Neutral Citation Number: [2025] EWHC 148 (Ch)

Case No: PT-2020-MAN-000130

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
PROPERTY TRUST AND PROBATE LIST (Ch)

IN THE MATTER OF THE TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES ACT 1996
AND IN THE MATTER OF THE ESTATE OF SHEILA MARY KEEGAN DECEASED

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ
Date handed down: 28 January 2025

Before:

HIS HONOUR JUDGE STEPHEN DAVIES
SITTING AS A JUDGE OF THE HIGH COURT

Between: (Lead Claim: No: PT-2020-MAN-000130)

PATRICIA ANN KEEGAN	**Claimant**
- and -	
1) TERENCE JOHN KEEGAN **(2) RITA CARMEL VARGA**	**Defendants**

AND BETWEEN (Claim No. F02MA445):

TERENCE JOHN KEEGAN	**Claimant**
- and -	
1) MARIE ANNA DARLEY **2) RITA CARMEL VARGA** **3) PATRICIA ANN KEEGAN**	**Defendants**

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James Fryer-Spedding (instructed by **Bridge Law Solicitors Limited**) for **Patricia Ann Keegan**
Terence John Keegan (in person)
Marie Anna Darley (in person)
Rita Carmel Varga did not attend and was not represented

Hearing dates: 21-22 November 2024
Draft judgment circulated: 27 November 2024

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APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10am on 28 January 2025 by circulation to the parties or their representatives by email and by release to The National Archives.
I direct that pursuant to CPR PD 39A paragraph 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.
His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

1. This is my judgment following the hearing of two post-trial applications on 21 – 22 November 2024. I produced my judgment in draft and, as agreed at the hearing and in order to save the need for a further hearing, dealt with all outstanding matters, including any revision to the draft judgment, on receipt of further submissions in writing.

2. In accordance with usual convention in civil family disputes I shall refer to the parties by their first names.

3. At trial I was provided with the principal bundle, a supplemental bundle, the original trial bundle from July 2022 for reference, and an estate accounts bundle produced by Patricia's solicitors on the morning of day two of the hearing.

4. Mr Fryer-Spedding, counsel for Patricia, produced a helpful written opening skeleton and chronology. He also greatly assisted the court as the sole professional advocate at trial. Terence, who ought also to have produced a written opening skeleton under the directions order of DDJ Hassall made 26 June 2024 ("the directions order"), failed to do so without any good or sufficient reason, but did assist the court through his clear and detailed oral submissions. Marie attended, but only as an observer. Rita did not attend. Although Terence suggested that Rita's position was aligned with his own there was nothing received from her, whether in writing or otherwise, which indicated clearly that this was the case.

5. I did not need to hear evidence from any of the parties in order to resolve the disputes which are before me. Oral evidence was not required at this post trial hearing (see CPR 32.2(1)(b) and 32.6(1)). Neither party suggested that it was necessary or desirable for there to be oral evidence and it did not seem to me that it was necessary or desirable.

6. In his directions order DDJ Hassall identified that there were four issues to be determined, as follows:

    a. First, the further identification of the land included within the gift of Heath Cottage made by the late Sheila to Patricia by clause 4 of her will. DDJ Hassall found that the gift of Heath Cottage included a field known as Field 84. This was the land the subject of paragraph 3 of the order made by DDJ Hassall post-trial on 21 July 2022 ("the trial order"). I shall refer to this as the "Field 84 Issue".

    b. Second, the propriety of Terence putting gates and certain other obstructions on the right of way ("ROW") which DDJ Hassall found was also created by the will in favour of Heath Cottage over another field owned by Terence, Field 86, and of Patricia wishing to lay a hard surface to the ROW. This also raises the issue of the further identification of the ROW. I shall refer to this as the "ROW issue".

        Issues one and two also involve a consideration as to whether or not an injunction ought to be ordered against Terence to prevent any further alleged interference with the boundary between Field 84 and Field 85 and the ROW.

    c. Third, the form of transfer by which Heath Cottage (including Field 84 and the benefit of the ROW) is to be transferred to Patricia ("the Transfer Issue").

d. Fourth, the distribution of the estate, after the agreement or determination by the court of estate accounts and the sanctioning of distribution by some person other than Peter D Greenhalgh, Solicitors ("Greenhalgh"), to make that distribution ("the Distribution Issue"). This raises – at least on Terence's submissions at trial: (a) the issue of the proper treatment of Capital Gains Tax ("CGT") on the sale of the Property (as defined in the trial order, being Kings Clough Head Farm, Back Rowarth, Glossop SK13 6ED); (b) whether certain costs and expenses incurred by Patricia are properly to be deducted from the estate; and (c) a complaint about delay by Patricia in the finalisation of the estate accounts and the distribution of the estate. All of these points involve some investigation of the actions of Patricia and her solicitors, Bridge Law Solicitors ("BLS").

7. A further issue, not included in the list of issues for determination was Terence's application for injunctive relief. As recorded in the order, this is because Terence no longer wished actively to pursue the application, so that it was ordered to be stayed until this hearing. Although Terence confirmed that he no longer pursued his claim for an injunction, the justification for his issuing the application it is still relevant to the question of costs.

8. I decided to reserve judgment at the end of the hearing. In order to speed up the post-judgment process and to avoid the time and cost of a further hearing I directed that I should include in my judgment my provisional views in relation to costs on the basis of the open material now available to me, but leave my final determination over until I had seen and received submissions in relation to any Part 36 or other admissible offers when, at the same time, I should summarily assess any costs claimed by Patricia which I might determine she was entitled to receive.

