

Neutral Citation Number: [2018] EWHC 767 (Ch)

Case No: HC-2017-000089

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 17/4/2018

Before:

MASTER CLARK

Between:

AMÉLIE PEARL LILY PROLES
(a minor by her mother and litigation friend,
MELISSA PROLES)

Claimant

- and -

HARJEET KAUR KOHLI
(in her capacity as executor and beneficiary of the
estate of BALDEV KOHLI deceased)

Defendant

Julia Beer (instructed by **Mundays LLP**) for the **Claimant**
Teresa Rosen Peacocke (instructed by **Wright Hassall LLP**) the **Defendant**

Hearing dates: 11, 12, 18, 19 and 22 January 2018

Judgment Approved

Master Clark:

Introduction and the claim

1. This is my judgment in the trial of a preliminary issue in a claim under the Inheritance (Provision for Family and Dependants) Act 1975 (“the 1975 Act”).
2. The claimant, Amélie Proles (“Amélie”) was born on 5 March 2013, and is now 5 years old. Her claim is made against the estate of Baldev Kohli (“the deceased”), whom she says is her father (this is in issue in the claim). He died on 8 December 2015, leaving a will dated 30 October 2015 (“the Will”) which makes no provision for Amélie. The claim is pursued on her behalf by her mother and litigation friend, Melissa Proles (“Ms Proles”), with whom the deceased had an intimate relationship in the first 8 or 9 months of 2012.
3. The deceased was a married man at the time of his relationship with Ms Proles (although he told her that he was divorced), and he remained married at the date of his death. The defendant, Harjeet Kohli (“Mrs Kohli”), is the deceased’s widow, the executor appointed by the Will and the sole beneficiary under it. Probate was granted to her on 15 July 2016.
4. Section 1(1) of the 1975 Act provides, so far as relevant:
 - “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:-
...
(c) a child of 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.”
5. The issue to be tried therefore is whether the deceased was domiciled in England and Wales at the date of his death, the burden of proof being upon Amélie. It is common ground that the deceased’s domicile of origin was India. The preliminary issue can therefore be divided into two sub-issues:
 - (1) whether the deceased, during his residence in England, acquired England as his domicile of choice;
 - (2) if so, whether he abandoned it by deciding to travel and travelling to India on 3 November 2015, where he lived until his death just over a month later.

Legal principles

6. The relevant legal principles are summarised in Dicey, Morris & Collins Conflict of Laws 15th edn, Chapter 6, Section 2: B.

Rule 10:

Every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise.

Rule 11:

Any circumstance which is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice in that country.

Rule 13:

- (1) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise
- (2) When a domicile of choice is abandoned, either (i) a new domicile of choice is acquired; or (ii) the domicile of origin revives.

Residence

7. It is not necessary to show an intention to reside to establish residence. But, to give rise to the inference that the country of residence has become the domicile of choice, the residence must be the primary one:

“Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily **his sole or chief residence** in a particular place, with an intention of continuing to reside there for an unlimited time.” (emphasis added).

Udny v Udny (1869) LR 1 Sc&Div 441; followed in *Henwood v Barlow Clowes International* [2008] EWCA Civ 577.

Intention

8. Residence without the relevant intention is insufficient to show the acquisition of a domicile of choice. That intention is one to reside permanently or for an unlimited time in a country:

“Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicile, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation.”

Udny v Udny (1869) LR 1 Sc&Div 441

9. “Unlimited time” was further explained in *IRC v. Bullock* [1976] 1 WLR 1178 at 1184H:

“A man might remove to another country because he had obtained employment there without knowing how long that employment would continue but without intending to reside there after he ceased to be so employed. His prospective residence in the foreign country would be indefinite but would not be unlimited in the relevant sense. On the other hand, as I have already indicated, I do not think that it is necessary to show that the

intention to make a home in the new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no opportunity to change his mind. In my judgement the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to him to make him change his mind.”

10. When considering intention, the court must look back as from the date of death at:

“the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death.”

Mummery LJ in *Agulian v Cyganik* [2006] EWCA Civ 129

Special care must be taken in the analysis of the evidence about isolating individual factors from all the other factors present over time and treating a particular factor as decisive: *Agulian* at [46].

11. As to the nature of the intention, as explained in *Bullock*:

“The effect upon a man of the change of domicile is to make the law of his new domicile his personal law in place of the law of his previous domicile. The intention which has to be sought, however, is not a conscious intention to achieve this result. I think it would be unusual for anyone who changed his domicile to have done so consciously or primarily for the purpose of subjecting himself to the legal system of his new country.”

12. Express declarations of intention are not conclusive. They

“must be examined by considering the persons to whom, the purposes for which, and the circumstances in which they are made, and they must be further be fortified and carried into effect by conduct and action consistent with the declared expressions.”

Ross v Ross [1930] AC 1, 6-7

The court may refuse to give effect to them if they are inconsistent with the conduct of the person whose domicile is in issue (“the propositus”) – a domicile cannot be acquired or retained by mere declaration: Dicey at para 6-051.

13. As Dicey notes (at para 6-051), the courts are, in particular, reluctant to give effect to declarations which refer in terms to “domicile” since the declarant is unlikely to have understood the meaning of the word. Such declarations may also be self-serving when made in circumstances where the propositus has a motive for establishing a particular domicile. “Subjective intentions have to be ascertained by the court as a fact by a process of inference from all the available evidence about the life of the person whose domicile is disputed.”: *Agulian* at [13].

The witnesses

Claimant's witnesses

14. The following witnesses gave evidence on behalf of the Claimant:
- (1) Ms Proles;
 - (2) Heather Proles, Ms Proles' mother;
 - (3) Hilary Omissi, a member of the St George's Hill Tennis Club and a friend of Ms Proles;
 - (4) Joseph Wilson, a member of the St George's Hill Tennis Club, and a friend of the deceased;
 - (5) Laura King, a member of the St George's Hill Tennis Club and a friend of Ms Proles.
- All of these witnesses were honest and straightforward.

Defendant's witnesses

15. The witnesses who gave evidence in Mrs Kohli's case were
- (3) the defendant, Mrs Kohli;
 - (4) the deceased's elder son, Rajveer Kohli;
 - (5) the deceased's younger son, Aviraj Kohli;
 - (6) Peter Jamieson, the chair of the St George's Hill Tennis Club and a friend of the deceased;
 - (7) Ampharpal Kohli, the deceased's brother;
 - (8) Maninder Singh, Mrs Kohli's brother;
 - (9) Carolyn Botterill, a member of St George's Hill Tennis Club and a friend of the deceased;
 - (10) Ewan Cockcroft, the deceased's accountant.
16. As for the deceased's immediate family, I have reservations about the reliability of their evidence. Mrs Kohli embellished her oral testimony by, for instance, saying that she had visited the Tennis Club (of which the deceased was an enthusiastic member), when in her witness statement she said she had never visited it, and explained why not. In cross examination, she accepted that she was familiar with two properties bought by the deceased in 2006, Flat 28, Grice Court and 198 New North Road; and two further properties bought in 2009, 343 Earlsfield Road and garages at Carlisle Place. None of these were mentioned in her witness statement. Most significantly, her evidence that she and the deceased remained physically and emotionally close throughout their marriage was unsupported by any evidence by way of texts or emails; or any other written communications such as letters or cards. In 2016, Mrs Kohli had a Gmail address and sent emails from her iPhone: her evidence omitted any account of her communications using emails and texts. The lack of emails and texts between her and the deceased is to be contrasted with the hundreds of texts and emails passing between the deceased and Ms Proles. These show the deceased as an emotional and expressive person, who did not hesitate to express his feelings in writing. It was only in re-examination (and in response to a question not arising out of her cross examination) that Mrs Kohli said that she and the deceased kept in touch by telephone.
17. As to Rajveer, his witness statement did not accurately set out his father's property dealings, all of which (except for one property, 28 Grice Court) are now agreed by Mrs Kohli. For instance, he described 198 New North Road as having been bought at auction in 2006 and sold a few months later. The true position is that the

deceased retained the freehold of the property until 2012; and created three leasehold interests of which 2 were sold in 2006 and the third sold in 2007 (see paras 37 and 44 below). Rajveer also claimed to be the beneficial owner of 28 Grice Court and 8 Vauxhall Grove (discussed in paras 38 and 47 below), both of which claims I have rejected.

