Neutral Citation Number: [2017] EWHC 491 (Ch)

Appeal No.: CH-2016-00051

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No.: B10CL060

ON APPEAL FROM
THE COUNTY COURT AT CENTRAL LONDON

IN THE ESTATE OF NORMAN FREDERICK MARTIN (DECEASED)

AND IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2017

Before:

The Honourable Mr. Justice Marcus Smith

- -

Between:

MAUREEN PATRICIA MARTIN

Appellant/Defendant

- and -

JOY WILLIAMS

Respondent/Claimant

- -
- -

James Weale (instructed by **Frydenson & Co.**) for the **Appellant/Defendant**
Katherine McQuail (instructed by **Irwin Mitchell LLP**) for the **Respondent/Claimant**

Hearing date: 2 March 2017

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Approved Judgment

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

.....

Mr. Justice Marcus Smith:

A. INTRODUCTION

(1) The 1975 Act

1. The Inheritance (Provision for Family and Dependants) Act 1975 (the "1975 Act") as in force at the material time provides (so far as material):

> "1. **Application for financial provision from deceased's estate**
>
> (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:-
>
> …
>
> (ba) any person not being a person included in paragraph (a) or (b) above) to whom subsection (1A) or (1B) below applies;
>
> …
>
> (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 the 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.
>
> (1A) This subsection applies to a person if the deceased died on or after 1st January 1996 and, during the whole of the period of two years before the date when the deceased died, the person was living –
>
> (a) in the same household as the deceased, and
>
> (b) as the husband or wife of the deceased.
>
> (2) In this Act "reasonable financial provision" -
>
> …
>
> (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.
>
> …
>
> (3) For the purposes of subsection (1)(e) above, a person is to be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

2. **Power of the court to make orders**

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

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

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

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

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

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

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

…

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

(2) An order under subsection (1)(a) above providing for the making out of the net estate of the deceased of periodical payments may provide for –

(a) payments of such amount as may be specified in the order,

(b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified,

(c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside or appropriated for the making out of the income thereof of payments under this section,

or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3) Where an order under subsection (1)(a) above provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or

appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(3A) In assessing for the purposes of an order under this section the extent (if any) to which the net estate is reduced by any debts or liabilities (including any inheritance tax paid or payable out of the estate), the court may assume that the order has already been made.

(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;

(c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient.

3. **Matters to which court is to have regard in exercising powers under s.2**

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

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

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

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

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

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

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

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

…

(2A) 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)(ba) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to –

(a) the age of the applicant and the length of the period during which the applicant lived as the husband or wife [or civil partner] [4] of the deceased and in the same household as the deceased;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

…

(4) 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)(e) 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 extent to which and basis upon which the deceased assumed responsibility for the maintenance of the applicant and to the length of time for which the deceased discharged that responsibility.

(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.

(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."

(2) The core facts and the proceedings

2. Mrs. Maureen Martin, the Appellant/Defendant, was the wife of the deceased, Mr. Norman Martin. By his will dated 29 April 1986 (which had a codicil dated 23 November 1995, together the "Will"), Mr. Martin left the entirety of his residual estate to Mrs. Martin, who was also named as sole executrix. Mrs. Martin took out a grant of probate on 1 September 2014.

3. Mrs. Joy Williams, the Respondent/Claimant, lived in the same household as Mr. Martin – as she had done for a number of years – as the wife of Mr. Martin. Since about June 2009, Mrs. Williams and Mr. Martin lived in a property known as and situate at 20 Coburg Road, Dorchester. That property was owned by them as tenants in common, with shares of 50% each. At the time of Mr. Martin's death, the property

was mortgaged, but it was accepted by all that this mortgage was a liability of Mr. Martin alone.

4. On his death, Mr. Martin's interest in 20 Coburg Road (as well as in various other property, the detail of which is immaterial) passed (or, perhaps, more precisely, would have passed but for the proceedings that I describe in this Judgment) by virtue of the Will, to Mrs. Martin.

5. On 18 November 2014, Mrs. Williams commenced proceedings under the 1975 Act seeking an order that reasonable financial provision for Mrs. Williams be made out of the net estate of Mr. Martin. The trial of the claim took place on 8 to 11 February 2016 before His Honour Judge Gerald. Although at the trial the focus was on Mr. Martin's interest in 20 Coburg Road, it is worth noting that Mrs. Williams' claim as originally framed expressly referenced and averred as to be treated as part of Mr. Martin's estate:

    i) Mr. Martin's severable share in the property known as and situate at Damers Barn, 143 Bridport Road, Dorchester. Damers Barn was the property in which Mrs. Martin had lived for many years, and it was held by Mr. Martin and Mrs. Martin as joint tenants. The property thus passed, on Mr. Martin's death, to Mrs. Martin by right of survivorship, and not by virtue of the Will.

    ii) Mr. Martin's severable share in "the bank/building society accounts declared as containing £169,928 in the draft IHT 205 supplied to [Mrs. Williams]". This money was held in two accounts held jointly by Mr. and Mrs. Martin (the "Joint Account" and the "Reserve Account", collectively "the Accounts")). These choses in action thus also passed, by survivorship and not by the Will, to Mrs. Martin on Mr. Martin's death.

6. By the time of the hearing, however, the focus was on 20 Coburg Road. In his Approved Judgment provided on 1 April 2016, HH Judge Gerald stated at paragraph 3:

> "…in substance, after various mortgages and debts were paid off, [Mr. Martin's] net estate principally comprises his one half interest in 20 Coburg Road plus around £20,000 and a small share of another property…"

7. HH Judge Gerald:

    i) Found that Mrs. Williams was a person falling within section 1(1)((ba) of the 1975 Act, and as such was entitled to apply for an order under section 2 of the 1975 Act. Given this finding, HH Judge Gerald did not in terms find that Mrs. Williams fell within section 1(1)(e) of the 1975 Act, but it is clear (from paragraph 100 of the Approved Judgment) that he would have done so had he reached a different conclusion in respect of section 1(1)(ba).

    ii) Was satisfied that the disposition of Mr. Martin's estate by the Will was not such as to make reasonable financial provision for Mrs. Williams under section 2(1) of the 1975 Act.

iii) Held that reasonable financial provision, in this case, involved the transfer of Mr. Martin's beneficial interest in 20 Coburg Road to Mrs. Williams.

(3) Permission to appeal

8. Mrs. Martin had contested all three of the points HH Judge Gerald had determined. In other words, she had: *(i)* denied Mrs. Williams was a person falling within section 1(1) (whether section 1(1)(ba) or (e)); *(ii)* denied that the disposition of Mr. Martin's estate by the Will was not such as to make reasonable financial provision for Mrs. Williams; and *(iii)* denied that a reasonable financial provision required Mrs. Williams to be vested with Mr. Martin's beneficial interest in 20 Coburg Road.

