. However, the length of that period is relevant under the other s.3 factors.

219. The part of the definition in s.1(1)(d) which the Claimant would have to get within is the requirement that in relation to any family in which the deceased at any time stood in the role of a parent, he was treated by the deceased as a child of the family.

220. I am troubled by the rhetorical question: which family? In 1995, before their relationship with the deceased began, the Claimant, his brother and his mother were a family. The deceased was not at that time a member of that family. In or after 1995, did the deceased become part of Mrs O'Herlihy's, the Claimant's and Rogan's family or vice-versa, or was a new family created?

221. I have set out at some length above the evidence as to the relationship between the deceased and the Claimant; some of it conflicting. The conflicts of evidence cannot be resolved by me. I consider that there is a real prospect of the Claimant's case that the

deceased treated him as a son or stepson being accepted in respect of the period from 1995 to 2005. Further, I consider the Claimant has a real prospect of establishing that:

221.1. The deceased treated him in the ways alleged by him for the period 1995 to 2005.

221.2. A family came into existence in about 1995 of which the Claimant and the deceased were part.

221.3. The deceased treated him during that period as a child of his family in which the deceased during that period stood in the role of a parent.

222. I now turn to the matters which s.3 requires the court to have regard to in determining whether the disposition of the deceased's estate is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section. In doing so I of course bear very much in mind that in the respect of a s.1(1)(d) applicant such as the Claimant, that means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

223. S.3(1)(a): the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future.

224. The Claimant makes a reasonable income as a personal trainer. His self-employed profits (net of outgoings and pre-tax) as shown by his tax returns were:

224.1. £31,312 for the tax year 2016/17, giving rise to an Income Tax and National Insurance liability of £6,300.38.

224.2. £62,847 for the tax year 2017/18, giving rise to an Income Tax and National Insurance liability of £11,479.10

224.3. £72,639 for the tax year 2018/19, giving rise to an Income Tax and National Insurance liability of £8,909.95.

224.4. £74,252 for the tax year 2019/20, giving rise to an Income Tax and National Insurance liability of £21,567.96.

224.5. £61,019 for the tax year 2020/21, giving rise to an Income Tax and National Insurance liability of £15,931.58.

224.6. £55,894 for the tax year 2021/22, giving rise to an Income Tax and National Insurance liability of £13,723.86. Also Capital Gains disposals of listed shares and securities for £1,793.91, £1,615.47 and £233.01, with acquisition costs of £1,595.87, £1,654.45 and £250 respectively.

- 224.7. £90,595 for the tax year 2022/23, giving rise to an Income Tax and National Insurance liability of £28,667.29.
- 224.8. £33,784 for the tax year 2023/24, giving rise to an Income Tax and National Insurance liability of £6,331.46.
225. In C's Schedule exhibited to his statement dated 11 October 2024, the Claimant put his monthly income at about £5,800 per month. That is about £70,000 per year. There is no explanation for the drop down to £33,784 for the year ended 5 April 2024.
226. At the time of his 11 October 2024 statement the Claimant put his monthly outgoings at about £5,321 per month. These included £1,400 per month in respect of rent; £884 per month in respect of repayments of loans from friends and HSBC; £800 per month in respect of credit card repayments; £500 per month to BGS; £200 per month to Askews (the Claimant's accountants) and £50 per month to HMRC.
227. Thus, on the basis of what was said by the Claimant in the C's Schedule, as at 11 October 2024 his income exceeded his outgoings by about £479 per month or by about £5,748 per year.
228. C's Schedule showed the Claimant to have had liabilities totalling about £170,000. In his statement dated 20 December 2024 the Claimant explained that:
- About £32,000 remained owing to friends. This was the approximate figure shown in C's Schedule. Of this he said that very nearly £29,000 was owed to his girlfriend of which £20,693 related to litigation expenses and £8,251 to living expenses.
 - £8,506 remained owing to Mr Hargreaves in respect of £10,000 loan for counsel's fees discussed above. This £10,000 loan appeared as a separate item, additional to the roughly £32,000 liability shown in C's Schedule as owing to friends.
 - Of the £16,000 loan from HSBC shown in C's Schedule, the current balance outstanding was £13,288.25. He said he was paying off the balance at £535 per month.
 - Of the about £9,500 owed in respect of his HSBC credit card, currently £8,588.85 was owed which he paid back at around £220 per month. In C's Schedule he said he paid this back at £300 per month.
 - Of the about £15,500 owed in respect of his AmEx credit card, the current balance was £12,683 which was being paid back at £584 per month.
 - The approximately £60,000 shown in C's Schedule as owing to HMRC was "now" £76,333.62. He said that on 6 November 2024 HMRC had threatened him

with bankruptcy proceedings in respect of the £76,333.62. A letter dated 6 November 2024 from HMRC to the Claimant confirms that. The £76,333.62 is only about £2,000 less than the aggregate of the amounts of the Income Tax and National Insurance liabilities shown by the Claimant's tax returns for the years 2016/17 to 2023/24 summarised above. In other words, as the Claimant confirmed in the witness box, he has paid very little of the tax owed in respect of the 7 years of his business as a personal trainer.