18. As to Aviraj, he was not an open and straightforward witness. His witness statement was also inaccurate when setting out his father's property dealings, which he referred to as "flipping" properties. He omitted from his statement the purchase of the property 62 Kingsley Road, Hounslow, incorrectly stating that the deceased sold his house at 15 Windmill Rise, Kingston to buy another house at 12 Savery Drive, Kingston. In his oral evidence, he was unable to give any detailed evidence as to the deceased's property dealings. In cross examination, he accepted (contrary to Mrs Kohli's case) that the deceased always provided the funds to purchase any properties; and that he was the decision maker and the "boss".
19. The claimant's counsel submitted that in the light of the conveyancing documents referred to below, the evidence of Mrs Kohli, Rajveer and Aviraj was deliberately incomplete, and I agree. This undermines their credibility on the other issues in this claim.
20. Mr Jamieson, while seeking to do his best, was affected by his loyalty to the deceased and to his widow, Mrs Kohli, whom he is helping in this litigation: as he put it, "it is the honourable thing to do to defend his estate" (from Amélie's claim). He had no detailed knowledge of the deceased's business dealings; and I consider that his view of Ms Proles and the deceased's relationship with her was inevitably rather one-sided, and coloured by the deceased's own inconsistencies as to fulfilling his promises to take financial responsibility for Amélie.
21. Ms Botterill was not a close friend of the deceased: she was not, for instance, invited to the party held by him for the Jesters to celebrate Amélie's birth. Her evidence was also coloured by the fact that the deceased was her only source of knowledge as to his relationship with Amélie and Ms Proles; the deceased being, as several witnesses commented, somewhat unreliable in the account he gave of himself to others.
22. Ampharpal Kohli and Maninder Singh had no real knowledge of the deceased's activities and life in England, and only saw him at family occasions in India. Ewan Cockcroft was the accountant for the deceased's companies, Communion Solutions Limited ("CSL") and Almond Alliance Limited ("AAL"), but not for his personal affairs. His evidence was in parts inconsistent with the financial records maintained by him in respect of those companies, and, where it did conflict, I prefer those records to his evidence.

The documentary evidence

23. The relevant events in this case span a period of at least 13 years. Not surprisingly, in the earlier part of this period, full financial records are not available. Mrs Kohli has resisted disclosing the conveyancing files for the numerous properties bought and sold by the deceased. This was partly on the basis that the disclosure was unnecessary because "details of these are addressed in the witness evidence"; and

partly on the basis that the files were held by Barretts, the conveyancing solicitors, who had a lien on them for unpaid fees (Mrs Kohli's solicitors' letter dated 17 July 2017). On 4 September 2017, on a contested application, I ordered disclosure of several categories of documents including all documents relating to the deceased's property dealings. The disclosed documents included 37 files held by Barrett & Co in respect of conveyancing transactions by the deceased (and his companies). Rajveer's oral evidence was that he had had access to these files in 2016, notwithstanding the lien, because, as he put it, he "sweet-talked the solicitor".

24. As mentioned above and set out in more detail below, the conveyancing documents revealed a number of properties bought by the deceased, but not mentioned by Mrs Kohli, Rajveer or Aviraj in their witness statements.

The Facts

25. Many of the facts in this case are not contentious, and, at the trial were either expressly agreed or not disputed by the parties. Unfortunately, little attempt seems to have been made to agree non-contentious facts before the trial; so that the bundles included large amounts of material that it was unnecessary to look at, including all the conveyancing files referred to above.
26. Before turning to the facts, therefore, I record that the following were not in issue at trial:
- (1) The deceased was resident at various addresses in London from 2003 onwards – set out in annex 1 to this judgment; although Mrs Kohli disputes that the deceased ever intended to reside at the final property on the list, Flat A, Hill Rise House, Holbrooke Place, Richmond TW10 6UD;
 - (2) The deceased's property dealings in London – as set out in annex 2 to this judgment. Mrs Kohli disputes the position as to 28 Grice Court (considered in para 38 below). She also disputes the source of the purchase monies for the properties, but did not put forward a positive case as to their source. Insofar as they arise, my findings as to these are also set out in the course of this judgment.
 - (3) The dates when the deceased was in India and in the UK between January 2012 and November 2015 – set out in annex 3 to this judgment
 - (4) The dates when Mrs Kohli was in India and in the UK in the same period.
27. The primary factual issues between the parties were:
- (1) The nature and strength of the deceased's relationship with Mrs Kohli from about 2009 onwards;
 - (2) The strength of the deceased's attachment to and commitment to Amélie;
 - (3) The deceased's subjective intention when he decided to and did travel to India in the last few weeks of his life – whether he intended to return to England.
28. One of the difficulties in this case in evaluating the evidence in this case is the deceased's unreliability in his dealings with all the witnesses in this case. An example is how he presented his relationship with his wife to the outside world. In addition to Ms Proles, he also told some of her friends at the Tennis Club (of which he and she were both members) that he was divorced. He told some of his own friends at the Tennis Club that he was still married, and introduced them to Mrs Kohli in 2010 or 2011. As mentioned, he told his own solicitors that he had been

separated from his wife since about 2010. Another example is that he complained about Ms Proles' financial demands on him, although he had promised to take full financial responsibility for Amélie, and whilst also buying Amélie extravagant gifts, such as an iPad.

Initial life

29. The deceased was born on 8 January 1956 in Calcutta, India. His parents are Sikhs, and he was brought up in the Sikh faith. On 17 November 1980 he married Mrs Kohli. He was 24 and she was 20. She also came from a traditional Sikh family, and it was an arranged marriage. Their first son Rajveer was born in September 1981; and their second son Aviraj was born in September 1984. Initially the couple lived in Calcutta, but in the early 1990s they moved to Delhi; and in 1993 bought a house there at C-11 Anand Niketan. Mrs Kohli remains living at that address; though now in a flat, rather than the whole house.
30. Shortly after moving to Delhi, the deceased set up a business manufacturing pharmaceutical ampoules, called Medicos Glass Containers, and built a factory on the outskirts of Delhi. Towards the end of the 1990s, he moved that manufacturing unit to Gurgaon, a city just south-west of Delhi. In 1995 or 1996, he became the agent of a Dutch pharmaceutical company called Diosynth BV, selling their raw materials to Indian businesses; and acted in a similar capacity for a Danish company called Polypeptide. This involved travelling to Europe, including England.
31. In 2000 he took the radical step of breaking with tradition by cutting his hair and ceasing to wear a turban (an integral part of the Sikh faith). As a result, he became estranged from his parents, who severed all ties with him for at least five years.

2000 - 2003

32. In about 2000 or 2001, the deceased sold his business Medicos Glass Containers, and the factory in Gurgaon. He began to travel to Europe more frequently, including to England. On 8 January 2002 he registered for VAT with HMRC. I find that at this point he intended to carry on business on a significant scale in England.
33. The deceased was keen that his sons should have their tertiary education in the UK. In early 2002 he travelled with Aviraj to England to look at universities. Aviraj enrolled on a three-year business management course at Kingston University, starting in September 2002. Initially, Aviraj stayed in student accommodation. However, in 2003 the deceased bought 74 Tudor Drive, Kingston upon Thames, London. This was a house large enough to accommodate Aviraj and the deceased.
34. On 2 September 2003, the deceased registered with a local GP practice, giving his address as 74 Tudor Drive, and a UK mobile number as his work number. Mrs Kohli's evidence was that registration letters arrived for her and Mr Kohli, without any application having been made by them. I do not accept this. The deceased must have applied to be registered as a patient, and in the absence of any documentary evidence that Mrs Kohli was registered, I am not satisfied that she was. It is unlikely that the deceased would have troubled to register with a GP in England unless he intended to spend substantial amounts of time here.

2004 -2005

35. In 2004 the deceased sold 74 Tudor Drive and bought a larger house to replace it, 15 Windmill Rise, Kingston upon Thames. In September 2004, Rajveer moved to England and began studying for a Master's degree at Kingston University, so he also lived at 15 Windmill Rise. On 9 October 2004, the deceased opened an account with the Halifax– this is his first UK account in the documents before the court.
36. In 2004 the deceased and his wife developed their house in Delhi into four flats, three of which were sold in 2006/2007. They retained the penthouse flat for their own use. There is no detailed evidence as to the surplus funds available from the sale of the flats, or how it was spent; but the deceased did not invest any surplus in India. In my judgment, it is to be inferred that any surplus was brought to England, and was used in the deceased's property investment business.

