Neutral Citation Number: [2020] EWHC 1185 (Ch)

Case No: PT-2019-000212

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY TRUSTS & PROBATE LIST (ChD)

IN THE ESTATE OF MRS JEAN MARY CLITHEROE DECEASED

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

Date: 21/05/2020

Before :

DEPUTY MASTER LINWOOD

- -

Between :

JOHN CLITHEROE	**Claimant**
- and -	
SUSAN BOND	**Defendant**

- - - - - - -

- -

Mr Henry Hendron (instructed by **direct access**) for the **Claimant**
Mr Edward Hicks (instructed by **Birkett Long LLP**) for the **Defendant**

Hearing: 2nd – 6th March 2020

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JUDGMENT

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I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as remotely handed down may be treated as authentic.

Deputy Master Linwood:

1. This is a bitter family dispute between the Claimant brother and Defendant sister as to whether their mother, the deceased, had testamentary capacity to make each of her two wills and in addition or in the alternative whether either or both wills resulted from fraudulent calumny. With no disrespect intended I will refer to the wider family members by their first names, using where possible the names used in the family correspondence.

2. I first outline the wider family by history and relationships. Then I set out the essence of the claim and counterclaim, the issues I am to decide, certain discrete matters which inform or play a substantial part in those issues, and summarise the evidence of the 9 witnesses who gave oral evidence and the expert evidence. I then turn to the law, my findings of fact for each issue and my decisions.

The Wider Family

3. The deceased ("Jean") was born in 1941. She married Keith Clitheroe in 1961. They had 3 children – Debra ("Debs") born in 1963, Susan ("Sue") in 1967 and John in 1968. Jean and Keith separated in about 1980 when Jean discovered that Keith had been abusing Susan (although this has relatively recently been challenged by John). Jean and Keith divorced in 1982. Keith lived locally, in Essex, for a while and then went to the Isle of Wight and then Spain for about 10 years in each place before returning to the UK.

4. Debs sadly died of cancer on 19th December 2009. She was just 46 years old. She was trained as a primary school teacher and by all accounts was a most dedicated one, her last appointment being Deputy Head at St Osyth Church of England Primary School. She did not have children herself but besides her devotion to her school and pupils was a long standing and passionate fan of Colchester United, attending all home and away games. She was especially devoted to her family including in particular her niece Charlotte, and had many wider interests, especially collectibles. She was said to be the lynch pin of the family.

5. Debs bought 78 Woodlands Close, Clacton-On-Sea ("the Bungalow"). In 1989 she was diagnosed with skin cancer. Most unfortunately, after treatment, it returned in 2007. Her diagnosis was terminal.

6. No will was ever found. That is a matter of great concern to Susan, in circumstances where Debs was known as being a very organised person, had plenty of time in which to put her affairs in order (and she had taken out various insurance policies including a whole life one despite having no dependants.) Further, she was very close to Jean, Susan and Charlotte, and apparently was aware of the benefits of having a will in place. Her estate was administered in intestacy and so her parents benefited. Keith signed a Deed of Variation transferring all but £5,000 of his share to Jean.

7. Sue married Peter Bond in 1999. They have one child, Charlotte, born in about August 2003. Sue took early retirement about then. Her career culminated in her appointment in July 1998 as Branch Manager 3 of Lloyds Bank, Clacton-On-Sea. She had also worked part time in diverse areas such as selling clothes, books and cleaning.

8. John married Zoe in August 2010. They have 2 children and divorced in 2015. John was in partnership with Peter Bond as Estate Agents from about 2000 with offices on Station Road, Clacton-On-Sea, very close ("20 seconds" as John put it) to Powis & Co, Solicitors, ("Powis") who acted at various times for Jean as to her wills and also for John on his divorce. John's current partner is Ms Josephine Walsh who has with permission of the Court represented him at various hearings and has conducted to a substantial extent his claim, as can be seen by her instruction of Dr Hugh Series.

9. Jean was deeply affected by Debs' illness and death and as she put it "took to her bed" on the death of Debs from late 2009. She was at the time also suffering from some longstanding ailments. She remained bed-ridden until her death on 11th September 2017 aged 76. The primary cause of death was sepsis, plus infection of right hip, anaemia, acute renal failure, leg ulcers and frailty.

The essence of the claim and counter-claim

10. Jean left two wills in similar terms, both prepared by Powis. By the one dated 21st May 2010 ("the 2010 Will") John was appointed executor and trustee, and took the residuary estate after small bequests of chattels to Sue and Charlotte. The will dated 3rd December 2013 ("the 2013 Will") changed the 2010 Will by giving Jean's grandchildren Charlotte, Holly and Sophia £5,000 each; John took the residuary estate. Mr Hicks told me the estate is worth some £350,000.

11. Jean gave detailed reasons for excluding Sue; in her handwritten instructions to Powis for the 2010 Will she said Sue was "a shopaholic and would just fritter it away". Powis in an attendance note recorded Jean saying Sue was a "spendthrift and will just spend her inheritance".

12. Jean's instructions to Powis for the 2013 Will in handwritten notes dated 2nd April and 3rd December 2013 make wider allegations against Sue to include lack of contact, Jean's refusal to give Debs' estate namely the Bungalow to Charlotte, her spendthrift ways and an alleged ransacking of the bungalow after Debs' death.

13. John in his claim propounds both Wills. Sue disputes their validity and asks the Court to find that Jean died intestate. She says Jean suffered from a complex grief reaction from about the time of Debs' death and a continuing affective disorder beyond it, which appeared by her depression and insane delusions regarding Sue, together with a poisoning of her mind against Sue.

14. Sue says the reasons Jean gave were false or else based on false beliefs induced by John, who knew them to be false or else did not care if they were or not. Sue says Jean lacked testamentary capacity as to both Wills or alternatively or additionally the 2013 Will was as a result of fraudulent calumny. She therefore counterclaims for an order that the court pronounce against the force and validity of both Wills and that Jean died intestate.

The Issues

15. Below I reproduce the List of Issues provided by Mr Hicks

> "**As to testamentary capacity:**

1. Whether the Deceased suffered from a complex grief reaction or any other affective disorder as a result of Debra's death or otherwise (the burden being on the Claimant to demonstrate that she did not);

2. Whether, as a symptom thereof, the Deceased suffered from any insane delusions regarding the Defendant, or otherwise that her mind was poisoned against the Defendant, as at the execution of the Wills or either of them (the burden being on the Claimant to demonstrate that she did not);

3. Whether any such delusions or poisoning of the Deceased's mind influenced the making of the wills or either of them (the burden being on the Claimant to demonstrate that it did not).

As to fraudulent calumny:

4. Whether the reasons of the Deceased for excluding the Defendant from any or any substantial benefit from her estate represented or were the product of false beliefs induced or encouraged by the Claimant's words or conduct, and if so whether he knew they were false, or did not care whether they were true or false (the burden being on the Defendant to establish the same).

General

5. In determining these core issues, the court will have to consider various more detailed matters.

6. In particular, the Court will have to determine what the reasons the Deceased made the 2010 and the 2013 Wills or either of them in terms that effectively excluded the Defendant from any or any significant benefit from her estate actually were, or otherwise what beliefs influenced her in making the wills. Those reasons or beliefs may include the following:

(a)That the Defendant had falsely accused Keith Clitheroe of the abuse, and had thereby broken their marriage;

(b)That the Defendant had acted in some way wrongfully by requesting the Macmillan Nurse to give Debra morphine in the final few days of her life;

(c)That the Defendant was a shopaholic/spendthrift, and in particular that Debra disapproved of the same, Debra and Jean only buying things out of need and not want;

(d)That the Defendant did not see the Deceased because she did not care about the Deceased, and deprived the Deceased of access to Charlotte;

(e)That the Defendant was searching for a will of Debra's that did not exist;

(f)That the Defendant was pressuring the Deceased into giving her Debra's bungalow, despite no will of Debra's having been found, or otherwise that the Defendant wanted to mortgage the bungalow to send Charlotte to private school;

(g)That the Defendant stole from the Deceased, in particular;

(i)A 9ct gold watch Jean gave her;

(ii)Various cameras;

(iii)A digital projector;

(iv)A new personal computer;

(v)Harry Potter Books (some hardback, some paperback);

(vi)Everything in Debra's locker at School;

(vii)65 trolls from Debra's classroom;

(viii)Numerous DVDs, CDs, videos and books;

(ix)Swarovski crystals given to Debra for safe keeping, said to be worth about £30,000 10 years previously;

(x)Other things from Debra's garage.

(h)That the Defendant stole from the Deceased's bank account when she worked for Lloyds;

(i)That the Defendant borrowed money from the Deceased which was not repaid;

(j)That the Defendant, together with Peter Bond and her friend Amanda ransacked Debra's bungalow.

7.In relation to each such reason of belief, the court will need to consider:

(a)Was it true;

(b)Was there any rational basis on which Jean could have held such reason/belief; and

(C)In any event, did John (or anyone else) encourage such reason/belief either knowing or not caring whether it was true or false?

8.More generally:

> (a)did the Deceased exclude the Defendant from benefitting under either will because of a hatred of her, and
>
> (b)if so whether
>
> (i)that hatred was the result of a poisoning of her mind against the Defendant by reason of an affective or other mental disorder (the burden being on the Claimant to establish that it did not); and/or
>
> (ii)it was the result of a poisoning of her mind against the Defendant by reason of fraudulent calumny (the burden being on the Defendant to establish that it was)."

16. Mr Hendron also submitted a List of Issues. He did not agree to that of Mr Hicks, but accepted that both are similar as to the key matters of testamentary capacity and the sub issues of complex grief disorder and insane delusions. I have adopted that of Mr Hicks as it conveniently sets out the factual matters that I must determine, although I am not bound to determine them all.

The 2010 Will

17. The matters I set out as to the Wills arise from the documents provided by Powis to Birkett Long LLP ("BL") in reply to the latter's *Larke v Nugus* request dated 2nd November 2017. None of the documents I refer to have been challenged and the entirety of Powis' files were in evidence. I heard no oral evidence; the fee earner who acted on all three wills was Mary Brennan, Chartered Legal Executive, who retired in November 2013, assisted by her colleague Carlie Brown, also a Chartered Legal Executive. Powis say that the 2010 Will was the first time they acted for Jean; that must be wrong as they acted on her divorce and also at least one property transaction.

18. By an attendance note dated 21st May 2010 but recording events over the previous several days or so "MB" (I presume Mary Brennan) noted that John called to the office with a sealed envelope apparently containing Jean's instructions for her will. I set out those instructions below. Ms Brennan recorded that John expressed concern that Jean was very poorly (repeated twice), that she "…may be suffering from advanced septicaemia arising from ulcerated legs" and that the will "…may need to be signed as quickly as possible". Carlie Brown drafted the will in Ms Brennan's absence. The note records "…the main thing is that she will not wish her daughter to benefit from the Will, save for leaving her your Garner Diamond ring".

19. The note then records Ms Brennan speaking to John and noting her concern of no face to face meeting with Jean and "…this will is not being set up as it should be. However we understand from you the urgency of the situation and so this is something of a cleft stick situation in that if we do not prepare the will at all there will doubtless be difficulties. You confirm your mother does not want your sister Susan to benefit greatly from the will as she is so bad with money". John told Ms Brennan that Jean was of sound mind.

20. Ms Brennan then asked John to have Jean call her which Jean did a few minutes later. Ms Brennan recorded that Jean was "evidently very clear what you wish to do", that

she went through the draft will with her and that "…you do not wish your Daughter Susan to have anything apart from your diamond ring as she is such a spendthrift and will just spend away her inheritance." The will was engrossed and that day provided with a covering letter and set of instructions as to execution for collection by John.

21. Jean's instructions are in a handwritten two page note dated at the top and end "19/5/10" and headed "The Last Will & Testomy (sic) of Jean (Mary) Clitheroe". She names John as executor and leaves her "house at 38 Weeley Road CO16 9EN [known within the family as "Conifers"] together with its contents & my daughter's bungalow together with its contents …whatever percentage I own to my son John…".

22. She refers to the gift to Sue of the Garnet & Diamond ring as Sue had "…always wanted it. It was my Aunties Flo's engagement ring. She died in 1947." She then wrote "I don't leave Susan anything else as shes a shopaholic & would just fritter it away". The note goes on to make some detailed bequests of specific items and also excludes Zoe as "…she could well marry again" (her marriage to John actually taking place a few months later, in August 2010.) Jean also provides for "Charlotte Bond Debs niece to have something from Debs bungalow to the value of £5K. I love Charlotte very much."

23. There is a further note from Jean dated 20th May 2010 in which she states John has Debs' address book (for specific legacies) and sets out her three bank accounts and post office account. Jean concludes the short note by stating "Please excuse writing as not too well. Would appreciate will ASAP please."