9. She sought to appeal the order of HH Judge Gerald of 24 February 2016 disposing of the proceedings. HH Judge Gerald refused permission to appeal, but permission was granted by Nugee J. on 14 October 2016 on all grounds set out in Mrs. Martin's amended grounds of appeal dated 11 May 2016, save for Ground (1).

10. The amended grounds of appeal set out six grounds of appeal:

i) *Ground (1)*. That HH Judge Gerald was wrong to conclude that Mrs. Williams fell within section 1(1)(ba) of the 1975 Act. As I have noted, permission to appeal on this ground was refused, and in due course Mrs. Martin filed re-amended grounds of appeal deleting this ground.

ii) *Ground (1A)*. That HH Judge Gerald's finding that Mr. Martin "maintained" Mrs. Williams within the meaning of section 1(1)(e) of the 1975 Act was unsustainable on the evidence before the court. On this ground, Nugee J. ordered:

> "Permission to appeal on ground (1A) be refused but only to the extent that it relates to the question of whether or not [Mrs. Williams] has standing to bring a claim under the [1975 Act] (as opposed to whether or not [Mr. Martin's] will made reasonable provision for [Mrs. Williams] or the nature and/or extent of the relief which it was appropriate to grant."

In other words, there was to be no challenge of or appeal in relation to Mrs. William's standing to bring a claim under the 1975 Act: but, to the extent that facts relating to section 1(1)(e) were relevant to what was or was not reasonable financial provision, permission to appeal on Ground (1A) was given.

iii) *Ground (2)*. That HH Judge Gerald's conclusions as to the extent of Mrs. Williams' financial needs were unsupported by any proper/admissible evidence and/or were contradicted by Mrs. Williams' own evidence.

iv) *Ground (3)*. That the relief granted by HH Judge Gerald was substantially in excess of what was necessary to meet those needs and was a perverse decision.

v) *Ground (4).* That HH Judge Gerald wrongly disregarded Mrs. Williams' interest in another property known as and situate at 60 Slade Road, Bristol as an asset available to Mrs. Williams to meet her needs.

vi) *Ground (5).* That HH Judge Gerald wrongly dismissed the evidence of Mrs. Martin as to her financial needs in circumstances in which Mrs. Martin's evidence was not challenged during cross-examination.

(4) Standard of review and approach

11. In this appeal, the standard of review that I must apply is that akin to those cases where the exercise of a discretion is being challenged. I cannot allow the appeal and set aside HH Judge Gerald's order simply because I disagree with the manner in which the Judge disposed of the case on the merits. Rather, before the appeal can be allowed, I must be satisfied that there has been a wrong exercise of the Judge's discretion. In Ilott v. Mitson [2015] EWCA Civ 797, Arden L.J. stated at [32]:

> "It is common ground that the appropriate standard of review is that applying to the exercise of a discretion. That means that DJ Million must be shown either to have made an error of law, for instance by applying the wrong test or failing to take into account matters that he should have considered, or taking into account matters he should not have considered, or reaching a conclusion that was perverse."

12. In Fielden v. Cunliffe [2005] EWCA Civ 1508 at [107], Mummery L.J. said:

> "In order to succeed the appellants must satisfy the Court of Appeal that the judge failed to take proper account of the guiding factors laid down in section 3 of the 1975 Act, or that he has failed to exercise his discretion as to the amount of the lump sum judicially: for example, as a result of applying a wrong principle of law, or through a misunderstanding of the facts of the case, or in arriving at an amount which is, for some other reason, plainly wrong. As Nourse L.J. said in Re. Krubert [1997] Ch. 97 at 102F:
>
> "So the question on the appeal is whether the [recorder's] decision as to the provision she should receive was wrong in principle or, viewed as an exercise of discretion, plainly wrong."

13. This Judgment must therefore consider: first, whether, according to this standard of review, the order of HH Judge Gerald should be set aside. If – but only if – the order should be set aside, is it necessary to consider, secondly, how to exercise the discretion that vested in the Judge.

B. APPROACH TO THE JUDGMENT

14. The 1975 Act requires a court to determine three questions:

i) *The first question.* Does the claimant have standing to apply to the court for an order under section 2? This requires a determination of whether the claimant falls within one or more of the classes of person defined in section 1(1) of the 1975 Act. Here, as noted in paragraph 7(i) above, HH Judge Gerald found that

Mrs. Williams fell within section 1(1)(ba), but he would have been prepared to find that she also fell within section 1(1)(e).

ii) *The second question.* Has the deceased's estate made reasonable financial provision for the claimant's maintenance? This, Francis, Inheritance Act Claims: Law Practice and Procedure (loose-leaf, hereafter "Francis") correctly describes as a "value judgment" (at p.1-4). It is to be noted that, in the case of Mrs. Williams, the test was whether the Will made reasonable financial provision for her "maintenance". Had Mrs. Williams fallen within a different class for the purposes of section 1(1) – a spouse, for instance, under section 1(1)(a) – the test would have been the different (and probably more generous) one of reasonable financial provision, whether or not such provision is required for his or her maintenance.

iii) *The third question.* If the court is satisfied that reasonable financial provision has not been made, it must consider what provision should be made. This is where the due exercise of discretion comes in.

15. Plainly, the matters to which a court should have regard when determining the second and third questions may well overlap or even duplicate. But it is important to bear in mind that these are very different questions. The second question – the value judgment – is a binary "Yes/No" decision, whereas the third question – the discretion – will in many cases be a nuanced one involving the weighing of multiple factors perhaps pointing in favour of different outcomes.

16. In the Approved Judgment, HH Judge Gerald:

i) Determined the first question in paragraphs 98 to 100, based upon his analysis of the facts and circumstances set out by him in the paragraphs preceding paragraph 98.

ii) Determined the second question in paragraph 130 and the third question in paragraph 151. However, that does not mean to say that he considered them altogether separately. In paragraph 102, he correctly noted that section 3(1) of the 1975 Act identified a number of factors for the court to take into account "when considering both questions" and the factors he identified as relating specifically to the second question (those at paragraphs 104 to 129), he also used to determine the third (see paragraph 131).

iii) The factors that HH Judge Gerald identified in paragraphs 104 to 129 were headed as follows:

a) "Claimant's income and expenditure" (paragraphs 105 to 113).

b) "Defendant's income and expenditure" (paragraphs 114 to 120).

c) "Obligations and responsibilities towards claimant and defendant" (paragraphs 121 to 124).

d) "Assets and other factors" (paragraphs 125 to 127).

e) "Size and nature of deceased's estate" (paragraph 128).

f) "Age and health" (paragraph 129).

17. The grounds of appeal contend that the Judge erred in the findings he made under a number of these heads, and I propose to consider the grounds of appeal through the prism of the Judge's findings under these various heads. The essence of Mrs. Martin's appeal was that the Judge's consideration of the factors that informed his decision was so detached from the evidence in certain regards, that his decisions on the second and third questions cannot have been exercised soundly, and must be set aside.