2006

37. In April 2006 the deceased bought his first commercial property in England: the freehold of 198 New North Road, Islington N1 7BJ. He granted 3 long leases for premiums in respect of 2 flats (198A and 198B) and a shop in 2006 and 2007. The lease of flat A (in October 2006) was to Aviraj on the face of the documents, but he had no knowledge of it, and I find that the deceased was the beneficial owner of that leasehold interest.
38. This was followed, on 23 June 2006, by the purchase of a residential investment property (28 Grice Court, Alwyn Square, N1 1TH). Rajveer's evidence in his witness statement was that he bought 28 Grice Court at auction, and sold it again in weeks for a good profit. In cross-examination, however, he accepted that it was his father's money that had been invested in this property, and it was always considered to be the deceased's property. This is confirmed by the purchase ledger for the property which is the deceased's name. I find therefore that the deceased was also the beneficial owner of this property.
39. On 22 December 2006, the deceased bought another commercial premises (a restaurant), 12 Chiswick High Road ("the Chiswick restaurant"), and began receiving rent from it. He opened a loan account with Handelsbanken with a facility of £300,000.
40. All these property purchases were financed by a combination of mortgages and cash. Since the deceased had no assets in India at the date of his death, it is to be inferred (and I find) that the cash element came from the sale of his business in India, and the net proceeds of the sale of the flats at C-11 Anand Niketan.

2007

41. Aviraj continued studying at Kingston University and completed his studies in June 2007. He then left England for about 18 months, returning in 2009. Rajveer remained in England.
42. In 2007, the deceased carried out extensive property dealings and increased his portfolio, as I set out below. On 24 January 2007, he sold 15 Windmill Rise and used the net proceeds to buy the freehold of 62 Kingsley Road, Hounslow on the

same date. Aviraj's evidence that the proceeds of sale of 15 Windmill Rise were used to buy 12 Savery Drive (see para 44 below) was untrue. The deceased granted 2 long leases (for premiums) of 2 flats in 62 Kingsley Road in late 2007.

43. In February 2007, the deceased bought 94 Balls Pond Road, Islington; he later (in 2008 and 2011) granted 2 long leases of the 2 flats in it, and retained the freehold, which he owned at his death. Rajveer's evidence that this property was sold "within weeks" was untrue.
44. On 4 May 2007 198A New North Road was sold, and the deceased bought 12 Savery Drive, Kingston, where he lived for over 4 years, until it was sold in August 2011. On 11 May 2007, 198B New North Road was sold.
45. On 8 November 2007, the deceased bought another commercial property, 5 High Street, Hampton Wick, Kingston, which comprised 3 flats already held on long leases and ground floor commercial (restaurant) premises ("the Kingston restaurant").

2008

46. In 2008, the deceased received a substantial gift from his father, some £400-£500,000. There is no evidence that it was invested in India, and I find that the deceased brought it to the UK, and invested it here in properties referred to below.
47. The property, 8 Vauxhall Grove SW8 1TD, was bought in 2008. No conveyancing file was disclosed in respect of this property. Rajveer claimed in his witness statement that he had bought it. However, again, in cross examination, he accepted that he had no significant income in 2008, having just graduated, and only receiving "pocket money" from the deceased. He accepted that the deposit had been provided by the deceased, but asserted (for the first time in his oral evidence) that it had been a gift to him. He also said in his witness statement that on the sale of 8 Vauxhall Grove in 2011, he loaned the proceeds of sale to his father with 6% interest payable on the loan. There is no contemporaneous evidence of this loan. The only evidence is a letter dated 12 December 2016 (when the claim had been made in correspondence) from Mr Cockcroft:

"Dear Rajveer,
I can confirm that you loaned your late father the sum of £40,000 in December 2011 and £306,557.08 in March 2012. These sums were banked in Communion Solutions Ltd. I understood that interest at the rate of 6% would accrue."

Mr Cockcroft's evidence, which I accept, is that Rajveer approached him and asked him to confirm this loan. Although the letter states that the loan was banked in Communion Solutions Limited ("CSL"), it was never recorded as a loan in CSL's accounts; and Mr Cockcroft was not aware of it at the time the monies were paid. The letter records a self-serving attempt by Rajveer to establish the loan, and I reject Rajveer's evidence on this issue. I find that 8 Vauxhall Grove was another property beneficially owned by the deceased.

48. In 2008, the tenants of the Kingston restaurant were unable to pay their rent; and the deceased decided to run his own Indian restaurant (initially named Orchid, later Machaan) at the premises, with a view to building up a successful business; then selling the business as well as the property at a later stage. He asked Rajveer to run the restaurant for him. Rajveer was unwilling to do this, and he returned to India where he remained until 2013. However, Aviraj had returned to England by this time and he was willing to run the restaurant, which he did until 2011, when he returned to India.

2009

49. In 2009 Mrs Kohli was in England from 26 February 2009 to 28 July 2009.
50. On 1 April 2009, the deceased became the principal director and majority shareholder of CSL, which had been set up by Rajveer in April 2008. He remained principal shareholder until March 2015, when he transferred his shares to his sons for nil consideration. As will be seen, CSL was the company which the deceased used to operate his restaurant businesses, initially at the Kingston restaurant, and later at the Chiswick restaurant.
51. In 2009, the deceased began a relationship with his secretary, Fiona Sturley. He experienced erectile dysfunction, and attended his GP on 3 occasions, whose notes on 7 April 2009 record:

“Talked at length about relationship problems with wife and partner and erectile dysfunction which sounds psychological in origin rather than physical.”

I find that from that date there were problems in the deceased’s relationship with his wife.

52. In September 2009, the deceased incorporated Almond Alliance Limited (“AAL”), in which he and Ms Sturley were shareholders. The records at Companies House for AAL state that the deceased’s country of residence is the UK. When the deceased’s relationship with Ms Sturley ended in 2010, he became the sole shareholder in AAL. AAL was used by the deceased as a vehicle for some of his property transactions from that time onwards.
53. On 15 October 2009, the deceased bought land and garages at 2-10 Carlisle Close, Kingston. On 18 November 2009, he bought a freehold house, 343 Earlsfield Road, Northfield. He sold the ground floor flat at that property on 9 March 2010, and the freehold reversion on 30 July 2010.

2010

54. In 2010 Mrs Kohli was in England from 7 July 2010 to early September 2010; and 10 October 2010 to 11 November 2010.
55. In February/March 2010, the deceased became a member of the St George’s Hill Tennis Club (“the Club”) in Weybridge. He had previously been a member of a tennis club in Surbiton. The club describes itself in its marketing as “quintessentially English”. The deceased was an enthusiastic member and attended

the club 3 to 4 times a week, mainly to play tennis on its grass courts; but also to take part in other activities such as spin classes and social events. He was a member of a social group called the “Jesters”, who met every Sunday morning and then had coffee afterwards. The deceased asked Mr Jamieson if he could be an overseas member of the Club; but, as Mr Jamieson said, “he was always trying to find a way to get cheaper anything” - not of any significance in relation to the question of his domicile. The deceased first met Ms Proles in 2010, though their relationship did not develop until 2012.

56. In April 2010 AAL bought freehold land at Kings Keep, Beaufort Road, Kingston, which it sold in September 2010.
57. In January 2010, Aviraj approached the Nando’s restaurant group with a view to CSL acquiring a Nando’s franchise for Delhi and the surrounding region. The evidence of Aviraj and Rajveer is that their father was an integral part of this venture. However, the documentary evidence is exiguous, and the only event that it shows the deceased being involved in is a meeting on 14 June 2011. Mrs Kohli relies upon it as evidence that the deceased continued to seek investment opportunities in India. However, such documents as are available show that Aviraj and Rajveer were the moving forces behind the proposal; and, in any event, the project came to nothing.
58. I find that after developing and selling the flats at C-11 Anand Niketan in 2007, the deceased had no intention to and did not invest any of his money in India. If he had so intended, I have no doubt that he would have been able to find suitable investment opportunities in a country of such size and economic activity.

2011

59. In 2011, Mrs Kohli was in England from 11 July to 23 August 2011.
60. Early in 2011 Aviraj decided that he had had enough of running the Kingston restaurant, and decided to return to India. He found and trained a manager and chef who ran the restaurant; and returned to India in about June/July 2011.
61. In August 2011, the deceased sold 12 Savery Drive for £1.135 million, and bought the freehold reversion of an apartment block (consisting of 18 flats and 11 garages) at 1-18 Park Close, Kingston, together with a house at 19 Park Close, which became his home until he moved to live with Ms Proles. It was sold in April 2013. On 5 September 2011, AAL bought 126 London Road, Kingston. The deceased intended to convert it into flats and retain the freehold. However, there were access problems, which AAL sought to resolve by buying in March 2012 land adjoining the site. This was unsuccessful, and ultimately an LPA receiver was appointed, by whom the property was sold in November 2015.

2012

62. In 2012 the deceased spent 218 days in the UK and 132 days in India. Mrs Kohli did not come to England at all. The deceased spent Diwali (13 November), an important family occasion, with Ms Proles. He also went on holiday with her to Dubai, Las Vegas and Istanbul.

