Neutral Citation Number: [2021] EWHC 1000 (Ch)

Case No: PT-2018-000861

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Rolls Building
Fetter Lane, London EC4A 1NL

Date: 23/04/2021

Before :

SIR JULIAN FLAUX
CHANCELLOR OF THE HIGH COURT

- -

Between :

(1) JULIET ANTONIA MARGARET MILES	**Claimants**
(2) LAURETTA KATE ISABELLA SHEARER	
- and -	
PAMELA LESLEY SHEARER	**Defendant**
(As executrix and beneficiary of the estate of ANTHONY PRESLEY SHEARER)	

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Jordan Holland (instructed by **Charles Russell Speechlys LLP**) for the **Claimants**
Barbara Rich (instructed by **Cripps Pemberton Greenish**) for the **Defendant**

Hearing dates: 2-5 March 2021

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Approved Judgment

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

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Sir Julian Flaux C:

Introduction

1. The claimants are the adult daughters of the late Anthony Presley Shearer who died aged 68 on 12 October 2017. The first claimant (to whom I will refer as Juliet, since she was addressed by her first name at the trial) was born on 19 August 1980, so is now 40 years old. The second claimant (to whom I will refer as Lauretta for the same reason) was born on 30 March 1982, so is now 39 years old. The claimants seek an Order that reasonable financial provision be made for them from the estate of their late father (to whom I will refer as Tony, since he was so described at the trial) pursuant to the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act"). Tony was married to their mother Jennifer Shearer ("Jennifer") for 34 years and their marriage was dissolved in 2007.

2. Tony's will dated 2 February 2015 makes no provision for either Juliet or Lauretta or their children. The principal beneficiary is his second wife Pamela Shearer ("Pamela") whom he married shortly after the dissolution of his first marriage. The will appoints her as executor and, after two small legacies, leaves the residuary estate to her.

3. The will contains substitutionary provisions which would have taken effect if Pamela had predeceased Tony. These provided that the residuary estate would have been held as to 25% each for two of Pamela's friends, as to 25% for Juliet and as to 25% for her two daughters. Pamela made a mirror will at the same time as Tony's. I will return to the question of that will later in the judgment.

4. Probate was granted on 14 May 2018 and the net value of Tony's estate in the United Kingdom was £2,190,226, with foreign assets in France valued at £3,574. The net estate does not include the flat in Kew jointly owned by Tony and Pamela since 2013 or the property in Provence in which they lived at the time of his death. Claims under section 9 of the 1975 Act to sever the joint tenancy or under section 10 for an Order that the joint tenancy was in some way a disposition to defeat the claimants' claims were not pursued at trial.

The evidence

5. Before setting out the factual background and my findings in relation to it, I should say something about the evidence. Some of the factual background is common ground or can be discerned from contemporaneous documentation but a great deal of it depends on the evidence of the factual witnesses. Each of the claimants gave evidence at trial and their mother Jennifer also gave evidence for the claimants. The defendant Pamela gave evidence.

6. Neither of the claimants nor Jennifer was an entirely satisfactory witness. There is no question of their having deliberately misled the Court. I have no doubt that each had convinced herself as to the correctness of her recollection and impression of her respective relationships with Tony and with Pamela but, to a greater or lesser extent, each of them had an axe to grind and was not in any sense objective. I agree with what Miss Barbara Rich, counsel for Pamela, said in her closing submissions, that the evidence, particularly of Juliet and Jennifer, was imbued with and influenced by a sense of entitlement to inherit from Tony's estate to support a standard of living for Juliet and

Lauretta and their children that Juliet and Lauretta had enjoyed until their young adulthood, prior to their parents' divorce. This contributed to the lack of objectivity of their evidence.

7. In contrast, I found Pamela a straightforward and objective witness who gave her evidence in a measured and dignified manner. I consider that her recollection and impression of the relationship between the claimants and their father and herself was far more accurate and reliable than that of the claimants and Jennifer. I also agree with Miss Rich that cross-examination of Pamela by Mr Jordan Holland, counsel for the claimants, did not show that Tony had been an unreliable narrator, in the correspondence and other documents he produced, as to his relationship with the claimants or as to the history of their family life, other than in relation to details, irrelevant to anything I have to determine, of his and Pamela's intimate life. Where the difference between the recollection or impression of the claimants and Jennifer on the one hand and Pamela on the other differed in a way which mattered for what I have to decide, I prefer the evidence of Pamela.

8. I should add that, very sensibly, although the witness statements of all four witnesses ranged far and wide over the history of family relationships, it was agreed between counsel that cross-examination should be limited to those areas of dispute which were relevant to the issues I have to decide. I am grateful to both counsel for this sensible and pragmatic approach. In accordance with it, I have only set out below those aspects of the factual background and history which are necessary for and relevant to the determination I have to make.

The factual background

Tony's history and the position of the claimants until their parents' marriage broke up

9. Tony was born on 24 October 1948. His family were comfortably well off and he was privately educated at Rugby School. When he left school, his parents paid for a gap year and 9 months learning French in Lausanne. He then trained for the ACA qualification which was funded by his father, Having qualified as a chartered accountant, he worked in the London office of Deloitte, before being posted to their office in Johannesburg in 1971. Whilst in South Africa he met Jennifer and they were married in December 1972. They moved to London in October 1973. The purchase of their first matrimonial home in Chiswick was funded in part by money from his parents. When that house was sold in 1976, they bought a large house in Suffolk. The additional cost was funded by a loan from his father which was subsequently waived.

10. Tony became a partner in Deloitte in 1980 and subsequently took on roles as finance director and deputy chief executive in investment management. In the 1980s, he inherited a family estate called Quarter in Scotland. This was sold in the early 1990s. There was some issue at the trial as to how much was made by way of profit from the sale. In a letter which Tony wrote to Lauretta in 2008 (to which I will return below) he said that what he received from the sale was "not that much". Jennifer's evidence was that the house was sold for £675,000. It is not necessary to resolve this dispute since, as Pamela pointed out in evidence, because he had inherited Quarter, Tony did not benefit from his parents' wills, their estates passing to his siblings. Furthermore, the proceeds from the sale of Quarter were evidently used to purchase and refurbish a house

in South Kensington where the claimants lived with their parents as children. Tony sold both that house and the house in Suffolk in 1995. The proceeds were used to purchase a house in Holland Park where the claimants spent their teenage years and early adulthood.

11. There was also a flat in Holland Road which was held in the names of two friends, one of whom, Chris Chism, had a 23.3% beneficial interest in it. The remainder of the beneficial interest was held as to 42.1% by Tony, 16.5% by Juliet and 18.1% by Lauretta. Pamela thought that the difference between the size of beneficial interest of the two claimants was to be explained by the fact that the flat had been part purchased with money invested by Tony on behalf of each of the claimants when they were children and the investments had performed differently. This seems a distinct possibility and would explain the difference between the amounts of funds provided by Tony to each of the claimants in early 2008, to which I refer further below.

12. Tony became finance director of the merchant bank Singer & Friedlander ("S & F") in 2003 and he became chief executive of S & F in 2005. S & F was subject of a hostile takeover by the Icelandic bank Kaupthing. Tony was forced to resign due to concerns about the takeover, which he did with effect from 30 November 2005. It was common ground that these events had a very significant impact on Tony. That was his last chief executive role, although he had a few non-executive directorships thereafter. Furthermore, not long after his resignation from S & F, his marriage to Jennifer broke down.

13. Before dealing with his relationship with and subsequent marriage to Pamela, I will deal with the position of the claimants up until the breakdown of their parents' marriage. Both claimants were privately educated. Following their A-levels in each case their parents funded gap years. Both went to university, but for different reasons, neither finished her degree course.

14. Juliet went to University College London to study Classical Civilisation but left after the first year. Her evidence was that she had started temping in the holidays and preferred that. University was not for her. Her father had not been pleased but understood. She had not known what career to follow, but eventually ended up in arts and the theatre, which she'd always enjoyed. She had had a boyfriend who had been threatening, with whom her father dealt without involving her. She had moved out of home into a flat. She met her first husband, Steve Nicholson, in about March 2006. He was an actor and 14 years older than her with one child from a previous marriage. They were married in 2007.

15. Lauretta went to Newcastle University to do a degree in Classical Studies. She described herself as up and down a lot, wanting to be with her family and as having spent a lot of her second year in London because of Juliet's abusive boyfriend, who broke into the house once when he was stalking Juliet. Lauretta did restart her second year but did not complete it and left university. She said that her father had told her to go and get a job, which she did and her father was proud of her. She was made redundant and then in 2005/2006 went to do a diploma at the London School of Public Relations. In cross-examination she accepted that her father might well have paid for that course.

The break-up of the marriage to Jennifer and Tony's relationship with and marriage to Pamela

16. Pamela was born on 27 November 1952. She worked full-time throughout her adult life after leaving university. She worked in investor relations at S & F having been employed following a competitive pitch to the board at Tony's instigation. They had known each other professionally previously. They began a more intimate relationship in about May 2006. Tony had told her in February of that year that his marriage was over, although he and Jennifer did not separate until June 2006. Pamela and Tony were married in March 2007. Pamela had not been married previously and does not have children.

17. The picture which the claimants sought to portray, both in their witness statements and their oral evidence, was of a happy family life throughout their childhood and early adulthood and of a good relationship with their father throughout until the break-up of their parents' marriage. They also sought to convey the impression that this all changed after Tony married Pamela and that, to the extent that his relationship with his daughters soured after 2006/2007, this was attributable to the influence of Pamela. Indeed it is striking that, in solicitors' correspondence before the claim, the claimants' solicitors intimated an intention to challenge the validity of Tony's will in effect on the grounds of undue influence on him by Pamela, which they said would also be a matter of relevance to the claims under the 1975 Act. In the event, that challenge to the validity of the will was not pursued, but I agree with Miss Rich that, in their evidence, the claimants pursued an extensive and unattractive attack on Pamela and her conduct during her marriage to Tony, but that both the claimants' evidence and the cross-examination of Pamela fell a long way short of establishing that, in his relationship with his daughters after the break-up of his marriage to Jennifer, he acted otherwise that entirely of his own free will and not in any sense under the influence of Pamela.