9. The three most significant issues, in substantive terms and/or in relevance as to costs, are the Field 84 issue, the ROW issue and the CGT issue. It would not be a productive use of judicial time and resource, and would only promote delay, to refer to every issue in the level of detail referred to in the documents, in the witness statements and in the oral submissions. I can however confirm that I have read the documents to which I was referred and have read the witness statements and reflected on the written and oral submissions made.

10. In order to avoid unnecessary explanation, I shall treat as attached to this judgment the trial judgment of DDJ Hassall (to whom I shall subsequently refer as to the trial judge) and his trial order. I should also note at this stage that his trial judgment was the subject of an unsuccessful appeal to HHJ Halliwell, sitting as a High Court Judge on the sole issue on which I had previously granted Terence permission to appeal. His judgment can be found at [2023] EWHC 3268 (Ch) and provides a very helpful introduction to the dispute). Terence's further application for permission to appeal HHJ Halliwell's decision was refused on the papers by Falk LJ in the Court of Appeal. It follows that the trial judgment has been subject to judicial scrutiny by three other judges and there is, therefore, no remaining basis for any criticism of his judgment, produced after a hearing lasting four sitting days, which included a site visit.

The Field 84 issue

11. By paragraph 3 of his trial order the trial judge declared that that the property left to Patricia was that edged in red on the plan annexed to the trial order, which included the field known as Field 84.

12. The annexed plan was not drawn to a particularly large scale (1:500). The red edging is both fairly thick and, in the relevant section, drawn in a straight line. It is thus difficult to identify the precise boundary from the annexed plan alone. The single joint expert (see later) described this plan as being of "indicative use" only. It is also important to emphasise that the dispute before the trial judge was about whether or not Field 84 was included within Heath Cottage at all, not about its precise boundary. Thus, although the trial order included both a general and a specific permission to apply, it was not expected at the time of the trial that these provisions were included with the specific intention of addressing an already crystallised issue as to the precise boundary.

13. The issue arose when the surveyor instructed by Patricia to peg out the boundary in accordance with the trial order was met with an objection by Terence that the boundary as being pegged out extended too far into the adjoining Field 85. Again, it is important to bear in mind that by the time of the trial the historic dry stone boundary wall between Field 84 and Field 85 had been removed many years ago, so that the task for the surveyor given the points made above about the plan was not an entirely easy one. The end result was that, rather than taking the measured step of applying to the court for directions, Terence decided to move some of the pegs and the temporary fence erected by Patricia and to erect his own stock-proof fence along where he contended the boundary was. It was this hostile act which led to Patricia making an application to the court seeking an order that Field 84 be marked out with fencing pursuant to the attached plan prepared by her surveyor.

14. For present purposes, it suffices to say that the plan shows the eastern boundary line at the south east corner of Field 84, where it meets the remaining dry stone wall running along the southern boundary of Field 84 and Field 85, as containing a small triangular extension into Field 85 ("the triangle"). It should also be recorded that the eastern boundary line, closer to Heath Cottage itself at the north east corner, was also in issue, because Terence was contending that it lay further to the west, in a dog leg type position, than where Patricia said it was ("the dog leg").

15. By the time the matter came before DDJ Hassall for directions, both parties had obtained their own surveyor's plans, showing the differing positions contended for. What is apparent is that, as with so many boundary disputes, it makes no real difference to Patricia as the declared owner of Field 84 or to Terence as the existing owner of Field 85 which position is correct. However, by this stage both parties had become entrenched in their positions. Sensibly, DDJ Hassall directed that there be a single joint expert's report on the issue of the dimensions of the boundaries of Field 84.

16. Mr Hainsworth of Insepes Ltd was appointed single joint expert and produced a careful and detailed report, to which an equally careful and detailed map was attached, and answered questions from Patricia. Terence did not raise any questions.

17. In a nutshell, and putting matters in broad terms, he concluded that Terence's position was to be preferred in relation to the section close to Heath Cottage itself, whereas Patricia's position was to be preferred in relation to the triangle.

18. Patricia, acting realistically, has accepted Mr Hainsworth's opinion in relation to the dog leg. Terence has refused to accept his opinion in relation to the triangle.

19. Thus the issue as to whether I should accept Patricia's or Terence's case in relation to the triangle is the issue which I must now resolve. In determining this issue (and the ROW issue considered below)

I am engaged in essentially the same task as was the trial judge, namely determining what, on a true interpretation of the will, was Sheila's intention in relation to the boundaries of Field 84 and of the ROW in the light of the evidence about the surrounding circumstances when the will was made and direct evidence of her intentions as testatrix under section 21 of the Administration of Justice Act 1982. The applicable principles are conveniently set out in paragraphs 7 to 10 and 16 to 18 of what I would respectfully identify as HHJ Halliwell's extremely clear and well-reasoned judgment on appeal.

20. Evidentially, in my judgment the position is very clear. As Mr Hainsworth's report and plan make clear, the triangle extends a small extent into what would otherwise be within Field 85 if the boundary line as drawn by him is carried down in a straight line from point E at the southern end of the dog leg below Heath Cottage down to the southern boundary wall. Similarly, it extends a slightly less extent beyond where: (a) the LiDAR 2022[1] evidence shows the historical remains of the wall separating the two fields would run down to and meet with the southern boundary wall; and (b) some stones which can be seen on historic photographs in the same general area ("the stones").