63. The deceased and Ms Proles began their romantic relationship in early 2012. The evidence before the court includes all the text messages between them between their first meeting in 2010 and 5 December 2015. As noted, the deceased told her that he was divorced. In about March 2012 they began looking for a property to live in together.
64. In April/May 2012, the deceased travelled to Ladakh in Northern India where he met Mrs Kohli for a holiday. He was in text contact with Ms Proles in very affectionate terms up to the flight time, and in contact again immediately on his return to England.
65. The deceased and Ms Proles moved in to a rented property at High Beech, Old Avenue, Weybridge, Surrey in June 2012; and made plans to buy a home in which they would live together, engaging various local agents to search for a suitable property. Later in his life, the deceased told others that he doubted his paternity of Amélie, or that he had been “trapped” by Ms Proles into having a child. However, on 10 June 2012 Ms Proles texted to the deceased:

“Why would we talk about starting a family and not being careful if it wasn’t for the future?”

This text shows that the deceased and Ms Proles discussed whether to have a child together. I accept Ms Proles’ evidence that around that time the deceased proposed marriage to her, and that he told her he wanted to have a baby with her; and that he was aware that she was no longer using contraception.

66. Sadly, the deceased’s relationship with Ms Proles came to an end on 26 August 2012. By this stage, Ms Proles was pregnant. She moved to the Isle of Wight to be near her family, particularly her mother, who provided support during the pregnancy and the first seven months of Amélie’s life. Ms Proles described the deceased as being “inconsistent” during her pregnancy, sometimes wanting to come to scans and sometimes not wanting to come.
67. In 2012 the tenants in the Chiswick restaurant stopped paying their rent and then abandoned the premises. The deceased decided to continue trading at that restaurant, also under the name Machaan.

2013

68. In 2013 the deceased spent 303 days in the UK and 59 days in India. Mrs Kohli did not come to England at all. The deceased spent Diwali (3 November) with Ms Proles. Rajveer returned to England in that year, and resumed running the two restaurants for his father.
69. Amélie was born on 5 March 2013. It is clear from the text exchanges between Ms Proles and the deceased that from the moment Amélie was born the deceased was very interested and committed to her, and that he remained so. On 31 March 2013 he held a lunch for the members of the Jesters at the tennis club to celebrate her birth. Ms Omissi described him as being “absolutely besotted”. By way of example, in a text on 2 April 2013 (when he had only seen photographs of her), he says:

“I will pay all the expenses of princess till I die financially and emotionally she is my responsibility”

70. Ms Proles returned to her house in Weybridge in October 2013. From that time onwards, the deceased was enthusiastically involved in Amélie’s life. He saw her together with Ms Proles several times a week. He did not have unsupervised access to Amélie, but there are no texts from him in which he complains about this. Ms Proles’ evidence (which I accept) was that he was not confident enough to see Amélie without her. It is clear from his texts that he was still hoping that Ms Proles would move in with him so that they could be what he described as a “proper family unit”. The deceased funded Amélie’s nursery place and provided financial support to Ms Proles. He also discussed and planned Amélie’s education with Ms Proles. Mr Jamieson described the deceased as being prepared to put his heart and soul and mind into raising Amélie, even though there were times when he believed she wasn’t his child. He said the deceased took Amélie on unquestioningly, irrespective of whether he was her father.
71. Ms Botterill’s evidence was that the deceased was unhappy with Ms Proles’ financial demands on him and refused some of them. However, whilst the texts between Ms Proles and the deceased do include a complaint by Ms Proles that he is not paying agreed maintenance, there are very few requests for payment, and no refusals to provide money by the deceased, except in the final stages of his time in England. These texts show the deceased as being keen to spend money on Amélie, to the extent of buying her an iPad, to which Ms Proles responds, “a bit extravagant for a one year old and I’m embarrassed by it”. The overall tenor of the texts is of warmth, interest and positivity on the part of the deceased, and friendliness and civility on the part of Ms Proles, though a consistent unwillingness to recommence the romantic relationship sought by the deceased.

2014

72. In 2014 the deceased spent 342 days in the UK and 23 days in India. Again, he spent Diwali (23 October) with Ms Proles. Mrs Kohli came to England (for the first time since August 2011) in April 2014, returning on 2 July 2014. She took a balloon flight with the deceased which he had unsuccessfully tried to persuade Ms Proles to join him on, as the voucher for it was about to expire.
73. In June 2014, the deceased consulted Vanessa McMurtrie (“VM”) at Mackrell Turner Garrett (“MTG”) for advice as to acquiring parental responsibility for Amélie, whom he referred to as his daughter. In her attendance note of 23 June 2013, he is recorded as describing his financial circumstances as good:

“He owns 2 restaurants in Kingston and Chiswick and has a property business. He says he gets 2 directors’ salaries of about £3,000 each. He also has property management.”

The attendance note records the deceased referring to going away *on holiday* for two months, which was must be a reference to travelling to India, as this was the only place to which the deceased travelled in 2014.

74. VM also spoke to Ms Proles, and prepared a draft letter to be sent to her, which VM sent to the deceased; but the deceased's relations with Ms Proles improved, and he did not pursue the matter. In September 2014 the deceased signed a registration form for Notre Dame school in which he described himself as Amélie's father.
75. In October 2014 the deceased was diagnosed with mouth cancer. In the letter dated 8 October 2014 from his consultant, his occupation is stated as "restauranteur". Over the following 13 months, he underwent extensive medical treatment, all exclusively by the NHS. Following the diagnosis, Mrs Kohli arrived in the UK on 24 October 2014 and remained here until 21 April 2015, when she returned to India.
76. In early November 2014, the deceased and Ms Proles contacted VM and attended MTG's offices together on 10 November 2014. VM's attendance note records:
- "We could see they both had Amélie's best interests at heart. Melissa did not want an intimate relationship with Baldev. It wasn't just about money-we didn't think it was at all, although that's how Baldev saw it."

On that date, the deceased signed a Statutory Declaration of Acknowledgement of Parentage.

77. Following her meeting with the deceased and Ms Proles on 10 November 2014, VM drafted a parenting agreement which she sent to both parties on 11 November 2014, and which included:
- "Baldev is habitually resident in England and Wales but his domicile of origin is in India and he is an Indian national."
78. On 11 November 2014, the deceased met with Graham Harvey ("GH"), the private client partner at MTG to give him instructions for his will. He described himself as having spent 10-14 years coming and going. He told GH that he was resident in the UK for tax purposes. He said he was single/separated and that his divorce was unfinished; he had separated from his wife 3 to 4 years ago and that his sons alternated living with him and Mrs Kohli. He said he had 4 properties in the name of his company worth about £1.3m to £1.4m; and 3 properties in his own name worth about £900,000 to £1 million, with mortgages to the value of about £700-£800,000. Turning to AAL, he said that this was on a site worth £500,000 and was a pharmaceutical ingredients trading company. He was he said the sole owner of AAL which had an annual sales revenue of £300-400,000, and itself owned properties worth in total about £1.4 million.
79. At VM's suggestion, Ms Proles consulted her own solicitors, Munday's, and on 14 November 2014 VM reported back to the deceased by email on her conversation with Ms Proles' solicitor:
- "The other point raised was about your domicile. Melissa's solicitor was unhappy about acknowledging your domicile of origin is India in the document as it might affect claims against your estate after death in the absence of provision for Amélie in your will."

But as a matter of fact your domicile of origin is India and for the purposes of your will you are non-domiciled, that is you do not say your domicile of choice is England and Wales i.e. you have made the decision to live out your days in England.

Please correct me if I am wrong - I will also need to inform Graham.”

80. The deceased phoned VM the same day and her attendance note records:

“Call in from Baldev returning our call. Giving him an update. He hadn’t decided whether he wanted to stay in England or return to India or anywhere else for that matter.”

81. On 14 November 2014 Ms Proles met with Eleonora Newberry (“EN”) of Mundays, and the issue of the deceased’s domicile was discussed (as recorded in an attendance note):

“MP explaining she does not think Amélie’s father would make a will excluding Amélie then asking if he does, can she claim under the Inheritance Provisions? EN explaining yes, in theory, but there remains an issue with his domicile. EN explaining that hopefully it will not be too much of an issue as whilst India is his current domicile of origin, it could be said that the UK is his domicile of choice. MP explaining that he has been intending to become a British national after Christmas 2014. Explaining that this is for tax purposes explaining that he has no intention of ever returning to India to live.”

82. On 17 November 2014 EN emailed VM:

“Thank you for your telephone call on Friday evening when you explain the position that your colleague from private client said his view was that for Will and for tax purposes, Baldev is currently non-domiciled in England and Wales.

I know Melissa’s instruction is that Baldev’s domicile of choice would be England and Wales. As you know I am a bit reluctant for her to sign an agreement which indicates that he is not domiciled in England and Wales because I think this could be another hurdle for Melissa to cross if she ever did need to make an Inheritance Act claim. I wondered therefore if this could be changed to either

1) Add that Baldev says his domicile of choice is England and Wales (if that is his instruction!) or

2) Remove the reference to habitual residence/domicile/nationality altogether?