229. The figures given in the C's Schedule appear to be overstated or double counted in some respects and understated so far as HMRC was concerned, but (i) the Claimant was not cross-examined about that and (ii) the discrepancies roughly balance each other out; so it is clear that the Claimant had debts of about £170,000 in October 2024. There is no evidence that the amount of his liabilities has changed significantly since then.
230. At the times of his witness statements the Claimant was living in a flat owned by his girlfriend and was paying rent to her of £1,400 per month.
231. In a letter to Macfarlanes dated 10 March 2025, Myddletons stated that the Claimant's circumstances had materially changed since his last witness statement in that he had separated from his partner and was homeless.
232. Macfarlanes responded to this in a letter dated 20 March 2025. They said that while the First Defendant was sorry to hear about the breakdown of the Claimant's relationship, that did not justify his entering his fourth witness statement ahead of the Preliminary Issue Hearing. They said that: if, as they said, the Claimant should not be granted permission to bring his claim out of time, the breakdown in his relationship and the change in his housing situation could not possibly change that result. I disagree with that. Whether the Claimant has a real prospect of success on his claim is an issue, and one factor in relation to that issue is the financial resources and needs of the Claimant, which are clearly affected by his housing situation. Nevertheless, the Claimant did not ask for permission to put in a further witness statement dealing with this.
233. In his statement dated 10 June 2025, the Claimant gave his address as "no fixed abode". When asked to give his address after taking the oath in the witness box, the Claimant was asked by Mr Jeffery to confirm his full name and address. As regards his address, the Claimant said that he did not really have an address "at the moment".
234. One effect of the Claimant's leaving his former girlfriend's flat is that he does not have to pay her the £1,400 per month rent that he was paying her. On the other hand that

is only a short-term financial benefit and at some stage it is likely that the Claimant will need to pay for his accommodation.

235. In his statement of 11 October 2025 the Claimant said that his income was sufficient to meet his outgoings according to the lifestyle he now led out of necessity; but he had no capital at all and his income/outgoings position depended on (i) his living in his girlfriend's property (in respect of which he had no security of accommodation) and (ii) his living nothing like the lifestyle he enjoyed when supported by the deceased and he could have expected to live had he joined the deceased's business. In addition, the Claimant said he was in significant debt due to his legal costs.
236. It was not only due to his legal costs that the Claimant was in debt. He had borrowed in order to pay his legal costs. In the brief examination in chief which I permitted, the Claimant said that his total spends on legal costs were £1,800 on Sinclair Gibson; about £42,000 on Farrer & Co and just over £11,000 on HCR. Those figures tally with the figures derived from the Claimant's bank statements. They total about £55,000. The total "significant debt" of some £170,000 which the Claimant owed included the £60,000 (according to C's Schedule) or £76,000 due to HMRC. The Claimant's indebtedness was also due to the £61,000 which he had incurred in respect of BGS.
237. In very broad terms without the debts possibly attributable to the legal costs of £55,000 and the BGS liabilities of c£61,000, the substantial debt of £170,000 which the Claimant was under would "only" have been the £60,000 or £76,000 owed to HMRC.
238. S.3(6) requires the court to take into account the applicant's earning capacity. It also requires the court to take into account the Claimant's financial obligations and responsibilities. Under s.3(5) I must take into account the facts as known to the court at the date of the hearing.
239. The Claimant is aged 36. Based on the figures set out above, the Claimant would have an earning capacity as a personal trainer of some £90,000 per year, net before tax; though in a bad year he might earn substantially less than that.
240. At that rate of earning and without additional resources, the Claimant's income would be sufficient to meet his outgoings according to the lifestyle he led; though at the rate at which he was paying them off, his debts would take many years to pay off.
241. There were photos, web pages or social media snapshots and references to videos in the evidence which showed what appeared to be a very glamorous and expensive lifestyle being led by the Claimant. In cross-examination the Claimant said, in effect, that this was the lifestyle which he wished to project for the purposes of advertising his personal trainer

business under the soubriquet or marketing name of “the posh PT”. The Claimant explained that many of the costs related to or backgrounds to the photos, web pages or social media snapshots, for example a picture of a private jet, were met by or belonged to clients and that they did not represent his real lifestyle. The Claimant explained that his former girlfriend encouraged him to attempt to develop his business with foreign trips and funded those trips, at least in part by way of loans to him.

242. In her statement dated 20 December 2024 the First Defendant referred to a page which the Claimant had on the business website ‘Everipedia’ on which his net worth was stated to be “£3 million (\$4.4 million)”. In his response in his statement dated 24 January 2025 the Claimant said about this that it would also be very easy to confirm that the figure for his supposed ‘net worth’ on ‘Everipedia’ was “a made-up figure plucked out of nowhere”. He said “these sort of ‘clickbait’ sites were common online and were just fluff.” He said that having googled ‘Everipedia’ himself he saw that it was now called ‘IQ.wiki’ and was clearly not a serious site. It was not suggested that the Claimant actually had £3 million.