24. The will was executed on 21st May 2010 before two independent witnesses. The original appears to have been returned to Powis as Ms Brennan wrote to Jean by letter dated 24th May 2010 confirming receipt of the original and enclosing a copy plus her account. The 2010 Will provided for specific bequests including, amongst others, to Charlotte of Jean's Swarovski Crystal collection and items up to £500 from the Bungalow (and the like to Debs' friends Sue Sheppard and Rachel Dines), to Sue the ring mentioned above. John was sole executor and took the residuary estate.

The 2013 Will

25. For this will Jean initially gave instructions by telephone on 2nd April 2013. On Powis' file is a manuscript attendance note by a person unknown of that date which says "She now wishes to leave everything to her son John as he does everything for her and nothing to her daughter. Said for her to write a letter saying why she was doing this and it could be put with the will. She is now bedridden".

26. The next day, 3rd April 2013, John brought to Powis' offices a note from Jean dated 2nd April 2013, consisting of five pages in manuscript. She commences by saying "I'm not leaving anything to my daughter (Susan Bond) because since my son married August 2010 I haven't seen her or has she let me see my granddaughter, her daughter Charlotte. My elder daughter Debra Clitheroe passed away on 19th December 2009, she didn't leave a will. I told her about a year before she passed away that if she didn't leave a will then her estate would pass to her Father and myself. She said yes she knew."

27. Jean continued "Debra I know didn't want Susan to inherit anything from her because Susan is a shopaholic & just spends money. I understand she wants to sell Debs bungalow or mortgage it to send Charlotte to private school Debra didn't agree with private education …". Then at the bottom of the page: "If left to her I would have starved to death. Deb would have been so upset and disgusted about the way she has treated me."

28. The second page is headed "Things I know Susan helped herself too (sic)". There follows a long list of items as set out in the List of Issues of Mr Hicks at para 6(g) above, including this "The 65 Trolls Deb had on a high shelf round her classroom at school. They really belonged to the children. I would have given them back as a menmento (sic) to the children, of Debra."

29. The third page commences with Jean repeating "Susan hasn't done anything for me as far as she is concerned I could have starved to death." She then alleged that after Debs died "Susan, her husband Peter Bond & her friend Amanda went through Debs property one Sunday taking anything which took their eye. Deb would have been horrified." In Jean's view this "was beyond the pale".

30. On the fourth page Jean sets out her wishes for her will; the ring is to go to Sophia, her granddaughter, rather than Sue. Each granddaughter is to receive £5,000. John is to receive both properties and she expresses a wish that John and Zoe will retire to Conifers and hopes that he will leave both properties to his daughters Sophia and Holly. Everything else is left to John "…who has been there for me getting shopping cooking meals etc".

31. A draft will was sent under cover of a letter from Ms Brennan to Jean dated 4th April 2013, with an account for just £72.00. On the 8th April Ms Brennan wrote to Jean stating she was enclosing "the letter to your daughter as requested" (which did not appear in the evidence) and asked Jean to make an appointment for her to visit to sign the will. A note of 18th April records that Jean's operation was cancelled and she would make an appointment.

32. By letter almost 7 months later dated 11th November 2013 Ms Brennan said the appointment fixed for Tuesday 12th November had to be cancelled. The next letter on file is from Ms Carlie Eve confirming her call at Jean's home when the will was signed on 3rd December 2013. The 2013 Will was witnessed by Ms Eve and Ms Chapman, Jean's neighbour. It makes specific bequests of the Diamond Garnet ring to Sophia and £5,000 to her (Sophia), Holly and Charlotte. John takes the residuary estate.

33. For completeness I should mention that on 21st August 2014 Ms Carlie Brown (nee Eve I assume) attended on Jean at her home according to her letter of 27th August 2014 which enclosed a draft will. In that draft the specific legacies to the three granddaughters was repeated with Charlotte also receiving a gold watch. The major change was that the Bungalow was devised to John for life with that and the residue (including Conifers) being for Sophia and Holly – but not Charlotte.

34. Also on Powis' file is an undated manuscript attendance note which states that Zoe was divorcing John for unreasonable behaviour. The draft will provides at clause 8 that no provision has been made for Susan for the reasons set out in a letter signed by

Jean. A reminder was sent by Ms Brown on 22nd May 2015 asking if Jean had made a decision. A note dated 4th March 2016 records Jean needs longer to decide and "John will be getting a divorce so wants that to all be settled. Close file".

Note by Jean dated 3rd December 2013

35. This is a three page manuscript note headed "Re – My Daughter – Susan Bond". It continues "I do not want Susan to inherit any part of my estate whatsoever. Approximately a year before, Debra Clitheroe, my elder daughter, passed away we were driving back from the Harvester after having lunch there together which we did most Sundays I said to Deb.." and then she repeated her exchange with Debs as to her failure to make a will would result in her estate going to Jean and Keith – almost word for word as I set out in [26] above.

36. Jean continues by saying she has been bed bound for about a year and had not seen Sue, John and Charlotte since John married Zoe on 7th August 2010, and that "Susan gave up on seeing me because I would not give her Deb's bungalow." She also repeats that Sue is a shopaholic, that Debs was disgusted at her forever spending money whereas Debs was like her "…only buying for need not want".

37. Jean repeats the allegations re the ransacking of the Bungalow and Sue's theft of a watch she bought Debs for her 18th birthday which she said really upset her. As well as listing all the previous items stolen she alleged that Sue had "…collected all Debra's belongings from school and kept them including 65 TROLLS (sic) which really belonged to the children…".

38. Substantial criticism is made by Mr Hicks of the 2010 and 2013 Wills. In particular he submits that the circumstances as to the 2010 Will leave much to be desired – citing John's involvement in its execution, that he knew of the contents, and urged its urgent execution. Further, Powis never met Jean face to face and the direct instructions were by telephone with no identity check.

39. The "Golden Rule" was not followed and the execution was not attended by solicitors. Jean's medical records show that she had not eaten or drunk over the 3-7 days prior to her admission to hospital on 24th May 2010 – which included the period over which instructions were taken, the draft provided, approved and executed. Jean also at that time was refusing medication, suffering from hallucinations, and had on-going depression, (albeit not clinically diagnosed).

40. As to the 2013 Will Mr Hicks again criticises Powis for not following the "Golden Rule" bearing in mind Jean's age and the fact she was bedridden, that John was involved throughout and no attempt was made to take instructions from Jean in person – although the drafting lawyer did attend and witness the execution. He refers to the fee of £72 being consistent with minimal effort – but I would assume more prosaically that was due to John as an estate agent working closely with Powis and referring clients to them.

41. Clearly instructions for both Wills were not taken in accordance with best practice. The Golden Rule was ignored but I have some sympathy with Powis as to the circumstances they faced in 2010. There is no challenge to execution. Reading Jean's letters and the attendance notes the impression I have is Jean gave detailed and

believable reasons which she expressed directly and without equivocation. The disposition of the ring and its history I quote in [22] above demonstrates this. Powis' failure to challenge her or for them to be put upon enquiry so as to refuse to carry out her instructions was in the circumstances as they saw them understandable at that time especially in view of Jean's character that I turn to below.

42. In Boughton v Knight (1873) LR 3 PD 64 the headnote states:

> "A man, moved by capricious, frivolous, mean, or even bad motives, may disinherit wholly or partially his children, and leave his property to strangers. He may take an unduly harsh view of the character and conduct of his children, but there is a limit beyond which it will cease to be a question of harsh unreasonable judgment, and then the repulsion which a parent exhibits to his child must be held from some mental defect."

43. As I have mentioned above, the question I must address is whether Jean was so affected whether by way of a complex grief reaction, continuing affective disorder or otherwise which led to insane delusions regarding Sue so as to invalidate her testamentary capacity.

Jean's character

44. One rare matter that all the witnesses of fact were agreed upon – and some witnesses had known her for decades – which also appears in her copious medical notes was that Jean was strong in character. She was variously described by the witnesses as "very clever", "very stubborn", "demanding", "strong willed", "controlling", "spoke her mind", "melodramatic", "very knowledgeable", "awkward at times" and "calls a spade a spade".

45. As to her mental capacity Professor Robin Jacoby instructed for Sue and Dr Hugh Series instructed for John reviewed some 40 years of Jean's medical records. In their Joint Statement dated 13th February 2020 at para 1.1.2 they said:

> "We agree that there is nothing in the medical records which we have seen that suggests that the deceased had a cognitive impairment at any material stage, despite her considerable health problems. We agree that neither dementia nor delirium is relevant in the present case."

46. Dr Series also states in his answer to Birkett Long LLP's ("BL") Part 35 Questions, number 5, that Jean was "…very strong minded and it would have been difficult to change her mind on anything". In his Further Opinion dated 27th February 2020 he referred at para 4.1.3 to her being "…a very difficult patient to treat. She regularly refused advice from nurses and doctors and others which might have helped her conditions to heal more quickly."

47. At para 9.1.3 Dr Series said:

> "In the present case there is no reason to think that the deceased's understanding of the nature of a will or the extent of

> her estate was compromised. There was no cognitive impairment."

48. Professor Jacoby in his report dated 31st January 2020 under the heading "Diagnosis" at para 45 said:

> "In my opinion the Deceased was not showing any evidence of dementia at the material time. She scored repeatedly highly on both the AMT [Abbreviated Mental Test] and MMSE [Mini Mental State Examination]. Dementia is not an issue in this case."

49. Professor Jacoby also noted at para 71 that:

> "On the face of it the Deceased appears not to have been vulnerable to the influence of others. Indeed, in most cases the opposite was probably the case because of her tendency to have fixed ideas. However, in my opinion she was potentially vulnerable to influence when circumstances fitted in with her own fixed ideas. For instance, if she developed a fixed idea about Susan, I consider that she would have been vulnerable to believing any further denigration of her younger daughter, true or false."

50. Jean was found by every treating clinician in various disciplines to have had capacity to make her own decisions. By way of brief example, she did have a mental state assessment – the only one by a mental health specialist namely a nurse, Ms Angela Rooke – on 20th July 2017. No abnormal beliefs or perceptions were found and the notes state "Insight/Judgment: has very good insight into current needs and difficulties."

51. The day before she died on 10th September 2017 Dr Oakley noted "Patient is able to recall, retain and communicate information so has capacity". Her care record on the day she died notes she refused antibiotics and fluids and that John wanted to override her refusal "…but explained she has capacity and we cannot".

Jean's medical records

52. These span over 40 years and total 5,003 pages. They take up 12 lever arch files. Approximately 2,300 pages are from treating hospitals, 2,600 from her GP practice and the small balance mental health notes.

The documentary evidence

53. It is frequently the case in family disputes that very little is available in documentary form. Accordingly, it is often difficult to corroborate or substantiate oral evidence by reference to contemporaneous documents. The position is different here. The extensive documents in evidence are far more than the substantial medical notes; key witnesses have kept or been able to obtain volumes of documents. Before me for trial were 31 lever arch files referred to as Supplemental Bundles with a further 10 lever arch files being the so-called Core Bundles.

54. Jean kept diaries – those for certain years are missing and Sue alleges they have not been provided by John but those in evidence are in 6 lever arch files. Miscellaneous papers of Jean and her notebooks take up one file. Her financial disclosure is in 8 lever arch files and that of Debs in one. The remaining 3 files contain financial disclosure of Sue and Peter.

55. Extracts from those 31 files appear in 7 of the 10 Core Bundles. During the hearing I was taken to just 23 pages from the Supplemental Bundles. I set this out so my findings can be seen in the context of Jean's own personal diaries and papers as well as extensive financial disclosure by all of Jean, Debs, Sue and Peter.

WITNESSES OF FACT

56. There were substantial factual differences in the evidence I read in the witness statements and heard. In summary, the evidence of the independent witnesses was generally accepted by me. As will appear below, that could not be said as to the evidence of each family member. I set out below my comments as to the witnesses in the order in which the 9 of them appeared. I do not refer to individual statements of testamentary scripts as I agreed with counsel that there was no need to put them to the deponents.

Mr John Clitheroe

57. John's statement is 8 pages of closely typed script and is a family history from his perspective. It makes numerous wide-ranging allegations against Sue. He also signed the statement of truth on what is described as his "Counter Defence" which is in effect a substantial – 10 page - Reply to the Defence and Defence to Counterclaim.

58. John gave evidence for almost one day, spread over an afternoon and the following morning. In summary, I found him to be an unreliable witness who did not care much for the truth. He gave at times glib explanations of some matters and at other times could not accept when he clearly was wrong.

59. For example, as to Sue's occupation at para 25 of the Counter Defence John (and Ms Walsh who apparently drafted that document) denied that Sue was ever a Lloyds Bank Manager. When it was put to him that she was he said it was what others told him. When he was asked if Sue was in a well paid job he denied she was. However in the unchallenged documentary evidence are Sue's letter of appointment from Lloyds Bank dated 8th July 1998 as Bank Manager 3 and a separate document headed "Variation in Terms and Conditions" setting out her then good salary.

60. Further, as to the 2010 Will John in his statement at para 26 said he was told by Jean to go to Powis and pick up an envelope and bring it to her. He did so and on arrival saw his wife's parents with Jean. He stayed in the garden – they all went into the lounge. Then Jean told him he was to take the envelope back to the solicitor and that it was her will.