What you think?”

83. VM replied the same day:

“Thanks for the suggestion but 1) would be inaccurate.

2) I don’t agree with the suggestion to remove the clause-it is factual and also ties in with paragraphs 2, 3 and the jurisdiction clause at the end.”

84. The 2 solicitors also had a telephone conversation on 17 November 2014 which is recorded in an attendance note by VM:

“The other point which they weren’t happy about was with respect to domicile. They weren’t happy to acknowledge that his domicile of origin is in India because it might restrict Melissa’s ability to make a claim under the Inheritance Act. She wondered if we could insert that his domicile of choice is England and Wales. We said in connection with domicile, we had inserted that because of what our colleague who is preparing his will had said, basically he was a non-dom. We would have to take instruction.

...

Thereafter speaking to Graham and explained domicile issue Graham said that he wasn’t entirely clear in his instructions but he did feel he was a non-dom. Seven to ten years ago he came to this country and it’s clear his domicile of origin is in India but by common law he could by choice, if he wanted to live out his years in Blighty, say that England and Wales was his domicile of choice. If he died and had lived in England for 17 out of the 20 years before death, he would be deemed to have domicile in this country. He isn’t at that point yet and he couldn’t get clear instructions from him about whether or not he intended to live out his days in England.”

85. On 17 November 2014 GH emailed the deceased, copying in VM, and attaching the draft will prepared by him. The email included the following:

“You were born in India and have only lived in the UK for the last 10 years or so. You have made a separate will in India in relation to your Indian property and you consider yourself domiciled in India and you do not consider England to be your permanent home. Please correct me if I’m wrong I also note that you pay your taxes in the UK. Please note that once you have spent more than 17 out of the last 20 tax years in this country you will be deemed domiciled in the UK for inheritance tax purposes, and you may then need to review your will. Kindly also note that **I have not undertaken a full analysis of your domicile position for succession law purposes because I have not investigated your circumstances in full**, such as your links to India, as that was not within the remit of my instructions.”
(emphasis added)

86. The draft will included the following:

“2. Declaration of domicile
I declare that I am domiciled in India and I do not consider England to be my permanent home.”

87. The deceased never replied to GH’s email of 17 November 2014, so that the confirmation sought by him was never given, and the investigation in full of the deceased’s circumstances to which he refers has never been carried out. The draft will was never executed.

88. On 18 November 2014 the deceased underwent surgery for his mouth cancer, followed by chemoradiotherapy. The weekend before his operation he went for an

overnight stay with Ms Proles and Amélie. The evening before the operation was the deceased's wedding anniversary; during that evening he was in constant contact with Ms Proles by text messaging. He remained in constant text contact with her after the operation.

89. In November 2014, CSL entered into a 1 year lease of 53 Marina Place, Hampton Wick from 29 November 2014; and the deceased moved in there.

2015

90. In 2015 the deceased spent all of the year (307 days) until he left on 3 November 2015 in the UK. He then spent 35 days in India, concluding with his death on 8 December 2015. Mrs Kohli remained in England until 21 April 2015, and attended some hospital appointments with the deceased. She returned on 12 June 2015 and remained until 29 October 2015, when she flew home.
91. On a date, which is unclear from the evidence, but would appear to be late 2014 or early 2015, the deceased instructed Barretts in the purchase of Bridgeway House, Old Avenue, St George's Hill, Weybridge - a 5 bedroom detached house. This was sold for £2.5 million in December 2014 (but not to the deceased). Barretts wrote off their fees for this abortive transaction in March 2015. I find that the deceased was at this stage seeking to buy a permanent home in England because he intended to remain here indefinitely.
92. On 11 March 2015, the deceased wrote to Notre Dame school (where Amélie was registered) to give them his address at 53 Marina Place, but advising them that he would be moving to a different address shortly.
93. Mr Cockcroft's evidence (which I accept) was that from March 2015 the deceased was actively seeking tenants for both the Chiswick and the Kingston restaurants so that the business of renting those properties could carry on; and that this continued up to the deceased's death. This is evidenced by Mr Cockcroft's letter dated 18 September 2015 (set out below).
94. In April 2015 the deceased enrolled on a trial of a new treatment, immunotherapy. On 29 April 2015 Amélie's birth certificate was reissued naming the deceased as her father.
95. On 11 May 2015, the deceased walked into a new firm, Infields Solicitors, and gave instructions to Mrs Barbara Williams to prepare a will. Her attendance note records:
- “He confirmed that he was domiciled and resident for tax purposes in the United Kingdom and that he held no property abroad or offshore but that his wife is currently in India.”
96. The will prepared for him by Infields recites that his address is 53 Marina Place, and makes no reference to domicile. It makes provision for Amélie by giving her the Park Close property. The deceased executed this will on 15 May 2015.

97. On 18 September 2015, Mr Cockcroft wrote to HMRC in relation to the deceased's VAT affairs:

“A new lease is in the course of preparation for the premises at 5 High Street, Kingston Upon Thames, and we hope to let you have a copy by 30 September or shortly after.”

98. The deceased responded well to the immunotherapy treatment, with his tumour decreasing in size; and in the following months he is described as not taking painkillers and leading an active life. Even in September 2015 he reported himself as playing tennis for up to 4 hours.

99. However, on 19 October 2015 he was told that his most recent CT scan had revealed clear progression of his head and neck cancer. He texted Ms Proles and told her that he had been removed from the immunotherapy trial, and that “I may not have any further treatment give my body rest”.

100. On 22 October 2015, the deceased told Ms Proles by text that he had another appointment with his consultant, Professor Kevin Harrington, that afternoon. She asked him whether he was continuing with immunotherapy. He replied:

“No I have made up my mind no further treatment I am just going courtesy sake I will just restore my body with fresh food and no drugs”

and continued

“My body is speaking to me it's happy I feel more stronger day by day it made me as vegetable”

and

“can you believe Mr Kevin decided I have no treatment and after 6 week scan they decide the course of action he feels I need total rest I am going to India on Monday just to recover and be myself and go to Golden Temple”

“I am arranging money to buy ticket as I need. To travel business”

“I am selling my car so I don't panic for money”

101. On 23 October 2015, again by text, the deceased responded to Ms Proles querying whether he was well enough to fly to India.

“That's why I am going to India its warm and I can recover as my chef is good and it will be home food here it's restaurant food fresh though”

He also referred again to selling his car to raise money for a business class ticket and to his son trying to sell properties but not Park Close. He texted Ms Proles an image of an award given to the Kingston restaurant and commented

“yes so now I can say my goodtime has started just about of push and media we will be full all the time”

continuing

“all looks positive again”

and

“I always wanted that my luck was crazy now I have official break from my treatment that’s also good luck”

He told Ms Proles that his next scan was in 6 weeks time, on 3 December 2015 and that he had an appointment with Professor Harrington on the same day.

102. The outcome of the 19 October meeting and another on 22 October 2015 is set out in the deceased’s consultant’s letter dated 4 November 2015 to his GP, which states:

“We have therefore discontinued his treatment and I have suggested that we see him again in approximately 5 or 6 weeks time with repeat imaging. In the meantime, he will travel to India and I have informed him that this seems reasonable to me. We will see him on his return.”

Similarly, a letter dated 11 November 2015 from the Prince Alice Hospice to the deceased’s GP says:

“I am writing to inform you that I have spoken to this gentleman’s son and he has returned to India until next summer.”

103. The last occasion on which the deceased met Ms Proles and Amélie was 25 October 2015. On 27 October, in the course of a text conversation with Ms Proles, he said

“Don’t panic just relax they have not given anything that I am not treatable they have given official break”

104. There followed a series of texts in which the deceased became increasingly acrimonious, and eventually broke off from any continuing relationship with Ms Proles saying

“I am fed up it’s not going to work you go your way I go my way I don’t want stress it’s making me sick I can’t cope as I have no gain only pain”

At this stage the deceased did not suggest that he was not Amélie’s father. His complaints were, rather, directed to the fact that Ms Proles was not sufficiently involving him in Amélie’s life.

105. On 30 October 2015, the deceased instructed Infields (again Mrs Williams) that he wanted urgently to vary his will. The new will was prepared and executed by him on the same day. As noted, it makes no provision for Amélie, and the deceased told

Mrs Williams that he had come to understand that Amélie was not his daughter. The deceased's address is stated in the Will to be 53 Marina Place. Mrs Williams set out in a letter dated 30 March 2016 the circumstances surrounding the execution of the Will:

“Mr Kohli did refer to his intention to visit India. He said he was particularly looking forward to the warm climate there, but he did not say that he wished to stay there permanently. He did refer to his properties and business interests in the United Kingdom, but not to any property or business interests in India.”