18. I have made repeated reference to the "Approved Judgment", which was the judgment of HH Judge Gerald handed down after reviewing the transcript of a judgment given by him orally on an earlier occasion. It was contended on behalf of Mrs. Martin that there were substantial differences between the oral judgment handed down and the reviewed transcript that became the Approved Judgment. I consider that, in this case, it has been appropriate to consider the Approved Judgment, and I have not found it especially helpful to have regard to the earlier (orally given) version.

C. MRS. WILLIAMS' INCOME AND EXPENDITURE

(1) Income

19. Paragraphs 105 to 113 of the Approved Judgment consider Mrs. Williams' income and expenditure. No issue was taken on the findings in relation to Mrs. Williams' income at paragraph 106 of the Approved Judgment.

(2) Expenditure

20. Mrs. Williams' outgoings were described at paragraph 107 of the Approved Judgment. The Judge noted that these "are itemised in some detail in a letter dated 21st March 2013". That was a solicitors' letter written on Mrs. Williams' behalf before proceedings began, and Mr. Weale, counsel for Mrs. Martin, suggested that such a letter was an insufficient evidential foundation on which to make any assessment of reasonable financial provision. Relying on Patel v. Vigh [2013] EWHC 3403 (Ch), Mr. Weale sought to suggest that much more should have been provided by Mrs. Williams before her evidence on expenses could be accepted. I reject that submission: Patel v. Vigh was a very different case from the present, involving dishonesty, allegations of forgery and disorganised and chaotic documentary evidence. Whilst I entirely accept that it would be desirable for information regarding finances to be provided in the sort of comprehensive "checklist" and "questionnaire" form described in Appendix 2 of Francis, I do not consider that the Judge can be criticised for basing himself on the 21 March 2013 letter.

21. He adopted a firm approach to the items of expenditure noted in that letter, as the transcript shows, reducing the £1,250/month expenditure of Mrs. Williams to £900/month by excluding certain items like the mortgage payments (which no longer had to be made: see paragraph 59 below) and "presents" of £150/month, which he robustly described as "nonsense".

(3) Errors in the Judge's approach

22. It is at this point, so Mr. Weale submitted, that the Judge went wrong. According to Mr. Weale, HH Judge Gerald went wrong in three respects:

    i) First, the Judge – having, subject to some reductions, accepted the evidence of Mrs. Williams' expenditure in the 21 March 2013 letter – then proceeded to increase what he considered to be Mrs. Williams' monthly expenditure in a manner unsupported by any proper/admissible evidence (Ground (2)).

    ii) Secondly, the Judge was wrong to conclude that Mr. Martin maintained Mrs. Williams within the meaning of section 1(1)(e) of the 1975 Act (Ground (1A)).

    iii) Thirdly, the Judge failed properly to take into account Mrs. Williams' interest in 60 Slade Road (Ground (4)).

23. The paragraphs in the Approved Judgment to which these criticisms are directed are paragraphs 107 to 112.

(4) Ground (2) and Ground (1A)

24. The first two grounds of appeal – Grounds (2) and (1A) – are connected. The Judge took the figure of £900/month expenditure (see paragraph 21 above) as a minimum and as a starting point (emphasis added):

> "107. So far as her monthly outgoings are concerned, it is agreed that these are around £900 a month. These are itemised in some detail in a letter dated 21st March 2013, a few of the items included within that schedule have been removed so that the total is around £900 but once they have been removed it is quite plain that [Mrs. Williams] is living at around a subsistence level, at any rate compared with that at which she and [Mr. Martin] lived before his death. As she said in evidence, before [Mr. Martin] died, she paid one-half of the utility bills but [Mr. Martin] continued to pay…other household bills such as council tax, household insurance, television licence and much of the groceries and toiletries…
>
> 108. It is clear from that and [Mrs. Williams'] evidence, which I accept, that subsequent to the death of the deceased, she has had, to put it mildly, to tighten her belt and lives, as she puts it, a hand-to-mouth existence, waiting for offers at the supermarket and using vouchers and use public transport…"

25. The evidential basis for using £900/month as a starting point, rather than the conclusion, is at first sight difficult to discern. That is, no doubt, a criticism that can be, and is by way of Ground (2), made of the Approved Judgment. The relevant parts of Mrs. Williams' first witness statement – paragraphs 118 to 126 – provide little if any basis for these findings. In particular, paragraph 124 states (emphasis added):

> "My current outgoings total approximately £1,300 per month. This includes all my personal and household expenses. I have significantly reduced the level of my lifestyle as I now have to pay all of the bills. It is difficult to save for my future and I feel as though I am living hand-to-mouth, which is not what [Mr. Martin] would have wanted for me."

26. However, the basis for the Judge's uplift appears to have been his conclusion in relation to the respective contributions of Mr. Martin and Mrs. Williams to their household prior to Mr. Martin's death. At paragraph 111 of the Approved Judgment, he said:

> "…the overall picture which emerges is that before his death [Mr. Martin] was contributing considerably more than [Mrs. Williams] to their joint expenditure because, as I have already indicated, it was the deceased who paid the bulk of household and other bills. In broad terms, I accept [Ms. McQuail's, counsel for Mrs. Williams] submission that the claimant's contribution to their joint expenditure was in the region of £2,000 per annum, whereas the deceased's was in the region of £7,000. What that does is serve to demonstrate the broad level of support the deceased provided…"

27. Mr. Weale criticised the Judge for relying on schedules of expenditure produced by Ms. McQuail during the course of opening. These schedules were derived from the bank statements produced by way of disclosure during the course of the proceedings. Mr. Weale contended that the Judge should have preferred the schedules he (Mr. Weale) produced (also derived from the bank statements) during his cross-examination of Mrs. Williams.

28. During the course of oral submissions, I was shown both sets of schedules. Mr. Weale's contention was that there was no proper evidence to support the conclusion that Mr. Martin substantially contributed to Mrs. Williams' reasonable needs. I reject this contention:

i) HH Judge Gerald was, in paragraph 110 of the Approved Judgment, dismissive of all the schedules that were produced to him, not merely those produced on behalf of Mrs. Martin. Of both sides' efforts, he said that they had:

> "produced reams of highly complicated schedules going down to pennies trying to demonstrate who is or was contributing more and what each other's expected expenditure is or will or is likely to be. It is almost impossible without the assistance of expert evidence for any of that to be properly and fully assessed and digested…"

ii) Although it is wrong to describe the schedules themselves as complicated, the extent to which reliable inferences can be drawn from entries in bank statements as to the respective contributions of Mr. Martin and Mrs. Williams before Mr. Martin's death must be doubted. Although the Judge might not have put his concerns very clearly, I sympathise with the point he was trying to make.

iii) On an appeal, it is even harder to make findings regarding the levels of expenditure on the part of Mr. Martin and Mrs. Williams that can be deduced from the schedules or (for that matter) from the bank statements from which the schedules are derived. Certainly, I consider that it would be entirely wrong

for me to venture into this kind of factual detail on an appeal. There are, however, two points which it is necessary to bear in mind.