61. In oral evidence he was asked if he knew what was in the envelope. He said he suspected it was a will but that Jean had not told him what was in her will. Ms Brennan's attendance note that I set out at [19] above was put to John. He said he did not remember taking Jean's instructions to Powis. Nor did he recall "at all" him

confirming to Ms Brennan that Jean's instructions were that Sue was not to benefit as she was so bad with money.

62. John tried to excuse his failure to recall any part of the 4 numbered detailed paragraphs in Ms Brennan's note by saying that as his place of work was so close he was in and out dropping stuff in to Powis all the time. He was asked again if he knew what was in the 2010 Will and he replied "No".

63. John was then asked about the 2013 Will. He first said he didn't remember it. Para 51 of his statement was put to him wherein he stated that the day (unspecified) he found out about the 2013 Will he called Peter. John then said he only found out about the 2013 Will the day after Jean's funeral (which would have been 6th October 2017). The attendance note of 3rd April 2013 of Powis was put to him which records John visiting Powis and saying Jean was going into hospital and that she needs "…to get will signed." He then said he did not remember this.

64. John was then asked how could Powis receive correspondence from banks re Jean's estate – for example Lloyds' letter dated 22nd September 2017, 11 days after Jean died but two weeks before her funeral on 5th October 2017? It was put to John that he already had the 2013 Will and asked Powis to commence the administration before the funeral. He replied that was "totally not true" and maintained that he did not know of the 2013 Will until after the funeral. I cannot accept that as Powis would not have acted alone without instructions, and from him as executor. I also note that John has not produced on disclosure Powis' file which would almost certainly resolve the issue.

65. A letter addressed to "Representative of Mrs Susan Bond" was put to John. The letter stated that as executor he had made an application for a grant *ad colligenda bona* and says:

> "Mrs Jean Mary CLITHEROE had signed a legal contract to sell 38 Wesley Road, Little Clacton. As contracts were exchanged and a sale agreed it has now become a legal binding contract between buyer and seller. Therefore, I have asked the courts for a partial grant to proceed and finalise sale of the said property" (my emphasis)

66. The letter is dated 21st March 2018 and the copy in evidence bears the stamp of Manchester District Probate Registry. John was asked if he had signed it. After a pause he confirmed he had. It was then put to him that to say contracts had been exchanged was a lie. He said no, there was a mortgage offer and they were ready to exchange. In my view that clearly is wrong, John knew so and this was an attempt by John to avoid the truth.

67. Then he was asked if the information as to exchange was untrue. This time he said he "had not exchanged at the time". He was asked if he had made an application for a grant on a false basis. He replied "I did not" but confirmed that Josephine Walsh had made the application on his authority. When asked if she had made a false statement to the probate office he replied "I cannot answer that".

68. John's evidence here again is simply not credible; he is an estate agent of many years experience. Further, no evidence of the buyer has been produced to verify this supposed sale. In addition, Jean died on 11th September 2017 – this letter was written 6 months later when in any usual contract for the sale of a residential property time for completion would have long passed.

69. John's evidence was also found wanting on some other matters that I will turn to in my findings of fact but in summary I cannot accept much of what he said unless it was supported by independent documentary evidence. I have taken into account that he as a litigant in person prepared his own evidence with I think Ms Josephine Walsh but that does not alter the view I have taken. In general, where his evidence conflicted with others, I prefer their accounts.

Ms Doreen Baker

70. Ms Baker is a retired school teacher; she taught at St Osyth with Debs. Her typed statement was dictated by her to Ms Walsh but she confirmed it was her evidence and none of it had been suggested to her. She said she was a close friend of both Debs and Jean. She extolled Debs saying how she had time for everyone no matter their work in life and loved children – and they loved her.

71. In her statement she said that Debs was not extravagant but spoke to her "…about her extravagant sister Sue who was the very opposite of her (Debs)". When cross examined as to whether Debs had spoken about Sue in a negative way her reply was "not to me". She was then asked if Debs said Sue was extravagant and her response was no.

72. Ms Baker also said she shopped for Jean twice a week and so got to know her well as they would chat about their children, their lives and their achievements. She said that after Debs died Jean could not talk about Debs without crying for about 6-8 months, and Christmas was a particularly bad time.

73. Ms Baker in re-examination then said Debs told her Sue was always spending money, contrary to what she said in cross-examination, but repeating that Debs was a very private person. She was asked to give more detail of Debs' relationship with Jean. She said that they were more like sisters than mother and daughter; always together, doing things – shopping and trips.

74. I found Ms Baker tried to assist the court and, whilst truthful, was at times rather forgetful. She changed her account as to Sue being extravagant but also was on other matters prepared to say when she did not know. I generally accept what she says where it was in her direct knowledge.

Ms Zoe Reed

75. Ms Reed had handwritten her 9 page statement which is dated 9th February 2018, 5 months after Jean died and just over one year before these proceedings commenced. She is a qualified District Nurse and currently manages a team of District Nurses. She confirmed it was her statement written without assistance.

76. She said she had been in a relationship with John for 15 years – so from about 2000 – and for the first 5 years every Christmas was spent at Sue's house with John, Jean, Debs, Sue and Peter. She said Jean would frown upon Sue's requests for expensive presents on her Christmas lists and said to her that Sue "…is my daughter but I don't like her as a person", but in cross examination changed that to Jean saying she loved Sue as a daughter but didn't like her as a person..

77. She also said that Jean and Debs would come to her and John's house and "…moan about Sue's compulsive spending". Certain text messages between her and Sue dated February and March 2018 were put to her in cross examination. Sue had met Zoe by chance and then sent a text asking if they could meet as there were some things Sue wanted to discuss. Zoe confirmed there had been no contact before then, save a missed call.

78. Zoe was asked if she felt harassed by the two text messages from Sue – she said no, and agreed the tone of the texts was polite. Zoe said she was quite surprised to hear from Sue as this was the first contact since her divorce from John. Zoe confirmed she did not report Sue to the police and neither did anyone else on her behalf.

79. Sue then said she asked about Ms Josephine Walsh; Zoe replied that she did not have her number and she had never spoken to her, but was aware she appeared at Jean's bedside at the time of her death and at the funeral. Mr Hicks asked Zoe if she had concluded her financial remedy proceedings against John; she confirmed she had. Zoe was then asked if John made payments to Sophia and Hannah, their daughters; she said no, the court had approved joint custody and that she worked full time and was self-sufficient.

80. Mr Hicks submitted that Zoe was hostile and argumentative in demeanour and made various false assertions such as Sue not having worked since she knew her – which I consider has to be wrong as Sue did work until around 2003. He added that Zoe was partisan in that by the 2013 Will their daughters would receive £5,000 each. He criticised her statement due to the way it was written in that especially it did not differentiate hearsay.

81. I disagree. First, there has been much judicial and other criticism concerning the "over lawyering" of witness statements. This statement undoubtedly was as the CPR requires in the witness' own words. It was not technically correct in certain minor aspects as to be expected but the sense of it was well put as it was her evidence in her own words. That in my opinion is preferable to statements that have been so engineered that the witness struggles when it is put to them in oral evidence. Mr Hicks also criticised Mr Hendron's extensive re-examination which he submitted amounted to examination in chief, which arose from her statement. In my view that was a product of the fact she prepared it herself, before the proceedings, and I do not criticise Zoe nor her evidence for that.

82. I found Zoe to be straightforward and direct. She was thoughtful and apologised for errors such as missing out a date. She was in my view somewhat embittered or even angry at the turn of events but overall was a truthful and convincing witness.

Ms Josephine Walsh

83. Ms Josephine Walsh confirmed that she first met John on 5th September 2015. She accepted that the material events regarding the Wills had occurred before they met but said her personal knowledge came from conversations she had with Jean. She first met Jean face to face when Jean was in hospital in 2016 but most of their conversations were in 2017. She denied being the driving force behind this litigation and running it but said at various times John was "…a broken man" and there was no-one else who could assist him.

84. She accepted she had commenced these proceedings. As I have indicated above, she typed the statements and the Counter Defence. She accepted the reference in the latter document to "we" meant her and John. She was asked if she was pursuing this litigation for financial gain – her response was that she had asked John to walk away from it but he said it was his mother's wishes. I do not accept that. She also has represented John at numerous hearings and also was the contact for Birkett Long.

85. I found Josephine to be argumentative, hostile and, whilst clearly intelligent, reluctant to answer questions at times directly. She did not seem to care whether what she said was the truth or not and when pinned down in cross examination would invent such evidence as she thought would assist. I set out some examples below.

86. The letter of 21st March 2018 I refer to at [65] above was put to her. She confirmed she drafted it, including the words "As contracts were exchanged and a sale agreed" and that John accepted there was no such exchange of contracts. She said at the time "John was not functioning", he asked her to help as the purchaser had a mortgage and Jean had agreed to the sale. She said she thought those words meant that Jean had signed the contract to say Sam (supposedly the purchaser) could have it, that she was not an estate agent but that she had a bit of legal experience.

87. I find her evidence here incredible as a) whilst exchange of contracts is a technical legal term it is literally in every day usage, b) she could have just said Jean had signed the contract, c) no documentary evidence of this alleged sale has been produced d) this was written 6 months after Jean died when any purchaser would have presumably disappeared and e) this letter was intended to assist John by persuading the Probate Registry of facts namely the exchange which was, as John eventually accepted, false.

88. On 27th March 2018 Josephine dialled Sue's number. Each of them produced a transcript of the recorded call and Josephine was heavily cross examined on these transcripts and her conduct. The transcripts are quite similar in content apart from on one issue. I refer only to part of them due to their length. The transcripts start with Josephine asking to speak to John Fawcett (Sue's then solicitor). Then Josephine tells Sue to stop harassing Zoe and that Sue was "harassing our client".

89. Then Josephine in a demanding manner tells Sue to "do me a favour" seven times and not contact Zoe who does not want to speak to her and that she should stop pestering her with texts. The demands mount as Josephine says "Stop harassing people Sue, stop harassing people Sue, stop harassing people Sue, stop harassing." and "you are really and truly absolutely the most horrible person I have ever met . . . ever in my life", "I cannot believe how evil you are. Please go to hell", "get off your fat arse, get a job and live a life of normal people".

90. Josephine then changes tack and refers to her investigations of Sue; she says she has "invested money in finding out the truth", that she has "found out the fucking truth" and that "six private investigators found out the truth" (in oral evidence Josephine suggested these were friends of hers who did not want to get involved – and no evidence of their investigations has been disclosed.) She states that she has "brought in Lloyds" and that they are "very interested" in Susan going through accounts of people not in the office. In oral evidence Josephine said she had written to Lloyds (also undisclosed) and that they had responded to her by telephone. These exchanges appeared to me to be pure invention by Josephine.

91. In this exchange Josephine was – and I make due allowance for the stresses of litigation - attempting to intimidate Sue by saying she was calling Birkett Long. The allegation that Zoe was harassed is without foundation; having heard evidence from both of them Zoe's denial was wholly credible, especially combined with her clear strength of character. Zoe was also clearly not the "client". In addition to intimidatory language and allegations, I consider Josephine was aggressive, offensive and threatening to Sue. I do not accept for example the Lloyds investigation nor the 6 private investigators.

92. In a second call Josephine left a message on Sue's telephone, supposedly from Zoe, that she had reported Susan to the police for harassment; that as shown by the evidence of Zoe was untrue. I therefore do not accept Josephine's evidence where it conflicts with others, but her evidence was of little value as to the key issues as she could only give evidence of matters from September 2015. Her evidence concluded the evidence for the Claimant.

Dr Susan Sheppard

93. Dr Sheppard is a Chartered Psychologist and was the first of the witnesses for Sue. She described herself as Debs' best friend and said they met on a teacher training course in 1983. They socialised and went on holidays and day trips together. Dr Sheppard had a daughter, Ellie, in 2000 to whom Debs became close – like an informal aunt - so she got to know Jean and Sue.

94. She said Debs "…was incredibly close to her mum..." and that "Jean needed a lot of support, which Debs provided. She would visit her mum very frequently doing her shopping, or taking her out, mowing the lawn and keeping her company. Debs almost replaced her father's role in the family…Debs never spoke about her father except to say he left the family home when the children were very young and never mentioned seeing him."

95. She also described how "Jean seemed to be in denial about Debs' terminal diagnosis …She was distraught about what was going on and often 'phoned me to talk about it...I do not believe Jean ever coped with the loss of Debs." Dr Sheppard also said that she got to know Sue more as time went on especially as Ellie and Charlotte got on very well "...and as often happens children bring adults together."

96. Dr Sheppard has no interest in this claim. She gave her evidence in a measured, considered and thoughtful way. She clearly had known Debs for many years. She was honest and to the point and I have no hesitation in accepting all she said.

Ms Lynn Hennessy

97. Ms Hennessy is a Higher Level Teaching Assistant at St Osyth. She met Debs through the school in about 1993. They became close friends, socialising regularly. She said Debs was very close to Sue and set aside every Thursday during school holidays to see Sue. Debs she said "...took great joy in her shopping trips..." with Sue and Jean, and would not just as has been alleged spend out of need; she spent her money on whatever she wanted, and had a good time.

