



Neutral Citation Number: [2023] EWHC 1085 (Ch)

Case No: PT-2022-000333

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

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

Date: 12 May 2023

Before:

MASTER MCQUAIL

Between:

Corinne Blythe

Claimant

- and -

Stephanie Blythe

Defendant

David Mitchell instructed by **Roythornes Limited** for the **Claimants**
Richard O’Sullivan instructed by **Malcolm & Co Solicitors LLP** for the **Defendants**

Hearing dates: 27 and 28 March 2023

Approved Judgment

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MASTER McQUAIL

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Master McQuail:

1. These proceedings concern the estate of Roland Blythe (**Roland**), who died on 10 September 2017. The claimant, Corinne Blythe (**Corinne**), and the defendant, Stephanie Blythe (**Stephanie**) are two of his daughters. I will use the first names of family members in this judgment without intending any disrespect.

2. Roland was born on 28 August 1933. His older two children live in Jamaica. Roland never married, but was survived by three children in England: Corinne, Stephanie, and their brother, Courtney Blythe (**Courtney**). The mother of these three children died in March 2013, although the Deceased was no longer living with her at that time. For some years before his death Roland lived with Vanita Oliver (**Vanita**) in a house owned as to 51% by Roland and as to 49% by Vanita.

3. Roland's last will, dated 1 May 2012 (**the Will**), appointed Stephanie as executrix and provided that the entire net estate should be shared between Corinne, Stephanie and Courtney in equal shares. Stephanie extracted a Grant of Probate from the Principal Registry on 7 January 2020. The net estate was sworn at £232,479.

4. Stephanie's solicitors, Malcolm & Co LLP, produced draft estate accounts in February 2022. It appears that the total value of Roland's assets at the date of his death was some £239,148 odd. The largest asset was his 51% interest in his home, valued at £153,000. In addition there was some £84,103 in bank accounts and other modest amounts attributable to some policies, pension arrears and tax refunds. Funeral and related catering costs have been paid as have some legal fees. Distributions have been made to Courtney and Stephanie of £50,000 each and a sum of just over £112,000 remains in an account in Stephanie's name and three insurance policies have yet to be collected in.

5. The main dispute between Corinne and Stephanie is about a lifetime transfer made by Roland to Corinne of £200,000 on 29 September 2015 (**the Transfer**). Corinne's case is that it was a gift. Stephanie says that the transaction should be avoided on the grounds of lack of capacity or undue influence. There is also in issue a failure by Stephanie to collect in the insurance policies and complete the estate administration,

6. Corinne issued a Part 8 Claim on 21 April 2022 seeking a declaration that the Transfer was a gift and other relief to secure the complete administration of Roland's estate. Stephanie accepts that once the main issue is resolved she will need to finalise the administration.

7. Deputy Master Scher made an order on 22 June 2022 permitting Stephanie to bring a Counterclaim.

8. The Part 20 Claim seeks a declaration that Roland lacked capacity to make the Transfer, lacked the capacity to make a gift by the transfer, a declaration that the transfer is void for undue influence and an order that Corinne repay the £200,000.

9. The Defence to Part 20 Claim pleads first that Stephanie's claim is barred by laches, acquiescence and delay. It goes on to plead the presumption that the transfer was a gift. In addition any lack of capacity or undue influence is denied

Corinne's Case

10. Corinne's case is set out in her first witness statement and her Defence to Part 20 Claim. She explains that due to the passage of time she cannot recall exactly what was said in the conversations she had with Roland in connection with the Transfer.

11. Prior to 2015, Corinne was living in local authority accommodation (**the Property**) and, had 'the right to buy' the Property at a discounted price.

12. Roland encouraged her to purchase the Property but learned that she could not afford to do so and made the Transfer to her to enable her to do so.

13. At some stage prior to the purchase Roland asked an old friend, Oscar Osmar, who is in the business of providing condition surveys for properties, to inspect the Property and provide a report to him on its disrepair and the possibility of adding a further bedroom. Mr Osmar visited the Property with Roland and provided him with a report.

14. Roland told Corinne that he would buy the Property for her. Corinne says that Roland told her at that time that he had previously made a similar offer to Stephanie, but she did not want to take him up on the offer as the house she was living in was too small and she wanted a larger property in a different location, in particular stating that "you can't swing a cat in it". Corinne also says that when Stephanie found out about the gift to Corinne Stephanie asked Roland to make a similar gift to her.

15. In her first witness statement Corinne said that Roland went to his NatWest branch and arranged the transfer.

16. In her Defence to Part 20 Claim, which was her earliest opportunity to meet the case formulated against her, and her second witness statement Corinne said that, without explaining the purpose of the visit. Roland asked her to take him to the bank branch where he met with a senior bank clerk in private and that at the end of the meeting the bank clerk asked Corinne for her bank details, saying that she was lucky as Roland wanted to make a gift to her. Corinne provided the details with the result that a computer-generated instruction dated 29 September 2015 to send a CHAPS payment was prepared and was signed by Roland and £200,000 was duly transferred to Corinne's account.

Stephanie's Case

The Transfer

17. Stephanie is unable to advance any positive case about what occurred on 29 September 2015, her position is that she knew nothing of the Transfer until after Roland's death.

Capacity

18. By paragraph 3 of her Part 20 Claim Stephanie asserts that "[Roland] had been increasingly frail and suffering from ill health since the death of his wife [sic] in March 2013 and often became confused."

19. By paragraph 4 of that pleading Stephanie asserts that the amount of the transfer represented either two thirds or the majority of Roland's assets and that his frail and confused state meant he lacked capacity to make such a transfer at all or as a gift.

20. In her first witness statement Stephanie claimed that Roland's medical records, which had not then been obtained, would show he was very ill at the time the Transfer was made. In her second witness statement she made specific reference to four entries in Roland's medical notes and commented upon them.

Undue Influence

21. By paragraphs 6 and 7 of her Part 20 Claim Stephanie asserts that Corinne became reconciled with Roland after the death of their mother in 2013 and was in a position of trust and confidence in relation to Roland, who was vulnerable, and had gained ascendancy over him. The pleading goes on to say that the Transfer, being of the majority of Roland's assets, and in light of the provisions of the 2012 will, is a transaction that calls for explanation giving rise to a presumption of undue influence.