243. The promotion of the Claimant’s business by the use of web pages, social media or videos which showed the Claimant appearing to lead a very glamorous and expensive lifestyle and the use by him for that purpose of untrue “fluff” and “clickbait” does not go substantially to the merits of his claim under the 1975 Act; but it is some confirmation of a willingness to tell untruths, at least in a business or quasi-business context.

244. It is apparent from the Claimant’s bank statements and from the evidence, that he was dependent on his former girlfriend, not only for accommodation, but also for financial and practical support in relation to his business.

245. It was not suggested by Mr Jeffery, but it must be possible that the separation will have an adverse effect on the Claimant’s business and hence, at least in the short term, on his earning capacity.

246. The Claimant has no financial obligations or responsibilities except for his financial liabilities mentioned above.

247. S.3(1)(b) is irrelevant in this case. No persons are applicants under the Act except for the Claimant.

248. S.3(1)(c): the financial resources and financial needs which any beneficiary of the estate has or is likely to have in the foreseeable future.

249. No suggestion is made that any award under the 1975 Act ought to be satisfied in any way out of the two pecuniary legacies.

250. As regards the First Defendant: there was little evidence of the financial resources and financial needs which she had or was likely to have in the foreseeable future. She said that, in the event that the Claimant was granted s.4 leave, she would seek to provide further evidence to the court on the issues in the Claimant's substantive claim.
251. Be that as it may, as I have already held, the value of the assets of the deceased's estate distributed to and retained by her would be more than sufficient to satisfy the most extravagant of claims for maintenance whether the net estate of the deceased was worth £30 million, £40 million or £50 million.
252. S.3(1)(d): any obligations and responsibilities which the deceased had towards any applicant for an order under s.2 or towards any beneficiary of the estate of the deceased.
253. In s.2(1)(d) "had" does not mean "had at any time in the past." As per Nourse LJ in *Re Jennings* [1994] Ch 286 at p.296D-F: as a general rule, it refers to obligations and responsibilities which the deceased had immediately before his death. The Act was not intended to revive defunct obligations and responsibilities as a basis for making it. Nor, if the obligations and responsibilities do not fall within a specific provision such as s.3(1)(d), can they be prayed in aid under a general provision such as section 3(1)(g).
254. Similarly per Henry LJ at p.300D-G:

“One of the matters that the court is obliged to have regard to in determining both of the issues the judge identified is set out under section 3(1)(d) "any obligations and responsibilities which the deceased had towards . . . [the plaintiff]." Such obligations and responsibilities are clearly constraints on the deceased's freedom of action to dispose of his property as he wishes. Such constraints are in the nature of duties, and may be legal or—see *In re Coventry*—moral. The judge rightly asked himself whether such obligations were limited to those existing at the date of death, or extended to include those arising in infancy and still undischarged. He held that the obligations under section 3(1)(d) need not exist at the time of death. In my judgment that was wrong as a matter of law. The deceased's freedom of action to dispose of his property must be judged at the time of death, and it is only his then current obligations and responsibilities that must be taken into account. Some undischarged responsibilities from the past may still be current—for instance a child of the deceased might have given up a university place to nurse the deceased through his long last illness and now wish to go to take up that place. The moral obligation there would be both current and clear. But where the undischarged responsibility does not amount to an obligation present at the date of death, the statute does not require it to be taken into account.”

255. Mr Wilson submitted that by the time of his death the deceased did not have any obligations or responsibilities to the Claimant. Mr Jeffery submitted that he did by reason of the expectations which the deceased had induced in the Claimant that he would

become involved with and would inherit the deceased's property business and certain specific properties.

256. Assuming in the Claimant's favour that he could establish that the deceased made representations to the effect of the alleged inducements, there would remain an insuperable problem with Mr Jeffery's submission. That is that as a matter of fact there is no real prospect of the Claimant establishing that he acted to his detriment or prejudiced himself in reliance on the representations. The most that could be said is that he chose to study property and construction rather than some other subject at university because of the deceased's representations; but there is no evidence that by studying property and construction, the Claimant in any way acted to his detriment or prejudiced himself. His university fees were paid by the deceased and the deceased gave him £500 per month and other gifts until about 2012 when the Claimant was aged about 23.

257. The Claimant's own evidence in his statement dated 11 October 2024 confirms the lack of relevant detriment or prejudice. In that statement he said:

“After it became apparent to me that I would not be joining and ultimately succeeding to Hugh's property business I felt totally betrayed and bereft and could not bear the idea of working in that sector without Hugh. The First Defendant had also mentioned on multiple occasions that she would make it her priority to ensure that I never succeed in property or classic cars. Accordingly, I trained as a personal trainer and am now a self-employed personal trainer.”

258. There is no evidence to contradict the inference that the time when it became apparent to the Claimant that he would not be joining and ultimately succeeding to the deceased's property business must have been in or about 2012. That inference arises for the following reasons:

258.1. The dinner at which the Claimant says that the First Defendant “screamed” at the Claimant that “it was all for her girls now”. That dinner took place in 2011 or 2012.