21. Thus, one asks oneself, what was the basis for Mr Hainsworth including the triangle in Field 84? The answer is clear. It is that the 1898 and 1922 Ordnance Survey ("OS") maps clearly show this triangle, with the former also indicating that it was where a well was situated. Further, as he says, the stones are likely to be - because they are in the same location as - the "remnants of brick" identified by the trial judge in paragraph 48 of his judgment. As Mr Hainsworth concluded, "the boundary does not follow a single straight line but more likely has changes in direction akin to the 1898 OS map and the 1922 OS map".

22. Further, he explained that he was unable to find clear evidence of where the historic dividing wall between Field 84 and Field 85 was. This is important because, as he suggested, it would in my view be wholly disproportionate, as well as quite possibly inconclusive, to seek to excavate to expose any covered wall remnants. He also explained that map indicated areas in OS maps may not be the same as physical field areas on the ground and that it is not uncommon for there to be a difference of up to around 3% between the two. This is important, because Terence lays great emphasis on the disparity between the total area for Field 84 shown on the OS maps (1.287 acres) and that as surveyed by Mr Hainsworth if the triangle is included, even though it is not at all great in the overall scheme of things.

23. In my judgment it follows that there is every reason to accept Mr Hainsworth's opinion and none on which, on proper analysis, to reject it. Terence's strongest point, i.e. the location of the stones, falls away once one takes into account the evidence that the probable reason for the triangle is the indication on the OS maps that it housed a former well, the remains of which are probably what could be seen as the stones. Thus, if Terence seeks to rely, as he does, on the stones as being the best evidence of the historical location of the boundary wall, he is in my judgment wrong to do so, because the historical boundary wall would have dog legged out to the south-east at this point to accommodate the well. Even if it is wrong to place emphasis on the evidence of the former well, the

[1] This is a reference to 2022 LiDAR imagery from the Defra website. LiDAR (Light Detection and Ranging) is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth and is therefore of potential use in identifying features such as historical walls.

point remains that the OS maps clearly showed this triangle, and the presence of the stones does not cast any real doubt on the proposition that this was the historical boundary and there is no reason for thinking that it was ever changed, whether on the ground or in Sheila's mind based upon her knowledge of the boundary wall before it was removed between the two fields.

24. In the circumstances, there can be no sensible reason to doubt that the extent of Field 84, as included as part of Heath Cottage in the gift in the will, was its historical extent and as shown on the historic OS maps before the boundary wall between Field 84 and Field 85 was removed. There is no evidence that anything said or done at the time of the removal of the boundary wall, or subsequently up until the time the will was made, could have been thought to indicate that the triangle should be regarded as having been carved out of Field 84 and given to Field 85.

25. I have considered whether this conclusion does unacceptable violence to the trial judge's conclusions at paragraph 48 of the trial judgment that that Field 84 "plainly follows a wedge-type shape which is clear from historic maps. It seems clear to the court that the wall line starts where the remnants of brick are at the point of boundary 81[2]". I do not think that it does, for essentially two reasons. First, because the historic maps which show the "wedge-type" shape include the OS maps, to which the trial judge referred, which clearly show the triangle. Second, because in any event it is an expressly qualified conclusion, being followed by the words: "This can be verified simply, one would have thought, with a simulation of the plot and cross-checked against the recorded acreage on historic maps". What has happened is that, this exercise having been conducted by Mr Hainsworth, it has revealed that: (i) the simulation and cross-check of the plot against historic maps has demonstrated the true position; and (b) the cross-check against recorded acreages is not conclusive either way, given the stated factor of inaccuracy identified by Mr Hainsworth. In any event, since the trial judge was not, as I have said, purporting to determine a boundary dispute in his trial judgment, his comment about the wedge shape cannot be said to have been made when he was applying his mind to this particular issue.

26. Finally, on the merits, it is unattractive for Terence to take the benefit of Mr Hainsworth's analytic approach as regards the dog leg but to seek to discard it as regards the triangle. If the extent of Field 84 is ascertained by reference to the historic evidence which Mr Hainsworth has so carefully assembled and analysed at one end there is no obvious reason to adopt a different approach to the other end.

27. Thus, I am satisfied that the true boundary between Heath Cottage (including Field 84) and the surrounding land is as shown on the Insepes plan.

28. Whilst it may be said that the eventual conclusion has resulted in a score draw outcome as between Patricia and Terence in terms of relative success, what the process has revealed is that: (a) it would have been far more sensible for Terence to have done what Patricia eventually did, i.e. to make an application to the court to determine the true boundary, rather than to take his unilateral action of removing the pegging and temporary fence and erect his own fence; and (b) the costs of the application in relation to Field 84 and, in particular, the costs of the hearing on this point have been incurred in principal part due to Terence's approach including his unwillingness to accept Mr

[2] This was a simple slip – the southerly field is Field 91 not field 81.

Hainsworth's opinion. In the circumstances, on the open material it seems to me that Terence should pay the costs of this element of the case or, at least, a substantial proportion of those costs.