98. Ms Hennessy said after Debs died she became closer to Sue, but the family fell apart; it was Debs who had joined them together. In her statement Ms Hennessy said that it had been put to her that Debs used to see her father. She doubted this as Debs only mentioned him once to say he wasn't a very nice man. She knew Debs used to play badminton but did not believe she played with her father, as John had alleged.

99. She also was asked about the trolls that Debs had collected over the years. She said that they were all in Debs' classroom, on a metal beam. Following Debs' death on 19th December 2009 the school had to prepare her classroom for the replacement teacher. Ms Hennessy said she and others took all the trolls down. The children were able to take some and she and her colleagues did too.

100. Ms Hennessy gave her evidence in a straightforward, voluable and chatty manner. She recalled a lot of detail and clearly has a very good memory. She was direct, independent of the parties and I accept all she says.

Ms Heather Baines

101. Ms Baines was employed at St Osyth as a bursar from 1990. Debs was already teaching there. She said until Debs saw him by chance on a school trip they were both on she did not know of John as Debs had not mentioned him. She never spoke of her father. Ms Baines did play badminton with Debs for one year but said Debs never mentioned playing with anyone else.

102. She confirmed that she had not spent a lot of time with Jean after Debs' death but as Jean need assistance she asked her husband, David, to help out. That developed in to him helping her about once a week, until about 2015.

103. Ms Baines' evidence was detailed and clear. She is independent of the parties and I accept all she says.

Mr Tim Palmer

104. Mr Palmer was Head Teacher at St Osyth until he retired in December 2014. He worked with Debs for some 17 years, they became friends and she was appointed as his deputy. They used to attend football matches together. Debs only ever mentioned her father once saying he started her interest in football by taking her to a match when she was 13.

105. Mr Palmer said Debs was very close to Jean and Sue but that Jean could be very demanding of Debs' time. He only met John just before Debs died. He also confirmed the distribution of the trolls as recounted by Ms Hennessy. He gave his evidence in a

direct and clear manner. He was impartial and a compelling witness. I accept all he said.

Ms Sue Bond

106. Sue's statement is especially detailed being 47 pages long with a substantial exhibit. Due to the breadth of her evidence and her position at the centre of most of the contested events I will not illustrate with detailed examples my summary view of her evidence as I have with the other 8 witnesses. The crucial allegations she deals with are best set out in my findings of fact. Sue gave evidence for most of the penultimate day of trial. She was put under some considerable pressure during cross examination and was recalled briefly on the final day – to which she agreed – for some further questions as to diary entries.

107. As appears below the events she had to deal with were distressing both in life as they happened and in oral evidence, going to the heart of her relationships with her sister, brother and most of all her mother. Occasionally on some areas she was defensive and would repeat herself rather than answer a question directly. In addition, she appeared to consider Charlotte had an expectation in terms of an inheritance from Debs. She also minimised her mother's gift of the ring which, taken alone, and in the context of apparent substantial disparity in family assets between her and John, appeared a little begrudging.

108. In summary, I accept her evidence as truthful. In the main she was calm, straightforward and to the point and I do appreciate how difficult some of her evidence was for her.

THE EXPERT EVIDENCE

109. I have been assisted by the reports and joint statements of the experts Professor Jacoby and Dr Series, both eminent Old Age Psychiatrists I referred to in [45-49] above. I will turn to the law below but would emphasise at this point that John bears the burden of proof as he is propounding the Wills, so it is for him to establish that Jean had testamentary capacity, or, as it is put in the List of Issues at [15] above at sub para 1:

> "Whether the Deceased suffered from a complex grief reaction or any other affective disorder as a result of Debra's death or otherwise (the burden being on the Claimant to demonstrate that she did not);"

110. Dr Series in his first report dated 5th February 2020 said in his summary of his conclusions at para 1.1.1 said there was no clear medical evidence that Jean lacked testamentary capacity at the time she made the 2010 and 2013 Wills due to her understandable grief reaction. He added that he did not accept Professor Jacoby's argument that her beliefs about Sue may have been delusional.

111. Having reviewed documents provided by Ms Walsh on behalf of John including about half the medical records, the Court bundle for the PTR, the Wills, Jean's handwritten letters and Powis' attendance notes he opined at 8.2.10:

> "In conclusion, I think the medical records suggest that it is more likely than not that the deceased was suffering from an adjustment disorder which had many causes, one of which was the death of her daughter, but another very important one was chronic, unrelieved pain. It is possible that she had a clinical depressive disorder, but there is not enough infromation in the medical records to be confident of this."

112. And then at 9.1.5:

> "On a straightforward reading of this evidence, it appears to me that these matters provide a sufficient explanation of why she should have excluded Susan from her wills. She weighed up the claims of Susan and John and made her decision, as any testator of sound mind is entitled to do. If the deceased had no good reason to disbelieve those things about Susan, then she was entitled to exclude her from her will."

113. Professor Jacoby in his report dated 31st January 2020 at para 46 under the heading Diagnosis said:

> "In my opinion, the Deceased did show evidence of a complex grief reaction around the time of Debra's death. I use the word "around" advisedly because it probably started before her daughter died, once she realised death was inevitable….If the Court accepts Susan's account, the Deceased's behaviour in not wanting palliative care for Debra was part of the grief reaction."

114. And at 48:

> "In my opinion, the deceased's personality also has to be considered here. She appears to have been a woman of rather fixed ideas that were not always evidence-based. She attended doctors very frequently but would have her own ideas about what was wrong and would often decline to accept medical advice. She tended to displace her obesity onto unrealistic causes"

115. Then Professor Jacoby turned to testamentary capacity and at para 65 said:

> "In my opinion, at the time she made both the 2010 and 2013 wills the Deceased was suffering from a disorder of mind within the meaning of the Banks v Goodfellow judgment, namely an *affective disorder*. I choose to use the latter term because it encompasses the complex grief reaction and the persisting depression. As I have already stated, bereavement reactions after loss of a loved one are entirely normal in most cases. In some however they can be overwhelming. In the case of Key v Key [2010] EWHC 408 (Ch) in which I gave evidence, the Court accepted that the testator experienced an

> affective disorder in the form of an overwhelming bereavement reaction that impaired his testamentary capacity. Briggs J as he then was stated in the judgment: [paras 95 and 96 then quoted see [140] and [141] below]"

116. Professor Jacoby distinguished this claim from *Key* as Jean did not lack the "mental energy to make any decisions of [her] own about whom to benefit" and continued in para 66:

> "In my opinion, if she did lack testamentary capacity, it was on the grounds of "*insane delusion"*. This opinion is conditional on whether the facts averred by Susan, the Defendant, are correct. This is a matter only the Court may determine by its examination of the non-medical evidence. If the Court finds that the beliefs about Susan were false and that they caused the deceased to make a disposal of her property that she would not otherwise have made, in my opinion, they were consistent with the sort of delusional beliefs caused by an affective disorder."

117. And finally as to capacity at para 67:

> "Delusional beliefs in affective disorders are most commonly delusions of guilt but in older patients guilt is often "projected" onto other persons. A common example is for a patient to say his or her spouse caused their marriage to hit the rocks. On recovery the patient can hardly believe that this was said. The Deceased had a tendency to project her problems e.g. her obesity and its consequences on her legs and mobility away from herself. In my opinion, it is probable that she projected her guilt at outliving her elder daughter onto Susan. Her allegations against Susan, if found by the Court to be false, would, to paraphrase the Banks v Goodfellow judgment, have been ideas *that poisoned her affections, perverted her sense of right and prevented the exercise of her natural faculties."*

118. And in summary at para 72:

> "The Deceased suffered from a complex grief reaction with persisting affective manifestations at the time she made two contentious wills. If the beliefs about her daughter Susan are accepted as false by the Court, they were consistent with depressive delusions that caused her to exclude Susan from her bounty. She was potentially vulnerable to the influence of others, if those others reinforced her own fixed ideas."

119. Dr Series differs as to testamentary capacity as at para 10.1.3 he says

> "I agree it is possible diagnosis that the deceased had a complex grief reaction, however, because of the lack of psychiatric assessment, I think that it is not possible to establish that the deceased had the requisite range of symptoms to be

> diagnosed with an affective disorder. It is possible she did, but that is not clear from the records."

120. Commenting on Professor Jacoby's view that Jean was suffering from delusional beliefs which affected her dispositions in the Wills Dr Series said at 10.1.5:

> "In psychiatry, a delusion is a fixed belief which is out of keeping with the person's social, cultural, educational or religious background. The word "fixed" in the definition means that the person holds onto the belief in the face of strong evidence or argument that it is false. It is not sufficient simply to show that the belief is false; many of us believe things which are in fact false, but it is not until the holder of those beliefs continues to hold them in the face of normally persuasive evidence of their falsity that the beliefs could be called delusional."

121. Then at the end of para 10.1.6:

> "If the deceased had reasonable grounds for believing those claims were true, then in my view they were not delusional. They could only be said to be delusional if the deceased had no good reason for believing them, and if she continued to hold them after efforts had been made to persuade her they were false."

122. Dr Series was then provided with further medical records and documents in addition to questions pursuant to CPR Part 35. Having reviewed the new information, he maintained his views saying at the end of para 4.1.10:

> "I have not seen evidence to suggest that anyone tried to persuade Mrs Clitheroe that her beliefs about Susan were ill-founded, so that in my view it is difficult to demonstrate that they were fixed beliefs."

123. And in conclusion:

> "For these reasons I continue to think it unlikely that the deceased was suffering from an affective disorder, nor do I think it likely that the beliefs she expressed about Susan could properly be described as delusional. She was a strong minded, opinionated person who had poor mobility and was in a great deal of pain for many years as a result of her various medical conditions, and she was understandably unhappy with her situation. She also understandably felt the loss of her daughter Debra very strongly. None of those things, in my opinion, is likely to have undermined her testamentary capacity either in 2010 or 2013 when she executed her two wills."

Concurrent oral expert evidence – "hot tubbing"

124. The trial timetable was already half a day behind when the experts were due to give their evidence. I therefore suggested to counsel (but did not require) that time could be saved by "hot-tubbing". Time was saved and discussion and agreement between the experts did develop, but possibly not to the extent it would have done had I given more notice by so all concerned could have prepared.

125. In any event, I heard fully from the experts over more than half a day. Mr Hicks in particular took Dr Series to numerous references in Jean's medical records to her having depression, such as, by example, that being the reason for one of her admissions to hospital. For each reference Dr Series carefully and precisely explained how these references were not in his opinion a diagnosis but – in this example – a reason for admission, used in the ordinary sense of the word, which was not the same as a depressive disorder – although he accepted it might be.

126. So whilst there were numerous references to depression there was no proper diagnosis of depression by an appropriately qualified clinician at any time, or, as Dr Series carefully put it, the notes recorded depression but the clinical investigations – if any – which led to that being noted were not set out, the implication being Jean told the clinicians she was depressed and they wrote it down. When Jean was eventually assessed by Ms Rooke, a mental health nurse, in July 2017 just 2 months before she died that I refer to in [51] above, she did not find depression.

127. Mr Hicks put to Dr Series that he had to be very careful not to pigeonhole when he had not seen the patient. Dr Series agreed and said "I am not saying she didn't have an affective disorder...the notes I have seen do not show that. She had a prolonged bereavement reaction. I cannot say she didn't have an affective disorder."

128. He was then asked whether it was more likely than not that she did have? Dr Series replied "You will get different answers from different doctors" and that there were whole books by psychologists and doctors saying that grief or bereavement reaction should not be classified as a disorder. In re-examination Mr Hendron asked Dr Series to explain this further. Dr Series said

> "I think I jumped a step. If a psychiatrist had been asked to examine Jean in that period of time – for several years after Debs' death – based on the information in the records we have there is a good chance their assessment would have shown she had a depressive disorder. That's definitely possible. Possible even likely. But it never took place."

129. Dr Series continued by saying that whilst Professor Jacoby had reached that view for himself he did not think the evidence was there in the clinical notes, but "Having said that if a psychiatrist had carried out a proper assessment it was quite likely that Jean could have been diagnosed with a depressive disorder..." but the mental health assessment that was carried out "...was very short of what a proper assessment should be."

130. Dr Series added that the reason he thought it was likely some psychiatrists would have found a depressive disorder was due to a number of factors such as pain, isolation,

loss of Debs and other medical problems such as swollen legs and osteomyelitis meant Jean had good reason to be depressed, plus the fact that there was evidence she had morbid thoughts, was anaemic, tired and lacked energy.

131. Professor Jacoby emphasised his profound disagreement with Dr Series at the outset of Dr Series' examination as in his opinion pathological grief reaction which Jean suffered from is a form of affective disorder; a primary disorder of the mind. Another difference between the experts was over projected guilt, as to which Dr Series remained to be convinced; Professor Jacoby's opinion was that it was quite common in older patients and that Jean had a tendency to project her problems away from herself – see [117] above. Overall, Professor Jacoby did not depart from the terms of his written evidence.