258.2. The deceased's email to Mrs O'Herlihy of 19 February 2012 referred to in my chronology above makes it clear that, except for helping the Claimant to arrange a mortgage, the deceased was no longer going to provide financial assistance to the Claimant of his brother and told Mrs O'Herlihy that it behoved her to explain that to them. The Claimant has not denied that she did so.

258.3. The exclusion of the Claimant from the deceased's life. The Claimant says that took place in or from 2012 and was because of the machinations of the

First Defendant and the deceased's increasing lack of mental capacity. In the absence of cross-examination of the First Defendant I cannot and do not make findings of fact on that question; but even if all those allegations were true, it would still have become apparent to the Claimant that the very things which he now alleges and complains about in terms of what he alleges were the First Defendant's actions, would have shown that, at least for so long as the First Defendant remained on the scene, the probability of his joining and ultimately succeeding to the deceased's property business must have been extremely remote.

259. Even if I was wrong in making that inference and in holding, as I do, that there is no real prospect of the Claimant establishing that it became apparent to him that he would not be joining and ultimately succeeding to the deceased's property business in or about 2012; that must have become apparent to him at the very latest by the end of the tax year 6 April 2015 to 5 April 2016. That is because his tax returns show an income for him as a personal trainer for that tax year, with the consequence that he must have trained as a personal trainer in or before that tax year and, as he said in his statement dated 11 October 2024, that was after it became apparent to him that he would not be joining and ultimately succeeding to the deceased's property business.
260. Accordingly, I hold that there is no real prospect of the Claimant establishing that the deceased owed him any obligations or responsibilities at the time of the deceased's death or within the meaning of s.3(1)(d).
261. I was not addressed as to what, if any, obligations and responsibilities the deceased had towards the First Defendant at his death. Whatever they may have been, I consider that they were satisfied by the provision which the deceased made for the First Defendant by his will, and would be satisfied, even if what was left to her by the will was depleted by the maximum value which the Claimant's claim for reasonable financial provision for his maintenance could reasonably be considered to amount to, grossed up for the Inheritance Tax which might become payable as a result.
262. S.3(1)(e): the size and nature of the net estate of the deceased.
263. The detail of the administration of the estate was not in evidence. I am not concerned about that. Nor am I concerned to pursue, let alone to bottom out the allegations by or on behalf of the Claimant in correspondence or in evidence as to possible maladministration of the estate or as to the possibility that there were or ought to have been additional assets in the estate. Sensibly Mr Jeffery did not pursue these allegations before me. On any

footing the net estate was worth at least some £36 million. The value of the assets distributed to and retained by the First Defendant would be more than sufficient to satisfy the most extravagant of claims for maintenance, whether the net estate was worth £30 million, £40 million or £50 million.

264. S.3(1)(f) is irrelevant in this case. There is no evidence of either the Claimant or the First Defendant suffering from any physical or mental disability.
265. S.3(1)(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.
266. The conduct, alleged or actual, of the Claimant when he was aged 15 or under is of very little relevance. Of more relevance are:
- 266.1. *Berger* factors 3, 4 and 5 discussed above.
- 266.2. The Claimant's actual lack of contact with the deceased after 2012, whether or not that was caused by the First Defendant.
267. The Claimant's threats in HCR's letter of 26 July 2023 of adverse publicity and his engagement of BGS to investigate the First Defendant are unattractive and carry some, though not a great deal, of weight with me in assessing the possible merits of his substantive claim. They are also relevant to *Berger* factors (1), (3) and (4).
268. The Claimant has a real prospect of establishing his allegations as to the conduct of the First Defendant which he alleges caused the isolation of the deceased from the Claimant and others. In relation to the Claimant's failure to contact the deceased after 2012, that alleged conduct has some relevance in explaining that failure, but on the more significant point as to whether or not the deceased had obligations or responsibilities to the Claimant at his death, they are not relevant.
269. The s.3(3) requirement to have regard to the manner in which the Claimant was being or in which he might expect to be educated or trained: As regards how he was being educated or trained: by the time of the deceased's death he was not being educated or trained. As regards the manner in which he might expect to be educated or trained: by the time of the deceased's death the Claimant had and could have no expectation in that regard, as explained above in relation to the s.3(1)(d) consideration. By the time of the deceased's death in 2019, the Claimant was aged 30; had trained as a personal trainer; was earning his own living and had received nothing from the deceased for over 5 years.
270. S.3(3)(a), whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the

contribution made by way of maintenance: I have set out the position in relation to that above.