29. An issue was also raised late in the day by Terence as to whether he should be allowed (as he contended) to erect and maintain a stock proof fence at his own expense on the line of the boundary, wherever determined, because he keeps livestock in Field 85 and wants to protect against escape. That seems to me to be reasonable, but only on the basis that the fence is erected strictly in accordance with the markers to be erected by Mr Hainsworth to show the boundary as determined by him on his plan. It ought to go without saying that if it transpires that Terence seeks to obtain some encroachment through this exercise he will almost inevitably pay a heavy price for doing so, in that he will be liable to committal for contempt of court and also be liable to pay indemnity costs.

The ROW issue

30. This issue raises similar issues to the Field 84 issue and my conclusions are broadly similar.

31. Again, the trial judge was asked to determine whether the will should be construed so that the gift of Heath Cottage should carry with it a right of way over Field 86. He concluded that it did. Terence was refused permission to appeal against this decision. He did comply with paragraph 4 of the order, in that he did remove the obstructions preventing Patricia using the gate leading to the public highway.

32. In his trial judgment the trial judge did not deal with the precise location of the ROW. Again, that is not surprising, as no issue was raised in that respect at trial. It is common ground, and the trial judge found, that there was a public footpath along the south of Field 86, running parallel to the dry stone wall separating that field with fields 87 and 85 to the south. In her witness statement in support of her case Patricia referred to this as a track or roadway which was marked in green on the attached plan. In the trial order the ROW was defined by reference to a track, 12 feet in width, shown coloured green between the points A and B on the plan attached to the order.

33. Terence relies on the fact that the plan shows the ROW running next to the wall. However, as with the Field 84 issue, the scale of the map and the thickness of the track as marked make it impossible to conclude that this was consciously intended to show that the 12 feet width of the ROW began right next to the north side of the wall.

34. Instead, it is necessary to have regard to the salient features on the land as at the time of making the will, about which the trial judge was very well aware given his site visit and the evidence he heard. First, the photographs show that there is a gate leading to Heath Cottage which is right up against the southerly wall. Second, they also show that where the track reaches the public highway on the other side of the field there is a short return section of the dry stone wall along the highway, which contains within it a wall stile which is obviously intended for pedestrian use to access the public footpath. To the north of that return section there is a gate post and then a gate leading from the public highway into the field. There is no evidence of this arrangement having been different as at the time of the will.

35. Since the trial judge accepted Patricia's evidence and found that she had driven this route from the public highway to Heath Cottage, it follows that she must have used the route from gate to gate, as would anyone using or thinking of using this as a vehicular route as at the time of the will. It also

follows that this route, if in a straight line, would not run parallel with and immediately adjacent to the wall next to the public highway but, instead, would gradually converge with the wall at the point where the gate to Heath Cottage lies.

36. Terence is driven to accept that the ROW must, at the public highway end, be 12 feet wide where it meets the gate to the highway because, if it was only 12 feet wide from the south wall, it would not enable Patricia to have the full 12 feet for vehicular access because of the length and position of the return section of wall where the stile is.

37. Notwithstanding this, having removed the existing obstructions to the gate, what Terence then did - in what was, I am satisfied, a rather petulant attempt to make life as difficult as possible for Patricia whilst remaining true to the trial order - was to: (a) alter the existing gate to make it open to the north rather than to the south where, because of the natural south sloping lie of the land, it would remain open, so that it has a tendency to swing shut now; (b) erect a short section of fence running in a diagonal into the field from north to south, forcing any vehicle to travel towards the southerly wall; and (c) erect a second gate between the end of that fence and the wall, through which any vehicle must pass, in what was a fairly transparent attempt to force any vehicle using the ROW to travel parallel to the wall towards Heath Cottage. (This gate has more recently been removed by Terence.) Also, because of the lie of the land and the use of the field for cattle, that low lying area immediately to the north of the southerly wall is liable to become poached and, in wet conditions, a "quagmire", thus preventing it from use by normal two wheel drive vehicles.

38. In addressing this aspect of the case, the single joint expert took the eminently sensible approach of plotting the ROW from the middle of the gate at each end of the ROW, taking its overall width as being 6 feet on either side of that that centre line. It is fair to say that there is nothing in the trial judgment which indicates that this was indeed what the trial judge would have decided if asked to do so. However, given the existing site features described above, it is difficult if not impossible to see why he would have come to a different view. There is no obvious reason why the vehicular ROW should be in precisely the same location as the public footpath, especially given the respective locations of the stile and the gate. It is far more obvious that it should be in a straight line from gate to gate and that, I am satisfied, is what the will provided for on its true interpretation. If the point had arisen at the time it is inconceivable in my judgment that anyone would have suggested that it should follow the route contended for by Terence.

39. Terence referred to the authority of Bolton v Bolton (1879) 11 Ch. D. 968, a decision of Fry J, to the effect that it was for the owner of the servient land (i.e. him) to select the route of the ROW, and that where there is a pre-existing path the parties must have intended the route to follow that path. He referred to the evidence of Patricia at trial that she had said that the existing route was parallel to the wall. He said that the only reason why the width of 12 feet was adopted was that he had said that this was the width of the gate.

40. Mr Fryer-Spedding submitted that: (a) the pre-existing footpath is irrelevant to the issue of the vehicular ROW; (b) the evidence does not show that Patricia had said that the existing vehicular path was precisely parallel to and immediately adjacent along its entire length to the wall; and (c) in Bolton Fry J had also referred with approval to the earlier statement of Blackburn J in Pearson v.

Spencer (1863) 1 B & S 571, that this was subject to a qualification that it should be a convenient way. In my judgment all three points are compelling.