18. Furthermore, Pamela's evidence as to what Tony had told her about the claimants' behaviour when teenagers and young adults was completely at odds with the picture they sought to portray, to which I referred in the previous paragraph. She said in her witness statement that he had told her they were wayward and out of control, that in 2002 one of Juliet's boyfriends had broken into the house (which was confirmed by Lauretta's evidence to which I have already referred) and Tony had to call the police and that the claimants' behaviour had sowed the seeds of the breakdown of his marriage to Jennifer as they could never agree as to how best to control the bad behaviour of their children. He told Pamela that the claimants had routinely lied to him and their mother about their misdemeanours. He also told her that both claimants referred to him as "the chequebook", which they found amusing but he found hurtful.

19. I did not understand Mr Holland to be suggesting that Pamela was not telling the truth about what Tony had told her. Rather he suggested in his cross-examination of her that Tony was an unreliable narrator, putting to her that Tony would have said the things he did to show her that he loved her, to which her perfectly cogent answer was to ask how it would do that. She said Tony had told her how unhappy he was, but was never nasty about Jennifer, which was one of the things she liked about him. She described him as the least confused man she had ever met, with strong opinions. He had told her the things she referred to in her witness statement. He had no motivation to make things up. Whether he was painting a picture she did not know but she did not think so. He was not that sort of man. In my judgment, not only was she telling the truth about what Tony had told her, but the things he told her were substantially correct. Her description of his character is borne out by his successful business career and by the picture of him

which emerges from the contemporaneous correspondence. What he told her about the claimants' conduct and attitude to him is borne out also by the emails and letters he wrote to them from 2008 onwards, to which I will refer later in the judgment. I reject the suggestion made by Juliet that Pamela wrote the emails which he sent the claimants and that Pamela wrote abusive emails to his family and friends.

The gifts to the claimants in 2008 and events in 2008 and 2009

20. In early 2008, the flat in Holland Road was sold and Tony gave Juliet £177,000 and Lauretta £185,000. In closing submissions, Mr Holland sought to make two points about this. First, he pointed out that the funds came from the sale of the flat, in which the claimants each already had a beneficial interest, so that Pamela had been incorrect to describe these as gifts from their father, since in effect the claimants owned the funds already. I agree with Miss Rich that this overlooks that it is not credible that the claimants' beneficial interests in the property could have had any other ultimate source than Tony himself. Both claimants and their mother suggested in evidence that other members of Tony's family had contributed funds for the purchase of the flat. I do not accept that suggestion. No documentary evidence to support it has been produced and it is inconsistent with contemporaneous documents. Tony's Voluntary Disclosure in his divorce settlement with Jennifer sets out the beneficial interests as set out in [11] above, with no suggestion that any other member of his family had contributed or had an interest.

21. Furthermore, in a letter dated 30 April 2007 to both claimants and Jennifer, Tony says that the agents mentioned a sale price of £500,000, that Chris Chism would be entitled to 23.3% of the proceeds, leaving 76.7% to be shared between the two claimants. There is no suggestion that the funds had come from other members of his family, nor do the claimants or their mother appear to have suggested that at the time.

22. The second point made by Mr Holland is that, although in her witness statement, Pamela had referred to Tony having presented a cheque to each claimant at a meeting at which she was also present, in evidence she had been more nuanced, referring to documents having been handed over. He put to her in cross-examination that the meeting had not taken place. She was very firm that there had been a meeting which she attended but Jennifer did not, when Tony handed over documents calculating what each claimant was to receive. Juliet had gone to Barclays the next day and paid in her share of the proceeds. This is borne out by a letter dated 26 March 2008 from Barclays to Juliet thanking her for opening a Barclays Savings Bond with a deposit of £177,000, which was her share of the sale proceeds of the Holland Road flat.

23. I accept Pamela's evidence that there was a meeting between Tony and both his daughters in February or March 2008, which Pamela attended, at which he handed over, if not cheques, documentation evidencing their respective shares of the sale proceeds, which were £177,000 in the case of Juliet and £185,000 in the case of Lauretta. I am also quite satisfied that the ultimate source of those funds was Tony himself, so that in that sense they were in each case a gift. I also consider that, in all probability, as Pamela recollected, Tony said something at that meeting about this money being their legacy which he expected them to invest wisely in property, as he had indicated he was keen for them to do in his letter of 30 July 2007, the clear message being that they could

expect no further financial assistance from him. The claimants did indeed each use the money to invest in property.

24. Pamela's evidence was that Tony had said he did not always enjoy seeing the claimants because he knew the encounter would end with a request for money, which he found distasteful. I am satisfied that he did say that and that there was an element of truth to it. An occasion to which Pamela referred in evidence was one in April or May 2008, not long after the gifts were made, when she and Tony went to dinner at the flat in Fulham where Lauretta was living with her then boyfriend. There were allusions made to what she could not afford and what she needed. In the taxi home Tony had said how ghastly it was that Lauretta was still asking for money, which is why he wrote the letter of 30 May 2008.

25. Although Mr Holland put to Pamela that this incident was not mentioned in her statement and despite Lauretta's denial in her evidence that she had raised the subject of money at the dinner, I conclude that this incident did occur, not least because that letter refers expressly to Lauretta having mentioned money at the dinner. The letter is not dated but computer data confirms it was created on 30 May 2008. The relevant parts provide:

> "Last night you mentioned money a number of times...as you did when we came to you for dinner a few weeks ago.
>
> I really do not want there to be any surprises/disappointments on this subject. But the fact that you mention it so often means that it may already be a subject of friction, or that it could become a subject of friction in the future.
>
> First, your mother has half of my money (including my pensions). So I have less to spend/invest/waste/pass on.
>
> Second, Pam and I intend to live for a long time and we intend to spend all of our money. It would be wrong for you to have any expectations, and in any event there is not likely to be very much to pass on.
>
> Third, I am not expecting any money from my mother, and it has been at times pretty distasteful to see how Bridgett has viewed her potential inheritance from that source. I would not want you to feel the same way. It gives the impression at times that Bridgett feels that she has a right to some say in how granny spends/invests/wastes her own money.
>
> Fourth, you might have heard that I inherited a lot of money from Betty and John through Quarter. That is a very different story, and indeed keeping Quarter going before I sold it cost me a very great deal of money and effort. After the taxes and costs that I have paid, the net amount was not that great.
>
> Fifth, over the last 35 years or so I have spent a great deal of money providing the family lifestyle (e.g. holidays, education,

> etc etc). I have also provided substantial deposits for both you and Juliet. Once I started working aged 19 I never expected any money from my father or mother. They paid for the occasional 3 or 4 day trip at Christmas in Arosa and they gave me the odd present at Christmas/birthday. They did provide money for a small deposit on your mother's and my first house.
>
> So I think that you have already received almost everything that you can expect. I am delighted that you are now earning a decent salary and well done to you for that. But from now on you are on your own financially. I would not approve of it any other way.
>
> You can expect the odd present (probably a lot smaller than you might think appropriate) and my love, company, advice and support etc.
>
> I hope that you will take this in the right way and we can put this subject to rest."

26. In her evidence, Lauretta said she did not remember seeing this letter at the time, that she had not received it and that her father did not always send things he drafted. Pamela's evidence was that Tony told her at the time that he had posted the letter. I consider that, in all probability, the letter was sent. Contrary to the submissions made by Mr Holland, I do not regard the letter as only dealing with the question of receiving further funds in Tony's lifetime. The reference to having received almost everything Lauretta could expect and to now being on her own financially seem to me a clear indication that she should not expect any further financial assistance from her father during his lifetime or in his will.

27. On 24 October 2008, Tony wrote a long autobiographical letter to both his daughters in which he set out some of his own personal and professional history and sought to explain the reasons for the break-up of his marriage to Jennifer, together with his love for Pamela and how she was his life now, which he wanted his daughters to share. At that stage, it appears that Lauretta was accepting of Pamela but Juliet was not. She was not prepared to see Pamela. It was clear from her witness evidence and from the upset she manifested when asked about that letter, that Juliet has never accepted Pamela or her father's love for Pamela. In my judgment, as a consequence, her evidence to the effect that Pamela was responsible for the souring of what had previously been a perfectly good relationship with her father, was not objective and was unreliable.

28. Tony wrote to both daughters again on 17 September 2009. In that letter he expressed his love for both of them and also said this:

> "I have enjoyed having daughters, though that may surprise you. On the whole I have enjoyed having the two of you; there have been many very good times, though some appalling times. I am sure that you will both recognise that. On the whole I think I have been pretty tolerant.
>
> I have always set out to show you the options from which you could choose. But to let you make your own decisions and to

> guide you in which you chose. So I am satisfied that on the whole you are what each of you is due to the decisions that you have each taken personally, and you have mostly done that by seeing the options that [were] available. So I actually am at peace that I have done my job reasonably well. In your different ways I am proud of both of you.
>
> I am very glad that Lauretta has chosen to keep in touch and to accept Pam as the most important part of my life. I am desperately sorry that Juliet has not, and that I have hardly seen Indy. You may think that is my fault, but I don't care whose fault it is, merely that I regret it."