iv) First, although Mr. Martin "separated" (and I place the word in quotation marks quite deliberately) from his wife in mid-1994 and began living with Mrs. Williams from then on, Mr. Martin maintained what can only be described as an unusually high level of connection with Mrs. Martin. Not only did they not divorce, but (for a period at least) they carried on in business together, and maintained the Accounts, into which they both paid and from which they both drew. After Mr. Martin's death, the Accounts vested in Mrs. Martin alone, and whatever drawings Mr. Martin made to finance his life with Mrs. Williams would have ceased. It might be difficult to assess in what amount these payments were made, but the fact that they occurred and that Mrs. Williams benefited from them cannot, in my judgment, be questioned. To that extent, therefore, Mrs. Williams was the poorer on the death of Mr. Martin, and this explains Mrs. Williams' reference (in paragraph 124 of her first statement, quoted at paragraph 254 above) to having to reduce the level of her lifestyle and living hand-to-mouth after Mr. Martin's death.

v) From this it follows, secondly, that the Judge was entitled to infer a contribution by Mr. Martin to his household with Mrs. Williams, and was entitled to review Mrs. Williams' expenditure figures in that light. I do not find the Judge's conclusion (which he derived from the schedules produced by Ms. McQuail) that the annual contribution to the household was £7,000 on the part of Mr. Martin (i.e. about £600/month) and £2,000 on the part of Mrs. Williams to be an unreasonable one. Viewed in this light, I do not consider that the Judge's concluding paragraphs can seriously be criticised:

> "112. Drawing those strands together, the view I take is that if one looks at this in a sensible and practical way and bearing in mind the sort of expenditure which [Mrs. Williams] and [Mr. Martin], when he was alive, were outlaying…the appropriate monthly level of expenditure of the claimant is more in the region of £1,200 to £1,500 per month with the upper figure being the appropriate one to use.
>
> 113. I should say that I am well aware that that is not descending into any detail at all, but one has got to look at this in the real world and the real world was that the deceased was considerably better off than the claimant. It is inconceivable that he would not have been more than willing and, indeed, it would have been perfectly natural for him to spend considerably more of his resources on his joint life with the claimant than the claimant did simply because he had more money than her and that is what he had been doing since 1994. Generally, couples do not spend at the level of the lowest common denominator but at a slightly higher one which, of course, is consistent with the overall picture which emerges from the financial analysis produced by [Ms. McQuail] which I have just referred to and broadly accept."

29. It follows that I reject Ground (2). HH Judge Gerald was entitled to find that Mr. Martin had maintained Mrs. Williams prior to his death. From this, it follows that there were grounds for the Judge to conclude that Mrs. Williams' financial needs were

greater than as set out in the 21 March 2013 letter: that is a conclusion which I do not consider I can re-visit on an appeal. I therefore also reject Ground (1A).

(5) Ground (4): Mrs. Williams' interest in 60 Slade Road

30. Ground (4) concerns the Judge's failure, so it is contended, to have due regard to Mrs. Williams' interest in 60 Slade Road.

31. Mrs. Williams' interest in 60 Slade Road was not disclosed in her solicitor's letter dated 21 March 2013, as it should have been. I am told that 60 Slade Road is a three-bedroomed house in Bristol, mortgage-free, in which Mrs. Williams has a 50% interest. The property had a value at the time of trial of £270,000 – Mrs. Williams' share was £135,000.

32. 60 Slade Road did not feature in the Judge's assessment of Mrs. Williams' income and expenditure at paragraphs 105 to 112 of the Approved Judgment. He did, however, consider 60 Slade Road in paragraphs 126 (under "Assets, and other factors") and 143 (when considering the third question) of the Approved Judgment. In paragraph 126, which contains the Judge's reasoning, the Judge said:

> "126. …she had inherited a one half interest in her father's home which she inherited in 2008. It is a property called 60 Slade Road in Bristol. Its current value is around £270,000, of which [Mrs. Williams] is entitled to one half. Its current value is around £270,000, of which the claimant is entitled to one half, being £135,000. In respect of that property it was [Mrs. Williams'] evidence that her sister lives there and she is of very limited resources so cannot really even afford to pay any rent. It is [Mrs. Williams'] understanding, although as she properly accepted, contrary to what she says in her witness statement, that she has not been given any advice as to whether or not her sister has any actual right to remain in occupation for the rest of her life, albeit that [Mrs. Williams] would be loathe, in fact would not, as I understood it, be prepared to evict her…

33. 60 Slade Road is obviously significant as a "financial resource" *prima facie* available to Mrs. Williams, in the sense that she has a present, unencumbered, 50% interest in a property valued at £270,000. Good reason would be required to leave the property entirely out of account. I find that there was no good reason in this case, for the reasons given in the following paragraphs.

34. There is no evidence that, as a matter of strict law, Mrs. Williams could not exercise a power of sale over 60 Slade Road. Ms. McQuail, in paragraph 10.1 of her written submissions, suggested that it was "far from clear that there would be any legal ability" to force a sale of 60 Slade Road. That is an unsustainable contention. In order to make good such a contention, it was incumbent upon Mrs. Williams to show circumstances that rendered 60 Slade Road "unavailable" as an asset as a matter of law. The Judge, quite properly, made no such finding: he had no evidence before him to enable him to do so.

35. Rather, the reason he left 60 Slade Road out of account was the human cost, as he saw it, of Mrs. Williams enforcing her strict legal rights as against her sister. In essence,

he considered that Mrs. Williams should not be placed in a position where she should be forced – in order to maintain herself – to evict her sister.

36. This gives rise to two questions:

i) First, as a matter of law under the 1975 Act, is a court entitled to disregard an asset on such grounds?

ii) Secondly, on the basis that it was (as a matter of law) open to the Judge to take this course, were there sufficient grounds to entitle him to do so?

37. Although Mr. Weale contended that the Judge was not entitled as a matter of law to disregard 60 Slade Road, the emphasis of his submissions (both oral and written) were on the second point. In paragraph 22 of his written submissions, Mr. Weale contended that "the reasons given by the Judge for disregarding 60 Slade Road were perverse and there was otherwise no proper basis for doing so".

38. In my Judgment, Mr. Weale was right to emphasise the second, rather than the first, point. The factors that the court must have regard to in the 1975 Act are broad: the 1975 Act, under section 3(1)(a), requires the court to "have regard to…the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future". Section 3(6) provides additional guidance to what must be taken into account when considering a person's "financial resources", including having regard to "earning capacity". Mr. Weale did not identify any law that required me to treat 60 Slade Road as a financial resource available to Mrs. Williams no matter what the circumstances, and I consider that (in an appropriate case) there would be a discretion to leave even a significant asset out of account.