41. The first point needs little elaboration. A vehicular ROW may follow the path of an existing public footpath or it may not. It all depends on the circumstances. Here, the presence of the return wall and the stile and then the gate indicates that it would not follow the path at this point because the point of access to the field is different for pedestrians and vehicle drivers.

42. As to the second point, as Mr Fryer-Spedding submitted, in fact all that Patricia had said at trial, in answer to a question from the trial judge about some existing two wheel tracks visible on a photograph, was to agree when he had asked whether they were parallel and further that they ran "alongside the wall" and "parallel to the wall". These explanations, which were not given in the context of her being asked whether the route was parallel to and right next to the wall, as opposed to running from gate to gate, cannot in my judgment be relied upon by Terence as establishing that this was a pre-existing path.

43. As to the last point, as Mr Fryer-Spedding submitted, it cannot have been regarded as convenient that Terence should select, even if he ever had, a route which required Patricia to turn sharp left immediately on entering the field and then drive hard along the boggiest section of the field. Indeed, if the 12 feet was chosen by reference to his evidence as to the width of the gate, that is all the more reason for the ROW as being direct gate to gate.

44. Thus, I am satisfied that the ROW is as shown on the Insepes plan.

45. Terence suggested that the lock on the road gate was to prevent walkers from using the gate and leaving it open and that he had offered to provide Patricia with her own key for access. He also suggested that the reason for the secondary gate and fence was to prevent the livestock from straying. However, it seems to me that the combined effect of his actions was clearly intended to make life difficult for Patricia even if, as I accept, there was a genuine concern about his livestock not straying due to inconsiderate walkers. As he said when I asked him, that could also have been addressed by a cattle grid. Whilst, as he said, that might technically also prevent the ROW from being exercised with animals, as was granted, that was not something he had ever discussed with Patricia and in fact she has no objection to this.

46. Whilst, in the end, Patricia has been willing to agree that Terence may either maintain the padlock as long as she has a key or that he can install a cattlegrid at his cost, she seeks an order that he remove the new fence and rehang the old gate in its previous position. I am satisfied that she is entitled to these orders.

47. Further, Terence has also in the end been prepared to agree that Patricia may lay and maintain at her own expense hardstanding along the route of the ROW.

48. Having regard to the above, and to the history of this dispute, I am also satisfied that the costs of the ROW issue and the need for a trial on the ROW issue have been incurred in principal part due to Terence's unwillingness to act sensibly following the trial judgment and trial order and to accept Patricia's sensible proposals from the start or to accept Mr Hainsworth's sensible opinion. In the circumstances, on the open material it seems to me that Terence should pay the costs of this element of the case, or at least a substantial proportion of those costs.

Is Patricia entitled to an injunction?

49. In my judgment Patricia is entitled to an injunction in the terms pleaded at paragraphs 6 and 7 of the draft order in relation to the ROW issue, given the history recounted above. However, in my judgment the necessity for an injunction in relation to the Field 84 issue in the full terms sought at paragraph 8 has not been demonstrated at this point. First, although unwise, Terence has been vindicated – at least in part – in relation to the true boundary between Field 84 and Field 85. Second, it seems to me that it is not unreasonable to allow him to erect and maintain the stock proof fence. Thus, there should be an injunction requiring him to permit Patricia's surveyor to peg out the boundary in accordance with the Insepes plan and this judgment and not to erect or move the stock proof fence other than in accordance with that plan and this judgment. I am satisfied that a provision in the order that any further dispute between the parties in relation to the subject matter of these proceedings should be referred to me or DDJ Hassall (subject to our availability) to deal with promptly and efficiently is a preferable solution to the full injunction proposed.

Terence's injunction application

50. It follows from the above findings that Terence was, in principle, entitled to complain about Patricia's surveyor marking out Field 84 in the wrong location at the dog-leg, but not to complain about the marking up at the triangle. Moreover, as I have said, what he should have done from the start was to make an application for the boundary to be determined rather than to take unilateral action on the ground and then to seek an injunction.

51. The same is true in relation to the ROW issue. Whilst in principle he was right to say that Patricia should not stray outside the ROW, whether for driving or parking, equally seeking an injunction against her when, as it transpired, he had obstructed the ROW and sought to confine her to the ROW in boggy conditions without accepting from the outset her right to lay hardstanding along the ROW as I have found it to be, was in my judgment plainly unreasonable.

52. In the circumstances I see no reason on the open material why he should not pay the costs of the injunction application.

The CGT issue

53. The issue arises in this way.

54. Under the will both Terence and Patricia were appointed executors and trustees and the Property was given to Rita as to 50% and Marie and Terence as to 25% each. Patricia, hence, did not receive any share in the Property. She did however receive Heath Cottage and Terence also received the farm buildings and farm land.

55. Early on after Sheila's death there was a falling out between Terence and Patricia, in the course of which Terence first obtained a grant of probate for himself on 16 June 2014 and then Patricia obtained a grant of probate for herself alone on 1 September 2014.

56. Further, at the time of Sheila's death title to the whole of the land and property owned by her was unregistered. As relevant to this issue, Terence caused the Property to be registered under title DY487432 in his sole name on 30 September 2014. He says that this was always on the basis that he

was registering title to him in his capacity as personal representative, albeit that it was not possible to state this as such in the Land Registry documentation.