106. The deceased's acrimonious text exchanges with Ms Proles continued until 1 November when he said in his final text to her:

“just leave me alone I am going to destress and recoup and recover I will survive”

107. On 3 November 2015 the deceased flew to India, travelling unaccompanied in business class. He emailed Julie Thomas of Infields on 5 November 2014:

“I want to inform you that I am away on total rest for 12 weeks not to be disturbed to my cancer treatment.”

108. On 24 November 2015, Rajveer agreed to enter into a tenancy of Flat A, Hill Rise House, Holbrooke Place, Richmond, TW10 6UD commencing on 27 November 2015. The deposit of £10,003 was paid by AAL on 25 November 2015.

109. On 15 December 2015, the deceased's accountant, Mr Cockcroft wrote to HMRC in relation to his VAT appeal:

“We would advise you that our above client's private residence is
Flat A, Hillrise House
Holbrooke Place
Richmond
Surrey
TW10 6UD”

110. Mr Cockcroft's evidence was that the deceased advised him of this address as being his new address, after leaving 53 Marina Place. Since that tenancy came to an end on 28 November 2015 and the arrangements for Hillrise House were only made a few days earlier, the deceased must have been in India when he told Mr Cockcroft about his new residential address.

111. I find that Rajveer entered into the tenancy of Hillrise House on behalf of the deceased, and that it was where the deceased intended to live when he returned to England.

Acquisition of England as domicile of choice - discussion and determination

112. The claimant's case is that in about 2010, following lengthy residence and the deceased's estrangement from Mrs Kohli, it is to be inferred that the deceased had

the intention to reside in England indefinitely – to settle in England and abandon his domicile of origin.

113. The claimant relied upon the deceased's "tapestry of life" in the UK, which when contrasted with his connections with India, showed, her counsel submitted, the deceased's intention to live in England for an unlimited time.
114. She relied upon factors falling into the following three categories:
 - (1) The deceased's business activity and property investments in England and in India;
 - (2) The deceased's social and emotional connections to England and in India;
 - (3) The deceased's professional connections to England and India.I turned therefore to consider these factors.

Business activity and property investments in England and in India

115. The deceased began his business activity in England when he registered for VAT in January 2002. From 2006 onwards, he received rental income from the Chiswick restaurant, and from 2007 the Kingston restaurant; and from 2008, he received income from their trading as restaurants operated by him. Although Mrs Kohli's position was that in the last few months of his life, the deceased had wound down his business activity, the documents relating to his VAT appeal show that he intended to continue to rent out the two commercial properties as going concerns at the date of his death.
116. From 2009 onwards, the deceased's business activities in England were also conducted through his 2 companies, CSL and AAL. He was the principal director of CSL and majority shareholder in it from 2009 to March 2015, when he transferred his shares to his sons for nil consideration. CSL's cashbooks show the deceased deriving substantial sums from it; and he used its bank accounts for his personal expenditure. Although he continued to have pharmaceutical agency work in India, the income received from it was paid to his English company, CSL (apparently receiving it on behalf of AAL).
117. As for AAL, this company was incorporated by the deceased as a vehicle to buy and sell properties in England (and used as a trading vehicle for his pharmaceutical agency work), and was profitable. Again, its bank accounts were used by the deceased for his personal expenditure.
118. As for the deceased's investments in residential and commercial property between 2003 and 2015, these were, as has been seen, extensive in number (15 properties) and value. The deceased's property dealings were sophisticated, involving creating and selling off leasehold interests from freeholds. Contrary to the evidence of Mrs Kohli and the deceased's sons, they are not in my judgment accurately described as "flipping" properties for a quick profit from the rise in the property market; and, in several cases, involved retaining properties over lengthy periods. Furthermore, the profits were not sent back to India, but were reinvested in properties in London.
119. The Defendant's counsel submitted that the evidence showed that the deceased was seeking to wind down his business activities in England following the crash in 2008. However, this is not supported by what actually occurred: the deceased

bought several substantial properties in 2009, 2010 and 2011. He intended to retain 126 London Road, but for the reasons explained above it was sold by the LPA receivers. At his death he/his companies retained 1-18 Park Close (and all but 2 of the accompanying garages), the Chiswick restaurant and the Kingston restaurant.

120. In 2015, the deceased had 3 personal English bank accounts, 3 company bank accounts and a loan account with Handelsbanken. He had English store cards with M&S and John Lewis, and an English credit card.
121. By contrast, the deceased's only economic activity in India after 2005, was the development and selling off of the flats at his house in India in 2006/2007. The retained flat was owned as to 2/3 by Mrs Kohli and as to 1/3 the deceased. Mrs Kohli could not explain why this was the case. This flat was the only significant asset owned by him in India at the date of his death.
122. It is clear from the above that by the date of his death the deceased's business life had been firmly based in England for 14 years.
123. The defendant's counsel submitted that this period was a small proportion of the deceased's working life; but this in my judgment is not a relevant consideration. She also submitted that the deceased's activities were substantially limited after the 2008 crisis. I reject that submission: the deceased began using both of his companies in 2009 and continued buying properties after 2008. He experienced financial difficulties because of the issues which arose in respect of 126 London Road, Kingston (referred to in paragraph 61 above); and this both reduced the amount available for investment, and resulted in him seeking to realise assets to relieve those difficulties. But the evidence does not support the conclusion that the deceased was actively running down his businesses in England in 2015.

Social and emotional connections to England and in India

124. The strength of the deceased's relationship with Mrs Kohli is an important issue in this case, because she was based in India throughout. As noted, the deceased told different people different things about this and other matters; often the only people who know what is really happening in a marriage are the parties to it.
125. Mrs Kohli's counsel invited me to find that the deceased was in an active enduring marriage; and to conclude that the deceased told MTG that he was separated from his wife, because he was too embarrassed to tell them he was having an extramarital relationship. I consider this unlikely, when the deceased had already told his GP about his difficulties in his relationship with Mrs Kohli. He told some of his friends he was divorced, and others that he was married. To those friends whom he told he was married, the deceased maintained an impression of a happy marriage; but, in my judgment it was to his GP and his solicitors MTG that he told the truth.
126. As for the deceased's trips to India, as noted, he referred to one at least as a holiday; and he retained family connections in India, attending engagements and weddings. However, his children were both based in England for the majority of the period concerned; and together with Amélie, they are the people to whom the deceased was most closely tied emotionally.

127. In addition, the deceased entered into two serious emotional relationships with women in England: firstly, with Fiona Sturley in 2009, and then with Ms Proles in 2011. He lived with her for 8 or 9 months in 2012 and agreed to have a child with her. Until the last week before leaving for India in November 2015, he expressed wholehearted commitment to Amélie, and was still seeking to be in a relationship with Ms Proles.
128. Mrs Kohli, on the other hand, was not in England for 2½ years from August 2011 to April 2014. Even taking into account the deceased's trips to India, this is a substantial period for a married couple to live apart. She visited England at times when at least one of her sons was here. In 2012, when neither of them were here, she did not come; nor did she come in 2013, when Rajveer only returned in the course of the year.
129. When combined with the complete absence of documents showing a close relationship at that time, and my reservations about the evidence of the deceased's immediate family, this leads me to the conclusion that the deceased was from about 2009/2010 no longer closely bound to Mrs Kohli; and that his emotional centre of gravity had moved from India to England, initially as a result of his relationship with Ms Sturley, then his relationship with Ms Proles, and subsequently his ever present desire to resume a romantic relationship with her.
130. I take into account that the deceased throughout his time in England, the deceased continued to provide financially for Mrs Kohli (who had no income of her own) - this is consistent with estrangement within the marriage, the deceased nonetheless considering himself obliged to maintain her.
131. I also take into account that once the deceased's mouth cancer had been diagnosed, Mrs Kohli came to England and spent substantial periods here living with the deceased. This is not inconsistent with the marital relationship having come to an end, but Mrs Kohli wishing nonetheless to help and look after the deceased in his illness. I note that Mrs Williams' letter of 30 March 2016, setting out her discussions with the deceased on 30 October 2015 (when he executed the Will) includes:

“The deceased referred constantly to his two sons during the time in which he gave his instructions and said that he knew his wife would leave everything to them on his eventual death.”

and

“Mr Kohli did refer to his marriage to Harjeet Kaur Kohli. He said that she would look after him when he was in India and he wanted to leave everything to her.”

Neither of these are consonant with the picture of a devoted marriage put forward by Mrs Kohli. Rather they suggest that the deceased's motivation in making the Will in her favour was, primarily gratitude to Mrs Kohli for the care she had taken and would take of him, rather than marital love; and in the knowledge that the assets given to her would be passed on to his sons.