39. That, however, leads to the second question, which is whether, as a matter of discretion, the Judge did indeed have sufficient grounds to enable him to leave a significant asset out of account. Mr. Weale submitted that there were no sufficient grounds to entitle the Judge to leave 60 Slade Road out of account. I accept these submissions, for the following reasons:

i) 60 Slade Road is a material asset in which Mrs. Williams has an immediate and significant interest of 50% - or £135,000. Extremely cogent reasons would be required to disregard this altogether.

ii) The evidence on which HH Judge Gerald disregarded this asset was quite flimsy. All Mrs. Williams' first witness statement said was:

> "114. I have an interest in a property at 60 Slade Road, Portishead, BS20 6BW. The property was my father's, until his death in 2008. When my sister, Jill, was widowed, she returned from living in Australia and moved into the property with my father. Under the terms of my father's will his estate, of which the property was the most significant asset, passed to my sister and me in equal shares…
>
> 115. I believe that the property is valued at approximately £215,000.
>
> 116. I do not consider my interest in 60 Slade Road, Bristol, to constitute an available asset. My sister, Jill, is 70 and widowed, and currently lives there on

> her own. Jill lived there with my father and cared for him until he died. She has no intention of leaving the property, and I would never consider asking her to leave, as it would go against the wishes of my late father. My father expressed very emphatically that this house was to be a roof over my sister's head for her life and my father spoke to Norman and I about this. My father was of the view that Norman would look after me financially whereas Jill needed more financial help. I am advised that Jill would be very likely to have good legal grounds for resisting any attempt by me to realise the proceedings of the property by forcing a sale.
>
> 117. Despite my interest in the property, it would be entirely inappropriate for me to live at 60 Slade Road. My life is in Dorchester now. I have many friends here as well as my job, and I consider it to be my home. I could not consider relocating to Bristol. Further, I have not lived with my sister since we were children and it would be entirely inappropriate to impose myself upon her."

iii) This evidence is not particularly full, and proceeds very much on the wrong premiss. The test under the 1975 Act is not what is "appropriate" for Mrs. Williams (or her sister), still less what their father considered should be done for Mrs. Williams by way of financial provision by Mr. Martin. The fact is that Mr. Martin has left Mrs. Williams in the position she is in, and it is for Mrs. Williams to demonstrate that the testamentary dispositions of Mr. Martin, in the Will, should be re-written.

iv) Even taking Mrs. Williams' evidence at its highest, what she says is insufficient to justify leaving 60 Slade Road out of account. Moreover, in cross-examination, Mrs. Williams agreed that her sister could easily downsize ("She can if she wants to."). She also acknowledged that –inconsistently with paragraph 116 of her witness statement – she had received no legal advice as to her sister's rights in 60 Slade Road.

v) I consider that, <u>if necessary</u>, Mrs. Williams could have realised and can still realise 60 Slade Road. I do not consider that there is enough evidence to justify the conclusion that her sister Jill's position would have rendered this so unreasonable a course of action so as to justify the asset being left out of account altogether.

vi) Moreover, no consideration appears to have been given to whether Mrs. Williams could have used 60 Slade Road to finance her needs <u>without</u> requiring her sister to move at all. I am certainly not satisfied that the choice before the Judge was as stark as either *(i)* leaving 60 Slade Road out of account altogether or *(ii)* forcing Mrs. Williams to turf her sister out of her home following a contentious and acrimonious legal wrangle. The evidence simply does not allow the choice of alternatives to be presented as starkly as that.

40. I hold that HH Judge Gerald's decision to leave 60 Slade Road out of account was a perverse conclusion. The facts stated by the Judge cannot justify it; and there are no other facts, unstated by the Judge, that could justify it. Indeed, properly considered,

the basic premiss of the Judge – that Mrs. Williams should not be forced to evict her sister – I find misconceived and wrong. It follows that Ground (4) succeeds.

D. MRS. MARTIN'S INCOME AND EXPENDITURE

(1) Introduction

41. Paragraphs 114 to 120 of the Approved Judgment consider Mrs. Martin's income and expenditure. Mrs. Martin says – Ground (5) of her appeal – that HH Judge Gerald wrongly dismissed the evidence of Mrs. Martin as to her financial needs in circumstances where her evidence was not challenged during cross-examination.

42. The evidence of Mrs. Martin's financial needs is set out in her second and third witness statements. In her second statement, she says this of her income:

> "122. Prior to Norman's death, the entirety of Norman's pension was paid into the Joint Account (which was mainly used by me). In the months before he died, Norman's pension was £3,116.42…
>
> 123. Since Norman's death, Norman's pension provision (which I became entitled to) from the NHS was reduced to about £1,670 (this figure fluctuates slightly). Therefore, the income paid into the Joint Account has effectively been reduced since Norman's death by around £1,450.
>
> 124. In addition to that income, my own income is made up from my pension with Dorset County Council which is £674.38/month. I also have a state pension of £574.24/month (i.e. a total of £1,248.62/month). Therefore my total monthly income is £2,918.62 (which equates to £35,023.44/annum),
>
> 125. The only significant asset that I have from which to live is money in the Reserve Account. The current balance of this Reserve Account is about £26,839.81…and Building Society Accounts totalling about £17,000."

43. In terms of expenditure, paragraph 135 of her second statement states:

> "In total my monthly outgoings are around £4,500. These outgoings are essentially as they were prior to Norman's death. There is therefore a monthly shortfall of around £1,500 based on my current income (which equates to an annual shortfall of around £18,000). As I explain below, I fear that my health conditions will mean that it is likely that I will require the assistance of professional carers in the not-too-distant future."

44. Her third statement verified various matters that had been raised during the course of the proceedings.

45. None of this was challenged in cross-examination of Mrs. Martin. Mrs. Williams was represented by the very experienced Ms. McQuail and I have no reason to doubt, and every reason to think, that this was a deliberate course – no doubt because of a mature assessment that Mrs. Martin was telling the truth, and that cross-examination would serve no purpose beyond buttressing Mrs. Martin's position.

46. The reason there was no cross-examination is, in fact irrelevant. The fact is that there was none on this point. The absence of cross-examination, and of probing by the Judge himself, makes the Judge's criticism of Mrs. Martins' evidence, and the inferences he made in relation to that evidence, impossible to justify. Paragraphs 118 ("…it is quite possible that there are additional means not revealed to the court…") and 144 ("there has been an absence of frankness as to her actual resources and income given the shortcomings in disclosure") both suggest – quite without warrant – that Mrs. Martin had failed to disclose assets to the court.

47. Similarly, in relation to Mrs. Martin's outgoings, the Judge voiced an uncalled for scepticism as to the truth of what she was saying (paragraph 120: "…one should take into account what she says with a pinch of salt so far as the 1975 Act is concerned…").

48. The Judge's approach – given that Mrs. Martin's evidence had not been challenged, as the Judge himself correctly noted during the course of closing submissions – was unprincipled and wrong. He should have carried out his assessment under the 1975 Act on the basis of Mrs. Martin's evidence, and not sidelined or discounted it for no reason.