Loan

22. The case that the Transfer was a loan was not pursued at trial.

Law

23. As confirmed by *Kicks v. Leigh* [2015] 4 All E.R. 329 the test for considering retrospectively the mental capacity to make an inter vivos gift is that explained by Martin Nourse QC (as he then was) in *Re Beaney* [1978] 1 WLR 770. The test is as follows:

“the question is whether the person concerned is capable of understanding what he does by executing the deed in question when its general purport has been fully explained to him.”

What is required is an ability to understand, rather than actual understanding. The question is: would the donor have understood the transaction if the consequences had been fully explained?

24. As to the degree of understanding required, the judgment says this:

“The degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect. In the case of a will the degree required is always high. In the case of a contract, a deed made for consideration or a gift inter vivos, whether by deed or otherwise, the degree required varies with the circumstances of the transaction. Thus, at one extreme, if the subject-matter and value of a gift are trivial in relation to the donor's other assets a low degree of understanding will suffice. But, at the other, if its effect is to dispose of the donor's only asset of value and thus for practical purposes to pre-empt the devolution of his estate under his will or on his intestacy, then the degree of understanding required is as high as that required for a will, and the donor must understand the claims of all potential donees and the extent of the property to be disposed of.

25. As it is Stephanie who asserts incapacity the legal burden is on her to adduce evidence to raise sufficient doubt from which incapacity can be inferred so that the evidential burden would shift to Corinne; see [67] of *Kicks*.

26. The common law test for mental capacity to make a will is found in *Banks v Goodfellow* and set out in [30] of *Kicks*.

Undue Influence

27. Stephanie's alternative claim is that the Transfer was procured by presumed undue influence as explained in the decision of the House of Lords in *Royal Bank of Scotland plc v Etridge (No 2)* [2002] 2 AC 773.

28. The party alleging that a transaction should be set aside for undue influence must establish two elements – the existence of a relationship of trust and confidence and a transaction which calls for an explanation.

29. In *Etridge* at [8] Lord Nicholls explained that presumed undue influence:

“arises out of a relationship between two persons where one has acquired over another a measure of influence or ascendancy, of which the ascendant person then takes unfair advantage.”

In [9] he said this:

“The relationship between two individuals may be such that, without more, one of them is disposed to agree to a course of action proposed by the other. Typically this occurs when one person places trust in another to look after his affairs and interests and the latter betrays this trust by preferring his own interests. He abuses the influence he has acquired.”

And at [11] he said this:

“The principle is not confined to cases of abuse of trust and confidence. It also includes, for instance, cases where a vulnerable person has been exploited. Several expressions have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other.”

30. Lord Nicholls went on to say in relation to the second element at [22]:

“Lindley LJ summarised this second prerequisite in the leading authority of *Allcard v Skinner* 36 Ch D 145, where the donor parted with almost all her property. Lindley LJ pointed out that where a gift of a small amount is made to a person standing in a confidential relationship to the donor, some proof of the exercise of undue influence must be given. The mere existence of the influence is not enough. He continued, at p185 “But if the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act, the burden is upon the donee to support the gift. In *Bank of Montreal v Stuart* [1911] AC 120, 137 Lord

Macnaghten used the phrase "immoderate and irrational" to describe this concept"

31. *Snell (34th Edition)* at [8-031] explains what proving a relationship of influence requires:

"If, for example, B's claim is that undue influence was exerted by B's husband or wife, or by B's banker, then, as that relationship is not one that the law regards as necessarily involving influence, B will need to show that the specific marital or banking relationship was in fact one of influence. The essential question is whether A or X, the alleged influencer, "is in a position to influence [B] into effecting the transaction of which complaint is later made". It is not necessary for B to show that the relationship was one of domination, but clearly the finding of a relationship of influence should not be made on slim grounds, and a mere inequality of bargaining power between B and the alleged influencer cannot suffice.

A relationship of influence can be established by proof that B "placed trust and confidence in the other party in relation to the management of [B's] financial affairs", but it would be a mistake to think that B must prove such trust and confidence existed specifically in relation to financial affairs, or that the only relevant relationships are ones of trust and confidence. The question is one of influence, and a relationship of influence may be proved by, for example, evidence of B's dependence or vulnerability. Conversely, closeness or mutual trust between the parties will not, by itself, suffice; nor will the fact that the relationship imposes fiduciary duties on the alleged influencer. Everything turns on the specific facts: "relationships which may develop a dominating influence of one over another are infinitely various. There is no substitute in this branch of the law for a 'meticulous examination of the facts'". Indeed, there may be cases in which the facts are very similar, but different results are reached as to whether the relationship is one of influence. One point worthy of note is that the mere fact that the relationship falls into a particular general category (e.g. husband and wife; older person and younger friend) will not be enough, by itself, to establish a relationship of influence: such a general characterisation should suffice only if the type of relationship is in the special class. Moreover, a court will be wary of acting on an assumption that all relationships of that particular general class would then be ones of influence, as this could lead in practice to undue influence being presumed whenever a large gift is made within such a relationship. In *Re Brocklehurst*, for example, Lawton LJ considered that it would be "unfortunate" and "unfair" if, whenever a "wealthy man" were to make a generous gift to "his friend of lower social and financial status", the law then "required the recipient to justify the gift and, if he failed to do so, to adjudge that he should suffer the smear of having exerted undue influence on the donor". The same point lies behind the (somewhat overstated) judicial observation that, if all marital relationships were seen as relationships of influence, so that a presumption of undue influence arose whenever a generous gift was made between spouses, this would "render married life intolerable". It is therefore clear that, in a family or marital relationship, there must be some additional factor, such as circumstances of illness leading to dependency, or a background of trust and confidence in relation to the family's financial affairs, if a relationship of influence is to be found."

Equitable Defences:- Laches, Acquiescence and Delay

32. *Snell* at [5-011] explains that delay alone is not sufficient to defeat a claim. The question is whether the lapse of time means that A would now suffer irreversible detriment as a result of B's delay in claiming relief, perhaps because B has abandoned the right.

33. *Snell* at [15-013] explains the operation of affirmation as follows:

“Where a right of rescission exists, it will be lost if the person entitled to rescind elects to waive that right and affirm the contract after the material facts conferring the right have come to their notice or they are otherwise freed from the factor which vitiated their consent. ... It seems that both the facts which give rise to the right of rescission and the existence of that right must be known to the entitled party before they can be considered to have waived the right, but the requirement to know of the right is controversial. Affirmation requires express words or unequivocal conduct, but an intention to affirm is not required.