THE LAW

132. There was no difference between the parties as to the law so I will briefly summarise it, save in one area, namely the preferred definition of delusions.

Fraudulent Calumny

133. This was summarised in *Edwards v Edwards* [2007] EWHC 1119 (Ch). Mr Justice Lewison (as he then was) said at [47]:

> "vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny". The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;
>
> viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone;"

134. There are certain similarities in *Edwards* to the position here. The deceased excluded one of her three sons, John, from her will so that the entirety of her estate went to her other son, Terry, (the other son having pre-deceased her). Lewison J found that the reasons given were untrue and were an inadequate explanation for the substantial change. The deceased believed John had stolen both ornaments and money, as to which there was no substance. Terry prevailed upon his mother, who was found to be frail, vulnerable and frightened of him.

135. In conclusion at [55] Lewison J found Terry had every motive to persuade his mother by any means available, took the opportunities open to him in circumstances where he deterred John and his wife Carol from visiting and deliberately poisoned his mother's

mind by making deliberately untruthful accusations against John and Carol - which amounted to fraudulent calumny.

136. The burden of proof is upon Sue. The standard is the balance of probabilities but given the seriousness of the allegations "...they must be proved by compelling evidence" (*Edwards* at [2]). In *Re H and Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 Lord Nichols at 586G said:

> "The more improbable the event, the stronger the evidence that it did occur before, on the balance of probability, its occurrence will be established."

137. In *Nesbitt v Nicholson* [2013] EWHC 4027 (Ch) at [113] referring to undue influence by fraudulent calumny Proudman J said:

> "The burden of proof rests on the person alleging undue influence or fraud. Although the standard of proof is the civil standard, the balance of probabilities, and undue influence can be found by the court drawing inferences from all the circumstances, the cogency and strength of the evidence required to prove fraud is heightened by the nature and seriousness of the allegation."

138. If I may summarise, the court can draw inferences from all the circumstances but as with any allegation of fraud the strength of the evidence has to rise in proportion to the seriousness of the allegation.

Testamentary Capacity and Affective Disorders

139. The well known test set by Cockburn CJ in *Banks v Goodfellow* (1870) LR 5 QB 549 states:

> "It is essential … that a testator shall understand the nature of his act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if his mind had been sound, would not have been made...Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease; if insane suspicion, or aversion, take the place of natural affection; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to lead to a testamentary disposition, due only to their baneful influence—in such a case it is obvious that the condition of the

> testamentary power fails, and that a will made under such circumstances ought not to stand."

140. The causes of "disorder(s) of the mind" are many. An extreme grief or bereavement reaction was found to amount to an affective disorder that impaired testamentary capacity in *Key v Key* [2010] 1 WLR 2020. Briggs J (as he then was) held at [95]:

> "Without in any way detracting from the continuing authority of Banks v Goodfellow, it must be recognised that psychiatric medicine has come a long way since 1870 in recognising an ever widening range of circumstances now regarded as sufficient at least to give rise to a risk of mental disorder, sufficient to deprive a patient of the power of rational decision-making, quite distinctly from old age and infirmity. The mental shock of witnessing an injury to a loved one is an example recognised by the law, and the affective disorder which may be caused by bereavement is an example recognised by psychiatrists, as both Dr Hughes and Professor Jacoby acknowledged. The latter described the symptomatic effect of bereavement as capable of being almost identical to that associated with severe depression. Accordingly, although neither I nor counsel has found any reported case dealing with the effect of bereavement on testamentary capacity, the Banks v Goodfellow test must be applied so as to accommodate this, among other factors capable of impairing testamentary capacity, in a way in which, perhaps, the court would have found difficult to recognise in the 19th century."

141. And at [96]:

> "Banks v Goodfellow was itself mainly a case about alleged insane delusions. Many of the cases which have followed it are about cognitive impairment brought on by old age and dementia. The test which has emerged is primarily about the mental capacity to understand or comprehend. The evidence of the experts in the present case shows, as I shall later describe, that affective disorder such as depression, including that caused by bereavement, is more likely to affect powers of decision-making than comprehension. A person in that condition may have the capacity to understand what his property is, and even who his relatives and dependants are, without having the mental energy to make any decisions of his own about whom to benefit."

142. I was also referred to William Mortimer & Sunnucks (21st Edition) as to affective disorders at 10.20 and also para 10.21:

> *"*A grief or bereavement reaction may be indistinguishable from a depressive episode. Most grief reactions are entirely normal emotional responses to a bereavement, and resolve within about six months. If they continue for longer,

> psychiatrists consider them pathological. A grief reaction was held to have impaired a testator's capacity in *Key v Key*. Although it was not pathological, the court accepted expert evidence that it was an affective disorder, and thus that the testator had not had sufficient testamentary capacity to execute the will."

143. I was also referred to the Mental Capacity Act 2005 sections 1-4, although, as Mr Hendron submitted, it is not directly concerned with the execution of wills. Testamentary capacity is a matter of understanding at the time; in *Simon v Byford and ors* [2014] EWCA Civ 280 at [40] Lord Justice Lewison said "capacity depends on the potential to understand. It is not to be equated with a test of memory". The key point was not that the testatrix had forgotten the terms of and reasons for her earlier will but that she was capable of accessing and understanding that information. Accordingly, her will was upheld notwithstanding that she had forgotten the reasons for the disposition of certain shareholdings and may not have understood the consequences of changing the same.

Delusions

144. During closing submissions I indicated to counsel that I would find it helpful if they could both provide me with written submissions as to the legal test for the presence of "delusions". Mr Hicks had in his authorities provided me with the definition from Williams Mortimer & Sunnucks, 21st Edition, ("WM&S") but I had put to counsel the alternative definition below in [145]. I am grateful for their submissions. Those of Mr Hicks are especially detailed and I will endeavour to distil them below.

145. The definition of delusions in Williams on Wills, 10th Edition at [4.15] is

> "A delusion is a belief in the existence of something which no rational person could believe and, at the same time, it must be shown to be impossible to reason the patient out of the belief."
>
> *Dew v Clark and Clark* (1826) 3 Add 79 is cited as authority.

146. The paragraph continues

> "To avoid a will, the delusion must be such as to influence the testator in making the particular disposition made. The existence of a delusion is quite compatible with the retention of the general powers and faculties of the mind. It is a question of fact whether the delusion affects the disposition, and, even where the delusion is connected with the subject matter of the disposition, it is not a necessary conclusion that the delusion affected it."

147. And later

> "The well-trusted legal decision, that best of all guides on this question, is the following statement of Cockburn CJ in *Banks v Goodfellow*... [the second paragraph in [138] above].

148. In WM&S paragraph 10.24 states

> "Psychiatrists define a delusion as "a fixed false belief of morbid origin inconsistent with the patient's cultural or educational background". Some cultures readily accept propositions which others would treat as delusions. In early cases it was held that the presence of delusions, i.e. false beliefs, precluded the possibility of testamentary capacity. This doctrine must be regarded as overruled. Isolated delusions or delusional systems may not deprive a person of testamentary capacity if or to the extent that they do not affect dispositions in a will".

149. The footnote to the third sentence refers to *Dew* and "irrational antipathy to only daughter".

150. As to the test [10-25] states:

> "Delusion has been variously defined, but to almost every definition some objection can be raised. Perhaps the best legal test for determining whether delusion is present in a person's mind is this: "You must of necessity put to yourself this question and answer it, 'Can I understand how any man in possession of his senses could have believed such and such a thing?' And if the answer you give is, 'I cannot understand it,' then it is of the necessity of the case that you should say that the man is not sane" (*Boughton v Knight* (1873) LR 3 PD 64 at 68)

151. Mr Hendron submits that the two definitions are not inconsistent with each other but the test in Williams on Wills should be preferred; it is more comprehensive as it makes clear that to avoid a will the delusion must be such as to influence the testator in making the particular disposition, and that the delusion must affect the disposition. I would add that that definition also has the advantage of being simple, clear, and accords with the definition Dr Series sets out – see [120-121] above.

152. Mr Hicks submits that the test in WM&S should be preferred, as it is more extensive and considered, and perhaps the best test is that from *Boughton* that I set out at [150]. I would emphasise that this test does not require it to be a) evidenced and b) impossible to reason the person out of the belief. Those requirements are prescriptive.

153. Mr Hicks in essence first submits that the passage in *Dew* has been misunderstood, as it provides

> "Wherever the patient once conceives something extravagant to exist, which has still no existence whatever but in his own heated imagination; and wherever, at the same time, having once so conceived, he is incapable of being, or at least of being permanently, reasoned out of that conception; such a patient is said to be under a delusion, . . .".

154. There is, he submits, no requirement for it being "impossible" to reason the person out of their belief. Further, it is inconsistent with the *Banks* test which as to testamentary capacity is far wider, and was some 44 years later. In addition when *Dew* was considered in *Boughton* it was noted that it could provide an adequate test but it was not suggested to be a comprehensive test - in particular there was no further reference to attempts to reason the person out of their belief.

155. Reference was also made in *Boughton* to *Smith v Tebbit (*1867) LR 1 P&D 354 where the testatrix believed she was one of the Trinity; the impossibility was such that no point was made as to whether she could be reasoned out of her belief. That lack of requirement for it being demonstrated that the person could not be reasoned out of their beliefs as to their aversion to another person also appears in *Boughton* at page 69:

> "It is unfortunately not a thing unknown that parents—and in justice to women I am bound to say it is more frequently the case with fathers than mothers, - that they take unduly harsh views of the characters of their children, sons especially. That is not unknown. But there is a limit beyond which one feels that it ceases to be a question of harsh unreasonable judgment of character, and that the repulsion which a parent exhibits towards one or more of his children must proceed from some mental defect in himself. It is so contrary to the whole current of human nature that a man should not only from a harsh judgment of his children, but that he should put that into practice so as to do them injury or deprive them of advantages which most men desire above all things to confer upon their children. I say there is a point at which such repulsion and aversion are themselves evidence of unsoundness of mind. Fortunately the case is rare. It is almost unexampled that a delusion consisting solely of aversion to children is manifested without other signs which may be relied on to assist one in forming an opinion on that point."

156. Mr Hicks also referred me to three recent decisions in which he submits that the *Boughton* test I set out at [150], without the qualification as to the impossibility of reasoning the person out of their belief. First, in *Walters v Smee* [2008] EWHC 2029 (Ch) at [123] His Honour Judge Purle QC said:

> "The test in *Boughton & Marston* is applicable when there is no supportive medical evidence of the kind that there is in this case explaining how it is that the cognitive faculties of a testator can be impaired in consequence of a recognised medical condition."

157. And then at [124]

> "However, even if the *Boughton & Marston* test does apply, I find, in relation to whether Mrs. Latimer was being physically and mentally abused, and whether Mr. Walters wanted to get her out of the house, that, on the facts known to the deceased,

> no rational person of full capacity could possibly have believed any of those things. These were, as I have found, the most important factors (together with the stealing allegation) in the decision she reached. She must have known what it was that Mr. Walters said and did. No person of full capacity, knowing what she knew, could have thought that Mr. Walters was abusing her physically or mentally."

158. *Ritchie v Joslin* [2009] EWHC709 (Ch) concerned allegations made by the testatrix against her children, including that they had stolen from her. His Honour Judge Behrens found there was no evidence to support those allegations and then turned to capacity at [192]:

> "To my mind the evidence plainly points to the fact that Mary's motive in making the Will was to cut out her children rather than to benefit NOS. This emerges clearly from the file notes. There was no rational reason for her to cut out all her children. Plainly therefore her affections to her children were poisoned. This, too, emerges from the file notes. I have set out the allegations above. In addition there are references to the children "not deserving her money". As set above the allegations she made about her children which she gave as a reason for cutting them out were untrue but were believed by Mary to be true. They were, in my view delusions."

159. This, Mr Hicks submits, and I agree, is clear application of the test in WM&S, as also is apparent from *Hinton v Leigh* [2009] EWHC (Ch) where insane delusions were identified as beliefs that were "unfounded and irrational" i.e. beliefs no one in possession of their sense could have believed.