49. The only other basis on which HH Judge Gerald decided that Mrs. Martin's needs were less than she had suggested in her evidence to the court arose out of an "open" offer made by Mrs. Martin's solicitors on 5 January 2015. This offer expressed Mrs. Martin's willingness to allow Mrs. Williams to stay in 20 Coburg Road for the rest of her life. The offer was made by Mrs. Martin's solicitors in an attempt to bring the proceedings to a close. It was later withdrawn to reflect that fact that – given that the proceedings had not settled – costs in these proceedings were being incurred. But, the willingness on the part of Mrs. Martin to allow Mrs. Williams a life interest in Mr. Martin's 50% share of 20 Coburg Road offer was repeated by Mrs. Martin in her written and oral evidence.

50. The Judge took the view that this offer of a life interest substantially undermined Mrs. Martin's evidence as to her needs. Thus:

    i) In paragraph 114 of the Approved Judgment, HH Judge Gerald commented that "[Mrs. Williams'] income and expenditure is to be contrasted with that of [Mrs. Martin], being the sole beneficiary under the Will, who, as I have said, has made clear in her witness statement that notwithstanding what she says about her actual need and such like, she would be content for [Mrs. Williams] to live at Coburg Road for the rest of her life from which, as I have already inferred, [Mrs. Martin] does not need [the property] to be sold in order to generate any income from the deceased's half share or provide a capital sum to draw on".

    ii) In paragraph 117 of the Approved Judgment, the Judge again referred to the offer as the reason for his "difficulty in understanding [Mrs. Martin's] level of expenditure because, if it were so, it would be obvious that her income is more than exceeded by her expenses, but that did not seem to be anything which particularly concerned her in her witness statement…".

    iii) In paragraph 120 of the Approved Judgment, the Judge says:

> "When taking into account what she actually *needs* as opposed to what she presently is said to spend, in my judgment, one should take into account what she says with a pinch of salt so far as the 1975 Act is concerned. Putting that all another way, the only rational way to approach the inconsistency between [Mrs. Martin] on the one hand being content for [Mrs. Williams] to continue living in Coburg Road, thence making it unavailable to meet [Mrs. Martin's] financial needs, and, on the other hand, [Mrs. Martin] claiming that her current expenditure vastly outstrips her income is that that expenditure does not represent her "reasonable financial needs"".

51. I consider that HH Judge Gerald placed entirely too much emphasis on this offer and that it was not open to him to reject Mrs. Martin's unchallenged evidence on this basis. Not only was Mrs. Martin's evidence unchallenged, but the offer in relation to 20 Coburg Road was originally made in the context of this litigation, in which Mrs. Williams was (at least at the outset) claiming rather more than just 20 Coburg Road (see paragraph 5 above). Whilst I do not say that an offer to settle says nothing about the financial position of the offeror, it is extremely dangerous to draw inferences from the fact that such an offer has been made, given how the making of such an offer is coloured by a litigant's desire to bring proceedings to an end and to avoid further costs. The inference as to Mrs. Martin's means and expenditure that the Judge drew out of this offer was an impermissible one.

52. What is more, the offer was of a life interest, no more. There was no discussion in the Approved Judgment of the extent to which Mrs. Martin could use her reversionary interest in Mr. Martin's share of the freehold to raise money: yet that is as relevant to means as anything else.

53. I hold that the Judge's conclusions in relation to Mrs. Martin's needs were unsupported (indeed, contradicted) by the (unchallenged) evidence before him, and that he placed an unreasonable reliance on the offer of a life interest in 50% of 20 Coburg Road when making the inferences he did as to Mrs. Martin's financial position. Accordingly, Ground (5) succeeds.

E. THE RELIEF GRANTED WAS IN EXCESS OF WHAT WAS NECESSARY

54. This is the third of Mrs. Martin's grounds of appeal – Ground (3). It is difficult to separate this ground from the other grounds of appeal already considered. If, as I have found, the Judge wrongly and without justification understated Mrs. Williams' financial position (in respect of 60 Slade Road) and overstated that of Mrs. Martin (concluding that she was in less financial need than the facts warranted), it follows that the relief granted by him would have been excessive, simply by reason of these errors.

55. Moreover, considering the Judge's approach to assessing the necessary relief in the round, it is clear that the Judge failed to follow the approach laid down in the 1975 Act, and that for this reason also Ground (3) should succeed:

    i) First, HH Judge Gerald failed to consider the appropriate test for determining what "reasonable financial provision" would be for Mrs. Williams. Although the relevant statutory provisions are set out in paragraphs 101 and 102 of the Approved Judgment, there is no suggestion that the statutory test was

considered or applied in the later parts of the Approved Judgement, in particular in paragraphs 112 and 113. The Judge should certainly have had the following factors in mind:

a) The 1975 Act does not seek to abrogate the concept of freedom of testamentary disposition. As Francis notes at p.1-1, "[i]t is open to a testator whose property is governed by English law to leave that property on death as he pleases, or to decline to make express provision, thereby allowing the English law of intestacy to regulate the disposition of property. The fact that the outcome of testate or intestate succession may be perceived to be unfair or unjust does not remove that freedom."

b) The 1975 Act permits the court to interfere in the testamentary or intestate disposition of property only when there is a failure to make reasonable financial provision for those classes of person defined in section 1(1) of the 1975 Act. In the case of Mrs. Williams, "reasonable financial provision" means (by section 1(2)(b) "such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance".

c) In Re. Coventry, [1980] 1 Ch. 461 at 485, Goff L.J. stated:

> "There have been a number of cases under the Inheritance (Family Provision) Act 1938 previously in force, and also some cases from sister jurisdictions, which have dealt with the meaning of "maintenance". In particular, in this country, there is In Re. E., deceased, [1966] 1 W.L.R. 709 in which Stamp J. said that the purpose was not to keep a person above the breadline but to provide reasonable maintenance in all the circumstances. If I may say so with respect, "breadline" there would be more accurately described as "subsistence level". Then there was Millward v. Shenton [1972] 1 W.L.R. 711 in this court. I think I need only refer to one of the overseas reports, In Re. Duranceau [1952] 3 D.L.R. 714, 720, where, in somewhat poetic language, the court said that the question is: "Is the provision sufficient to enable the dependent to live neither luxuriously nor miserably, but decently and comfortably according to his or her station in life?"
>
> What is proper maintenance must in all cases depend upon all the facts and circumstances of the particular case being considered at the time, but I think it is clear on the one hand that one must not put too limited a meaning on it; it does not mean just enough to enable a person to get by; on the other hand, it does not mean anything which may be regarded as reasonably desirable for his general benefit or welfare."

ii) Secondly, HH Judge Gerald appears to have applied altogether the wrong test in relation to Mrs. Martin. As to this:

a) Mrs. Martin was not an applicant under the 1975 Act. She was, as the executrix, the defendant; what is more, she was the sole beneficiary under the Will.

b) It is difficult to see how – in these circumstances – Mrs. Martin could have made an application under the 1975 Act, even if she had tried. The estate already devolved to her by the Will.