34. A lifetime gift procured by undue influence would be voidable and equitable defences would be available. The law is not settled whether a lifetime gift made by a mentally incapable donor is void or voidable, see the discussion of the authorities by Mr Christopher Nugee QC (as he then was) in the case of *Sutton v Sutton* [2009] EWHC 2576. If voidable Stephanie, as Roland's executor, could potentially acquiesce in or affirm the Transfer.

Documentary Evidence of Roland's Finances

35. The CHAPS transfer form of 29 September 2015 contains Roland's name and bank account details and Corinne's bank account details as beneficiary. The amount of the Transfer is stated in figures and in words and in the section “Instructions to Beneficiary's bank” the words “gift to daughter” appear. Roland signed his name under the heading “customer signature.”

36. The only statement for a bank account of Roland's that has been disclosed was one for his “Advantage Reserve” account from the period 3 January 2013 to 1 February 2016. That statement was one dating from after Roland's death as it is addressed to Stephanie and refers to the account holder as “the late Roland Blythe”. The opening balance on the account was £266,905.00. On 21 August 2013 £200,000 was debited and apparently credited to account 605008-27333892, which has the sort code of a NatWest account. On 23 September 2014 there was a transfer in from this second NatWest account of £896.00. On 28 September 2015 there were two transfers in from the second NatWest account of £200,000 and £728.11. On 29 September 2015 the CHAPS transfer to Corinne's account of £200,021.00 (the £21 would appear to have been the charge) appears. On the same day a funds transfer of £45,000 was made to account 42643856. The other transactions on the account over the period resulted in a closing balance of £813.33.

37. The £45,000 transfer out on 29 September 20015 is explained by a NatWest letter and accompanying forms addressed to Roland bearing that date explaining the setting up of a new “Fixed Term Savings Account”. The “Your Choice” section makes apparent that Roland was intending to transfer a balance to this new savings account

the purpose of which was stated to be “nothing in particular – for safe keeping.” That section was signed by Roland and dated 29 September 2015.

Evidence from the Medical Records

38. No medical expert was called by either party. Roland’s medical notes were in evidence, having been obtained by Corinne. I set out in the following paragraphs the details of what seem to me the key entries including those on which Stephanie places particular reliance.

39. The GP notes record that Roland had problems with memory and a mini mental state examination (MMSE) score of 17 (out of 30) in the early part of 2013. On 8 July 2013 Roland visited the Older Adults Mental Health Team & Memory Service at Broad Street Health Centre for the first time. The consultant psychiatrist’s letter reporting the visit to Roland’s GP explains that Roland was accompanied by his daughter and partner Vanita. The letter records Vanita reporting that Roland had “been exhibiting memory problems for 2 years and gradually deteriorating.” The letter goes on to say that Roland was self-caring and independent but that during the interview he was “vague, muddled, forgetful, exhibiting global impairment of memory and cognition.” A MMSE score of 16 was recorded. The psychiatrist’s opinion was that Roland showed “cognitive impairment with underlying dementia mainly of vascular type (moderate in degree).” A nightly dose of 5mg Donepezil (a cholinesterase inhibitor), was prescribed, to be increased to 10mg after 4 weeks if tolerated. The psychiatrist also recorded that he explained lasting powers of attorney to the daughter and partner.

40. Roland’s next appointment at the Memory Clinic was on 19 November 2013. Again, he was accompanied by Vanita and a daughter. The psychiatrist on this occasion recorded that Roland and Vanita reported Roland’s improved functioning while taking the medication, no side effects and that fluctuations of memory had reduced as had his tendency to get angry following frustration. Roland on this occasion scored 21 on a MMSE. The psychiatrist concluded from the family report and the improved score that Roland had benefitted from the Donepezil and the medication was continued.

41. The six-month follow up visit to the Memory Clinic took place on 19 May 2014. Vanita accompanied Roland. On this occasion the psychiatrist’s letter recorded that:

“[Roland] reported that he feels much better and does recognise there are times when his memory is poor. His partner reports that there have been improvements since he has been on this medication. He is much more interactive and manages to go to Walthamstow market a few times a week by himself using the bus and returns home. He is independent in his activities of daily living and needs only little prompting.”

42. A score of 23 for a MMSE was recorded. The psychiatrist’s conclusion was that Roland had benefitted from the Donepezil, which was to be continued at the 10mg dose. Since Roland had been stable he was discharged from the Memory Clinic, the psychiatrist having explained to Roland and Vinita that he could be re-referred should the need arise.

43. On 25 November 2014 the GP notes record a discussion with Vanita who reported Roland’s discharge from the Memory Clinic and his improvement on medication such

that he was going out and meeting people. The note records “She is looking after him and says he is giving money to others and looking for somebody to talk to and for respite care.”

44. On 20 January 2015 the GP notes contain a record of Roland’s annual dementia review. The notes record Roland’s diagnosis of borderline dementia. It is also recorded that Roland was able to dress, eat, wash and do some shopping, but needed prompting to do small tasks like flushing the toilet. The notes also record that Vanita was finding the situation stressful “due to money constraints” and the GP advised her to book an appointment for herself.

45. On 19 June 2015 the medical notes record that Roland went to the radiology department at Queens Hospital when he should have attended an appointment with a Doctor Rai, presumably at the GP surgery. This was reported to the GP surgery by telephone and the caller reported that Roland seemed very confused such that it was suggested arranging transport for future appointments as he was unable travel alone.

46. On 30 August 2015 Roland was seen by a doctor following an NHS111 referral as a result of experiencing lower back and flank pain and on 2 September 2015 attended at A&E at Queens Hospital. On neither of these occasions was any note made about confusion or similar.

47. On 2 September 2015 under the heading “Dementia Care Plan” the GP notes record a visit accompanied by his daughter and partner who reported:

“he is stable and carer and family remind him for medication. Eating, drinking well. Partner does the cooking and housework. Carer helps with personal care.”

48. On 11 November 2015 the GP notes record an annual dementia review. The note refers to family concerns about short term memory, forgetfulness and forgetting of addresses. The result was a re-referral to the Memory Clinic.

49. On 1 December 2015 Roland attended the Memory Clinic with his daughter. The daughter reported that “his dementia has progressed further and he is more forgetful. His main concern was that he does not do anything to keep his brain stimulated nor does he want to attend any day centres or clubs as he has to pay for it. Basically he spends all his time indoors doing nothing.” The psychiatrist reported being unable to complete a formal cognitive assessment and that Roland appeared very disorientated in time and place. The conclusion was that Roland showed signs and symptoms of advanced dementia with no challenging behaviour.”