57. Under the trial order, Patricia was given sole conduct of the sale of the Property and was appointed as trustee to convey the same. Greenhalgh was also appointed as the conveyancer as a firm independent of the parties. Paragraph 8 stated that "the costs of selling the property and all liabilities relating to it shall be deducted from the proceeds of sale". Paragraph 9 specified how the gross proceeds of sale should be applied, as follows:

"The gross proceeds of sale shall be applied to satisfy the following liabilities in sequential order (and item (a) will be paid first and item (c) last):

(a) To pay the reasonable legal cost and expenses of the sale: then

(b) To pay the estate agent's reasonable fees of the sale: then

(c) To divide any remaining balance as follows:

(i) 50% to Rita Carmel Varga (but having first paid out of the said share to the Claimant any sum then outstanding under the costs orders made at paragraphs 17 to 20, inclusive, below (in so far as then crystallised in a liquidated sum));

(ii) 25% to Marie Anna Darley; and

(iii) 25% to Terence John Keegan (but having first paid out of the said share to the Claimant any sum then outstanding under the costs orders made at paragraphs 17 to 20, inclusive, below (in so far as then crystallised in a liquidated sum))."

58. The Property was sold (after conveyancing expenses) on 23 November 2022 for £507,042.20. Plainly, CGT would need to be payable on the proceeds of sale by someone. The question was who needed to declare it and pay it.

59. The chronology thereafter is a little involved but can be summarised as follows.

60. Under the relevant legislation a CGT return was required by 22 January 2023 and, hence, there was some urgency to deal with the matter.

61. As early as his email of 8 December 2022 to BLS Mr Greenhalgh of Greenhalgh solicitors was concerned that Terence was asserting that the beneficiaries were responsible to make their own CGT returns. Whilst his view was that this was flawed, he was concerned that he needed to distribute as required by the trial order, and suggested that counsel's advice be taken. In response BLS said that Patricia was "taking the necessary advice".

62. BLS also suggested that Greenhalgh might "wish to send the monies to our third party managed account for holding pending the administration of the Estate, please let me know and I will provide account details". I accept Terence's complaint that it is fairly obvious that this suggestion was a device for Patricia to obtain control of the funds, not least because she wanted to ensure that she could delay paying Rita or Terence their share until such time as the detailed assessment of costs ordered to be paid to her by the trial judge on the indemnity basis had been concluded, even though the trial order was clear that the only costs which could be deducted until the detailed assessment had

been concluded were the costs which he had ordered to be paid by way of interim payment on account of costs.

63. This desire on Patricia's part is clear from BLS' response which suggested, with no evident basis given the express terms of the trial order – or at least without a successful application to vary it, that if Greenhalgh retained the net sale proceeds it should "reserve" £100,000 to cover these costs being payable out of the estate. I also accept Terence's complaint that this, at least in part, explains the somewhat leisurely approach taken by Patricia to dealing with the CGT and the estate accounts generally, given that the costs were not agreed (and thus a detailed assessment avoided) until April 2024. It is perhaps no coincidence that Patricia's application was not made until 9 May 2024.

64. Going back to late 2022, it is clear that Greenhalgh began to feel that it was between a rock and a hard place and, ultimately, did agree to transfer them to BLS managed account.

65. However, counsel's advice was not taken. Instead, Patricia sought advice from Ms Heald, a tax manager with an accountancy practice. In her email dated 10 February 2023 Ms Heald stated that: "I have researched the position for the capital gains tax for [the Property] and unfortunately I have not been able to find a definitive answer. As I am sure you can appreciate, this is a very unusual situation and the rules are quite complex. As well as carrying out my own research I have also reached out to an external tax specialist to confirm the position. There are two main possibilities for how the gain should be reported as follows:

    Disposal from the Estate

    Firstly, the estate could be considered to still be in its period of administration. If the property is held within the estate then it would be the responsibility of the Executors to file a UK Property Return to report the disposal to HMRC. A Self Assessment tax return would also be required.

    The tax liability arising would be payable by the estate before the residue is distributed [to] the beneficiaries.

    Disposal by Beneficiaries

    If the legal opinion is that the estate was finalised when the property transferred to Terrence, he would have effectively been holding the shares intended for the other beneficiaries on trust. The will outlines that Rita and Marie are entitled to a share of the property and the beneficial ownership would remain with them. This means that each beneficiary would be responsible for reporting their share of the gain to HMRC and paying any tax due.

    Whether the property is still held in the estate is a legal matter and you will need to take advice either from the solicitor who acted for the estate or someone who specialises in this area. Would you be able to provide anything in writing which confirms the position? Once this has been determined we can support you in making the necessary submissions."

66. In its letter to Terence dated 24 March 2023 BLS stated that it was awaiting the conclusion of the accountant's investigations. It is unclear what these investigations could have been, given the content of the above email. When he asked for a copy of any advice he was not provided with anything. BLS' letter dated 20 June 2023 enclosed what was said to have been the accountant's advice and calculations but in fact all that was provided were the CGT calculations as prepared by

Ms Heald dated 17 April 2023 and a letter from HMRC acknowledging receipt and levying a late GCT return fine of £100. The calculations showed that CGT of £70,920.01 was declared and it is common ground that it was paid by Patricia.

67. A year later, in response to a further request, BLS still did not directly answer the request for a copy of the advice, stating instead that: "It is a matter of law that CGT was payable by the Estate. The estate was still considered to be in its period of administration at the time of the sale of Kings Clough Head Farm ("KCHF"). As such, since KCHF was held within the estate, it is the responsibility of the Executors of the Estate to file a UK Property Return to report the disposal to HMRC. Therefore, the tax liability arising from the sale of KCHF is payable by the estate before the residue is distributed the beneficiaries".