271. S.3(3)(aa), as to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the Claimant: I have set out the position in relation to that above.
272. S.3(3)(b): in maintaining or assuming responsibility for the maintenance of the Claimant, the deceased knew that the Claimant was not his own child.
273. S.3(3)(c): There is no evidence of any other person being liable to maintain the Claimant.
274. Both Mr Wilson and Mr Jeffery referred me to *Ilott v Blue Cross* [2017] UKSC] 17 on the law as to claims by adult children. It was not disputed that, with the differences inherent in a claim being made under s.1(1)(d) rather than (c), the principles were the same in relation to claims by adults claiming under s.1(1)(d) as under 1(1)(c).
275. In *Ilott*, by her will made in 2002 the testatrix left almost all her estate of £486,000 to a number of animal welfare charities to which she had no particular attachment. She made no provision for the claimant. The claimant was her adult daughter and only child, from whom she had been estranged for many years. The estrangement had arisen on the claimant's leaving home to live with her boyfriend whom she had subsequently married and by whom she had had five children. She had lived independently from her mother with no expectation of receiving any benefit from her but in straitened circumstances and in receipt of various benefits. Attempts at reconciliation having failed, in 2002 the mother attached a letter to her will stating that she felt no moral or financial obligation to make any provision for the claimant.
276. The District Judge who first heard the case considered the factors set out in s.3 of the Act to which he was required to have, reviewed the circumstances and found that the deceased's will did not make reasonable provision for the maintenance of the claimant, but that an award should be limited in view of the long estrangement and lack of any expectation of benefit, and that the claimant's family annual income was about £20,000 from earnings and the receipt of benefits. He accordingly made an award of £50,000.
277. In the Supreme Court Lord Hughes JSC gave a judgment with which all the other members of the Court agreed.
278. At para.14 Lord Hughes JSC stated that the concept of maintenance was no doubt broad, but the distinction made by the differing paragraphs of s.1(2) showed that it could not extend to any or everything which it would be desirable for the claimant to have. It

imported provision to meet the everyday expenses of living. Lord Hughes JSC approved the following summary of Browne-Wilkinson J in *Re Dennis* [1981] 2 ALL E R 140 at 143-146:

“But in my judgment the word ‘maintenance’ connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance.”

279. At paragraph 19 Lord Hughes JSC said that need (for maintenance rather than for anything else, and judged not by subsistence levels but by the standard appropriate to the circumstances) was a necessary but not a sufficient condition for an order. Need, plus the relevant relationship to qualify the claimant, was not always enough. And, at paragraph 20: there was no requirement for a moral claim as a sine qua non for all applications under the 1975 Act, but in the case of a claimant adult son well capable of living independently, something more than the qualifying relationship was needed to found a claim. Often the presence or absence of a moral claim would be critical.

280. At paragraph 35 Lord Hughes JSC said that the District Judge had dutifully worked his way through each of the s.3 factors. The long estrangement was the reason the testatrix made the will she did. It meant that Mrs Ilott was not only a non-dependent adult child but had made her life entirely separately from her mother, and lacked any expectation of benefit from her estate. Because of these consequences, the estrangement was one of the two dominant factors in this case; the other was Mrs Ilott’s very straitened financial position. Some judges, said Lord Hughes JSC, might legitimately have concluded that the very long and deep estrangement had meant that the deceased had no remaining obligation to make any provision for her independent adult daughter. However, held Lord Hughes JSC, the judge was perfectly entitled to reach the conclusion which he did, namely that there was a failure of reasonable financial provision, but that what reasonable provision would be was coloured by the nature of the relationship between mother and daughter.

281. At paragraph 47 Lord Hughes JSC dealt with two more questions which bear upon the present case.

- 281.1. He held that it was not correct to say of the wishes of the deceased that because Parliament has provided for claims by those qualified under s.1 it followed that that by itself struck the balance between testamentary wishes and such claims. It was not the case that once there was a qualified claimant and a demonstrated need for maintenance, the testator's wishes ceased to be of any weight. They might of course be overridden, but they were part of the circumstances of the case and fell to be assessed in the round together with all other relevant factors.
- 281.2. It was not correct that so long and complete an estrangement as there was in *Ilott* was of little weight. The Court of Appeal had suggested that this was so because (a) the claimant had not wished for the estrangement, (b) she had made a success of her life as a mother and homemaker and (c) it might well be that the estrangement was not really a matter of fault on either side, thus simply, in effect, a sad fact of family life. It was certainly true that the claimant had made a success of her home life, but that did not bear at all on the relationship between mother and daughter. As to the other two considerations, the District Judge had indeed held that both sides were responsible for the continuation of the estrangement, whilst attaching the greater responsibility to the deceased. Those matters of conduct were not irrelevant, but care had to be taken to avoid making awards under the 1975 Act primarily rewards for good behaviour on the part of the claimant or penalties for bad on the part of the deceased. It was clear that the District Judge gave effect to his findings as to the causes of the estrangement in allowing the claim, as he was entitled to do, but it did not follow that the relationship between mother and daughter was of insignificant weight to the exercise, and he rightly held that it was not.
282. In the present case the Claimant says that it was the First Defendant, not the deceased who was responsible for the lack of contact between him and the deceased after 2012; but in my view Lord Hughes JSC's reasoning carries across to that relationship. Thus, on the footing that there is a real prospect of the Claimant establishing that as a matter of fact the First Defendant was responsible for that lack of contact, that would be a matter of some significance to the Claimant's substantive claim.

283. Ultimately, and although there were various more or less procedural wrinkles, the Supreme Court held that the District Judge had been entitled to come to the conclusion which he did.