50. The next significant medical event was Roland’s admission to Queens Hospital on 6 January 2016. Medical investigations into his back pain revealed prostate cancer with spinal metastases. Roland remained in hospital until 24 March 2016. He was re-admitted on at least another two occasions in 2016. In several places the medical notes refer to Roland not having capacity specifically as to the matter of his discharge. It is apparent that from the time of his January 2016 hospital admission Roland’s physical and mental condition deteriorated substantially and that evidence in the medical notes after this date are of no assistance in determining Roland’s condition in 2015 or earlier.

Evidence from Correspondence Relating to the Administration of the Estate

51. Stephanie instructed Malcolm & Co to assist with the administration of Roland's estate. On 16 August 2018 Ms Goldman of that firm emailed Corinne to enquire about the Transfer. On 17 August 2018 Corinne responded stating that the Transfer was a gift. On 21 August Sally Goldman sent a further email enquiring whether the 2013 transfer of £200,00 to account ending 892 was a transfer to an account belonging to Corinne.

52. Corinne responded that the account ending 892 was not hers, that the gift was made in 2015 and that although she and Courtney had a power of attorney, she was not managing Roland's finances in 2013.

53. On 26 August 2018 Ms Goldman emailed again requesting a copy of the power of attorney. Corinne responded enquiring why it was needed and saying that it should be available online. Ms Goldman's response was that it might be available online, but it would be more convenient if Corinne was able to supply a copy.

54. On 25 September 2018 Stephanie emailed Corinne. She wrote:

“I am aware that previous discussion has taken place with you in regards to large sums of money taken out of dad's account. Therefore the final amount of your inheritance will compensate for this.”

55. Corinne's response of the same day addressed to Stephanie but copied to Courtney and to Ms Goldman included the following:

“You requested for copies of the POA, please speak to your solicitor about this. I have informed her via previous emails that I cannot locate his POA and suggest that she get this online. Please also note when dad passed, his POA no longer comes valid therefore, it was not deemed necessary for me to have to hand. Therefore I am not in agreement for you to deduct out inheritance, in fact I find this response intimidating and quite a threat. Sally, your response would be appreciated.

“In regards to the money, my father gave me, it was a gift. Anyone can present a gift and this should not have a bearing of my inheritance being deducted. The gift was provided before out father passed away. You should not be in a position to determine that i do not get what dad has willed. Dad made it clear in his will that his will should be shared equally. Sally, i again ask that you instruct or svfise your client and confirm what i have said.”

56. Ms Goldman's response on 27 September said:

“Your father can of course make you a gift, although we note that it was at a time when he was not in control of his own affairs, but the point is that the £200,000 is no longer in the estate except nominally.”

The email went on to suggest that because Ms Goldman understood that the effect of the gift was to make Roland's estate liable to IHT it would be reasonable for Corinne to bear the bulk of that tax. The email asked again for Corinne to produce a copy of the power of attorney.

57. Corinne chased for an update in January 2019. In response Ms Goldman again requested a copy of the power of attorney.

58. On 13 March 2019 Ms Goldman emailed Corinne again explaining that the £200,000 gift gave rise to an IHT liability and that, in order to complete the necessary schedule, she would need Corinne's written authority, the alternative was for Corinne to provide contact details for HMRC to make direct contact.

59. Corinne's response was dated 16 March 2019. She advised that she wanted Ms Goldman to add the gift to the IHT schedules and did not wish to be contacted directly by HMRC. Corinne also pointed out that the residence nil rate band would apply to Roland's estate.

60. On 15 October 2019 Ms Goldman signed the IHT400 for Roland's estate. The Transfer was included in form IHT403 as a gift and carried forward to the calculation section of the main form. Once the residence nil rate band was allowed for no tax was payable.

61. On 4 March 2020 HMRC wrote to Corinne confirming that on the basis of the information held no tax was payable on the gift.

62. On 11 August 2020 and 18 August 2020 Malcolm & Co wrote two slightly different letters to Corinne suggesting that, if the transfer was made when the power of attorney was in place, consideration would need to be given to whether it was a proper transfer and, if it was made before the power of attorney, the circumstances might also need to be investigated. The letters explained that it was proposed that distributions be made to Stephanie and Courtney (but not Corinne) pending satisfactory responses.

63. On 3 September 2020 Courtney emailed Ms Goldman. He reported that Roland had told him he had offered to buy Stephanie her house sometime before he made the gift to Corinne, but Stephanie turned him down because the house was too small. Courtney added that some time after the gift to Corinne, Corinne had told Courtney that Stephanie had requested money to buy her house, but Roland had said no.

64. Wright Hassall, solicitors, were instructed by Corinne and responded by letter dated 18 September 2020 to the Malcolm & Co August letters. The letter explained that the power of attorney had been registered at an earlier date than the Transfer, but that Corinne had not used the power of attorney until 2016 when Roland had lost capacity.

65. After a further exchange of solicitors' letters in which each side maintained their position there was a period of about a year in which there is no evidence of any further step taken by either side.

66. In late 2021 Corinne and Stephanie exchanged correspondence. Corinne was pushing Stephanie to complete the estate administration.

67. There was then some further inter-solicitor correspondence, in the course of which Malcolm & Co sent the draft estate accounts to Corinne's present solicitors,

Roythornes. On 8 March 2022 Roythornes sent a letter before action dated 8 March 2022 requesting that steps be taken to finalise the administration of Roland's estate failing which a Part 8 Claim seeking directions towards that end would be issued. Malcolm & Co's response included the first mention of "undue influence".

Witnesses of Fact

68. Corinne, Courtney and Oscar Osmar gave evidence on behalf of Corinne. Corinne's witness statement of 19 April 2022 was made in support of her Part 8 Claim. She put in a further statement dated 23 February 2023. Courtney's witness statement was dated 30 January 2023. Mr Osmar's statement was dated 7 February 2023.

69. Stephanie and Vanita gave evidence on behalf of Stephanie. Stephanie's first witness statement was dated 11 May 2022. She put in a further witness statement dated 23 February 2023. Vanita's witness statement was dated 23 February 2023.

70. Corinne was defensive in giving her evidence. This manifested itself when asked to explain why she had not mentioned taking Roland to the bank on the occasion of the Transfer in her first witness statement and when asked why her responses to Ms Goldman and Stephanie's correspondence in August and September 2018 had not, if as was her case that Stephanie knew all about the Transfer, mentioned that fact. She was reluctant to commit herself to answering questions about Roland's confusion or accept that the record of her words, for example at the Memory Clinic visit on 1 December 2015, was accurate if she perceived it went against her case. I do not, however, attribute her defensiveness to any unreliability, save for one aspect with which I will deal in due course, in her overall recollection of matters, rather than to the stress of the giving evidence. She was the only witness who had any grasp of the chronology of Roland's later years and health. It is unsurprising that she could remember what would to her have been the memorable occasion on which the Transfer was made.