160. I consider the test in WM&S is to be preferred for these reasons:

i) The requirement in the test in Williams to "show" it is "impossible to reason the person out of their belief" does not have the support of authority; that cited namely *Dew* not supporting that requirement. In addition a further report – Haggard – taken from the notes of the judge does not support it. Further the post-1826 authorities do not appear to have been considered.

ii) The recent authorities in *Walters*, *Ritchie* and *Hinton* support the approach in WM&S whether by direct reference or implication.

iii) The *Williams* test requires the testing of the deceased which would lead to uncertainty as to how the deceased should have been challenged, by whom and in what circumstances, all of which could be the source of further dispute.

iv) That could lead to nonsensical courses of action - for example here in closing submissions I put to counsel that would mean each child who received one of the 64 Trolls having to appear before Jean to evidence that Sue had not taken them. No doubt some of the children would have moved away or just refused to co-operate; would that mean Jean's belief could not be challenged and therefore could not be found to be a delusion?

v) The latter point could also lead to a reversal of the burden of proof in that the person who propounds the will must show that the testator had capacity, was not suffering from delusions or that those delusions did not affect capacity.

vi) There are also certain beliefs held by a deceased which could not be reconsidered in the light of rational facts or evidence – for example in *Smith* the belief of the testatrix that she was one of the Trinity. It was not found necessary to try and reason her out of this belief nor to show it was a belief that she could be reasoned out of. The emphasis should be on how or why the belief has arisen, as opposed to endeavouring to prove a negative.

vii) It would also be quite wrong in my judgment for a simple lack of challenge to defeat what clearly was a delusion, the more so if the testator kept the belief to himself alone by say putting a note with his will or did not put it before anyone who could or would challenge the belief.

viii) Finally, the test in WM&S is more flexible; it does allow for the belief to be challenged but is not prescriptive in its application.

The Burden of Proof

161. There is no issue as to the basic principles; it is for the person propounding a will to satisfy the court that the testatrix was of sound mind: *Waring v Waring* (1848) 13 ER 715. A will rational on its face, executed and attested in the manner required by law is presumed in the absence of evidence to the contrary to have been made by a person of competent understanding. If however there are circumstances in evidence to displace that, the presumption will not apply and the onus is on the party propounding the will to establish that the testator was of sound mind when he executed the will: *Symes v Green* (1859) 164 ER 785 and *Sutton v Sadler* (1857) 140 ER 671.

162. With regard to delusions, where it is established that the testator suffered from them the person propounding the will bears the burden of proving that the testator was free of them or that they did not affect particular dispositions. In Smee v Smee (1879) 5 PD 84 Sir Hannen J at page 91 said:

> "Unless your minds are satisfied that there is no reasonable connection between the delusion and the bequests in the wills, those who propound the wills have not discharged the burdens cast upon them, and your verdict must be against them."

FINDINGS OF FACT

Sexual abuse

163. Sue says her father Keith abused her when she was young, and he wrote letters to her detailing what he had done to her and wanted to do. Sue hid the letters under her bed. Jean found them, spoke to Sue about the abuse and, as she believed Sue, ended her marriage. The letters were given by Jean to her doctor and then to Powis for the divorce. Debs knew of the abuse as she was questioned by doctors as to whether she also had been abused. Sue thinks John was unaware until he was about 18.

164. Jean did speak at the time to a policeman friend, on an informal basis, about whether she should report Keith. The advice was that she should not, in view of the negative publicity and the risk of Sue and possibly Debs being taken into care. There is currently a police investigation.

165. In his statement John first says that Sue made some accusations about their father years ago which he now knows "...to be untrue and [a] complete fabrication". He then relates how Jean told him some time after Debs died that Sue had lied "...and there were no letters but it was her [Jean's] fault she should have asked to see them first …".

166. In the Counter Defence John says at [34] that Jean "...hated Sue because the false accusations of abuse by her dad which resulted in the breakdown of her marriage". John also says that Debs reconciled with her father.

167. Josephine says that Sue told her of the abuse and that Jean told her it was all a lie and that Sue had broken her marriage because Jean had believed Sue – so she was a home breaker. Further, on Debs' deathbed "...even Debs admitted Sue had lied."

168. Zoe says that when Debs was dying at her home Jean would speak to her about her marriage and the abuse of Sue by her father and said "...she made it up". Zoe replied if it was true why hadn't Sue reported it to the police and Jean replied "exactly".

169. I find that Jean started to maintain, and informed others, from 2009, just before Debs died, and continued to do so until her death, that Sue's allegations of abuse by her father were untrue, that there were no letters and she did not see them. I further find that this belief of Jean's was irrational to the point of being delusional in the circumstances below.

170. Contemporaneous medical records of Jean from 1980 set out her account of finding the letters as Sue relates in [163] above. A letter from a consultant psychiatrist Dr Jacobs of 23rd September 1980 to Dr Geddes (Jean's GP) states "As you say the letters are disturbing…her attitude has changed since finding these letters in, I think, May of this year to the daughter" and that Jean "…wished things withheld until she left him…".

171. Further, Sue's own medical records from 1986 refer to it, Jean having referred Sue for counselling then because of the abuse. A letter from a Dr Gray to a Dr Baloch dated 15.01.86 records how Jean told him of the abuse. Dr Baloch saw both Jean and Sue and replied on 24th February 1986 and records how they both told him of it and that Jean "…accidentally found what she calls "dirty letters" written to Sue and how Jean "…started divorce proceedings after this and has now divorced him."

172. Dr Baloch also in his letter dated 24th February 1986 confirmed that a prosecution was considered but Jean shied away as she was concerned over the publicity.

173. There was no reconciliation between Debs and her father as alleged by John. Keith's solicitors EJ Moyle LLP said on his instructions in a letter dated 13th May 2019 that as of 2010 he had not seen Debs for over 20 years, was unaware of her death until the 3rd or 4th May 2010 and that he had been living in Spain for 10 of those years anyway, the preceding 10 years being on the Isle of Wight.

174. Sue's account that Jean discovered the letters, read and believed them, showed them to doctors and passed them to her solicitors and divorced Keith on the basis of them is therefore borne out by contemporaneous independent correspondence from three doctors, which has not, and in my judgment cannot, be impugned. There are further medical records in support from other doctors but in the circumstances I need say no more. In addition there is the evidence of the informal discussion of prosecution with a police officer and Jean's solicitor in 1986.

175. I find there was and can be no rational basis for Jean to change her mind so as to believe the allegations were false. There is no evidence whatsoever before me to give Jean any reason to reverse her previously long held belief that her husband had abused Sue. I find her changed position to be delusional and irrational.

The administration of morphine to Debs

176. By the end of September 2008 Debs had a terminal diagnosis of cancer. According to a Bereavement Assessment Form of St Helena Hospice completed by a MacMillan nurse, Ms Anne Adams, on 20th December 2009, the day after Debs died, Jean would not accept that Debs was going to die but became "...more accepting [in the] last 2 days of Deb's life." Debs was noted by Ms Adams on the form as the mainstay of the family and further that Jean and Sue would need support, but there is no mention of John.

177. Lynn Hennessy in her witness statement said that she saw Jean when she visited Debs before she died and that she got the impression Jean did not accept Debs' imminent death. Next in her statement she says she saw Zoe at the Bungalow and "Zoe said that [Debs] needed morphine. After some delaying, Jean sent me and Zoe to a particular pharmacist."

178. Sue in her statement says that near the end of her life Debs was in excruciating pain and that she, Jean and Peter ensured someone was with her 24 hours a day, but "Mum refused to call the Macmillan nurse to give Debs more pain relief as she knew it would speed up Debs' death. Mum pointed at me and shouted "If you call the Macmillan nurse, I will never forgive you and never speak to you again!"

179. Then "Our family friend, Christine Smith told me that for Debs' sake I had to call the nurse. I felt distraught as I knew it was not what Mum wanted, but I could not let Debs suffer. I therefore called...This was against Mum's wishes and was one of the most difficult decisions I have ever had to make. Mum was deeply upset and angry with me for doing this."

180. This most sad and distressing event was graphically set out in the oral evidence. Sue was asked if Jean was stopping Debs receiving morphine. She confirmed she was. Then Sue said Debs was in so much pain but her mother pointed at her and said if you ring I'll never forgive you and never speak to you again. Sue said she didn't know what to do. Then Christine Smith said to her that her mum was not of sound mind and Sue should call the nurse – Ms Adams – which she did. Sue said that she was losing her sister and best friend, who was in excruciating pain when there was no need for her to suffer so.

181. Ms Hennessy expanded her restrained and limited account in [177] and said that the night before she died Debs "...was rolling around the bed in pain. She opened her eyes once to look at me. The whites of her eyes were yellow...she was not able to speak at that time."

182. Ms Hennessy said that the prescription had been written and Zoe was quite agitated saying that Debs needed it and that "it took a while" for Jean to hand over the prescription to her and Zoe. Jean then she said "...gave us permission to get the drugs. One chemist only had some so we went to a different chemist to get more." Ms Hennessy said Jean only eventually gave them permission to obtain it which was why Zoe was getting agitated.

183. Zoe did not mention this in her statement and was not asked about it in oral evidence. John also did not mention it in his statement and when asked in cross examination tried to downplay events, first saying that he was not aware his mother objected to the calling of the nurse but then accepting that he knew Zoe was involved with the nurses. He agreed that Sue and his mother had rows about something, which he then accepted was about the morphine injection.

184. I am unsure as to whether there were stages in that Jean had the prescription but Ms Adams had to be informed before the morphine could be obtained from the pharmacy and/or Ms Adams had to physically visit to administer the morphine.

185. Either way, I have no hesitation in finding that Jean:

a) tried to stop Sue from calling Ms Adams by threatening that she would never speak to her again if she did,

b) intentionally delayed handing over the prescription to Zoe and Ms Hennessy notwithstanding the extreme pain her daughter was in,

c) took her time to give them "permission" and

d) specified the pharmacist they should visit.

186. To deliberately and repeatedly delay the provision of pain relief to one's child who is suffering excruciating pain as I have found above appears to me to be capable of no rational explanation. I accept Sue's view that this marked the turning point in her relationship with her mother.

Did Debs make a will?

187. Before I turn to my findings of fact I will put this somewhat separate and arguably unnecessary issue in the context of the submissions. Mr Hendron submits that Sue's assertion that Debs made a will, whilst featuring heavily in her case, is an assertion that has no place in the List of Issues and is of no relevance to either Jean's capacity or undue influence. Further, he submits that neither the claim nor counterclaim include any application to set aside the Letters of Administration of Debs' estate and that the Court is bound by that; therefore I must proceed on the basis that Debs died intestate. I accept and agree with all that.

188. Mr Hicks submits that this is a discrete issue but that the evidence Debs did make a will became increasingly compelling over the course of the oral evidence. Further, in view of John's lack of honesty he submits it is more likely than not that John destroyed Debs' will in favour of Charlotte and arranged the 2010 Will so he would inherit both estates in due course (save as to the cash accepted by Keith in place of his half).

189. Mr Hendron also submits that this issue is only of relevance in putting the issues into context namely Sue's continuous assertion made to Jean and others that there was a will which, he says, is an important factor in understanding why Jean chose to leave Sue out of her will. A substantial amount of evidence was produced in the statements and adduced orally relating to this issue by Sue and her legal team.

190. I will summarise the extensive evidence I read and heard on this matter as briefly as I can. First, on the face of it, it appears probable that Debs would make a will; she knew her diagnosis was terminal, she was very organised, knew of the consequences if she did not – that her estranged father who had abused her sister would inherit – and had every opportunity to do so.

191. Ms Baines thought it "extraordinary" that an "intelligent and diligent" person like Debs would not have made a will, especially as Debs told her she had stored a copy of a will of a friend. She says that friend's will was never found either and she would have expected Debs to store the copy with her own will.

192. Mr Palmer remembered a conversation with Debs and others about the importance of wills and Debs saying "I will be leaving everything to Charlotte". That intention caused no surprise to him, as he described Charlotte as the "apple of Debs' eye". The same applied to anyone who knew Debs then or generally in view of her very close relationship with Charlotte.

193. Ms Hennessy said that Debs had never actually told her she had made a will but that she wanted Charlotte to have the best education which meant at secondary level private schooling if she did not get into grammar school, and that Debs said to her she would "sort it" and further "If I am not around it is sorted". This discussion was, she says, in about 2005/6 when Charlotte was about 2 or 3 years old.

194. Ms Hennessy also said that after Debs' death at a quiz night someone said Debs left everything to Charlotte; she corrected the speaker and two colleagues of Debs, Kerry D'Silver and Emma Smith, said Debs had urged them to make wills and were surprised she had not made one herself. Ms Hennessy then told Sue and Peter this.

195. Dr Sheppard said Jean told her they could not find Debs' will and she was unsure as to whether there actually was one which Dr Sheppard thought was bizarre, as she had had a discussion with Debs about wills and the importance of making them.

196. But in her letter to Powis of 2nd April 2013 Jean stated she told Debs a year before she passed away that if she didn't leave a will then her estate would pass to her and her ex-husband. Debs said yes, she knew that, and she did not leave a will. Jean repeated this in her note of 3rd December 2013 - [34] above. It is possible of course that Jean was actively explaining the absence of the will.

197. Sue said that Debs told her she "had sorted everything, that Charlotte would go to university" and not at Sue's expense. Debs apparently pointed physically to where important documents were. Sue said as she helped Debs with her finances she knew Debs had a metal box in which she kept a copy of Peter's will (probably the friend referred to in [191] above), and that there was also a large brown envelope which she believes may have contained the will. Sue says she told Jean and John of this as they were administering Debs' estate. Subsequently, on a visit to the Bungalow on Easter Day 2010 Sue noticed the envelope and metal box were missing.