284. Mr Jeffery referred me to paragraphs 64 and 65 of an additional judgment of Baroness Hale DPSC in *Ilott* with which Lord Kerr and Lord Wilson JJSC agreed. Mr Jeffery referred me to it for essentially the same point that Lord Hughes JSC had made to the effect that some judges might legitimately have concluded that the very long and deep estrangement had meant that the deceased had no remaining obligation to make any provision for her independent adult daughter, but that the District Judge was perfectly entitled to reach the conclusion which he did, namely that there was a failure of reasonable financial provision, but that what reasonable provision would be was coloured by the nature of the relationship between mother and daughter. At paragraph 65 Baroness Hale DPSC said that on the facts of *Ilott* a respectable case could be made at least three very different solutions:

284.1. He might have declined to make any order at all.

284.2. He might have decided to make an order which would have the dual benefits of giving the applicant what she most needed and saving the public purse the most money.

284.3. He might have done what in fact he did for the reasons he did.

285. The fact that different judges could reasonably and properly come to different conclusions makes for a low hurdle for the Claimant to overcome on the issue of whether he has a real prospect of success on his substantive claim. I only need to be satisfied that he has a real prospect of success of persuading some of the judges who might try his substantive claim properly to decide that his substantive claim should be successful. In other words if I thought that, given the set of relevant facts which the Claimant has a real prospect of establishing, a respectable number of reasonable judges could properly conclude that he should be successful, then even if I thought that the majority of judges would conclude otherwise, the Claimant would still have a real prospect of success.

286. Mr Wilson relied on the post-*Ilott* decision of Sir Julian Flaux C in *Miles v Sherer* [2021] EWHC 1000 (Ch) for the following propositions all of which I respectfully agree with:

286.1. Although an applicant may well have enjoyed an affluent lifestyle until they were in their early twenties, they were not entitled to expect that standard of living indefinitely.

- 286.2. Where the deceased had disclaimed responsibility, that had to be a relevant factual consideration militating against the deceased having any obligations or responsibilities at the time of death.
- 286.3. Any obligations or responsibilities that the deceased had towards the applicants in that case when they were in their 20s were irrelevant.
- 286.4. The lifestyle choices made by the applicants in that case subsequent to the deceased's disclaimer of responsibility were not dependent on the expectation of any such assistance.
287. I have already held that the Claimant has no real prospect of establishing that the deceased owed him any obligations or responsibilities at the time of his death. However, following *Ilott*, that is not necessarily fatal to the Claimant's case. *Ilott* is authority for the proposition that even where the deceased at the time of his death had no obligations or responsibilities to an applicant; very straitened circumstances or real poverty may be a factor which nevertheless makes the provision by the deceased of no financial provision for an applicant unreasonable.
288. Mr Jeffery submitted that the appropriate standard of living by reference to which the Claimant's financial needs should be assessed was a high one which was commensurate with his upbringing. I reject that submission and consider that at and after the death of the deceased, the appropriate standard of living for the Claimant was and remains that which he was capable of and did enjoy from his own resources and earnings. There is no real prospect of the Claimant establishing the contrary for the following reasons:
- 288.1. Firstly because the high standard of living which he enjoyed by reason of the deceased's support ceased in 2012, some 7 years before the deceased died.
- 288.2. Secondly because by 2012 or 2013 the Claimant knew that no provision would be made for him.
- 288.3. Thirdly because after 2012 the Claimant was emancipated from the deceased. He lived a separate life based on his own earnings, resources and needs with no assistance from the deceased.
- 288.4. Fourthly because at the time of the Claimant's death the Claimant was aged very nearly 30. Then and thereafter he was capable of and did earn his own living with a standard of living appropriate to that.
289. Mr Jeffery sought to distinguish *Miles v Shearer* on the grounds that in the present case, unlike in *Miles v Shearer*, it was the First Defendant who had brought about the separation of the Claimant from the deceased through undue influence coupled with the

deceased's increasing lack of capacity. As a matter of legal analysis, I agree with Mr Jeffery to the extent that in *Miles v Shearer*, as stated by the Chancellor at para.116 of his judgment, the Chancellor had expressly rejected the allegations of unreasonable conduct against the deceased and that the deceased's conduct was dictated or unduly influenced by the deceased's second wife. In the present case the accuracy or otherwise of the similar allegations made by the Claimant remain unresolved. However, even if those allegations were made good, they would not affect my reasons given above for holding that the Claimant has no real prospect of establishing that the appropriate standard of living by reference to which the Claimant's financial needs should be assessed was a high one which was commensurate with his upbringing. That conclusion is supported by what, after discussing the rights and wrongs of the alleged behaviours of the applicants and the substantive respondent (the second wife of the deceased), the Chancellor held at para.118:

“Whatever the rights and wrongs of what occurred, the most important aspect of his relationship with his daughters [the applicants] for present purposes is that, after he had made the gifts to them in 2008, Tony [the deceased] was not prepared to provide further financial assistance to them. The lifestyle choices they made were, as I have said, not dependent upon the expectation of any such assistance.”