71. Stephanie was more open than Corinne, although she was very reluctant to answer the question how often she visited Roland. However, she was unable to remember the date of almost anything of significance. The reason is undoubtedly that it was not until the date of her Part 20 Claim that Stephanie gave significant thought to Roland's circumstances at the time of the Transfer some seven years previously and by then had no detailed or time specific recall.

72. Vanita was also unable to put a date to anything about which she was asked in cross-examination. The explanation in Vanita's case is the same as in Stephanie's.

73. Courtney's evidence was that Roland had no problems with memory in the period 2014 to 2017 and that the only example he could remember of Roland being confused was muddling his children's names. Given Roland's clear deterioration in the last 18 months of his life, I can attach little weight to his assessment of Roland's capacity generally.

74. Mr Osmar's evidence that Roland told him he wanted to assist with the purchase and of his attending at the Property with Roland, discussing its possible purchase and providing a report on the condition of the Property to Roland was not seriously challenged. Mr Osmar was candid in his inability to put a date to the event and his

explanation that he only kept records for around two years was an entirely credible explanation for his report no longer being available.

75. What is remarkable about the witness evidence in this case is how sparse and unparticularised it is.

Family History and Money

76. Stephanie's evidence was that there was an estrangement between Corinne and Roland prior to 2013 because he refused to buy her a car, and that they only reconciled following the death of their mother. She said that the estrangement was the reason Corinne's address was not included in the Will. Corinne denied this estrangement and denied that she had asked Roland to buy her a car.

77. To the extent that there was an estrangement it cannot have been serious or long-lasting since Corinne was included as an equal beneficiary of residue in the Will and by 2013 she was involved in Roland's life, accompanying him to the Memory Clinic in July 2013.

78. Of the three children Corinne was the most regular visitor to Roland and she was the daughter referred to in the GP and Memory Clinic records. Corinne and Vanita each took Roland to appointments and to the bank and as is apparent from the medical notes, they sometimes both accompanied him to appointments.

79. Vanita and Corinne were not on good terms at any relevant stage and their relationship deteriorated after Roland's cancer diagnosis because of disagreements about his care.

80. Roland and Vanita lived independently in their own house, although at some stage a care package was needed and arranged. Corinne acknowledged that she took responsibility for arranging the care package because, as a social worker, she knew the system. Stephanie's evidence was that a full time live-in carer was in place by the time of the Transfer, Corinne's evidence was that full time care was only put in place after Roland's cancer diagnosis, so sometime in 2016. I consider that Corinne's evidence, supported by the detail that it was the cancer prognosis that led to the need for full time care is more reliable.

81. Stephanie's witness statement said that Roland was not generous with money and Vanita's witness statement said the same. Apart from the example of the car, another example Stephanie gave was that she was told by Vanita that Corinne had asked Roland to buy her a fridge and that he had initially refused to do so. However, Vanita's evidence about the incident is that she persuaded Roland he should buy Corinne the fridge and he did so.

82. As to the fridge Corinne's evidence was that it could not have been Vanita who persuaded Roland to buy the fridge as she was not speaking to Vanita at the time and in any event she considered the fridge incident to not be a big deal.

83. Roland being reluctant to spend money is consistent with Vanita expressing worries about money as recorded in the GP notes in January 2015 and with the

psychiatrist being told on 1 December 2015 that he did not want to pay for attending clubs.

84. Vanita and Corinne both said in their evidence that Roland did not discuss his finances with them.

85. I conclude from this evidence that Roland was generally careful with money and frugal, but I cannot conclude from it that Roland would not have been willing to expend a significant sum by way of a gift to enable one of his children to purchase a property if he considered it a sound proposition. He did eventually pay for the fridge. I also conclude that he was not in the habit of discussing his financial affairs with his family.

Capacity

86. it was common ground that there was never a formal assessment of Roland's capacity to manage any aspect of his financial affairs, even in 2016 when Corinne began to use the power of attorney.

87. Corinne's evidence was that until 2016 Roland had capacity, that he was stubborn and he would not have allowed her to take over his finances before 2016 when he was diagnosed with cancer and, in her view, lost capacity.

88. Corinne was circumspect about answering questions about Roland being forgetful or muddled or confused. When asked about Roland being muddled at the July 2013 Memory Clinic appointment Corinne conceded that he might have been muddled on that day but that he improved after being prescribed medication. She was also reluctant to accept the December 2015 Memory Clinic record of her own report of Roland's condition having worsened.

89. Stephanie's first witness statement included reference to an occasion in about 2010 when Roland had been going to paint a ceiling at her house, but when she returned from work she found him asleep. She also referred to him sleeping more than he used to generally but the only occasion she was able to date was in 2013. Her other evidence about Roland's falls, loss of appetite and confusion was not time specific.

90. Stephanie's second witness statement added no evidence from her own knowledge concerning capacity.

91. Vanita's witness statement referred to Roland being diagnosed with dementia in 2014. Apart from that she said that it was difficult to be specific about dates. She referred to Roland losing concentration, being absent minded, going out and coming back without his money or his wallet and her needing to take him to the bank so that he could withdraw money inside rather than at the ATM, which meant he would be less likely to lose it. When asked specifically about losing money or his wallet Vanita was unable to remember when it was but thought Roland might have lost his wallet twice.

92. Vanita was asked about an occasion (not identified by date) when her son Daryl had bought items online with Roland's bank card without permission. Vanita explained that Corinne and Courtney had wanted to go to the police, but Roland just wanted the money back. She agreed that Roland was able to make a rational decision in that respect.

93. Vanita also referred to accompanying Roland to the Memory Clinic a couple of times and recalled that he was not able to answer questions after 15 minutes. She said that he deteriorated rapidly after 2014. In cross-examination when it was put to her that Corinne said the rapid decline was in 2016 Vanita said that she could not put a date on the decline, she could not remember.

Trust in Relation to Financial Affairs

94. Corinne explained in cross-examination that she and Courtney went to the solicitors who had drafted Roland's will in 2013 and had a power of attorney drawn up. [It was unclear to me whether in fact there were powers of attorney for both property and health, but the evidence of the witnesses was concerned with the property one and that is the power of attorney to which reference is made in this judgment]. She explained, as she had to Ms Goldman, that she was unable to locate a hard copy. She explained also that she had used it to do Roland's shopping only in 2016 when Roland was really ill following his diagnosis and was confined to the house. She denied that in her role as attorney she had investigated what other accounts or savings Roland held.