29. Although that letter does not mention money, it is consistent with Tony expecting both claimants to make their own way financially after he made the gifts to them in 2008. Furthermore, although both claimants were critical of the correspondence he wrote them in 2008 and 2009, which they said was painful and upsetting and not consistent with the father they had known before, in my judgment all these letters are coherent and cogent and represent Tony's own views and not views being in some way imposed upon him by Pamela. The picture which emerges is entirely consistent with what Pamela said Tony had told her about the behaviour of his daughters and his unhappiness in the last few years of his marriage to Jennifer.

30. The same picture emerges from a later email sent by Tony to Lauretta on 16 July 2011, after she had become engaged to Mark Stevens, in which he said, among other things:

> "I had been unhappy for a number of years, and truthfully I think your mother felt the same, this is not something we chose to share with you or Juliet until we had decided to divorce.
>
> As you must know, when a couple divorces there are always other casualties. I doubt that the mother of Mark's children is exactly delighted to hear of your forthcoming nuptials. It must bring back all sorts of bitter memories. But at least it's easier to get through things if the truth is told. I have tried very hard to tell you and Juliet the truth and I wrote to you both when it all happened between your mother and me. Neither of you replied- which hurt me very much indeed and made me feel very pushed out into the cold. Perhaps I wasn't the perfect father, but I sure as Hell worked as hard as I could to keep the whole family circus on the road. As you will discover, it takes a lot of money to support the kind of lifestyle we enjoyed as a family. And the sort of lifestyle you and Juliet enjoyed went way beyond what you appear to think was my 'responsibility' as a parent."

The claimants' lives between the break-up of their parents' marriage and their father's death

31. Turning to the claimants' lives after their parents' marriage broke up until their father's death in October 2017, Juliet and Steve Nicholson have two daughters, the first born in 2008 and the second born in 2009. After their second daughter was born, they moved to Suffolk. The £177,000 she had received from the sale proceeds of the Holland Road

flat went towards purchasing a house in Suffolk. Her marriage got into difficulties as Steve was mainly in London and she was in Suffolk with the children. In her witness statement, Juliet related an occasion in 2011 when she visited her father unplanned and Pamela was out. She explained to him that she and Steve were essentially living separate lives and that they were struggling financially. She said her father told her if she wasn't happy she must leave Steve immediately and need not worry about money, because he would take care of everything financially and look after her and her daughters. She claimed that a few days later, after he had spoken to Pamela, he phoned Juliet and said he did not want to get involved in her divorce from Steve and that she was on her own financially. She found his change of mind upsetting and attributed it to Pamela's intervention.

32. This evidence about Tony's change of mind was challenged in cross-examination by reference to a two page document produced by Tony on 27 February 2012, which sets out calculations of the financial implications of the divorce. It states under "Juliet's position" that they should each get back what they put into the house, so that, on that basis, Steve would receive a cash payment of £82,500. It then says: "NB How will Juliet fund this payment?" Miss Rich suggested to Juliet that this demonstrated that Tony had never had any intention of funding this payment or otherwise funding the divorce, but Juliet maintained this had been written after Tony had spoken to Pamela.

33. Pamela's evidence about this was that Tony would never have promised financial support to Juliet for her divorce, since he had made it clear when he made the payments to the claimants in 2008, that that was the last significant financial contribution he intended to make to them. Tony did not seek her opinion and she took no part in any discussion about the divorce. All he told her was that Steve wanted £80,000 and Tony was not going to pay it, as he thought that would be the start of another avalanche of financial demands. That evidence was not challenged in cross-examination, but, in any event, I prefer it to that of Juliet on this point. I do not accept that in 2011 or 2012 Tony ever indicated a willingness to finance her divorce or that he then changed his mind at Pamela's instigation. Juliet said that, after her divorce from Steve, she never asked her father for money.

34. Juliet said that her mother had provided the funds to buy Steve out of his share of the house in Suffolk and paid off the mortgage. She and her children lived in the house for a further two years, before she married her second husband, Keith Miles, who was an army officer. She met him in 2012 and they married in 2014. They lived in Ministry of Defence accommodation in Wilton. Because his children from his first marriage only lived with them half the time, the house was smaller than would otherwise have been the case for two adults and four children. It was clear from her evidence that the accommodation was institutional and not luxurious.

35. The house in Suffolk was sold in 2016. Juliet and Jennifer then purchased a flat in Fulham together for £720,000. Juliet's share of the proceeds of the sale of the house in Suffolk went towards that purchase. In her first witness statement dated 13 November 2018, Juliet said that the flat was likely to be worth £632,000, of which her share would be £270,857. However, in her second statement and in cross-examination, she explained that not all that sum was hers, but only the £177,000 which she had put into the house in Suffolk. The balance was her mother's money from when her mother had bought out Steve on the divorce. This was confirmed by Jennifer in her evidence. The evidence of

both of them was inconsistent with an email dated 31 January 2016 from Jennifer to Tony which stated clearly that Jennifer had put £400,000 into the flat and that Juliet was putting in £300,000 and that they would divide up the monthly income [i.e. the rental income] accordingly. That is apparently how the rental income has been allocated. In cross-examination, Jennifer accepted that she could afford to let Juliet have the £300,000 share when the flat was sold, but said that she wanted to treat her daughters equally fairly. She accepted that there was no reason why she could not share the difference between the £300,000 [or presumably the equivalent 3/7ths proportion of the sale price] and Juliet's £177,000 equally between the two claimants.

36. Sadly Juliet's younger daughter has been diagnosed as severely autistic. Since 2016 she has been at a special school in Salisbury. I will set out later in the judgment the personal and logistical difficulties this has posed for Juliet.

37. After the course at the London School of Public Relations, Lauretta worked at Christies, but was made redundant. In 2010 she did a course at the London School of Journalism, for which she thought her mother paid. At that time her mother supported her. She accepted that, after her parents' divorce she did not rely on her father financially, but added that they did not divorce until she was in her twenties.

38. Lauretta became engaged to her future husband Mark Stevens, a barrister specialising in criminal law, in December 2010. It is clear that emotions were raised on both sides by the relationship and the wedding and Lauretta considered her father and Pamela acted unreasonably, whilst Pamela (and Tony) considered Lauretta and Mark were disrespectful. Mark did not give evidence. In the circumstances, I only make such findings as are necessary to the issues I have to decide.

39. It is common ground that Tony took an instant dislike to Mark from the first time he met him over a dinner with Lauretta and Mark, in the absence of Pamela. It is clear from an email Tony sent Lauretta on 28 September 2011, just over a month before the wedding which took place on 4 November 2011, that he sought to dissuade her from marrying Mark and, according to that email, Lauretta had told Tony that her mother and a number of her friends had given her the same advice. Lauretta agreed in evidence that her mother was concerned, as Mark had two children from a previous relationship, but Jennifer tried to get on with him.

40. That email of 28 September 2011 seems to have provoked a response in which Lauretta told Tony that his email was nasty, hypocritical and scheming. Tony was evidently so upset that he showed both emails to Pamela and asked her to consider objectively whether his message to Lauretta had been as she described. She disagreed and sent an email saying so to Lauretta dated 30 September 2011. Contrary to the evidence of Lauretta, this seems to be the only occasion where Pamela sent an email concerning herself in affairs between Tony and his daughters. In cross-examination, Pamela said that Tony was very upset by Lauretta's response, in tears and that, stupidly, Pamela tried to be an honest broker.

41. In her email Pamela said that, despite what Lauretta and Juliet appeared to think, Tony did not normally share with her his interchanges with his daughters. Pamela said things had got out of hand, which seems to be correct. She referred to Tony being genuinely

concerned about the wedding. She also strongly urged Lauretta to try to mend her differences with her father saying:

> "Having lost both my parents I can tell you that in the wee small hours you will revisit any differences you had with them after they have gone and the thought of them will tear you up. From what I gather you didn't exactly have an underprivileged childhood. Don't you think it's time to show a bit of respect and tolerance for those who have provided it for you?"

42. The email ended "'All the best' for your big day." Although Pamela sought in cross-examination to explain away putting those words in inverted commas as somehow the English equivalent of saying 'bon courage' in French, it seems to me that there is an element of sarcasm in doing so and it was certainly interpreted as such by Lauretta and Mark. The email elicited a furious response from Mark on the following afternoon 1 October 2011 which referred to the closing comment in inverted commas and said: "We all know what you really mean. Again it says exactly what type of individual you are." Elsewhere in the email he accused Pamela of patronising Lauretta.

43. Frankly, the email exchange then descended into a slanging match between Pamela and Mark, culminating in her threatening to send the whole exchange to his head of Chambers, which she did. I do not propose to set out the exchange. As I said when Mr Holland was asking Pamela about this email exchange in cross-examination, no-one covered themselves in glory. Pamela disagreed with the suggestion that Mark's response to her initial email was "measured", saying with some justification that she had not been patronising Lauretta and that the comment about what type of individual she was, was not very nice.

44. When Mr Holland was cross-examining Pamela about this irate email exchange and the emails Tony sent on the day of the wedding, to which I refer below, she said that she and Tony had been very worried. She recounted two incidents which I understood her to be saying occurred before the wedding, from which she and Tony were concerned that Mark had it in for them. They reported these to the police but no action was taken. I do not propose to set out these incidents in detail (one consisted of what appeared to be a screwdriver having been used to scratch their car and in the other there was an intruder in their house early one morning) and I am certainly not finding that Mark was behind them, but I consider that the concern that Pamela and Tony had that Mark was getting at them was genuine.

45. There appears to have been to-ing and fro-ing about whether Tony would go to the wedding if Pamela were not invited and about whether he would walk Lauretta up the aisle and give her away. In the event he said he would go to the wedding but not walk her up the aisle. On the morning of the wedding, 4 November 2011, he emailed Mark's head of Chambers saying he had been told that Mark had instructed his friends to take steps to prevent Tony attending the wedding service that afternoon and that there were concerns about his physical safety. He said that he would be going to see the police shortly.