290. The present case is distinguishable from *Ilott* on its facts in that in *Ilott* the applicant lived in straitened circumstances and was in receipt of various state benefits, whilst in the present case the Claimant is, and is capable of, earning an income which is sufficient to provide for the cost of his daily living at the standard of living appropriate to him, that is to say the standard which he created for himself after his separation from the deceased in 2012

291. Pulling the above threads together, my conclusions on the s.3 considerations are as follows:

291.1. S.3(1)(a): the Claimant has no real prospect of establishing other than that he earns and is capable of earning an income which is sufficient to provide for the cost of his daily living at the standard of living appropriate to him, that is to say the standard which he created for himself after his separation from the deceased in 2012. The Claimant owes debts totalling some £170,000 which he is paying off by instalments out of his income.

291.2. S.3(1)(b): not applicable.

291.3. S.3(1)(c): I proceed in the Claimant's favour on the footing that the First Defendant has no financial needs which could not easily be met even if a substantial award was made for the Claimant's maintenance.

- 291.4. S.3(1)(d): the Claimant has no real prospect of establishing that at the relevant time (i.e. the deceased's death) the deceased had any obligations or responsibilities to him.
- 291.5. S.3(1)(e): The net estate was worth at least some £36 million. The value of the assets distributed to and retained by the First Defendant would be more than sufficient to satisfy the most extravagant of claims for maintenance.
- 291.6. S.3(1)(f): not applicable.
- 291.7. S.3(1)(g): the conduct, alleged or actual, of the Claimant when he was aged 15 or under is of very little relevance. Of more relevance are *Berger* factors 3, 4 and 5 discussed above and the Claimant's actual lack of contact with the deceased after 2012, whether or not that was caused by the First Defendant. The Claimant's threats in HCR's letter of 26 July 2023 of adverse publicity and his engagement of BGS to investigate the First Defendant are unattractive and carry some, though not a great deal, of weight in assessing the possible merits of his substantive claim. The Claimant has a real prospect of establishing his allegations as to the conduct of the First Defendant which he alleges caused the isolation of the deceased from the Claimant and others and is of some weight in the Claimant's favour on his substantive claim ("real prospect" is what I have determined and is as far as I go on this factual question - the absence of evidence from and cross-examination of the First Defendant and, possibly, others, I cannot and do not make a finding of fact on the question beyond "real prospect"). But on the more significant point as to whether or not the deceased had obligations or responsibilities to the Claimant at his death, they are not relevant.
- 291.8. S.3(3): by the time of the deceased's death there was no relevant education or training or any expectation in that regard.
- 291.9. S.3(3)(a) and (aa): there was substantial maintenance of the Claimant by the deceased for which the deceased assumed responsibility in the period from 1995 to 2012. For the period down to April 2005 the Claimant has a real prospect of establishing that the maintenance was because he was treated by the deceased as a child of the family. After April 2005, by far the larger part of the maintenance was provided pursuant to the Separation Agreement. There was no maintenance or assumption of responsibility for maintenance after 2012.

- 291.10. S.3(3)(b): in maintaining or assuming responsibility for the maintenance of the Claimant, the deceased knew that the Claimant was not his own child.
- 291.11. S.3(3)(c): There is no evidence of any other person being liable to maintain the Claimant.
292. The quantum of the claim is not specified in the Claim Form. In his statement dated 11 October 2024 the Claimant contrasts what he said were his actual income, outgoings, assets and liabilities with what he says would have been likely to have been his financial position which the deceased had given him reasonable cause to expect and as it would have been had the deceased's plans for him come to pass. What the deceased may or may not have given the Claimant reasonable cause to expect and what would or might have occurred had the deceased's alleged plans for him come to pass is simply not the test for what it would be reasonable for an applicant under the 1975 Act to receive for his maintenance. At most, if those expectations had continued until the deceased's death, they might have given rise to a moral claim; but they did not.
293. But for the possibility that some judges might disagree with me on the merits of the Claimant's substantive claim, I would have little hesitation in holding that the Claimant did not have a real prospect of being successful in his substantive claim. I consider that (i) the s.3(1)(a) consideration that the Claimant has no real prospect of establishing other than that he earns and is capable of earning an income which is sufficient to provide for the cost of his daily living at the standard of living appropriate to him, that is to say the standard which he created for himself after his separation from the deceased in 2012 and (ii) the s.3(1)(d) consideration that the Claimant has no real prospect of establishing that at the relevant time (i.e. the deceased's death) the deceased had any obligations or responsibilities to him greatly outweigh the other s.3 considerations. In this case, unlike in *Ilott*, there is no significant counterbalancing consideration of very straitened circumstances or real poverty for the Claimant.
294. I only hesitate because of the point made in *Ilott* to the effect that different judges might reasonably and properly have different views from others. In particular I ask myself: could a different judge reasonably and properly decide that, by reason of (i) the financial position and standard of living which the Claimant currently enjoys not being anywhere near as high or good as those which, on his evidence, he was led by the deceased to understand that he would enjoy; (ii) the Claimant having been kept out of those higher and better financial and standard of living positions by reason of the machinations of the First Defendant (if established) and the deceased's lack of capacity

(to the extent established); and (iii) the size of the net estate, the will failed to make reasonable financial provision for the Claimant's maintenance? Ultimately I consider that such a decision is not one which a judge could properly come to. That is essentially for the reasons given in the immediately foregoing paragraph, supported as they are by the decisions and dicta in *Miles v Shearer*.