95. Corinne's account of only using the power of attorney from 2016 was uncontradicted.

96. Vanita's evidence was that she used to file all Roland's correspondence, bills and bank statements as they arrived by post in tabbed files. She said this carried on until the bank statements stopped being sent, which coincided with Corinne starting to use the power of attorney from 2016 and also with Corinne and Courtney taking Roland's paperwork away. Stephanie agreed that that was the position and that it was Vanita who helped to keep Roland organised. Vanita denied having noticed any bank statement showing the Transfer.

97. In connection with Corinne and Courtney obtaining power of attorney, Vanita said that Stephanie had thought it was unnecessary because Vanita was handling most of Roland's affairs although, beyond filing correspondence, there was no specific evidence of any matter handled by Vanita.

98. Vanita said that Roland placed trust in Stephanie and not in Corinne and that it was not Roland's decision to appoint Corinne and Courtney as attorneys, it was their own and that Roland may not have understood. Vanita recalled Roland saying of Corinne that she "put on a false smile", she could not say when.

99. Vanita also said that Roland would rely on Stephanie for anything that Vanita could not help with, an example was typing letters.

100. Stephanie agreed that Roland did not trust Corinne or had difficulties trusting her.

Knowledge of the Transfer

101. Stephanie's witness statement referred to being shocked when she discovered the Transfer in 2018. The first reason given for her shock was said to be that the Transfer came from a joint account she held with Roland. The second reason was said to be Roland's estrangement from Corinne, but in the next section of her statement Stephanie confirms that the reconciliation had happened before the date of the Transfer.

102. The existence of a joint bank account was echoed by Vanita who said that at some stage Corinne found a statement for the joint account and arranged to transfer the money in the account into bonds and shares. Stephanie was unable to explain what joint bank account this part of her statement was referring to and in the absence of any disclosure of Roland's finances by Stephanie it is not possible to conclude that the Advantage Reserve Account was at any time a joint account held with Stephanie. If it had been a joint account Stephanie would have been the surviving owner and the statement in evidence would be unlikely to have referred to the account as that of the late Roland Blythe.

103. Corinne's position was that Stephanie knew of the Transfer because Roland told her about it at the time. She conceded in cross-examination that Stephanie might not have known the amount of the Transfer.

104. In Corinne's second statement she referred to a meeting with Stephanie in January 2023 at which Stephanie told Corinne that Vanita had told Stephanie about the Transfer.

105. Stephanie denied that she was told of the Transfer by either Roland or Vanita and her position was that she only discovered it when she sent financial documentation to her solicitor in mid-2018 and Ms Goldman talked to her about it. In answer to a question put to her she said Roland never mentioned giving away large sums of money

106. Vanita said that the first she knew of the Transfer was when she was preparing her witness statement. Accordingly, she denied that she could have discussed the matter with anyone at any earlier time and denied that it was a matter that Roland would have discussed with her in 2015. If Vanita's evidence is correct it cannot be right that it was Vanita who told Stephanie about the Transfer at any time before February 2023.

107. I conclude that Stephanie did know that Roland had made a gift to Corinne to assist with the purchase of the Property before his death, but that she did not know the amount and that was what shocked her. I do not consider it likely that Roland would have told her that given the evidence of Vanita and Corinne that he was not in the habit of discussing his finances. I conclude also that it was the discovery of the amount of the Transfer that caused her to be shocked and the reasons given in her statement were illogical embellishments of the reasons for that shock, to distract from the real reason for it.

108. I conclude also that Corinne knew that Stephanie probably did not know the amount of the Transfer and that was why she was somewhat cagey in her responses to questions in 2018. If Corinne was right that Roland had told Stephanie about the Transfer and its amount and that he had had discussions with Stephanie about the possibility of a similar gift to her either before or after the Transfer, it would have been natural for Corinne to mention these matters in the correspondence with Ms Goldman and Stephanie in 2018. I conclude that Corinne has added these details and that she must also have discussed them with Courtney as early as September 2020 when he mentioned them in an email.

Estate Administration

109. Stephanie was unable to coherently explain why the £200,000 was treated by her solicitor as a gift in the IHT return, notwithstanding that she was adamant that a gift had not been made. Her explanation was that it was about “keeping her roof over her head.” In answer to a question what she knew now that she did not know at the time of the IHT return to justify denying the Transfer was a gift, Stephanie said that at the time she did not know Corinne had manipulated Roland (an allegation which formed no part of the pleaded case and was not put to Corinne) but knew that now. She also said that she had never brought her own formal claim because she did not want to be involved in a legal process.

110. In relation to the uncollected insurance policies Stephanie maintained that which she said in her first witness statement. In order to collect in the policies, she would be required to sign a declaration that she would distribute the proceeds according to the will. She felt unable to sign such a declaration because, if the estate is entitled to the return of £200,000 from Corinne but is unable to recover it, the estate may need to adjust the payments under the policies to give effect to the will.

111. Stephanie’s 2018 proposal of compromise whereby Corinne kept the £200,000 and the balance of the estate was divided between Corinne and Courtney was an obviously practical solution. I conclude that Stephanie made it because she recognised the likelihood that Roland had made a gift to Corinne, but hoped to secure a better financial outcome for herself and Courtney with Stephanie’s consent. I conclude also, that she did not wish to bring formal legal proceedings to force Corinne to return the £200,00 as she knew that Corinne could not afford to repay without losing her house. I conclude Ms Goldman, who must have consulted with Stephanie recorded the Transfer as a gift in the IHT Form, because they believed there was going to be no challenge to that position because Corinne would agree to the compromise. The position with the policies was different because by the time Stephanie needed to sign for them she intended that they would not be distributed in accordance with the Will, but would be factored into the hoped for compromise.

112. So far as Stephanie was concerned matters changed only when it became clear that Corinne would not accept the compromise, by her issue of the present claim.

113. Stephanie could not explain why she had not disclosed further bank statements to enable Roland’s financial situation in 2015 to be established. She was also unable to provide a cogent explanation of why she had not produced Roland’s medical records, notwithstanding that she relied on them as a core part of her case. In relation to the Transfer she suggested that she had made a complaint to Nat West about the incident but had not kept the details.