46. When Mr Holland put to Pamela that Tony had not been molested or threatened at the wedding, she accepted that, but said there had been a policeman present on stand-by in

case there was a problem and that she had been in a car around the corner. She said that Tony was frightened. He was sobbing when he came back from the wedding.

47. On the evening of the wedding day Tony sent another email to Mark's head of Chambers, saying that the fact that he had not been molested on the way into the church did not change the fact that he believed the threats were criminal and needed to be treated as such by her and the Bar Council. He said that he was still concerned that the threats might be implemented in the future on another occasion, so he believed she should be taking immediate action. There was no suggestion before me that any action had in fact been taken against Mark, professionally or otherwise.

48. Mr Holland asked Pamela if she thought that sending this email on the evening of his daughter's wedding, despite the fact that nothing had happened was the action of a reasonable father to which she said yes, if he thought his daughter was getting hitched to a man of unreasonable behaviour. Tony did not think that he had done anything wrong.

49. Mr Holland also asked Pamela about a letter Tony wrote to Lauretta on 12 January 2012, shortly after the wedding, in which he said, amongst other things:

> "I thought that, when you left your teenage years, things would improve. But they haven't.
>
> …
>
> Your treatment of me leading up to your wedding was disgraceful. I have no idea what I did to deserve that, other than to tell you that I didn't like Mark. But to make sure that I was excluded, and then to threaten me physically, is beyond any words. There can be no excuses about emotional build up, influences from your mother and husband to be, or anything, you were just…
>
> …
>
> You know, I gave you life; And paid for all your education and support. I took you to places round the world. But you have learned to hate me, the way that your mother did. You can't even be bothered to find the time to meet or contact me.
>
> Anyway, are you surprised if I am so hurt.
>
> I still love you, and have missed you."

50. Asked what Tony was talking about when he said Lauretta's behaviour had been disgraceful, Pamela said there had been to-ing and fro-ing between him and Lauretta, as I have indicated. Lauretta had said hurtful things to him on the phone. Mr Holland suggested there was a lot of bitterness in the letter. Pamela said Tony was upset, very upset, but he was leaving the gate open. If her own father had written that email, she would have rung up and said she was so sorry, let's have a drink. Tony was Lauretta's father and deserved a bit of respect. When Mr Holland queried whether that could be

so, when Tony had reported Mark to his head of Chambers on their wedding day, Pamela said that Tony was so worried. She did not know the truth, but Lauretta and Mark had been divorced very quickly, before their son was born, so there must have been something wrong with the relationship.

51. Lauretta was cross-examined about the events surrounding her wedding by Miss Rich. She said the allegations made on her wedding day were ridiculous, unbelievable. Her father attending the wedding but not walking her down the aisle had been an emotional nightmare. Her father had really not liked Mark. These difficulties had put pressure on the marriage from the beginning. Mark had been volatile once, but not violent. Asked in hindsight whether her father's view of Mark had been right, she said that potentially Mark was not a good choice of partner, but she didn't have a chance.

52. She could not remember whether she had any contact with her father between the wedding and Christmas 2011 but suspected any contact was quite limited. Miss Rich put to her that, in the letter of 12 January 2012, Tony was expressing his hurt about the wedding, to which Lauretta said that she thought they were both hurt.

53. As to Tony's conduct in relation to Lauretta's relationship with and wedding to Mark Mr Holland invited the Court to conclude that his behaviour was insensitive and unreasonable, stemming from his dislike of Mark and included persistent unfounded allegations of criminal conduct and substantial pressure on Lauretta to call off the wedding at short notice. Tony showed no remorse and told her she should be ashamed of herself.

54. I consider that, on the basis of Pamela's explanations of his and their concerns, which I accept, a far more nuanced assessment of Tony's conduct is appropriate. He clearly did not like Mark, but his concern about his unsuitability as a husband for Lauretta was genuine and, in hindsight, appears to have been justified. In the email exchange on 30 September and 1 October 2011, as I have said, no-one covered themselves in glory, but Mark's emails were intemperate and, from the viewpoint of people of an older generation such as Tony and Pamela, they were disrespectful. I also accept that Tony and Pamela's concerns that Mark was out to get them and that he would arrange for Tony to be excluded from the wedding were genuine, even if they proved unfounded, hence the police presence of which Pamela spoke.

55. I also accept Pamela's evidence that Lauretta had said hurtful things to her father on the phone, which made him very upset and that he genuinely considered her behaviour at the time of the wedding had been disgraceful. In the circumstances, whilst there may have been insensitivity in his approach, it was driven by his genuine concern for his daughter's welfare. I am not prepared to conclude that his conduct was unreasonable.

56. Lauretta had used the money she received from her father in 2008 to buy a flat in Wimbledon. After she married Mark, they moved in October 2014 to a flat on Fulham Palace Road where she still lives. Since 2011 she has worked at Sotheby's. She is currently a Senior Marketing Manager on a salary of £57,000 per annum.

57. In her evidence, Lauretta said that she was emotionally abused during her marriage and eventually found the strength to leave Mark even though she was pregnant with their son (who was born in January 2016). She gave evidence of going for dinner at a restaurant in Waterloo with her father and Juliet and telling her father that, despite being

pregnant, she wanted to leave Mark. She said he reverted to being the protective father he had previously been. He had helped with the divorce, although not financially. She said that although she had not asked her father for financial help over her divorce, her mother had asked him whether he would buy Mark out of the flat. He had seemed positive about this at first but a day or two later he had reverted and said no. The implication was that he had been "influenced" by Pamela. In my judgment, it is more likely that, on reflection, he maintained a position consistent with what he had said and written in 2008, that, after the gift of money to buy a flat, Lauretta could not expect any further financial assistance from him.

58. On 3 August 2015, which was some time after that dinner, Tony sent her an email in which he said amongst other things:

> "You are such a lovely woman who has done so well in your career. I am very proud of you for that.
>
> You have always made bad choices of men, though none as bad as Mark. You realised that by starting to divorce him, and you told me that that was because you had "found out that he is not a nice person". Your words and correct; that won't have changed.
>
> …
>
> So how can I be happy for you? And if I pretended to you that I was pleased, you would know I was lying.
>
> A child won't solve the problems in your marriage, and it will tie you to Mark for the rest of your lives even once you have left him."

59. In re-examination, Lauretta said that, in this email, her father was suggesting she should terminate the pregnancy. She said he was not nice about her pregnancy and the email made her feel horrendous. It may be, although it is not clear, that this was also the subject of the unpleasant voicemails to which she refers in her second witness statement and in an email of 24 September 2015 in which she told him she was having a boy. At all events, after that he does not seem to have raised the topic again and she says in her statement that there were no more nasty emails and she was in regular touch with him again. Mr Holland submitted that this was another example of Tony's insensitive and unreasonable behaviour, which he characterised as pressurising Lauretta into having an abortion. I consider that overstates the position: Tony was clearly concerned that, if she had Mark's child she would be tied to Mark for the rest of their lives even if she left him, hence his email, but it does not seem to me to have been putting undue pressure on her and, even if it was, Tony evidently had her best interests at heart, however misguidedly.

60. Pausing here, before considering the events leading up to Tony's death and afterwards, it is striking from the analysis of the claimants' adult lives that I have set out that, although in their witness statements both assert that they made their lifestyle choices on the basis of being encouraged to rely on their father for financial support, that was clearly not the case. Lauretta accepted in cross-examination that their father expected her to work and to become independent. As Miss Rich correctly submitted, in the ten

years that Tony was married to Pamela before his death, both claimants went through periods of estrangement from their father and both made important lifestyle choices, including marriage, divorce and purchase of property, without reliance on their father for financial support, whether at the time or in the future.

Tony's illness and death

61. Although Tony and Pamela had owned a flat in Kew from 2013, where they stayed when they came to London together, they lived in France for some years, initially in a house in St Remy which Pamela had purchased. When that was sold, the proceeds went towards Les Hautes Vignes in Provence. Pamela says that, in all, she contributed about 70% of the purchase price of Les Hautes Vignes and its contents.

62. She describes in her statement how Tony adored Les Hautes Vignes and wanted to live out his days there. He swam, played tennis, cycled, walked, researched and wrote his family history and an autobiography. Sadly, in May 2016 he was diagnosed with an aggressive form of brain tumour. He underwent surgery and radiotherapy in France, despite which his illness became incurable and he suffered a severe and progressive loss of physical and cognitive functioning. He was bed bound following a seizure in June 2017 and died at home in France on 12 October 2017.

63. Pamela was his primary carer during this terrible illness. Both Juliet and Lauretta visited him when he and Pamela would permit and corresponded by email, telephone and Skype. There is no doubt that his illness placed considerable stress on all concerned. In the witness statements, there are extensive factual conflicts between Juliet and Lauretta on the one hand and Pamela on the other about the events following Tony's diagnosis and leading up to his death. However, these were not the subject of cross-examination and Mr Holland submitted sensibly that it was unlikely that the Court would find it necessary to resolve these factual conflicts. I have not sought to do so and only observe that, on any view, the events fractured the already difficult relationship between the claimants and Pamela.

Events since Tony's death

64. In October 2017, Jennifer bought the Old Vicarage. Enford, near Pewsey, Wiltshire. It is a large, detached period house in extensive grounds with a swimming pool. Since its purchase, Juliet and her two daughters have lived there in a joint household with Jennifer. Initially her second husband Keith Miles also lived there, at least at weekends, as he worked in London during the week. Until their separation, Juliet and Keith shared responsibility for utilities and other household expenses with Jennifer. Keith is a lieutenant-colonel in the Army with an annual salary of £72,000-£75,000.