c) In those circumstances, however, given that the estate left under the Will by Mr. Martin was a small one, which by itself would be unlikely to meet the needs of two applicants under the 1975 Act, it was incumbent on the Judge to have regard to the effect of making "reasonable financial provision" for Mrs. Williams on Mrs. Martin.

d) By that, I do not mean that Mrs. Martin needed herself to be assured of "reasonable financial provision" out of the estate left by Mr. Martin. The Judge could, quite properly, look in general terms at 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" when considering the position of Mrs. Martin.

e) But the Judge had to assure himself that Mrs. Martin would have "reasonable financial provision". In these circumstances, it is important to bear in mind that the test of "reasonable financial provision" for spouses who are applicants under the 1975 Act is different to that applicable to Mrs. Williams. Had Mrs. Martin been an applicant under the 1975 Act, the test of "reasonable financial provision" is what "would be reasonable in all the circumstances of the case, whether or not that provision is required for his or her maintenance". Whether this is a higher or a lower standard in the particular circumstances of this case (Mrs. Williams having – as the Judge found – been Mr. Martins' partner for many years, living in the same household as him as husband and wife; and Mrs. Martin – again according to the findings of the Judge – being his separated wife) is a difficult question, but it is one that the Judge should have addressed.

f) As it is, he held, in paragraph 120 of the Approved Judgment, that what mattered was what Mrs. Martin "actually *needs* as opposed to what she presently is said to spend". That was, on any view, the wrong test. Moreover, without any justification, HH Judge Gerald appears to have applied, for no good reason, very different tests to Mrs. Williams (see paragraphs 112 and 113 of the Approved Judgment) and Mrs. Martin (see paragraph 120 of the Approved Judgment) as to their reasonable financial provision.

iii) Thirdly, having ascertained what would be "reasonable financial provision" for each of Mrs. Williams and Mrs. Martin, the Judge should have considered whether both those interests could be satisfied given the limited estate left by Mr. Martin. What the Judge appears to have done is simply to have assumed that Mrs. Martin had enough, and that Mrs. Williams' needs therefore overrode those of Mrs. Martin. Paragraphs 114 and 115 adopt a "comparative" approach between Mrs. Williams and Mrs. Martin ("[Mrs. Williams'] income and expenditure is to be contrasted with that of [Mrs. Martin]…": paragraph 114; "[Mrs. Martin] is in a considerably better position than [Mrs. Williams]…": paragraph 115). I do not suggest that such a "comparative"

approach is wrong in the case of a limited estate: but it does need to be carried out extremely sensitively having made findings as to what is "reasonable financial provision" for all interested parties.

F. CONCLUSION AS TO THE JUDGE'S DECISION

56. I find that Grounds (4), (5) and (3) (adopting the order in which I have determined them) succeed for the reasons I have given.

57. As was noted in paragraph 14 above, the 1975 Act requires the court to determine three questions:

i) Standing, which was not the subject of this appeal, and which the Judge determined in Mrs. Williams' favour.

ii) Whether, as a value judgment, the Will made reasonable financial provision for Mrs. Williams' maintenance. Here the Judge found himself satisfied that reasonable financial provision had not been made. I must ask myself whether, given that Grounds (4), (5) and (3) have succeeded, this binary conclusion can stand. I conclude that it can, despite these three grounds succeeding, for the following reasons:

a) As I have noted, permission to appeal was not given in respect of standing. The Judge's general conclusions regarding the nature of the relationship between Mr. Martin and Mrs. Martin on the one hand, and Mr. Martin and Mrs. Williams on the other hand, must stand.

b) Mr. Weale quite properly did not seek to challenge on this appeal the Judge's general factual findings, save to the extent he contended – as an intrinsic part of Mrs. Martin's grounds of appeal – that the Judge had reached a conclusion perversely or without proper regard to the facts.

c) I therefore consider that I am bound to accept at least the following as fact:

i) That Mr. Martin and Mrs. Williams lived as man and wife in a loving relationship and in the same household over a considerable period of time.

ii) That Mr. Martin contributed to his household with Mrs. Williams.

iii) That Mr. Martin and Mrs. Martin were separated and that their marriage was in all but law over; but that Mr. and Mrs. Martin abided by the "do-it-yourself" divorce arrangement that they had reached when Mr. Martin took up with Mrs. Williams, and were bound together in providing for their daughters.

iv) That Mr. Martin's Will made no provision for Mrs. Williams.

d) In these circumstances, I consider that the Judge was right to decide the binary value judgment contained in the second question in Mrs. Williams' favour. Given the unchallenged facts that the Judge found, I too would have concluded on the basis of those facts that the Will did not make reasonable financial provision for Mrs. Williams. To this extent, therefore, I uphold the decision of the Judge.

iii) On the other hand, it is clear that the Judge's exercise of his discretion in respect of the third question – what provision should be made? – is fatally undermined by the success of Mrs. Martin in respect of Grounds (4), (5) and (3). Both Mr. Weale and Ms. McQuail submitted that to remit matters for a re-trial would be disproportionately expensive, and urged me (in the event it was necessary to do so) for me to re-visit the Judge's exercise of his discretion myself. That was the approach followed by the Court of Appeal in Fielden v. Cunliffe [2005] EWCA Civ 1508:

> "57. Counsel for both parties sensibly agreed that given the high level of costs already incurred in this case, a re-trial was not the appropriate course if we came to the view that the judge's order could not stand. Both invited us to provide a figure in substitution for that ordered by the judge.
>
> 58. Whilst I agree that this is the better course, it has some disadvantages from this court's point of view. For example, the judge failed to make any finding about Mrs. Cunliffe's housing needs, or the cost of suitable alternative accommodation. His finding as to her earning capacity is not altogether secure, given her evidence. On the other side, he did not value the family trust funds (apart from the deceased's estate) available for the support of Diana, Victor and the latter's children.
>
> 59. Fortunately, I think there is sufficient material in the papers for this court to exercise its discretion and reach a figure, although the exercise, of necessity, will be somewhat rough and ready."

I am conscious that exercising a discretion divorced from the hearing of the evidence can be problematic for the reasons articulated by the Court of Appeal; but, as in Fielden v. Cunliffe, I consider that there is sufficient material for me to be able to exercise the discretion anew.