295. Accordingly I will hold that, there being no real prospect of success on the substantive claim, time should not be extended under s.4 and I refuse permission under that section.

Alternative ground for decision

296. I next consider, a possible second and alternative ground for my decision on the preliminary issue, in the alternative that I am wrong in my decision on the real prospect of success point on the substantive claim. I consider whether I should grant s.4 permission on the assumption that, contrary to my decision, the Claimant has a real prospect of success on his substantive claim. I think that it is desirable and in the interests of justice that I should do so because, if, as I do, I consider that on the basis of that assumption and applying the *Berger* factors, I should still refuse s.4 leave, it would be unsatisfactory and unjust to leave that issue undetermined. In that context, I have borne in mind that an appeal court might disagree with my conclusion as to the real prospect of success of the substantive claim, but agree with my conclusion on the discretionary s.4 point.

297. I cannot assume that the Claimant has a stronger case than a real prospect of success on the substantive claim, let alone a "strong" substantive case so as to come within Asplin LJ's dictum in *Cowan v Foreman* at para.51 that if, as in *McNulty v McNulty* [2002] WTLR 737 the applicant has a strong claim for reasonable financial provision, it may be appropriate, taking into account all of the other relevant factors, to exercise the s.4 power, despite the lack of a good reason for delay or some part of it. That is because, by reason of the conflicts of evidence and the limited cross-examination which has taken place, so many of the underlying facts which would need to be determined in the Claimant's favour, in order for his claim to have a real prospect of success or better, themselves can only be determined at this stage on the real prospect of success basis.

298. Against that background and on that assumption as to the merits of the substantive claim, I consider *Berger* factors (1) and (2). (1) what is right and proper and (2) has the Claimant shown sufficient grounds for the granting of permission to apply out of time.

299. I apply the approach to the possible exercise of the s.4 power summarised by Asplin LJ at para.49 of her judgment in *Cowan v Foreman*. Asplin LJ said that the power must be exercised for its proper purpose taking account of the context in which it arises. The

context was the making of reasonable financial provision for an applicant from the estate of a deceased, in the light of all of the circumstances of the particular case. The power was to be exercised in the light of all the circumstances of the particular case, having considered the *Berger* factors and to give them appropriate weight in the particular circumstances.

300. At para.44 of her judgment Asplin LJ specified the purpose of s.4 as being the avoidance of unnecessary delay in the administration of estates which would be caused by the tardy bringing of proceedings and the avoidance of the complications which might arise if distributions from the estate are made before the proceedings are brought.

301. My above summaries of *Berger* considerations (3) to (6) were as follows:

301.1. The third *Berger* consideration (promptness and circumstances in which the Claimant applied for an extension of time after the expiry of the time limit) weighs fairly heavily against the Claimant.

301.2. The fourth *Berger* consideration (were negotiations begun within the time limit?) weighs against the Claimant, though not very heavily because of the First Defendant's unyielding refusal to negotiate.

301.3. The fifth *Berger* consideration (was the estate distributed before the claim was notified to the Defendants?) weighs against the Claimant. Without taking prejudice to the First Defendant into account, it does not weigh very heavily. It weighs more heavily when the prejudice element is combined with it.

301.4. The sixth *Berger* consideration (would dismissal of the claim leave the Claimant without recourse to other remedies?) would weigh to some extent in the Claimant's favour if, as I have assumed for this part of this judgment, his substantive claim had a real prospect of success.

301.5. The seventh *Berger* consideration (looking at the position as it is now, has the Claimant an arguable case under the Inheritance Act if I allowed the application to proceed?): for this part of this judgment I have assumed (contrary to my decision above) that the Claimant's substantive claim has a real prospect of success.

302. As regards the second *Berger* consideration (has the Claimant shown sufficient grounds for the granting of permission to apply out of time): he has not. This weighs heavily against the Claimant. By the time the Claimant instructed Farrer & Co on 30 May 2022 and came to know about the possibility of making a claim under the 1975 Act 2 years had already elapsed since the expiry of the s.4 time limit and it behove the

Claimant to start proceedings promptly. He did not. Notwithstanding that in February 2022 and subsequently he had insufficient money to fund the making of a claim by way of his own private funding, if the Claimant had really wanted to start the claim from about February 2023 when he ceased to instruct Farrer & Co he could have done so under a CFA. Alternatively, the Claimant could have started the claim and applied for an interim order under s.5 of the 1975 Act for funds to enable him to pursue the claim. He could have made his own enquiries as to the availability of alternative funding for litigation.

303. Weighing *Berger* factors (2) to (7) (on the assumption, contrary to my decision above, that the Claimant has a real prospect of success on his substantive claim) and all the relevant circumstances, I consider that having regard to the purpose of s.4 as set out above, the scales come down against it being right and proper or just to exercise the s.4 discretion to extend time. Therefore, as a second and alternative ground for my decision on the preliminary issue, in the alternative that, contrary to my decision, the Claimant has a real prospect of success on his substantive claim, I refuse permission under s.4.