65. Juliet said that the marriage had been difficult because they were living separately and because of Juliet's younger daughter's autism. She filed a petition for divorce in the summer of 2018 which was served on Keith whilst he was at the Old Vicarage on 28 August 2018. At the time of his Acknowledgment of Service in November 2019, they had separated. However, they have not yet obtained a decree nisi. Juliet referred to documentation being lost in the post in the pandemic and that it had been filed again in January this year. Juliet denied, when it was put to her by Miss Rich, that but, for the present litigation, she would be postponing the divorce.

66. Juliet has not worked since before the birth of her elder daughter in 2008. She began, but abandoned, a course to become a Pilates teacher when she was married to Steve. At present, apart from the help she has from Jennifer, Juliet is solely responsible for the extensive and complex needs of her younger daughter, who is, as I have said, severely autistic. She also has severe learning and developmental disabilities and has Pathological Demand Avoidance syndrome. Her communicative ability is that of a three year old. She will be unable to lead an independent life. Although, in her original witness statement, Juliet said that providing care for her younger daughter precluded her working, she accepted in evidence that she could work part-time. She proposes to qualify as a dog behaviourist. If she were to work at that for 10 hours a week for 50 weeks a year, she could potentially earn £22,000 a year.

67. In terms of financial support from her ex-husband Steve, Juliet said that initially after the divorce, Steve was making good money, with a part in War Horse, and that he paid maintenance, but he did not currently have a regular salary. He had done some filming over the last year or so. As for Keith when they are divorced, he already pays maintenance for the two children of his first marriage, now 16 and 14. Juliet said the legal advice she had received was that, because they did not have children together, Keith would not be responsible for providing her with maintenance.

68. There is no doubt that the principal financial support Juliet receives is from her mother Jennifer. Juliet and her children live in some comfort in the Old Vicarage, a house purchased by her mother. Her mother also pays the school fees at Juliet's elder daughter's preparatory school, some £21,000 a year. In evidence, Juliet acknowledged that neither Steve nor Keith could have afforded to maintain this standard of living for Juliet and her children.

69. In the last 12 months or so, Jennifer has had health problems including two knee replacements and a bad fall, so she cannot drive at present. These problems, together with the fact that with Keith no longer paying for the utilities, they cannot really afford to continue living at the Old Vicarage, has led Jennifer to the reluctant conclusion that she will probably have to sell and move, once her elder daughter finishes preparatory school and goes to secondary school in September 2022. I say "probably" because, having heard her give evidence, I am far from convinced that they will sell up and move in the near future. Jennifer talked about how well the joint household worked apart from financial difficulties. She said it was wonderful for her younger granddaughter to be able to do things she couldn't do elsewhere, like be in the swimming pool throughout the summer. Although her younger grandaughter could not swim, she was buoyant in the water so this was a form of therapy. Jennifer is clearly reluctant to sell the Old Vicarage and, if they all continue living there, it is difficult to see how Juliet requires funds for her maintenance beyond what she already has.

70. I agree with Miss Rich that if the Old Vicarage has to be sold there are three realistic possibilities for Jennifer, Juliet and the two children, none of which requires maintenance from Tony's estate:

    (1) A joint household in a smaller property in a less rural area but within a reasonable distance of Salisbury, where Juliet's younger daughter attends a special needs school. Estate agents' details produced during the trial suggested that there is a wide range of property available for considerably less than the £1.6 million which is the

stated value of the Old Vicarage. On this basis, the jointly-owned flat in Fulham would not need to be sold and Jennifer and Juliet could continue to derive rental income from it.

(2) A joint household in London. Again, estate agents' details suggest that it would be possible to find a house in their preferred area, Fulham, for £1.6 million, so that the flat would not need to be sold. Even if the flat were sold, there would be a fund of some £2.3 million for property.

(3) Separate households, with Juliet remaining in Wiltshire, so as to maintain continuity in her younger daughter's education, and Jennifer returning to London. There is a good grammar school in Salisbury and since Juliet's elder daughter is bright and hard-working, she would probably secure a place. Although Juliet does not appear to have investigated what properties she could afford in Wiltshire, I consider that Miss Rich is right that a suitable house could be purchased with Juliet's share of the proceeds of sale of the flat in Fulham. Given that, as set out in [35] above, Jennifer accepted that she could afford to let Juliet have the difference between the £300,000 recorded as Juliet's share and the £177,000 she actually contributed, I consider it more likely than not that Jennifer would ensure that Juliet received £300,000 of the sale proceeds. Her understandable desire to treat her daughters equally and help Lauretta as well could be accommodated by funds from the sale of the Old Vicarage.

71. Given that Jennifer is now 71 and that Juliet's younger daughter is getting older and stronger and is clearly loud and boisterous, if and when the Old Vicarage is sold, it may well be that the third of these possibilities is the most likely. In re-examination Jennifer said that she doubted very much whether she would be living with her younger granddaughter in ten years' time. Nonetheless, in cross-examination, she had accepted that all the alternatives which Miss Rich put to her were possible.

72. Turning to Lauretta, in the event, her divorce from Mark was a long drawn out process which took until 2019. She was initially advised not to leave the flat where she had been living with him, but then did move out and lived with her mother for a while, taking legal steps to get back into the flat. The Court order made on the divorce gave Lauretta the flat subject to an 11% equity in favour of Mark and entitled her to live there with her son until he is 18 in 2034, at which point the flat would have to be sold to redeem Mark's equity.

73. The flat is subject to an interest only mortgage in excess of £400,000, for which Lauretta is responsible. Her case is that she cannot afford to switch to a repayment mortgage at that level, but that she could afford a repayment mortgage of £170,000. Part of what she claims as reasonable provision from her father's estate is the funds to reduce her mortgage to that level. She is subject to these financial commitments because of the Court order made in her divorce proceedings.

74. Miss Rich put to her in cross-examination that an alternative was to sell the Fulham Palace Road flat now for around £900,000 and buy a less expensive flat in the same locality for around £600,000 with the lower level of repayment mortgage. Although Lauretta was resistant to that suggestion because it might mean being further from her son's school in circumstances where she does not have a car, I consider it is a possible solution to concerns about her current level of mortgage.

The legal framework

75. The 1975 Act provides, so far as relevant, as follows:

> "Section 1 Application for financial provision from deceased's estate.
>
> (1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:—
>
> (a) the spouse or civil partner of the deceased;
>
> (b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;
>
> …
>
> (c) a child of the deceased;
>
> …
>
> (e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;
>
> that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.
>
> (2) In this Act "reasonable financial provision"—
>
> …
>
> (b) in the case of any other application [i.e. other than by a spouse or civil partner] made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.
>
> Section 2 Powers of court to make orders.
>
> (1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his

will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

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

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

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

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

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

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

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

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

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

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

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

…

> (3) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained…
>
> (4) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard—
>
> (a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;
>
> (b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.
>
> (5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.
>
> (6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities."

76. The statutory framework thus involves two questions: (1) has there been a failure to make reasonable financial provision and, if so, (2) what order ought to be made? However, there is in most cases, including this one, a very large degree of overlap between the two questions, not least because, in setting out the factors to be considered by the Court, section 3(1) of the 1975 Act makes them applicable equally to both questions. The correct approach is set out by Lord Hughes JSC giving the leading judgment in the Supreme Court in *Ilott v Mitson (No 2)* [2017] UKSC 17; [2018] AC 545 at [23]-[24]:

> "23. It has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process, viz (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made? That approach is founded to an extent on the terms of the Act, for it addresses the two questions successively in, first, section 1(1) and 1(2) and, second, section 2 . In *In re Coventry* [1980] Ch 461, 487 Goff LJ referred to these as distinct questions, and indeed described the first as one of

> value judgment and the second as one of discretion. However, there is in most cases a very large degree of overlap between the two stages. Although section 2 does not in terms enjoin the court, if it has determined that the will or intestacy does not make reasonable financial provision for the claimant, to tailor its order to what is in all the circumstances reasonable, this is clearly the objective. Section 3(1) of the Act, in introducing the factors to be considered by the court, makes them applicable equally to both stages. Thus the two questions will usually become: (1) did the will/intestacy make reasonable financial provision for the claimant and (2) if not, what reasonable financial provision ought now to be made for him?
>
> 24. There may be some cases in which it will be convenient to separate these questions, particularly if there is an issue whether there was any occasion for the deceased to make *any* provision for the claimant. But in many cases, exactly the same conclusions will both answer the question whether reasonable financial provision has been made for the claimant and identify what that financial provision should be. In particular, questions arising from the relationship between the deceased and the claimant, questions relating to the needs of the claimant, and issues concerning the competing claims of others, are all equally applicable to both matters. The Act plainly requires a broad-brush approach from the judge to very variable personal and family circumstances. There can be nothing wrong, in such cases, with the judge simply setting out the facts as he finds them and then addressing both questions arising under the Act without repeating them..."

77. The 1975 Act provides in section 1(2) that reasonable financial provision is what it is "reasonable for [the applicant] to receive", in this instance for maintenance. As Lord Hughes noted at [16] of *Ilott* these are words of objective standard to be determined by the Court. He cautioned at [17] that, asking whether the deceased acted reasonably is to ask the wrong question under the Act:

> "Nevertheless, the reasonableness of the deceased's decisions are undoubtedly capable of being a factor for consideration within section 3(1)(g), and sometimes section 3(1)(d). Moreover, there may not always be a significant difference in outcome between applying the correct test contained in the Act, and asking the wrong question whether the deceased acted reasonably. If the will does not make reasonable financial provision for the claimant, it may often be because the deceased acted unreasonably in failing to make it. For this reason it is very easy to slip into the error of applying the wrong test. It is necessary for courts to be alert to the danger, because the two tests will by no means invariably arrive at the same answer. The deceased may have acted reasonably at the time that his will was made, but the circumstances of the claimant may have altered,

> for example by supervening chronic illness or incapacity, and the deceased may have been unaware of the full circumstances, or unable to make a new will in time."