68. BLS has never provided any explanation as to what advice was obtained, or when or from whom. There is nothing in the fees and disbursements claimed by BLS for its advice or for Ms Heald which indicates that advice was provided to address the issue raised by Ms Heald, internally or externally.

69. On 23 October 2023 Terence obtained his own counsel's advice in writing. Counsel was asked to advise whether the Property was held on an implied bare trust prior to its sale in November 2022.

70. In paragraph 8 he stated that: "It is clear that the Will created a potential tenancy in common in which the farmhouse would be held in trust by Rita, Marie and Terence as trustees for themselves in the fixed shares described in the will. However, this trust would not come into effect until the legal estate in the farmhouse had been vested in all three tenants in common. What appears to have happened is that the legal estate was initially registered in Mr Keegan's name as executor of his mother's Will, and the question I am asked is whether Mr Keegan took as a bare trustee or under some other form of trust".

71. He concluded that, following the transfer of the Property to Terence as a result of the first registration of title, by reason of the sections 1 and 2 of the Administration of Estates Act 1925 Terence, as personal representative, held the Property as a trustee on the conditions set out in the will and that he held the Property on a bare trust since the beneficiaries as "the tenants in common are jointly absolutely entitled to the land as against the trustee – Kidson v Macdonald [1974] STC 54".

72. As a result of this advice Terence made enquiries with HMRC and, after some delay, it said that if he wished to take this further it would be necessary for Patricia to submit a revised return, seeking to reclaim the CGT paid, and for the beneficiaries to submit their own CGT returns. Although he suggested that HMRC had accepted that his analysis was correct, there is no documentary evidence to this effect and I do not accept that it would have done so in such a case.

73. Mr Fryer-Spedding raised initial points of objection to this CGT issue being taken by Terence before me. In particular, he complained that this issue had not been included in any particulars of objection to the estate accounts, as required by paragraph 5 of the directions order. Nor was there any express complaint about it in Terence's witness statements, even though the fact that it had been accounted for and paid by Patricia had been well ventilated in previous correspondence. He submitted that this was compounded by Terence's failure to provide a skeleton argument to enable him to address the point.

74. All that Terence had said in his letter dated 9 October 2024 was that he believed, based on the attached advice from counsel, that it was the individual beneficiaries who were responsible for CGT on the sale of the Property, and that in order to reclaim any overpaid tax Patricia would have to submit an amended return. Indeed, in his closing submissions, he said in terms that the only relief he was seeking was a direction that Patricia, as personal representative given sole conduct of the sale of the Property, should submit an amended tax return showing the beneficiaries as personally liable for the CGT, on the basis that if that was accepted then the beneficiaries would receive the appropriate refund whereas if it was rejected that would be the end of the matter.

75. Mr Fryer-Spedding's preliminary objections have considerable merit from a case management perspective. However, Mr Fryer-Spedding had come prepared to meet the argument identified in the advice from counsel referred to above. He was also able to provide me and Terence with materials to address the point. Further, whilst he submitted that if I refused to hear the point it would not be possible for Terence to raise it subsequently, by reference to the well-known Henderson abuse of process principle, it seemed to me to be unhelpful to force his client to travel down that route if that is what Terence duly attempted to do.

76. In the circumstances, and especially because I have reached a clear view on the point, I am satisfied that I can and should determine the point. To be clear, I am determining whether or not it is proper to approve the estate accounts as prepared by Patricia on the basis that they properly include the stated deduction for CGT and to sanction the distribution of the remainder to Rita, Terence and Marie by BLS, without making a direction along the lines sought by Terence.

77. In his opening written submissions Mr Fryer-Spedding referred me to HMRC Guidance Note HS282 Death, personal representatives and legatees (2022). This states:

    "During the period of administration, the personal representatives may be liable to CGT if they sell or otherwise dispose of any of the assets in the estate. This does not apply when assets are passed to legatees under the terms of the will, and so on.

    During this period the personal representatives have absolute control over the assets, except those that have been passed to the legatees. They're not bare trustees or nominees for the legatees.

    Where: (a) an asset has not been formally transferred to a legatee; (b) the residue of the estate has not been ascertained (see above); (c) the asset is disposed of by the personal representatives; a gain arises. The gain is chargeable on the personal representatives and not the legatee."

78. In relation to point (b), the guidance states that: "The administration period is the period during which the personal representatives are settling the estate. It starts on the date of death of the deceased person and usually ends for tax purposes when the residue of the estate has been made certain. If, however, there are disputes about the will, the administration period is not regarded as ended until they're resolved. The residue of the estate is made certain when the net balance of the estate has been identified and sufficient funds have been provided to allow any liabilities to be paid".

79. I agree that this guidance is counter to counsel's advice and was not expressly considered by him. In a letter written by counsel to BLS on 28 October 2024 he said that whilst he stood by his opinion "I did not consider any tax issues and my Opinion should be read as confined to the narrow, theoretical point of what is the kind of trust on which an executor holds property if a vesting in that executor has

taken place. Indeed, the decision in *Kidson v Macdonald* [1974] Ch 339, [1974] STC 54, to which I referred in my Opinion, deals exactly with the Capital Gains Tax position, which is as set out in the guidance published on the www.gov.uk website".