132. Another important factor, in my judgment, is the deceased's relationship with Amélie. I find that the deceased intended to stay in England indefinitely, in order to see her and maintain his relationship with her, whether or not he was her father. This was consistent with maintaining relations with his adult sons, whom he hoped (according to Mr Jamieson) would settle and make their lives in England. Although the deceased broke off relations with Ms Proles a few weeks before his death, I do not consider that to be determinative of his relationship with Amélie. If he had survived, it is very likely in my judgment that he would have relented his decision – he would have continued his relationship with her, and wanted to be involved in her life as she grew up in England.
133. As for his social connections, the deceased's membership of the St George's Hill Tennis Club and the social life around it formed a huge part of his life: he was at the club 3 or 4 times a week, and was described by Mr Wilson as its most frequent attender apart from himself. There was no evidence that the deceased had a social life in India, only of attendance at specific family events.

Professional connections

134. The claimant's counsel relied upon the deceased's engagement with professionals in the England, particularly medical professionals; and submitted that in doing so he was "living in the UK on a lawful and properly settled basis for the time being", relying on website guidance published by the NHS. However, this guidance is dated 18 August 2015, close to the end of the deceased's life; and there was no evidence as to the position during the majority of the time he was resident here. Similarly, the fact that the deceased chose to have treatment for his cancer in England is not in my judgment of itself significant, as it is clear that the deceased was constrained financially during this period.
135. The deceased also engaged several firms of solicitors to deal with various aspects of his business and personal life; and his accountant Mr Cockcroft in relation to his companies' businesses.

Other factors

136. Mrs Kohli's counsel relied upon the following as showing that the deceased never formed an intention to abandon his Indian domicile or acquire any settled residence in England: the deceased held an Indian passport, identity card and election card; he had an international driving permit and a limited visa to live and work in the UK. However, none of these formal documents are inconsistent with a settled intention to remain in the UK, as shown by the deceased's actual conduct. Ms Proles' evidence, which I accept, is that the deceased told her in 2014 that he was intending to become a British national with a British passport and to acquire permanent residency status in the UK; but that this was put on the 'back burner' when he was diagnosed with cancer.

The deceased's own stated intentions or declarations

137. The deceased made a number of statements of his intentions relating to his domicile. However, these are of limited significance for the reasons discussed above. It is clear that MTG did not undertake a full investigation of the deceased's domicile. His statements to MTG about his domicile were made in the context of

tax considerations in respect of the will they were drafting for him, and a possible claim by Amélie for provision from his estate - in my judgment, they were self-serving and little weight should be given to them. In any event, the deceased's last word on the subject to Infields, was that he was domiciled and resident for tax purposes in the UK.

Conclusion

138. Taking all of the above into account, I conclude that although the deceased maintained some connections with India, the inference to be drawn from his conduct and circumstances until his decision to fly there (which I consider below) is that his intention was to continue to live in England indefinitely i.e. permanently; and that by 2010 he had acquired England as his domicile of choice.

Abandonment of England as domicile of choice

139. I turn now to consider whether the deceased abandoned England as his domicile of choice during the last few months of his life, and if so when. The claimant's counsel addressed me on the basis that the relevant date was 3 November 2015, when the deceased flew to India. However, in my judgment, the relevant date is the date when the deceased decided to travel to India (at or shortly after his appointment on 22 October 2015), and the relevant intention is his intention at that time and thereafter.

140. I have set out the evidence as to his intention in paras 97 to 107 above. This can be summarised as follows:

- (1) the deceased told Ms Proles that he was going to India to recover and returning for medical treatment in England in 6 weeks time;
- (2) the deceased was upbeat with Ms Proles about the future for the Kingston restaurant;
- (3) the deceased had a scan and follow-up appointment booked on 3 December 2015, and told his doctors that he was travelling to India in the meantime, but returning for these appointments;
- (4) on 30 October 2015 the deceased told Mrs Williams of Infields that he was visiting India; not that he was returning there permanently to live;
- (5) the deceased's address stated in the Will, executed a few days before he flew to India was his English address at 53 Marina Place, not his address in India;
- (6) on 5 November 2015, the deceased told his solicitor that he was 'away' for 12 weeks;
- (7) whilst in India, the deceased advised Mr Cockcroft that his new address was Flat A, Hillrise house, Richmond;
- (8) the deceased was in the process (through Mr Cockcroft) of seeking to persuade HMRC that he had an ongoing intention to make taxable supplies and that the 2 restaurants were ongoing concerns such that he should be reregistered for VAT.

141. The contemporaneous evidence that the deceased intended to return to England is thus very strong. The deceased also told his friend Mr Jamieson that he was going to India for rest and recuperation, and that he would see him in a few weeks. Mrs Kohli's counsel submitted that it should be inferred that the deceased did not intend to return from the fact that he sold various assets (including his car), and did not renew his tenancy of 53 Marina Place. So far as the car is concerned, I find that this

was sold because of the deceased's straitened financial circumstances, and his need to obtain funds to pay for a business class ticket to India. As for accommodation in England, I find that Rajveer held the tenancy of Flat A, Hillrise House as nominee for the deceased, and that it was intended to be the deceased's residence when he returned to England.

142. The only evidence to the contrary is that of the deceased's immediate family, which I do not accept, because it is not consistent with the contemporaneous written evidence and because of my reservations about the reliability of their evidence.
143. I am satisfied therefore that when the deceased decided to go to India, and indeed when he flew to India on 3 November 2015, he intended to return to England.
144. It may be that as his illness progressed, it became clear that he would be unable to do so. It may be that at some stage it became clear to the deceased that he would die within a short period; and that at that stage he decided to remain in India. In my judgment, such decisions would not be an abandonment of his English domicile of choice, for two reasons. The first is that such a decision would be one forced upon him by his illness and impending death: see *Udny* (cited at para 8 above). The second is that it would not be a decision as to where he was to live indefinitely, because, for all practical purposes, there was, sadly, no life remaining to be lived by him.
145. Indeed, even if the deceased had travelled to India intending to die there, this would not, in my judgment, be an abandonment of his domicile of choice, for similar reasons. Where, for practical purposes, a person has no life left to live, then a decision to go to his/her country of origin to die, is not a decision to spend any significant part of one's life ("the end of one's days") in that country - it is a decision that the specific event of his/her death should be in that country.

Conclusion

146. For the reasons set out above, therefore, I find that the deceased was domiciled in England at the date of his death on 8 December 2015.

ANNEX 1

Chronology of the Deceased's travel to India 2012 -2015

- **Between January 2012 and November 2015**
- **Dates taken from Disclosed passport showing air travel stamps.**
- **Time spent in India is shaded in orange.**

Date in passport	Stamp	Bundle page	Days spent in UK
31 January 2012	India exit stamp	536	
31 January 2012	UK entry stamp	529	
28 February 2012	India entry stamp	535	28 days
05 March 2012	India exit stamp	533	
05 March 2012	UAE stamp	533	
11 March 2012	UAE stamp	533	
11 March 2012	India entry stamp	529	
26 March 2012	India exit stamp	533	
26 March 2012	UK stamp	529	
04 April 2012	USA stamp	534	9 days
09 April 2012	UK stamp	529	
08 May 2012	India entry stamp	533	30 days
03 June 2012	India exit stamp	525	
03 June 2012	UK stamp	533	
06 June 2012	Turkey stamp	530	3 days
10 June 2012	UK stamp	533	

19 September 2012	India entry stamp	533	101 days
16 October 2012	India exit stamp	528	
16 October 2012	UK stamp	529	
3 December 2012	India entry stamp	528* unclear	48 days
10 January 2013	India exit stamp	531	
10 January 2013	UK Entry	529	
3 May 2013	Unclear	534	
06 May 2013	India entry stamp	533	116 days
23 May 2013	India exit stamp	525	
23 May 2013	UK entry	525	
05 August 2013	India entry stamp	534	74 days
02 September 2013	India exit stamp	534	
02 September 2013	UK entry stamp	546	
17 September 2013	India entry stamp	533	15 days
21 September 2013	India exit Stamp	537	
21 September 2013	UK entry stamp	537	
31 December 2013	India entry	534	101 days
13 January 2014	UK stamp	520	
12 July 2014	India entry stamp	529	18- days
22 July 2014	India exit stamp	531	
22 July 2014	UK entry stamp	534	162 days
03 November 2015	India entry stamp	537	307 days

SUMMARY

	No. days in India	No. days in UK	No. Days other country
2012	132	218	15
2013	59	303	3
2014	23	342	0
2015	35 * Died	307	0