78. Although all cases under the 1975 Act turn on their own facts, it is of significance that, in cases other than those of spouses or civil partners, reasonable financial provision is limited to such provision as it would be reasonable for the applicant to receive for maintenance. The significance of this limitation was emphasised by Lord Hughes JSC in [13]-[14] of *Ilott*:

> "13. This limitation to maintenance provision represents a deliberate legislative choice and is important. Historically, when family provision was first introduced by the 1938 Act, all claims, including those of surviving unseparated spouses, were thus limited. That demonstrates the significance attached by English law to testamentary freedom. The change to the test in the case of surviving unseparated spouses was made by the 1975 Act, following a consultation and reports by the Law Commission…[He then noted the mischief to which the change in the law recommended by the Law Commission was directed] The mischief to which the change was directed was the risk of a surviving spouse finding herself in a worse position than if the marriage had ended by divorce rather than by death. For claims by persons other than spouses the maintenance limitation was to remain, and has done so.
>
> 14. The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) shows that it cannot extend to any or every thing which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living."

79. Lord Hughes then went on to cite the summary of Browne-Wilkinson J in *In re Dennis, decd* [1981] 2 All ER 140, 145-146, which, as he says: "is helpful and has often been cited with approval":

> "The applicant has to show that the will fails to make provision for his maintenance: see *In re Coventry* [1980] Ch 461. In that case both Oliver J at first instance and Goff LJ in the Court of Appeal disapproved of the decision in *In re Christie* [1979] Ch 168, in which the judge had treated maintenance as being equivalent to providing for the well-being or benefit of the applicant. The word 'maintenance' is not as wide as that. The court has, up until now, declined to define the exact meaning of the word 'maintenance' and I am certainly not going to depart from that approach. But in my judgment the word 'maintenance' connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses

> of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance."

80. For reasons which I will develop in considering the various factors under section 3(1), this limitation of reasonable financial provision to the provision of maintenance, in the sense in which the concept of maintenance is interpreted in those cases, is of importance in the present case. The claimants are both adult children of the deceased, who had lived their own lives and made their own lifestyle decisions without any further financial assistance from Tony after the gifts in 2008. Contrary to Mr Holland's submissions, what is "appropriate" in their cases is not comparable with what was appropriate in the case of a partner who had shared the life of the deceased, as in the case of *Negus v Bauhouse* [2008] EWCA Civ 1002 on which Mr Holland relied. That was an oral renewal of permission to appeal in which a two judge Court of Appeal gave ex tempore judgments refusing permission to appeal, so the case is of limited precedential value. The claimant had been cohabiting with the deceased for the last eight years of his life and thus qualified under sections 1(1)(ba) and 1A(b) of the 1975 Act. The deceased had provided her with a home and paid for everything, as well as making promises about her having a roof over her head. The judge had held that in those circumstances she was entitled to a degree of financial security and of comfort for the rest of her life. The executors of the will sought to appeal on the basis that maintenance was for needs not for upholding an extravagant lifestyle.

81. Citing what Browne-Wilkinson J had said in *In re Dennis*, Mummery LJ said at [12] that that statement allowed:

> "regard to be had in awards under the 1975 Act to the fact that some people have a more expensive or extravagant way of life than others. Having regard to what standard of living is appropriate to him means that one does not apply some objective standard of what is reasonable for everybody; it is a standard which has to be flexible to suit the circumstances of the case. It is what is appropriate to that case and that means looking at what style of life the claimant was accustomed to live with the deceased during his lifetime."

Munby J, also citing *In re Dennis* and *In re Coventry*, said at [24]:

> "It seems perfectly plain to me in the light of those two judgments that, in assessing in any particular case what is or is not reasonable maintenance, the court must have regard to the nature and quality of the lifestyle previously enjoyed by the applicant and the deceased."

82. In my judgment the crucial distinction between a case of a cohabitee like *Negus* and the present case is that, in that case, the deceased was maintaining the claimant in the relevant expensive lifestyle at the time of his death, whereas here neither claimant was maintained in any sense by her father for the best part of ten years before his death. Contrary to what Mr Holland seemed to be suggesting, it is not a question of a different maintenance standard being applicable to the two types of case, but of how the standard is applied in widely differing factual situations.

83. In so far as other authorities were cited during the course of argument which it is necessary to consider in this judgment, I shall do so in my consideration of the various factors under section 3(1) of the 1975 Act.

The factors under section 3(1)

S3(1)(a) and (b) The financial resources and needs of the claimants

84. Although much is made by Mr Holland of the precarious financial position of Juliet, which is said to have got worse since her father's death, I consider that this needs to be considered carefully for a number of reasons. First, in relation to the question of capital, it is said that she has only her share of the sale price of the London flat she owns jointly with Jennifer. The money she received from Tony in 2008 was £177,000, but, in her evidence, she said that she would only receive £167,000 of that if the flat were sold for £700,000. As I have already found at [70(3)] above, I consider it more likely than not that Jennifer would ensure that Juliet received the full £300,000 of any sale proceeds, equivalent to what she was recorded in the email of 31 January 2016 as having contributed, as referred to at [35] above. Those sale proceeds would be sufficient to purchase a house in Wiltshire suitable for her and her children if she and Jennifer decide to set up separate households in the event that the Old Vicarage is sold. However, as noted in [70] above, in that event, the setting up of separate households is only one of three possibilities, the other two involving Juliet and Jennifer continuing to share a household. In cross-examination, Jennifer accepted that these choices were all possible. If they decide to remain living together which they may well do despite the challenges which Juliet's younger daughter presents, then the London flat would probably not need to be sold and Juliet would not need to use any sale proceeds from the flat to purchase her own property.

85. In terms of an alleged deficit in income, Juliet produced in October 2019 a schedule of expenditure showing her total annual income as £20,158.60, (of which £9,600 was her share of the rent from the London flat) and annual expenditure of £36,035.79, an annual shortfall of some £16,000. In cross-examination, it became apparent that some of the expenditure included was Keith's which casts some doubt on the extent of the alleged deficit. Although Mr Holland submitted that, if the London flat were sold, so that Juliet no longer received that rental income, the annual deficit in income would increase to about £25,000, that overlooks first that two of the possibilities if the Old Vicarage were sold involve Jennifer and Juliet continuing to live together, so that the London flat would probably not need to be sold and second, Juliet's potential earnings as a dog behaviourist. Whilst the potential of £22,000 per annum may be unrealistic in the light of school holidays, it seems to me that she could well realistically make around £15,000 per annum.

86. It is also noteworthy that the schedule was produced on the basis of the lifestyle which Juliet has enjoyed since October 2017 living with her mother in a large, detached house in the country with extensive grounds and a swimming pool. That lifestyle has been supported and sustained both financially and in other ways by her mother. I agree with Miss Rich that, although Juliet would no doubt like to continue living that lifestyle, it is not one which she could sustain without the assistance of Jennifer. Neither of her husbands could have afforded to maintain that lifestyle, as Juliet accepted. Steve was and is an actor whose career seems to have been precarious and the house in Suffolk was clearly not on the scale of the Old Vicarage, since Juliet said she took sale proceeds of £167,000. In her marriage to Keith they lived in institutional Ministry of Defence accommodation in Wiltshire. Although Keith was an Army officer on a reasonable salary, he had two children from his previous marriage to maintain and they could not afford to buy a house when the Ministry of Defence accommodation had to be given up on Keith moving to a job in London. In my judgment, Miss Rich was correct that any assessment of the standard of living appropriate to Juliet should be by reference to the sort of standard she was prepared to accept, when married to Keith and living in Ministry of Defence accommodation, rather than the more luxurious lifestyle she has enjoyed since her father's death, with the assistance of her mother, at the Old Vicarage. However, no attempt was made in presenting her case to assess her financial needs by reference to that lower standard of living.

87. Juliet's claim also includes provision for the needs of her younger daughter, although a claim for private school fees was not pursued. Unfortunate though her younger daughter's condition is, grandchildren of the deceased do not qualify as eligible persons under the categories in section 1(1) of the 1975 Act. Furthermore, whilst the factors to be considered under section 3(1) include at (f): "any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased" that does not encompass any disability of a dependent of an applicant. Furthermore, funds which Tony had invested for his two granddaughters valued at about £30,000 were transferred by Pamela to Jennifer during the administration of the estate. As already indicated, I have considered and taken account of the effect of Juliet's younger daughter's autism on Juliet's earning capacity.

88. Lauretta's claim has two elements. First, she seeks funds to enable her to convert her current interest only mortgage to a repayment mortgage, which she can only afford at the level of £170,000, as opposed to the level of the current interest only mortgage of some £414,854. Her concern is that, with an interest only mortgage, upon the expiration of the term she will be required to repay the capital sum or be forced to sell.

89. Miss Rich submitted that this reduction of the mortgage debt, to convert the nature of the mortgage and enable Lauretta to make affordable repayments of capital as opposed to interest, did not fall within the concept of maintenance for the purposes of the 1975 Act. Payment of an existing debt may be appropriate as a maintenance payment if, for example, it enables the applicant to continue to carry on a profit-making business, as Browne-Wilkinson J noted in *In re Dennis* (in the passage quoted at [79] above) and as in *Espinosa v Bourke* [1999] 1 FLR 747, where the claimant was awarded a lump sum to pay off a mortgage securing a loan for the purchase of a business. By discharging the mortgage, the claimant was able to earn an income from the business which would support her in future. Miss Rich submitted that Lauretta was not in a comparable situation. The mortgage was a residential one secured on the former matrimonial home

and her responsibility for the mortgage is consequential on the order made in the divorce proceedings.