198. Sue says after her conversation with Ms Hennessy in [194] she spoke to Ms Smith who said Debs had told her she had made a will leaving her bungalow to Charlotte. Sue says she told John of this and that whilst John's daughter Sophia was not born at the time Debs would have wanted to be fair and so when they found the will Sue suggested the Bungalow could be split between Sophia and Charlotte subject to Jean being able to live there.

199. Sue then was visiting Jean in hospital almost every day for the 8 weeks from May 2010 when she was admitted. Sue offered to have Emma Smith call Jean to confirm Debs' will left the Bungalow to Charlotte, but Jean was adamant she would only discuss it in person. Sue says she was surprised that Jean, unlike her, did not want to investigate Debs' will and felt she wanted everything for herself.

200. In summary, I heard no direct evidence, only hearsay, and that of only one of several witnesses, that Debs said she had made a will. Nor is there any evidence whatsoever of Debs instructing solicitors or others to prepare a will. Whilst Sue says she investigated what happened to the will I heard no evidence regarding inquiries being made – whether by Sue or her solicitors - of local solicitors, Debs' bank and so on, as to the creation and retention of any will, which I had expected to hear.

201. One odd matter was Powis' invoice of 21st September 2010 for their services in the estate. It is addressed to the "Executors of the Will..." and appears to have been for work done by Ms Mary Brennan, who was the legal executive involved in the preparation of Jean's 2010 and 2013 Wills. The bill continues with the heading "Re: Grant of Probate" and the entirety of the narrative is consistent with probate of a will. Mr Hicks says Powis maintain this was an error. It appears to me the logical explanation is that to save time and effort on the part of the fee earner the entirety of the bill was "cut and pasted" from another such invoice.

202. Zoe said that she saw a change in Sue after it became clear there was no will as Sue tried to get Jean to "sign the bungalow over to...Charlotte...as Debra wanted her daughter to have it". Zoe also said "For months Sue became obsessed in finding a will of Debs that did not exist..." and that Sue said to her mother "Deb would want Charlotte to have it not you". As a result, Zoe saw Jean getting angry and wanting nothing to do with her "...as all Sue spoke about was the bungalow". Zoe in her statement said "Sue was so obsessed with the bungalow she chose that over her mother".

203. In cross examination Zoe when asked about the quotes above said in "...every conversation, everyone talking about it, Sue, Peter, John, got to find this will. I didn't say much as I felt Jean was comfortable in Debs' bungalow and had restricted mobility so it was perfect for her. Jean felt intimidated that the bungalow should be

signed over to her granddaughter...Jean felt comfortable in Debs' home. She'd just lost her daughter."

204. Sue said in cross examination that Peter's will was also not found when they looked for that of Debs. Sue confirmed that Debs did not say her will was in the metal box or the envelope but that she believed the will was prepared when Debs re-mortgaged the Bungalow in about 2006/7. Sue was asked whether she became quite obsessive over the existence of a will of Debs and finding it. She replied "No. Zoe's evidence was a lie".

205. Sue did accept that Peter said to her let it go as Jean knew what Debs wanted. She denied pressurising her mother over the Bungalow but Debs' will did crop up and she had to accept that Peter told her to let it go.

206. I cannot find on the balance of probabilities that Debs made a will in the absence of a) any direct – not hearsay – evidence of it and b) any evidence of her instructing solicitors or others who then did prepare a will.

207. If I am wrong as to that, I do not accept Mr Hicks' submission that it is more likely than not that John destroyed any such will of Debs that favoured Charlotte as whilst there was a clear reason for him to do so there is no evidence that he actually did so.

208. I find Sue became obsessed with finding the will as she wanted Charlotte to inherit what she thought was rightfully hers. Further, I find she did try to influence her mother to pass on the Bungalow to Charlotte and I prefer Zoe's account of these matters. That understandably annoyed Jean in her then circumstances, but it was not mentioned by her in her letters written for the 2010 or 2013 Wills.

209. Also in cross examination it was put to Sue that she did not need financial support in 2010 or 2013. Her response was that she spoke to other people and as parents they felt children should inherit equal shares. She added that "Peter and I worked very hard so why disinherit us?". It was put to her that the question was whether she needed the money. She was evasive on this point, saying she had mortgages and when asked how many investment properties she had she replied "less than or about 10". That wealth was another reason why she had no need to steal from anyone.

Was Sue a "shopaholic" or spendthrift?

210. Jean in her oral instructions to Powis for the 2010 Will excluding Sue said she was a spendthrift – see [20] above. Then her note to Powis of 19th May 2010 described Sue as a "shopaholic and would just fritter it away". Jean in her letter of 2nd April 2013 that I quote from at [26-29] said Debs she knew didn't want Sue to inherit anything from her as Sue "is a shopaholic and just spends money".

211. Jean said in her note of 3rd December 2013 said that Sue gave up seeing her as she would not give her Debs' bungalow and that Debs was disgusted with Sue forever spending money whereas Debs like her bought out of need, not want.

212. Whilst counsel did not submit definitions to me the Cambridge English Dictionary defines shopaholic as an informal term for someone who enjoys shopping very much and does it a lot. Spendthrift is defined as someone who spends a lot of money in a

way which wastes it. Clearly they are very different terms, albeit that Mr Hicks links them as in effect interchangeable in the List of Issues at 6(c). But there was no evidence as to exactly how Jean saw those terms; for example did she conflate them? Or was there an addictive implication in being a shopaholic which repulsed her?

213. For the purposes of this issue I will treat shopaholic as derogatory, albeit that it does not necessarily appear to be so; if a person uses a lot of their time visiting shops and making purchases they can afford which brings them enjoyment that is a matter of individual choice and freedom. It can be criticised and/or envied but no more.

214. This is an area in which the family disclosure is wide ranging and substantial. First, I find from review of Jean's diaries that all of Sue, Debs and Jean took regular shopping trips – all of them together or just two of them. There is some evidence as to the actual enjoyment level not being high on the part of Debs but the fact remains they all participated in this recreational activity over a considerable period of time.

215. Debs' extensive financial documentation includes some 15 credit cards with a total available credit of approximately £104,000. Debs' colleagues who knew her very well and socialised with her – Dr Sheppard, Mr Palmer and Ms Hennessy - described her various interests as including collectibles such as Star Wars memorabilia (videos, figures and posters) and that she enjoyed computer games, music, reading, film, sci-fi and especially football.

216. Dr Sheppard said of the allegation by Jean that Debs frowned on Sue's spending as untrue as Debs was not a judgmental person, and she respected peoples' choices as to how they spent their money. She described Debs as "not frugal" and having many hobbies including in addition to the above eating out, visiting friends, photography, attending music concerts and holidays. She added that Debs purchased many things online including the latest children's toys and kit for the school. Ms Hennessy did not accept Debs would only buy out of need; she saw Debs spend "...on whatever she wanted, and had a good time".

217. As to football and Debs' lifelong devotion to Colchester United Mr Baines describes how he and Debs went on a 3 day inspection trip to Paris and in the middle Debs flew back to see her team in a cup match and then returned to Paris. Her financial documentation shows Debs was a regular spender on Amazon, via PayPal, at bookshops and again for her team - missing just one game in 28 years.

218. I have no doubt in finding Debs did not shop out of need. In addition, I find it improbable that Debs disapproved of Sue's spending. Sue's extensive financial disclosure shows she shopped on a very regular basis at some expense. Most of her spending was on household items - for example in April 2007, 2008 and 2009 she spent about £100 per week on groceries. Her expenditure on eating out appears modest. Sue regularly went into overdraft as her spending exceeded her income but every now and then a substantial transfer was made to her account which put it back into credit. Sue was not cross examined as to her spending.

219. As to Jean, the documentary evidence is not extensive and she was on benefits for many years. However she accumulated a substantial collection of Swarovski crystal worth according to her some £30,000. Jean was insistent as to where her food was to

be purchased from and also on high quality clothes. Again, I find Jean did not just shop out of need.

220. In summary, I find that Debs spent enthusiastically on what she wanted. Jean also spent in a more limited way. Shopping was like a hobby or social activity for them until Debs died. Debs did not disapprove of Sue's spending, which albeit higher than that of Debs and Jean could not in my judgment be found to be wasteful in the manner of a spendthrift.

221. I find Jean's disapproval of Sue's spending was irrational and not based on fact. Further, Debs did not disapprove as Jean maintained. Jean's belief does appear on all the evidence to have been delusional.

The estrangement

222. As I have set out above Sue saw the turning point in her relationship with her mother being when she defied her to call the nurse so that Debs could be given morphine, in the face of an insistence she should not do so and a threat never to speak to her again. Despite this Sue visited Jean in hospital almost every day over the period May – July 2010, the hospitalisation occurring just after the 2010 Will was executed, unknown to Sue.

223. During one of those visits Sue says Jean accused her of stealing the Trolls. Sue says she explained to Jean that they were distributed by the teachers to the pupils and some retained by the teachers. Jean did not accept this and Sue said she should speak to the teachers – whom she knew many of. At the same time Jean made Sue hand over the keys for Conifers and the Bungalow.

224. Then Sue says her relationship with Jean rapidly declined after John's wedding in August 2010. Jean accused Sue of stealing a camera of Debs which Sue denied. Jean threatened to call the police. Jean would not thereafter see Sue, who tried to reconcile via John, who told her that Jean hated her guts.

225. Despite Jean's rejection of her, Sue continued to send cards and would include long messages aimed at a reconciliation. Charlotte also wrote cards. Any written response from Jean was cold and basic. By then John was doing a lot of caring for Jean. Sue offered to help but John refused. John told Sue he was doing everything possible to repair the relationship between them.

226. In 2012 Sue arranged to see Jean in hospital – a visit arranged through Dr Sheppard. Sue told John of this and then received a voicemail message from Jean saying she could not visit as there was a bug at the hospital – which appears untrue. John was with Jean when she made the call as evidenced by a concurrent text.

227. John always discouraged Sue from visiting Jean and said if she tried to do so Jean had threatened to call security. Sue told John she was desperate to see Jean but John dissuaded her by saying Jean would call the police. There were in evidence numerous text messages over the period July 2016 – September 2017 between Sue and John. They all show Sue's concern for Jean and John and do not support John's account that he was encouraging Sue to speak to Jean.

228. Further, Ms Baines confirmed it was Jean who cut Sue and Charlotte out of her life. Various witnesses also referred to how Jean insisted on the pictures of Sue in the Bungalow being turned around or covered up so Jean could not see her face.

229. I find that Sue was in no way responsible for the estrangement; it was clear Jean had taken against Sue but irrationally maintained it was Sue who cut her out. Likewise Jean with no reason said twice in correspondence that Sue would have let her starve to death. Neither can in my judgment be justified – there is no evidence in support but the contrary. This amounted in my judgment to a delusion, and it was an irrational one.

The thefts

230. Jean accused Sue of numerous thefts from her of what had been possessions of Debs but were inherited by Jean – there is a list at para 6(g)(I)-(x) of the List of Issues. For reasons I will come to I will address two allegations only; the theft of the Trolls and the Swarovski crystals.

231. I have mentioned the Trolls above, but to summarise: Jean when in hospital around May - July 2010 accused Sue of taking them from where Debs had left them namely on a high shelf that ran around her classroom - see [223] above. Jean repeated this allegation in her note of 2nd April 2013 – see [28] above. Sue denies this. The clear and unequivocal evidence of Debs' colleague Ms Hennessy and her head teacher Mr Palmer is that all the Trolls were given by her and other teachers to the children at the school; some teachers took a few too.

232. I have no hesitation in finding that there is not a shred of truth in this long held allegation of Jean's. It was a delusion on her part, and a wholly irrational one.

233. As to the Swarovski crystals Jean said in her note of 19th May 2010 that Debs was looking after 3 or 4 boxes of them for Jean, and that she had several more at her house. Two days later on 21st May 2010, the day of the execution of the 2010 Will, Jean in a handwritten note wondered if they could have been stolen by Sue and Peter. She then in her note of 2nd April 2013 claimed Sue had stolen them. Next in her note of 3rd December 2013 she wonders if they were still in Debs' loft. Three boxes have turned up which is accepted by John, although he did in the Counter Defence state they were stolen by Sue. Sue denies she ever took them.

234. Again I have no hesitation in concluding there is no truth in this allegation.

235. I will not proceed to go through the other 8 items allegedly stolen by Sue from Jean as a) Sue denies the allegations b) they were not put to her in cross examination and c) there is no evidence whatsoever in any of the material before me. Accordingly I find these allegations were false. I hesitate to find they were delusional beliefs in the totality of them as Jean did appear to ask people about various items. That however was certainly not the case with the Trolls.

Allegations of theft made by John against Sue

236. In the Counter Defence John claims Sue stole from her mother. In his statement he alleged Sue took money from Jean's account at Lloyds Bank, and that she borrowed

money which was not repaid. There is no evidence to support any of these allegations which Sue denies. They were not put to her in cross examination. I unhesitatingly dismiss them.