Analysis - Capacity

Size of the Transfer

114. Stephanie’s pleaded case was that by the Transfer, Roland was giving away two-thirds or the majority of his assets or as Mr O’Sullivan expressed it the majority or 80% of his liquid assets. However, despite being Roland’s executor with access to his financial records, Stephanie failed to fully evidence Roland’s financial position in 2015. The Advantage Reserve Account was clearly not an account from which ATM or other cash or card withdrawals were made by Roland, it is therefore certain that Roland had at least one other bank account.

115. No evidence was adduced by Stephanie that the Transfer had any impact on Roland's ability to afford any aspect of his day to day needs.

116. The available documents evidencing Roland's asset position are the Advantage Reserve Account statement, the Fixed Term savings letter and forms dated 29 September 2015, the IHT400 and the draft estate accounts.

117. The accounts and IHT400 indicate that at the date of his death Roland owned an interest in his home worth some £153,000, cash of some £84,000 and other amounts bringing the total to about £240,000.

118. It appears from the statement that for the two years prior to the Transfer its amount had been invested in a NatWest bond or product or, less likely, lent to a person with a NatWest account, such that it produced annual interest and was paid back to Roland after the second anniversary of being invested.

119. The Fixed Term account documents show that on the same occasion as the Transfer, Roland invested £45,000, representing nearly the entire balance of the Reserve Account, in a further fixed term savings account for "nothing in particular- for safe-keeping". The fact of that fixed term investment being made reinforces the likelihood that the amount of the Transfer had been invested in a similar manner for the previous two years.

120. I conclude therefore that amount of the Transfer and the further sum deposited in the Fixed Term account were surplus to Roland's day to day and even medium to long term needs.

121. If Roland's asset position did not significantly change in the last two years of his life the Transfer represented some 45% of his total assets or approximately two thirds of his liquid assets. In the absence of evidence adduced by Stephanie in this respect, I am prepared to assume that the Transfer was of no greater a fraction of his total or liquid assets than I have calculated.

122. Although the effect of the Transfer would be to make the overall division of Roland's assets at his death unequal and thereby not accord with the provisions of the Will, its effect would not be to deprive the other residuary beneficiaries of all or virtually all benefit under the Will.

123. While the Will demonstrated an intended equal division of his assets among his children in England at the time it was made, there was nothing to prevent Roland choosing to re-allocate his assets and thereby favour one child over another whether by a new will or the making of a significant gift. Roland's remaining assets were still significant in amount.

124. Applying the *Re Beaney* approach, Roland would not have needed the degree of capability of understanding of the effect of the Transfer that would be required for the making of a will.

Mental Capacity

125. As to the burden of proof as to capacity, the medical evidence in this case has been adduced by the party defending the transaction, the party challenging the transaction has adduced no medical or expert evidence. Each party has adduced some lay factual evidence as to capacity.

126. In assessing the issue of capacity there are three sorts of evidence: the medical evidence, here in the form of the records but no expert, the evidence of other witnesses and the evidence surrounding the Transfer. I must look at all of that evidence.

127. Roland was seen by psychiatrists at the Memory Clinic on four occasions. He was diagnosed with moderate dementia on the first occasion, was prescribed with Donepezil which led to an improvement in his condition after 3 months and then 6 months. He was then discharged by the Memory Clinic. He was reported to the GP as “stable” on 2 September 2015. Only when he was seen again at the Memory Clinic some two months after the Transfer, was he reported as having worsened.

128. During the period of discharge from the Memory Clinic there are the GP entries of 27 November 2014, 20 January 2015 and the occasion in June 2015 when Roland turned up at the wrong doctor’s appointment, which are relied upon by Stephanie as showing confusion and potentially incapacity on Roland’s part.

129. On no occasion was the person making the record or note of the interaction with Roland assessing or recording any assessment of Roland’s ability to understand the Transfer. A diagnosis of dementia does not equate to a blanket assessment of incapacity and occasional episodes of forgetfulness do not do so either. The evidence of the visits to the Memory Clinic suggests that there was an improvement as reported by the family and measured by the MMSE scores. Even on the first visit when the MMSE score was at its lowest the psychiatrist discussed powers of attorney implying that Roland would then have had capacity to execute one.

130. I have not had the benefit of expert medical evidence to assist in the interpretation of the medical evidence and in particular of the MMSE scores. I note from the decision in *Gorjat v Gorjat* [2010] EWHC 1537 that the experts in that case were agreed that the MMSE is not a test of decision-making capacity but that there exists a correlation between capacity assessment and MMSE scores and that the majority of persons with MMSE scores of 20 or more would have testamentary capacity.

131. I note that when he was discharged from the Memory Clinic in May 2014, on which occasion his MMSE score was 23, Roland and Vanita had explained to them the possibility of re-referral. That option was only taken up in November 2015, leading to the return visit on 1 December 2015. I infer that had there been any earlier dramatic and persistent, rather than intermittent, deterioration in Roland’s condition Vanita would have sought a re-referral at that earlier time.

132. Stephanie and Vanita’s evidence as to general confusion or forgetfulness was not sufficiently task or time specific to shed any light on Roland’s ability to understand the Transfer.

133. Corinne’s uncontradicted evidence that she only acted under the power of attorney in 2016 is in my judgment illuminating as to the point in time at which a family

member felt it necessary to take active control of Roland's financial affairs because of any incapacity. Prior to that Roland was being taken to the bank by Vanita or Corinne so that he could withdraw money but there is no evidence that Roland was not making all his own financial decisions. Vanita and Stephanie's assistance was limited to filing documents and typing letters.

134. Although Courtney failed to recognise that Roland's capacity deteriorated at all in the period 2014 to 2017, his position from as early as September 2020 has been that Roland had capacity to make the transfer. A position which is contrary to his own direct financial interest.

135. Mr Osmar's evidence of being asked by Roland to report on the condition of the Property, accompanying him there to inspect it and delivering a report to Roland is clear evidence of Roland having the capacity to engage in thought processes and decision-making necessary to purchase a property or make a financial contribution to someone else's purchase of a property, in what must have been a time in the lead up to the Transfer and the purchase of the Property.

136. It is also worthy of note that, although Stephanie said she had made a complaint to NatWest about the Transfer, no material evidencing that complaint was disclosed and Stephanie has not called the bank official who met Roland in September 2015 to give evidence.

137. Mr Osmar's evidence and Corinne's uncontradicted account of the circumstances of Roland arranging to make the Transfer, in particular that he met with the bank official alone to explain what he wanted to do, as well as the content of the CHAPS form and the Fixed Interest Account documentation, are supportive of a conclusion that Roland was capable of understanding the import of the Transfer as well as of investing money for "safe-keeping".