90. Mr Holland relied on *In re Leach decd.* [1985] 1 Ch 226 at 244-245, a case where the Court of Appeal upheld the judge's award of a lump sum to enable the applicant (an unmarried woman in her mid-50s) to repay a substantial part of her indebtedness, inter alia under a mortgage, thereby releasing additional income with which she could maintain herself immediately and in her retirement. Mr Holland submitted that Lauretta was in a comparable position. If she did not swap to a repayment mortgage, there was a serious risk that she would not be able to meet increased mortgage repayments under an interest only mortgage.

91. I doubt very much whether payment of some £244,000, to enable Lauretta to convert her mortgage to a repayment one at a lower level where she can afford the repayments, can properly be described as maintenance within the meaning of the 1975 Act. It is difficult to see how such a lump sum payment would help her future maintenance. It is to be noted that in *In re Dennis* itself, the judge refused to order a lump sum payment to enable the applicant to pay capital transfer tax, on the basis that, whilst it might save him from bankruptcy, it would not do anything to help his future maintenance. I agree with Miss Rich that the facts of *In re Leach* are strikingly different from the present case. She submitted that there were different expectations for a woman in her mid-50s in the 1980s compared with now. The applicant there, unlike Lauretta, did not have two decades of earning potential to look forward to. Furthermore, in that case, the deceased step-mother had encouraged the applicant to think that she would receive a substantial sum of money on the death of her step-mother, as a consequence of which the applicant had bought the house jointly with her friend.

92. The position here is completely different. When Lauretta and Mark bought the flat in October 2014, they did not do so in reliance on any assurance from Tony that Lauretta would inherit a substantial sum on his death. As I have already found, on the contrary, Tony had made it clear in 2008 that, after the gift of £185,000 to go towards the purchase of a flat, Lauretta was on her own financially and should expect no more from her father. Her lifestyle choices, including the purchase of the flat on Fulham Palace Road, were made completely independently of any financial assistance or expectation of financial assistance from Tony beyond the £185,000. This is an issue to which I will return in the context of section 3(1)(d).

93. It may very well be that, since her divorce, Lauretta cannot really afford to stay in the flat she is in, but a solution to that problem would be to reduce her expenditure by moving to a slightly smaller, cheaper flat in the same area of London.

94. The second element of Lauretta's claim is payment of a lump sum of some £105,000 to buy out Mark's 11% equity in the flat. Given that, as Miss Rich submitted, this is a contingent liability which Lauretta only has to discharge in 2034 when her son is 18, I consider that this cannot begin to be described as a financial need which Lauretta "has or is likely to have in the foreseeable future" within the meaning of section 3(1)(a) and (b) of the 1975 Act. She is still a relatively young woman in a good job with prospects of advancing her career at Sotheby's. She may well be in a very different and more advantageous earnings position in 13 years' time when she no longer has a legal obligation to maintain her son.

95. In considering the financial needs of the claimants, an important aspect is that both of them have received financial assistance over the years since Jennifer and Tony divorced from their mother Jennifer. This is particularly so in the case of Juliet in relation to the shared household and the payment of her elder daughter's school fees. In evidence, Jennifer indicated a general intention to continue helping both daughters financially. As Miss Rich correctly submitted, none of the other reported cases of claims under the 1975 Act by adult children have this factual element of a surviving parent, Jennifer, whose own financial position is derived from the division of assets on divorce from the deceased (which Jennifer accepted was on a 50/50 basis), who has taken on obligations and responsibilities towards her adult children since the divorce.

96. In all the circumstances, I do not consider that either claimant can demonstrate needs for maintenance which they cannot meet, if necessary by adjustment to their lifestyle as I have indicated. However, even if they could demonstrate such needs, for reasons developed below, I consider that these are outweighed by other factors under section 3(1)(d) and (g).

Section 3(1)(c) The financial resources and financial needs of Pamela as a beneficiary of the estate

97. Pamela, as she was entitled to, elected to keep her own financial affairs private and declined to answer any questions about them in cross-examination. Two issues arise from this. The first is whether, as Miss Rich contended and as I was provisionally inclined to accept, this means that this factor under section 3(1)(c) is to be treated as neutral. Mr Holland submitted that this was wrong, as it would enable a very wealthy defendant to invite the Court to treat this as a neutral factor by refusing to give particulars of his or her wealth which would lead to manifest unfairness. He submitted rather that the Court must proceed on the basis that Pamela has no financial needs which are not met by resources other than the net estate, which weighs in favour of the claimants' claims. On reflection, it seems to me that Mr Holland is right for the reason he gave. I proceed on the basis that Pamela's financial needs can be met by other resources than the net estate. However, even though Pamela's financial needs do not need to be taken into account, the claimants still have to demonstrate their needs for maintenance, which, for the reasons I have given they cannot do.

98. The second issue arises from answers given by Pamela in cross-examination. She accepted that she and Tony had made mirror wills in 2015, as they had done previously, possibly three times, changing executors. She accepted also that, under the will she made in 2015, on her death her estate would pass 25% to Juliet and 25% to her children. Mr Holland asked her if she had changed her will, to which she answered that she did not think she should say as it was private, but she would always respect Tony's wishes. She had made adaptations and changed executors as one of the original ones was older than her. Mr Holland pressed her as to whether, other than that, there were no changes, to which she again said everybody has a right to privacy in their will dispositions. Mr Holland asked whether the reason why she would not answer was that she had revoked the will, to which she said that she had not. At that point I intervened, as it seemed to me that Pamela was entitled to her privacy and what is to be made of her evidence on this was a matter for submissions.

99. Mr Holland invited the Court to proceed on the basis that Juliet and her children will not benefit on Pamela's death and that Tony's wishes will not be fulfilled. However, that would involve the Court not only drawing an adverse inference from Pamela's desire to keep her financial and testamentary affairs private, but also concluding that she was lying to the Court when she said that she would always respect Tony's wishes and when she denied revoking her will. I am not prepared to draw that adverse inference or to conclude that Pamela lied in her evidence.

100. In the circumstances, *In re Goodchild* [1997] 1 WLR 1216, upon which Mr Holland placed considerable reliance in closing submissions, is of limited relevance. That was a case in which the applicant's parents had made mirror wills leaving their respective estates to each other absolutely, in the event of surviving the deceased spouse for 28 days, but otherwise on trust for the applicant, their only son. The mother died and the father married the defendant second wife and made a new will leaving his entire estate to her. Six weeks later he died. The judge and the Court of Appeal dismissed the claim that the doctrine of mutual wills applied to the parents' wills, so that after the death of his first wife, the testator held her estate on trust for the applicant and, after the death of the testator, the defendant held the estate likewise on trust for the applicant. The doctrine of mutual wills did not apply because there was no clear agreement at law that the wills should be mutually binding. However, the judge and the Court of Appeal held that, although there was no clear agreement for mutual wills, nonetheless the mother's understanding of the will she had made was such as to impose on the testator a moral obligation, once it was established that the applicant had a need for reasonable financial provision under the 1975 Act, to devote to the applicant so much of his mother's estate as would have come to him if there had been mutual wills: see per Leggatt LJ at 1227G-H.

101. Mr Holland relied upon that case to support the proposition that Tony was under a moral obligation, for the purposes of section 3(1)(d), to make reasonable financial provision for the maintenance of the claimants. I agree with Miss Rich that that case is of no application here, where the complaint is not about Tony having changed his will, but about his not having made provision in it for the claimants save, in relation to Juliet and her children as to 50% of the estate after Pamela's death. There was no pre-existing will, as in *In re Goodchild*, under which the entire estate was to pass to the claimants, so nothing which attracted an equivalent moral obligation. Furthermore, given that I am not prepared to infer that Pamela has altered or revoked her will, so as to exclude 50% of the estate passing to Juliet and her children on her death, the factual situation which arose in that case has not arisen here.

Section 3(1)(d) Any obligations and responsibilities which Tony had towards the claimants

102. There is no legal obligation on a parent to maintain an adult child as there is for a child under 18. Section 3(1)(d) is concerned with obligations and responsibilities which the deceased had immediately before death, not in the past. This was made clear by the decision of the Court of Appeal in *In re Jennings decd.* [1994] Ch 286. In that case a middle-aged adult child sought an order for provision of a lump sum towards repayment of his mortgage against the estate of his father, who had neglected to maintain him throughout his childhood. The decision of the judge to award the lump sum on the basis that section 3(1)(d) could be construed as including legal obligations and

responsibilities which the deceased had but failed to discharge when the applicant was a child, was reversed on appeal.

103. At 296D-E Nourse LJ said:

> "In my respectful opinion that is an impossible construction of section 3(1)(d). While it is true that it requires regard to be had to obligations and responsibilities which the deceased "had," that cannot mean "had at any time in the past." At all events as a general rule, that provision can only refer to obligations and responsibilities which the deceased had immediately before his death. An Act intended to facilitate the making of reasonable financial provision cannot have been intended to revive defunct obligations and responsibilities as a basis for making it. Nor, if they do not fall within a specific provision such as section 3(1)(d), can they be prayed in aid under a general provision such as section 3(1)(g)."

104. Likewise, at 300E-G, Henry LJ said:

> "[The judge] held that the obligations under section 3(1)(d) need not exist at the time of death. In my judgment that was wrong as a matter of law. The deceased's freedom of action to dispose of his property must be judged at the time of death, and it is only his then current obligations and responsibilities that must be taken into account. Some undischarged responsibilities from the past may still be current - for instance a child of the deceased might have given up a university place to nurse the deceased through his long last illness and now wish to go to take up that place. The moral obligation there would be both current and clear. But where the undischarged responsibility does not amount to an obligation present at the date of death, the statute does not require it to be taken into account."