Ransacking of the Bungalow

237. Jean in her note of 2nd April 2013 alleges "After Debra passed away, unknown to John & myself, Susan, her husband Peter Bond and her friend Amanda went through Debs property one Sunday taking everything that took their eye." This was in Jean's view "...beyond the pale".

238. The obvious flaw in this is how or who told Jean of this ransacking? John tried to support it by saying – in oral evidence, not before – that he was called by a neighbour the day after Debs died and he immediately went and witnessed it himself. No neighbour gave such or any evidence. Sue says she went with Jean to the Bungalow to collect items for Debs' funeral and she made a note which was produced in evidence.

239. There was another, much later visit to the Bungalow by Sue but this time with her friend Amanda, arranged with Jean, then in hospital. As I have earlier referred to this was on Easter Sunday. It was for the Bungalow to be tidied for Jean to move in. John and/or Jean could have been confused between the two visits.

240. But again I unhesitatingly accept Sue's evidence. There was no such ransacking nor rational basis for thinking there was. Jean's view can only have been a delusion unless she was convinced of its truth by John – but there is no evidence of that.

The impact of Debs' death upon Jean

241. Jean's medical records are voluminous as I have indicated above. I will briefly summarise what I find to be key evidence contained in those records of the impact of Debs' early demise upon Jean, including the evidence of the witnesses. The start point is the importance of Debs as the lynch pin of the family. She was a substitute partner for Jean. Debs' initial diagnosis led to concerns as to Jean's mood as early as July 2009 as recorded by a physiotherapist in a letter to Dr Bowsher of 31st July 2009.

242. Jean just would not accept Debs was going to die until two days before and tried to prevent Debs receiving pain relief whilst she was in agony on her deathbed; see [176] above. She purchased a double plot at the cemetery so she could be buried next to Debs. In particular she formed a long lasting and irrational attachment to Debs' possessions – for example her car which Jean could not drive and knew she would never drive it but it was kept on the driveway as it was, according to Jean, the last thing they bought together.

243. In addition Jean would not allow others who could use certain possessions of Debs – including very close family – to have them or access to them. Charlotte was not allowed to play on a Nintendo game which Jean could not play. Jean kept the Bungalow as a shrine to Debs.

244. When Jean was admitted to hospital on 24th May 2010, just 2 clear days after she made the 2010 Will, her records state she was not coping since the death of her

daughter, she failed to perform the activities of daily living, the death had caused depression, made her unwell and that she wanted to go to sleep and not wake up.

245. The next day it is noted Jean has said she has found it difficult to cope since the death, and had not eaten or drunk over the past 3-7 days as a result. John told staff then that Jean had gone downhill since the death and had started to neglect herself. On 26th May 2010 Jean is noted as being depressed and constantly talking about her dead daughter. By 9th June 2010 Jean still became upset and references continue to her not coping since the death.

246. On 30th July 2012 Jean was again admitted to hospital. She could not cope (acopia) and talked about suicide. Depression was noted plus substantial pain. On 3rd August 2012 Jean was noted as saying she wanted to die since the death of Debs. The records consistently refer to acopia and depression.

247. Jean was admitted again on 28th March 2013 when she told the paramedics that she had caused Debs' death with an overdose of morphine – the police were informed. Then on 28th April 2014 she told a district nurse, when refusing to go to hospital, that she wanted to die and be with Debs. Next in May 2014 another district nurse noted that Jean had been bedbound for 4 years which was a way of dealing with the grief but she wanted to try and mobilise.

248. In August 2016 Jean spoke about suicide, mentioned Debs who had died some 6 years before and became upset. She was re-admitted to hospital in June 2017 when acopia was noted and infected leg ulcers. Jean was talking about wishing to die. In July 2017 the notes record she was low in mood and talking a lot about Debs' death 7 years before, and that she had clear symptoms of depression with a high level of self-neglect.

249. Dr Sheppard said Jean needed a lot of support which Debs provided – taking her out, shopping, mowing the lawn and keeping her company. On her regular visits to Debs at the end of her life she noted Jean "...seemed to be in denial about Debs' terminal diagnosis and...would talk...about medical trials that may be able to help Debs. She was distraught about what was going on and often phoned me to talk about it."

250. At the funeral Jean said to Dr Sheppard it should have been her which she repeated during visits. She would often call to talk about Debs. Dr Sheppard said Jean's behaviour changed physically and mentally after the death. She would not sort through Debs' belongings and kept everything as Debs had left it - "like a shrine". Jean would also say she thought Sue had taken things which Dr Sheppard said seemed unlikely as Sue knew her mum wanted everything to stay exactly the same in the Bungalow. In particular, Dr Sheppard thought Jean had not gone through a normal grieving process.

251. Ms Hennessy, also present during Debs' last few days, thought Jean did not accept she was going to die – and said she saw that Jean did not sit with Debs in her bedroom but in the lounge.

252. Ms Baines relates how she visited Debs at the end of her life and was with her the night before she died. She said Jean missed Debs terribly and "...all she yearned for was simply to be with her" and that there was "...nothing else for her." Ms Baines

found it sad that Jean had two other children and her grandchildren but "...found it mentally impossible to find any comfort in them."

DISCUSSION AND DECISIONS

253. At [161-162] above I set out the basic principles as to the burden of proof. Here, it is for John as the person propounding the wills to prove that on the balance of probabilities that Jean had testamentary capacity when she made each of the 2010 and 2013 Wills. In this claim, John has to establish that Jean was not suffering from an affective grief disorder. If he cannot do that then he must prove that either any delusions Jean had did not affect how she disposed of her property and/or that if her mind was poisoned it did not affect her dispositions of her property.

Testamentary Capacity

Issue 1: Was Jean suffering from an affective disorder as a result of Debs' death?

254. Mr Hicks submits that the evidence submitted by John has not "come up to proof" as Dr Series in his reports has addressed the wrong question, as he concludes there is not enough information in the medical records to be confident that Jean had a clinical depressive disorder – see paragraph 8.2.10 of his report which I set out at [111] above. What he does not say is whether she did not have a depressive disorder.

255. In cross examination Dr Series accepted that he could not say Jean did not have an affective disorder – see [127] above. Then in re-examination he said if a psychiatrist examined Jean in the several year period after Debs' death, based on the information in the records, there was a good chance – it was definitely possible – even likely that she had a depressive disorder - see [128] onwards.

256. I accept Mr Hicks' submission that Dr Series' opinion does not discharge the burden of proof on John. Accordingly, the short answer is that Jean did not have testamentary capacity at the material times.

257. If I am wrong as to that, I must consider the expert evidence further. I have set out material extracts from the reports and oral evidence at [109-131] above. Professor Jacoby concluded (see [114]) that Jean was suffering from an affective grief disorder within the meaning in *Banks v Goodfellow*. He said that he used that term as it encompassed the complex grief reaction and persisting depression.

258. He went on to say that any lack of testamentary capacity could also be due to her suffering from insane delusions, if the beliefs Jean held are found to be false. Dr Series' approach was first that there was insufficient clinical evidence, although he did confirm that a positive diagnosis was possible – see the re-examination I refer to at [255] above.

259. Dr Series took as I have set out above a more prescriptive approach, on the basis of there being no proper psychiatric assessment of Jean in the records – or that if one had been carried out, it was not noted as such in those records. I prefer the approach taken by Professor Jacoby as

a) his conclusion arises from his professional opinion based on the records before him which he considers sufficient for the task and

b) to do otherwise could substantially limit such expert opinion and result in injustice.

260. Further, and in any event, the burden of proof is on John but the evidence of Dr Series is that more is needed - so again John cannot discharge the burden of proof. Finally, at the end of his oral evidence Dr Series accepted that the likely conclusion of any examining psychiatrist was that based on pain, medical problems and grief reaction Jean was likely to be diagnosed with an affective disorder - [128] onwards again. The differences between the experts therefore narrowed substantially.

261. In summary, I accept Professor Jacoby's opinion that Jean was at the material times suffering from an affective disorder which includes complex grief reaction and persisting depression that impaired her testamentary capacity.

262. Further, Dr Sheppard, Ms Baines and Ms Hennessy all gave evidence - [249-252 above] – as to how Jean did not accept Debs was going to die and how there was nothing else in Jean's life after Debs died.

263. Accordingly my answer to Issue I namely did Jean suffer from a complex grief reaction or other affective disorder as a result of Debs' death or otherwise is yes, and John has failed to prove that she did not so suffer.

Issue 2: Whether, as a symptom of that affective disorder, Jean suffered from insane delusions regarding Sue or otherwise was her mind poisoned against Sue when she made her wills or either of them?

264. I approach this issue by reference to the evidential position at the time of execution of each will. First, as to the 2010 Will, I am satisfied that before or on the day of execution Jean was suffering from the following insane delusions:

a) that Sue had not been abused by her father which Jean told Zoe – see [168] - and therefore Sue broke up their marriage and was a "homewrecker" and

b) that she believed Sue and Peter had stolen her Swarovski crystals - [233]

c) Sue was a spendthrift – the main supposed reason in her written and oral instructions.

265. I also find Jean's mind was poisoned against Sue by:

a) Sue's defiance of her instruction not to call the Macmillan nurse;

b) the fact she could not accept that Debs was going to die and, as Professor Jacoby found, she projected her guilt on to Sue;

c) Jean accused Sue of theft of the Trolls when in hospital just after the 2010 Will was executed. This irrational allegation was a delusion, but I do not include it in [264] as there is no evidence Jean believed it as of the 21st May 2010.

266. In addition the medical records on Jean's admission show that 3 days after execution of the 2010 Will Jean was not coping with Debs' death, she had depression as a result and wanted to go to sleep and not wake up. The next day, 25th May 2010, the records state Jean had not eaten or drunk over the previous 3-7 days, refused medication, had poor sleep and hallucinations.

267. Secondly, as to the 2013 Will, I am satisfied that before or on the day of execution Jean was suffering from the following insane delusions:

a) each of the delusions in [264a, b and c];

b) that in addition Sue was a shopaholic as well as a spendthrift;

c) that Sue did not see or care for Jean and deprived Jean of seeing Charlotte;

d) extensive delusions as to theft of the Trolls, the Swarovski crystal and all other items listed at Issue 6(g) (i) - (x) inclusive;

e) that Sue and others ransacked Debs' bungalow.

268. In addition I find Jean's mind was poisoned against Sue by the matters in [265 a and b]. For all the matters I have found to be delusions there was no rational basis for Jean to have held such beliefs or given such reasons. John has not displaced the evidential burden upon him.

Issue 3; did any such delusions or poisoning of the Deceased's mind influence the making of either will?

269. In my judgment there is no doubt they did, for each of the 2010 and 2013 Wills, as Jean set them out in her oral and written instructions for her wills. In addition, she expressed her delusions to numerous witnesses as I have found above.

270. Before I turn to fraudulent calumny, I wish to address Mr Hendron's submission that the main reason Jean excluded Sue from her wills was Jean's belief that Sue was a spendthrift and would fritter away any inheritance. Mr Hendron continued by saying that even if that view was wrong it matters not; it was a view Jean was entitled to take and without more means the wills stand.

271. Mr Hicks submits the opposite; the disapproval of Sue's spending even if justified is inadequate of itself to explain Sue's disinheritance in view of the previous close relationship Sue had with Jean and Debs.

272. I disagree; testamentary freedom is exactly that and a testatrix may disinherit for inadequate, capricious, mean or bad motives as long as that harsh judgment is not one that arose "...from some mental defect" - see the headnote in *Boughton* at [41] above.

Fraudulent Calumny

Issue 4; did John induce or encourage Jean to exclude Sue for reasons which were false and which he knew to be false or did not care whether they were true or false?

273. Here the burden of proof shifts to Sue. Mr Hicks submits that John was actively involved in the preparation of each of the 2010 and 2013 Wills, is the principal beneficiary, has an obvious financial motive to ensure Jean left her entire estate to him, had access to the Bungalow and Conifers at all material times since Debs' death and frustrated contact between Sue and Jean. I agree with all that.

274. Mr Hicks also submits that although – as found – Jean was especially strong willed, with her poor view of Sue she would have been vulnerable to suggestions of further denigration of her character. John, he submits, had every opportunity to search for and find some of the supposedly stolen items. Someone must have told Jean of these items going missing or prompted her into thinking they had been stolen – by Sue. In particular, there was no rational basis on which Jean could have independently formed the view that Sue had lied about the abuse.

275. As I summarised at [137] above I can draw inferences from all the circumstances but as with any allegation of fraud the strength of the evidence has to rise in proportion to the seriousness of the allegation. There is in my judgment insufficient evidence here as what there is is circumstantial – there is no direct evidence of John encouraging his mother's beliefs about Sue without regard as to whether they were true or not. I therefore do not find fraudulent calumny.

Conclusion

276. Neither the 2010 nor the 2013 Wills can be admitted to probate. John has failed on the balance of probabilities to prove that Jean was not suffering from an affective disorder of the mind and was not suffering from delusions which affected her testamentary capacity when she made either will.

277. I invite counsel to agree an order for my approval, or else attend on the remote hand down.

Deputy Master Linwood 21st May 2020