ANNEX 2

Schedule of Deceased's Property Dealings in UK 2003 -2015

No. OF PROPERTIES PURCHASED	DATE OF ACQUISITION/CREATION	KNOWN PROPERTY DETAILS	KNOWN FINANCIAL/CONVEYANCE HISTORY DURING OWNERSHIP * Disputed by the Defendant	PAGE No.
	2003			
1	2003*	74 Tudor Drive KT2 5QF SY11420 (Freehold)	No conveyance File disclosed Accepted BK purchased this property	None
	2004			
2	2004*	15 Windmill Rise, Surrey KT2 7TU SGL505515 (Freehold)	Accepted BK purchased this property having sold Tudor Drive No conveyance file for acquisition SOLD 24/1/07 £550,000 Mortgage £371,640.40 repaid Net Proceeds £174,094.95 to BK	2691-2696
	2006			
3	28/4/06	198 New North Rd, Islington N1 7BJ NGL609157 (Freehold)	Purchase monies £405,000: RBS Mortgage £207,800 Deposit £16,380 (BK) Deposit £40,500 (unidentified) FREEHOLD SOLD by BK 10/12	2619-2624 2660-2663

			£8500	
	13/10/06	198a New North Rd, Islington N1 7BJ NGL873060 (Leasehold)	BK formed leasehold BK granted lease to Aviraj Kohli Price/Premium £200k BK received £146,890.25 (136k paid to BK on 13/10/06) LEASEHOLD SOLD 04/05/07 £221,500 (No ledger entry for proceeds of sale)	2625-2633
	9/11/06	The Shop, New North Rd, Islington N1 7BJ NGL873522 (Leasehold)	BK formed Leasehold BK granted lease to Adrian Cole Price/Premium £87,500 Net proceeds to BK	2637-2659
		198B New North Road, Islington N1 7BG AGL297011 (Leasehold)	BK formed Leasehold SOLD 11/5/07 £285,000	2634-2636
4	23/06/06	Flat 28 Grice Court, Alwyn Square, N1 1TH AGL342496 (Freehold) *Disputed by Defendant	Purchase Monies: Halifax Mortgage £219,970 Deposit BK £60,418 SOLD date unknown NET PROCEEDS unknown	2664-2666

5	22/12/06	12 Chiswick High Rd, W4 1TH AGL29442 (Leasehold)	Purchase Monies £505,200: Mortgage £296,980 Deposit BK? (Ledger incomplete) Deposit sale proceeds 198A New North Rd (£9,493.87) Refurbished by BK for restaurant OWNED at date of death Probate value 500k	2667-2690
2007	2007			
6	01/07	62 Kingsley Road, Hounslow TW2 1QA MX264232 (Freehold)	Purchase Monies £280,000 Deposit BK £111,000 Deposit sale proceeds 15 Windmill Rise £174,094.95 Mortgaged later to Handlesbanken £187,080.25 Equity raised: £73,780.71 to BK £112,257.41 to Ledger KOH71 SOLD in 2007 (Ledger incomplete) £76,500.69 to purchase 5 High Street	2697-2701 2710-2711 2712
	08/07	Ground Floor Flat, 62 Kingsley Road, Hounslow TW3 1QA (Leasehold)	BK created leasehold Price/Premium to BK £55,919.68	2704 2708-2709

			21/9/07	
	08/07	First Floor Flat, 62 Kingsley Road, Hounslow TW3 1QA (Leasehold)	BK created leasehold Price/Premium paid to BK £46,720.62 5/9/07	2702-2703 2705-2707
7	16/2/07	94 Balls Pond Road N1 4AJ (Freehold)	Purchase Monies: £450,000 Mortgage Handlesbanken £311,770.25 Deposit £45,000 (Ledger incomplete) SOLD 10/16 Value IHT400 £8500	2713-2719 2721-2737
	25/1/08	94A Balls Pond Road N1 4AJ (leasehold)	BK created leasehold Price/Premium was £325,000 Price/Premium paid to BK £320,644.19 (to Handlesbanken account)	2720- 2720A 2743-2747
	11/05/11	94B Balls Pond Road N1 4AJ (Leasehold)	BK created leasehold Price/Premium was £231,000 (£147,111.79 to Handlesbanken mortgage) & £58,247.52 to BK)	2721- 2742A 2746
8	04/5/07	12 Savery Drive KT6 5RH SY696123 (freehold)	Purchase Monies £900,000 Mortgage £499,965 Birmingham Midshires £380,347.71 Deposit BK	

			SOLD 1/8/11 £1,135,000 (£701,198 other purchases £20,000 BK £32,179.56 to AAL £380,347.71 Mortgage)	
9	8/11/07	5 High Street TGL189091 (Freehold)	Purchase Monies £440,000 Mortgage £303,901 Deposit £57,000 BK Net proceeds 62 kingsley Rd £76,500.69 Ground floor & basement Machaan restaurant OWNED at date of death IHT400 £500,000 Lease granted post death (12/06/17) annual rent 45k	2761-2866
	2009			
10	30/11/09	343 Earlsfield Road SW18 3DG LN126835 (Freehold)	Purchase Monies £190,000 Purchase by AAL Mortgage £125,000 Auction Finance Deposit £6k AAL £44,274.37 CSL £19k BK	2867-2868 2873 2874-2876 2880
		Ground Floor Flat, 343 Earlsfield Road SW18 3DG	AAL sells ground floor flat for 245K	2869-2870

			Net proceeds £130,671 to mortgage £112,508.77 to AAL/BK	2877
	30/7/10	Reversion of freehold 343 Earlsfield Road SW18 3DG	AAL sells reversion 10k Net proceeds £7384.52 to AAL	2878-2879
11	15/10/09	Land & Garages 2-10 Carlisle Close KT2 7AU	Purchase Monies £4750 Ledgers incomplete 12/10 Garages 2&6 sold 5k 7/1/11 Garage 7 sold 3k 14/6/12 Garage 4 sold 3k	2881-2891
	2010			
12	14/4/10	Land at Kings Keep, Beaufort Rd Kingston KT1 2HP	Purchase Monies £197,000 Purchase by AAL Mortgage Natwest 90k Deposit 107k AAL/BK Ledgers not provided SOLD 9/9/10 £240k Net proceeds of £238,787 to AAL	2892-2897
	2011			
13	5/9/11	126 London Rd, Kingston KT2 6QJ SGL530437 (Freehold)	Purchase Monies £430,000 Purchase by AAL From net proceeds of Savery Drive sale BK/AAL intended to convert to apartments and retain freehold Access problems so disposed of in auction 9/15	2898-2903 2907-2916

			Net proceeds 10/11/15 450k to AAL £301,264.77 Blandy & Blandy sols for receivers £17,000 Southern Piling £18,241 AAL File/ledger	
14	2/8/11	1-18 Park Close, kt2 6DW SGL612127 (Freehold)	Purchase monies £547,500 Mortgage/Advance Handlesbanken £215,000 (Cleared upon sale of 19 Park Close) Net proceeds Savery Drive £301,279.69 Freehold comprises 18 flats and 11 garages	2917-2922 2934-2938
		19 Park Close SGL739020 (Freehold)	SOLD £560,000 on 26/04/13 Handlesbanken loan discharged £261,940.23 £293,424.61 to BK	2923-2926 2934-2938 2946-2947
		1 & 14 Park Close SGL686731 7 SGL686737	Purchase invoices raised in ledger for purchase by CSL? Ledgers incomplete Other garages value at date of death IHT400 80k	2939-2945
	2012			
15	14/3/12	Land adjoining 126 London Rd	SOLD £8,000 Purchase funds received from AAL	2904-2906

* Conveyance date missing Year given only

Annex 3

Deceased's Homes from 2003 until Date of Death 2015

Date	Deceased's Homes	Known History
2003 – 2004	74 Tudor Drive KT2 5QF SY11420 (Freehold)	Deceased sold Tudor Drive & Purchased Windmill Rise
2004 -2007	Windmill Rise, Surrey KT2 7TU SGL505515 (Freehold)	Sold 2007
2007-2011	12 Savery Drive KT6 5RH SY696123 (freehold)	Sold 1/ 8/11
2011-2012	19 Park Close, KT2 6DW SGL612127 (Freehold)	Residence before moving into High Beech with Melissa in June 2012
2012	High Beech Old Avenue, Weybridge Surrey	Rented, initially with Melissa, until late 2012
2012-2013	58 High Street, Cobham, KT11 3EF	Rented from a friend at St George's Hill LTC on temporary basis
2013-2014	Orchard House, Cavendish Road, Weybridge KT13 0RJ	Rented close to Melissa & Amélie
2014-2015	53 Marina Place, Hampton Wick KT1 4BH	Rented
2015	Flat A, Hill Rise House, Holbrooke Place, Richmond TW10 6UD * Disputed by the Defendant	Rented in Rajveer Kohli's name