G. RE-VISITING THE QUESTION OF REASONABLE FINANCIAL PROVISION

58. It is necessary to begin with Mrs. Williams. As I made clear in paragraphs 24 to 29 above, I accept the Judge's findings in relation to Mrs. Williams' financial needs apart from his disregard for 60 Slade Road. In these circumstances:

i) Mrs. Williams' appropriate monthly level of expenditure is £1,500/month (paragraph 28(v) above), which is £18,000/year.

ii) Her income is as stated in paragraph 106 of the Approved Judgment, which £1,250/month at present (£15,000/year), but which will fall – if Mrs. Williams retires – to £650/month (£7,800/year).

iii) Mrs. Williams is of an age where she would like to retire and I consider that the correct approach in calculating what amounts to a reasonable financial provision is to proceed on the basis of what Mrs. Williams' retirement income would be (irrespective of what she in fact chooses to do).

iv) The difference between Mrs. Williams' expenditure and her retirement income is £10,200. Using the Duxbury Calculations to assess what capital amount would produce an income of this level, one reaches a figure of around £59,000 (this is for a female aged 69, producing an income of £10,000).

v) This figure - £59,000 – is well within the equity interest that Mrs. Williams has in 60 Slade Road, and I consider (for the reasons I gave in paragraphs 30 to 40 above) that this equity of £135,000 should be drawn upon. I should say that I reach this conclusion in the hope that Mrs. Williams and her sister Jill can arrive at, as they should, a non-contentious way of releasing capital out of 60 Slade Road. But I should make clear that, on the evidence before me, I regard 60 Slade Road as an asset available to Mrs. Williams, having taken full account of the concerns articulated by Mrs. Williams' in her evidence (as I have described it in paragraphs 30 to 40 above).

59. However, I am conscious that the Judge's assessment of Mrs. Williams' income and expenditure proceeded on the basis that she was living at no cost to herself in 20 Coburg Road. The Judge removed as an expense the cost of servicing the mortgage over 20 Coburg Road, and it is necessary to understand why:

i) 20 Coburg Road was purchased jointly by Mr. Martin and Mrs. Williams as tenants in common for a purchase price of £277,500, each holding a 50% interest (see paragraph 91 of the Approved Judgment).

ii) Mrs. Williams was able to contribute her share from monies that she had saved. Mr. Martin, on the other hand, drew £90,000 out of the Accounts he held jointly with Mrs. Martin and took out a loan from National Westminster Bank plc for a further £50,000 (see paragraph 91 of the Approved Judgment), which was secured by a mortgage over 20 Coburg Road (see paragraph 92 of the Approved Judgment).

iii) Mr. Martin paid the interest on the £50,000 loan (see paragraph 91 of the Approved Judgment), and it was anticipated that his drawing from the Accounts and the loan from the bank would be repaid when he received a lump sum payment on retirement (see paragraph 91 of the Approved Judgment).

iv) In the event, on his retirement, Mr. Martin received £136,395, which was paid by him into the Accounts. He died, leaving the £50,000 loan unrepaid. The monies in the Accounts, of course, passed by survivorship to Mrs. Martin.

v) There may very well have been an informal understanding between Mrs. Martin and Mr. Martin that the loan should be repaid out of the Accounts. If so, Mrs. Martin honoured that understanding, and (either out of the other assets comprising Mr. Martin's estate or out of the Accounts) herself paid to discharge the mortgage over 20 Coburg Road.

vi) In this way, 20 Coburg Road is unencumbered.

60. Some account clearly needs to be taken of Mrs. Williams' housing needs. The Judge did this by ordering that Mr. Martin's share in 20 Coburg Road should vest in Mrs. Williams. In this, I consider that the Judge went too far. Such an order goes well beyond what is necessary to make reasonable financial provision for Mrs. Williams. In my judgment, the appropriate order to make (considering simply Mrs. Williams' position: I consider Mrs. Martin's position further below) is to vest in Mrs. Williams a life interest in Mr. Martin's share of 20 Coburg Road, but with all other rights (specifically, the reversion of that interest) vesting in Mrs. Martin. My reasons for reaching this determination are as follows:

i) It is obvious that reasonable financial provision for Mrs. Williams involves ensuring a roof over her head. However, that could be achieved by using up the remaining equity in 60 Slade Road and Mrs. Williams' 50% share in 20 Coburg Road.

ii) I do not consider that this would be reasonable financial provision. Mrs. Williams is living in 20 Coburg Road, the home she shared with Mr. Martin. In my judgment not only should she be able to reside there rent free, she should also be able to choose the terms upon which she leaves 20 Coburg Road. Although I understand that Mrs. Williams is considering "downsizing", I do not consider – given both her emotional attachment to the property and the transaction costs involved in downsizing – that this is a course that should be imposed upon her.

iii) A life interest prevents Mrs. Martin from seeking to sell the property over Mrs. Williams' head, but does not involve the excessive provision that would be the case were Mr. Martin's entire interest to be made over to Mrs. Williams.

iv) I consider that if Mrs. Williams is inclined to move out of 20 Coburg Road to another property, that can be achieved by a settlement along the lines proposed in Mrs. Martin's solicitor's letter of 5 January 2015 relating to Mr. Martin's 50% share in 20 Coburg Road. Subject to two points I consider further below, that is the disposition I am minded to order pursuant to section 2 of the 1975 Act in this case.

61. The two points that require further consideration are:

i) Mrs. Martin's own need for reasonable financial provision.

ii) The risk that the disposition that I am minded to make as described in paragraph 60 above is unworkable due to the animosity that is said to exist between Mrs. Martin and Mrs. Williams and *vice versa*.

62. Mrs. Martin's own need for reasonable financial provision can be dealt with relatively quickly. That is because the disposition that I am minded to make is – apart from the question of the costs of these proceedings, which is not a relevant factor at this stage of the analysis (as both parties agreed), and which I leave out of account – in line with the proposal made by Mrs. Martin's own solicitors, and confirmed by her in her written and oral evidence. I have considered carefully whether – in adopting this

approach – I am making the same mistake that I have found HH Judge Gerald to have made in attaching too much weight to this offer. I consider that I have not: I am very conscious that it was Mrs. Martin who discharged the mortgage over 20 Coburg Road, although no doubt that is something Mr. Martin would have done, had he lived. In doing so, however, Mrs. Martin deprived herself of £50,000, which either came out of the estate left to her by the Will or out of the Joint Account, which accrued to her by survivorship. (The £50,000 could, for instance, have been paid out of Mr. Martin's 50% share in the property.) By ensuring that the reversion in 50% of 20 Coburg Road goes to Mrs. Martin after Mrs. Williams' death, this payment of £50,000 is taken fully into account. In short, I consider that the vesting of a life interest, but no more, in Mrs, Williams, accords with Mrs. Martin's own assessment of what would be reasonable financial provision both for Mrs, Williams and (more particularly) for Mrs. Martin herself.

63. Turning to the second point, which is the risk that animosity will render the order I am minded to make unworkable. I reject this argument. In the first place, the order is not so complex as to be capable of being thwarted by such animosity as may exist between the parties. In the second place, I am very conscious that personal litigation between individuals, in which they each have much to lose, is capable of engendering strong and hostile personal feelings. My sense is that, once this matter is finally resolved, and conscious now (if they were not before) of the costs of litigation (both financial and otherwise), the parties will be able to work together to the extent necessary. That, to the limited extent described in paragraph 60 above, is, in any event, what I am requiring them to do.

H. DISPOSITION

64. For the reasons given in this Judgment, and pursuant to section 2 of the 1975 Act, a life interest in the 50% of 20 Coburg Road that belonged to Mr. Martin shall vest in Mrs. Williams. I will hear from the parties' counsel as to the appropriate form of order and as to the costs of these proceedings.