105. It follows that, under section 3(1)(d), the question is what if any obligations or responsibilities did Tony have towards either claimant at the time of his death in 2017. Miss Rich submitted that the answer was none. He had made the gifts to them in 2008 to buy flats and made it clear at that time that they could expect no more financial assistance. On their own case, they both asked for further financial assistance thereafter which he refused. He refused to help Juliet over her first divorce by buying out Steve. It was her mother who helped financially. Lauretta, at least through her mother, seems to have sought similar financial assistance with her divorce in 2016, but Tony again refused. As Miss Rich put it, by the time of his death, whatever obligations he had taken on in the past to bail the claimants out of their financial difficulties were defunct.

106. In her submissions, Miss Rich placed particular emphasis on the decision of Lewison J (as he then was) in *Baynes v Hedger* [2008] EWHC 1587 (Ch). That was a case of an adult applicant pursuing a claim against the estate of her godmother, so it fell within section 1(1) (e) not (c) of the 1975 Act, even though the judge referred to the deceased as having assumed a "quasi-parental role". Accordingly, it was a case in which the

Court was required under section 3(4) to have specific regard to the question to what extent the deceased had assumed responsibility for maintenance of the applicant. It follows that the case has to be approached with a little caution, given that section 3(4) does not apply to cases of adult children of the deceased. Nonetheless, it is to be noted that at [186] to [196] of his judgment, the judge considered the extent to which the deceased had assumed responsibility for the applicant's maintenance together with the question under section 3(1)(d) of what if any obligations and responsibilities the deceased had towards the applicant.

107. Miss Rich relied upon what the judge concluded at [187]: "I do not consider that, objectively, Mary owed an obligation or responsibility to Hetty arising out of her role as quasi-parent to do more than give Hetty a sound financial start in life, which she did." She also relied upon the fact that, in the section of his judgment headed "The value judgment" dealing with the question whether, viewed objectively, the deceased's will failed to make reasonable provision for the applicant's maintenance, the judge referred, at [200] to [201], to the adult child's claim in *In re Dennis* and commented on the striking similarity between that case and the situation of the applicant before him. In my judgment, the most that can be drawn from *Baynes v Hedger*. in the case of an adult child such as each of the claimants, is that, in considering the factor under section 3(1)(d), the court should consider to what extent, at the time of death, the deceased had assumed responsibility for the maintenance of the relevant applicant. If the deceased has disclaimed responsibility, as Tony did in this case, that must be a relevant factual consideration militating against Tony having any obligations and responsibilities towards the claimants at the time of his death. On the basis of the decision of the Court of Appeal in *In re Jennings*, any obligations or responsibilities he may have had towards them when they were teenagers or in their early twenties are irrelevant.

108. Mr Holland placed reliance on the decision of Munby J in *In re Myers (decd.)* [2004] EWHC 1944 (Fam) a case of an adult child whose deceased father had made some provision for her during his lifetime, but had not made provision for her in his will. There the claim succeeded. In his consideration of the factor under section 3(1)(d), the judge said at [79]:

> "The deceased owed the claimant the ordinary obligations of a father to an adult and fully emancipated daughter. He did not owe her any special obligations or have any particular responsibilities for her unless arising out of what he knew or ought to have known of her financial, personal and medical circumstances at the time he made his last will – a topic I return to below."

109. I agree with Miss Rich that there must be a question mark as to whether that can stand as a broad statement of principle. It does not seem to have been adopted in other later cases and I note that the decision of the Court of Appeal in *In re Jennings* was not among the cases cited to the judge in that case (see [10] of the judgment). In any event, there were a number of stark features in that case which are absent here. The applicant was 60, she had never married and she was in poor health, particularly mentally. What does seem to have weighed in her favour is her parlous personal circumstances, described graphically by the judge at [87(i)] of the judgment:

> "The fact that by the time the deceased came to make his last will the claimant was living in severely straightened circumstances and looking forward to a financially stringent retirement. The fact is that her only capital consisted of shares worth about £200,000. She was living in a miserably small rented flat and had few personal possessions beyond the clothes she stood up in. She had no private pension. For the future all she had to look forward to was surviving on the state pension and the income from her shares."

110. By no stretch of the imagination could the position of the claimants be said to be comparable. They are 40 and 39 respectively. Lauretta is in a well-paid job and has earning potential for some further twenty years or more. Although Juliet's ability to earn a salary is constrained by her younger daughter's autism, she does have the potential to earn as a dog behaviourist. Both claimants have been married and have been supported financially by their mother so they do have other actual or potential sources of support in a way in which Ms Myers did not, and they are both in good health. Furthermore, unlike Ms Myers, as I have already held, in relation to section 3(1)(a) and (b), neither claimant establishes a need for maintenance from their father's estate.

111. As is clear from the findings I have made, I have concluded that Tony did not have any obligations or responsibilities towards either of the claimants at the time of his death for a number of reasons, which can be summarised as follows:

(1) Whilst the claimants may well have enjoyed an affluent lifestyle until they were in their early twenties, when their parents divorced, they were not entitled to expect that standard of living indefinitely, nor did they in fact do so, given that, as I have held, the lifestyle choices they both made in terms of marriage and family were not dependent upon their father's financial support at the time or contingent upon his financial support in the future. The issue, as *In re Jennings* makes clear, is what obligations and responsibilities Tony had towards either of them at the time of his death, not any obligations or responsibilities he may have assumed towards them up until his divorce from their mother some ten years earlier.

(2) Tony had made generous provision for both claimants with the gift of money in 2008 which they were able to invest in property. He made it clear at that time that they could not expect any further financial assistance from him (which he repeated in his letter of 30 May 2008 to Lauretta). He maintained that position consistently, declining to assist them financially with their respective divorces. As I have said, that disclaimer of responsibility militates against his having any obligations or responsibilities towards either claimant at the time of his death.

(3) Since I am not prepared to draw an adverse inference against Pamela or conclude that she lied when she denied revoking the mirror will, this is not a case, unlike *In re Goodchild*, where the deceased was under some moral obligation to either claimant at the time of his death. Lauretta was in any event not a beneficiary under either of the wills and the entitlement of Juliet and her children does not arise until Pamela's death. No entitlement arose on Tony's death.

Section 3(1)(e) The size and nature of the net estate

112. The net estate, as I said at the outset of the judgment, is just short of £2.2 million. Given that, as I have held in relation to section 3(1)(c), I have proceeded on the basis that Pamela's financial needs are met by other resources than the net estate, if I had concluded that either claimant could demonstrate the needs for maintenance which they claim, the estate would be sufficiently large to meet those claimed needs which totalled £1,226,145.

Section 3(1)(f) Any physical or mental disability of any applicant

113. Neither claimant suffers from a physical or mental disability so this factor is not relevant. As I have said, although Juliet's younger daughter's autism is very unfortunate, as a grandchild, she does not qualify as an eligible applicant under the 1975 Act.

Section 3(1)(g) Any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

114. In his written submissions, Mr Holland realistically recognised that the deceased's wishes are a relevant matter which fall to be assessed in the round with the other relevant factors. This is clear from [47] of the judgment of Lord Hughes JSC in *Ilott*:

> "It was not correct to say of the wishes of the deceased that because Parliament has provided for claims by those qualified under section 1 it follows that that by itself strikes the balance between testamentary wishes and such claims (para 51(iv) [of the judgment of the Court of Appeal]). It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight. They may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors."

115. In relation to Tony's wishes as primarily indicated in his will, Mr Holland submitted that it was necessary to take into account how Tony would have expected his estate to devolve after Pamela's death, namely that 50% should pass to Juliet and her children. Mr Holland deployed the argument here again that, because of what was said or not said by Pamela in cross-examination, the Court should proceed on the basis that those wishes would not be fulfilled and Juliet and her children will not benefit on Pamela's death. I have already rejected that submission in the context of reliance on *In re Goodchild*, since I am not prepared to draw the adverse inference against Pamela which Mr Holland invites me to draw or to conclude that she lied in her evidence when she denied revoking her will. She said in terms that she would always respect Tony's wishes and I proceed on the basis that his wishes will be fulfilled. It is a relevant consideration weighing against the claimants that Tony's wishes, as reflected in the wills, were that Juliet should not receive anything from his estate until after Pamela's death and that Lauretta should not receive anything at all (reflecting the consistent position he had adopted after he made the gift to her in 2008).

116. The claimants' case was that Tony's conduct after his marriage to Pamela was unreasonable, particularly at the time of Lauretta's wedding and in seeking to persuade her to have an abortion. I have already rejected this contention of unreasonableness on

his part in the findings I have made, which I do not propose to repeat here. I have also rejected the suggestion that his conduct was dictated or unduly influenced by Pamela. He was clearly a man who knew his own mind and who acted of his own free will.

117. So far as the conduct of the claimants themselves is concerned, it is not necessary to repeat here the detailed findings I made earlier in the judgment about family life prior to Tony's divorce from Jennifer and the extent to which he was unhappy with that family life, and about periods of estrangement between Tony and his daughters and the causes for this. The apparent unwillingness, particularly of Juliet, to accept Pamela as his wife evidently upset Tony a great deal, as did what he saw as financial demands on him by his daughters.

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

Conclusion in relation to the statutory questions

119. Returning to the two questions which arise under the statute, as I set them out at [76] above, the first question is: does Tony's will fail to make such financial provision as it would be reasonable in all the circumstances of the case for the claimants to receive for their maintenance. For all the reasons I have given, my answer to that question is: no, it does not. In the circumstances, the second question does not arise.

120. It follows that I dismiss both Juliet's claim and Lauretta's claim.