138. I am not satisfied that Stephanie has discharged the legal burden of proof she bears to establish, on the balance of probabilities, that Roland did not have the capacity necessary to make the Transfer as a gift of £200,000 to Corinne,. On the totality of the evidence adduced by Stephanie, no sufficient doubt as to capacity so as to shift the evidential burden to Corinne has been raised. Alternatively on the totality of the evidence, Stephanie has not established her case of incapacity. I am not satisfied that Roland was not capable of understanding the nature and effect of the Transfer had it been fully explained to him. Therefore this ground for avoiding the Transfer fails.

Analysis - Undue Influence

139. Corinne did not take any control over Roland's finances at any time before the Transfer.

140. Stephanie and Vanita were in agreement that it was Vanita who assisted Roland with filing his financial correspondence with occasional help from Stephanie before 2016. Stephanie and Vanita both said that Roland did not trust Corinne. Taken at face value that contradicts the case Stephanie seeks to prove. I have considered whether Stephanie and Vanita can really have meant what they said or whether what they really meant is that they did not trust Corinne. Whatever they meant, I cannot conclude that they meant the opposite of the words they used.

141. Neither Stephanie nor Vanita's witness statements or their evidence given during the course of the trial included evidence of matters from which it might be concluded that Roland and Corinne's relationship at the time of the Transfer amounted to one of trust and confidence or that Corinne had acquired ascendancy over him or even that he was vulnerable, such that ascendancy over him might be acquired. The only evidence that might point towards vulnerability was the medical evidence, but the fact of a person being diagnosed with borderline dementia, without more, does not enable me to conclude there was vulnerability to Corinne acquiring ascendancy over Ronald.

142. Mr O'Sullivan relied on Corinne's involvement in arranging Roland's care package, Corinne providing him with help in attending appointments and taking him to the bank and the fact that Roland must have placed sufficient trust in Corinne to appoint her as attorney and in 2016 took control of Roland's finances, as the material from which to conclude that there was the necessary relationship.

143. He placed reliance on the case of *Paull v Paull* [2018] EWHC 2520 in which Master Bowles was determining whether to set aside a transfer from father to son for undue influence. In that case the Master concluded that the relationship had not changed after the time of the transfer. The Master therefore held that evidence of the father delegating significant control of his affairs to his son after the questioned transfer was relevant to the assessment of their relationship at the time of the transfer.

144. That is different to the case here. Corinne only used the power of attorney and came to have dealings with Roland's finances after he had been diagnosed with cancer and, in her view, his mental health had deteriorated such that she needed to and was able to take over his financial affairs. The loss of capacity and Corinne's assumption of control represented a significant change from the state of affairs at the time of the Transfer, at which stage Vanita and Stephanie were providing Roland with such assistance with his financial affairs as he then required.

145. I can accept that a person appointed as attorney who makes care arrangements for the appointor and provides practical support for them might have a relationship of the type from which undue influence might be presumed. It will however depend on the specific facts of the case, as discussed in the passage from *Snell* to which I have referred.

146. The evidence adduced by Stephanie does not enable me to conclude on an examination of the specific facts here that in the case of Corinne's relationship with Roland he reposed trust and confidence in her in relation to his financial affairs or that she had developed a dominating or ascendant influence over him at the time of the Transfer.

147. As to the second element of the test, Stephanie must show that the Transfer "cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship" [24] of *Etridge*. As explained by Lord Scarman in *National Westminster Bank Plc v Morgan* [1985] AC 686 at 704 a presumption that the transaction was procured by undue influence does not arise unless the nature of the transaction is sufficiently unusual or suspicious that, "failing proof to the contrary, [it] was explicable only on the basis that undue influence ha[s] been exercised to procure it".

148. As I have concluded, the Transfer did not comprise a gift of the majority of Roland's assets, it was of a sum to which he had not had or needed access for the previous two years, it was not necessary to fund his day to day expenses and he had sufficient resources to deposit a further sum in a fixed term deposit account for safekeeping.

149. In Roland's financial circumstances to decide to assist one child with the purchase of a property, even if it impacted the inheritance prospects of the other children who were to benefit under his will, is not a transaction so unusual or suspicious as to be only explicable on the basis that undue influence was exercised to procure it. The Part 20 Claim fails on this ground also.

Delay, Acquiescence, Laches, Affirmation

150. In considering whether there has been acquiescence or laches of a character to defeat Stephanie's claim the question is whether any lapse of time means that Corinne would now suffer irreversible detriment or prejudice as a result.

151. Corinne's Defence to Part 20 Claim relies upon the following particulars:

- (i) Stephanie asked for a similar gift;
- (ii) Stephanie was appointed as executor in 2017;
- (iii) Stephanie represented to HMRC that the Transfer was a gift;
- (iv) Stephanie failed to formulate a claim;
- (v) Stephanie failed to obtain Roland's medical records, which were therefore assumed not to be available;
- (vi) failed to bring proceedings until the Part 20 Claim was brought.

152. I have concluded that Stephanie did not ask for any similar gift and the medical records have now been produced.

153. No particulars were pleaded of the prejudice or detriment that Corinne would suffer were Stephanie's claim to be allowed after the alleged delay and no evidence was adduced on that point.

154. I therefore conclude that, had Corinne's other defences failed, no laches or acquiescence defence would succeed.

155. In Mr Mitchell's skeleton argument he took the affirmation point for the first time saying that the Transfer was affirmed, by:

- (i) Stephanie's agent, Ms Goldman, asking Corinne if Ms Goldman should deal with HMRC regarding the gift;
- (ii) Stephanie's agent signing the IHT forms confirming the Transfer was a gift.

156. To succeed in a defence of affirmation, the affirmation relied upon must be unequivocal. While I accept that the communications to HMRC were unequivocal in their terms, I do not accept that so far as Corinne understood matters that the position was unequivocally affirmed. Corinne at all times knew that it was Stephanie's position that she would not challenge the Transfer as a gift provided that Corinne agreed that the balance of Roland's estate be shared between Courtney and Stephanie.

157. While Roland's estate remained unadministered Corinne must have understood that Stephanie had not unequivocally affirmed the Transfer as a gift but was hoping that a compromise might be reached.

158. Again, I conclude that had Corinne's other defences failed, no affirmation defence would succeed.

Judgment

159. This judgment will be handed down at a remote hearing on Friday 12 May at 2.30pm.