80. Mr Fryer-Spedding also referred me to Simon's Taxes in relation to CGT. Paragraph C1.203 confirms that where property is held by a nominee or on a bare trust it is the beneficial owner who must report and is taxable on any capital gains. At C1-206 it confirms that "the personal representatives are jointly and severally liable to CGT on gains realised in the course of administering the deceased's estate" and that "Chargeable disposals by personal representatives in the course of administration of the deceased's estate may give rise to chargeable gains … in the normal way and the personal representatives are taxed accordingly". Mr Fryer-Spedding referred me to ss.60 and 65 of the Taxation of Chargeable Gains Act 1992, which is the basis for the propositions stated in Simon's.

81. Mr Fryer-Spedding submitted that the above was clear and answered the question from a taxation perspective, regardless of whether or not the personal representatives are to be regarded as holding an asset as nominee or as bare trustee or otherwise.

82. I agree with that submission. It is consistent with the approach of Foster J in Kidson, where he decided the case on the basis of the taxing statute rather than any general principle and decided that as a result the personal representatives were liable to CGT on a disposal.

83. For good measure, Mr Fryer-Spedding also submitted that counsel's analysis ignored the fundamental distinction between a trustee properly so called and a personal representative. As he submitted, and as is stated in Snell's Equity 34th edition at paragraph 21-050, commenting on the differences between trustees and personal representatives, "Until they assent, personal representatives usually have the whole ownership of the property of the deceased vested in them; the beneficiaries have no beneficial interest in any particular asset but merely the right to compel the due administration of the estate. Under a fixed trust, the beneficiaries may have an equitable interest in a specific trust assets and possibly even the right to compel the trustee to transfer it to them".

84. The editors continue at 21-055, in a passage which echoes the Guidance Note,

"If the personal representatives have no duties to perform beyond the collection of assets, payment of creditors and distribution of the estate, they will remain personal representatives (even if they have stated that they are trustees) until assenting … However, where they are directed to hold the estate or some part of it upon certain trusts (e.g. for persons in succession or upon trust for sale and division) they will become trustees when the administration is complete, though in the case of land not, it has been held, until they sign a written assent in their own favour. The moment of transition from administration to trusteeship depends on the circumstances, although when the personal representatives bring in their residuary accounts, or exercise a power of appropriation, there is a presumption that the trusteeship has begun.

85. It follows, in my judgment, that in this case, where Terence could only have held legal title to the Property as personal representative – as, indeed, he had always contended was the case – at all material times until the Property was sold he held the legal title and the beneficial interest in the Property and, notwithstanding that Terence and Patricia were appointed executors and trustees by the

will, at no time prior to the sale of the Property did they ever become trustees of the Property in favour of the beneficiaries, let alone bare trustees.

86. In the circumstances, I am satisfied that Patricia's course of action was entirely proper and in accordance with the law. It follows that there is no basis for granting Terence the relief which he seeks.

87. Finally, and even if I had believed that there was a question mark over the true position, there are real practical difficulties with Terence's suggested approach. Patricia could not properly submit an amended declaration on the basis that the beneficiaries, rather than the personal representatives, were liable for the CGT without the benefit of proper professional advice confirming that this was indeed the position. Even if she did, it is quite likely that HMRC would require further information before making a decision. Thus, Patricia would have to instruct professional advisers in this respect, but Terence cannot realistically expect her to do so at her cost, thus she would have to be indemnified by the estate against the cost. Patricia's advisers would also have to communicate with all three beneficiaries and obtain their instructions which, as the history of this case has revealed, might well present difficulties and involve significant expense and, quite feasibly, a further application to the court. Until this process was completed the distribution of the estate could not be completed, because sufficient would have to be retained from the estate to allow Patricia to be fully indemnified against such costs.

88. In the circumstances Terence's suggestion, whilst framed deceptively simply, is fraught with complications. I would have to be extremely confident as to the correctness of his position before I should sanction it. As is obvious, that is not the case.

89. Finally, I should record that it has not been suggested by anyone, least of all Terence, that he should be allowed to submit an amended declaration as personal representative at his own cost, on the basis that the estate could be distributed subject to this as a cost-free option. For that reason no-one has investigated whether this would be an option. There is no basis for delaying the conclusion of this sorry and long drawn out saga further by now entertaining it, when it is something which was plainly for Terence to have suggested in good time for this hearing so that it could have been considered in advance.

Other estate accounts issues

90. There is little disagreement in relation to the balance of the estate accounts as proposed by Patricia.

91. On 27 June 2024, the day after the directions hearing before DDJ Hassall when he plainly urged the parties to be sensible in relation to the outstanding issues, Terence wrote to BLS, for himself and on behalf of Rita, to say that "Rita and I give our agreement to the estate accounts and the proposed distributions as set out in the estate accounts at page 112 of the bundle, copy attached. Please make payment within the next seven days".

92. On 9 July 2024 BLS replied asking him to sign and return the attached approval and consent order to enable to distributions to be made.

93. On 11 July 2024 Terence wrote to BLS saying that his agreement was conditional on payment within 7 days and also identifying difficulties with the approval and consent order. In my judgment the

acceptance was plainly not conditional and there were no difficulties with the approval or consent order and Terence's counter-proposals were unnecessary.

94. The end result was that the estate accounts issues had to go forward to trial. I accept that Patricia could not, given the history of this dispute, take the risk of distributing without court sanction. However, as I have already said, Terence did not provide a list of objections as required by the directions order and, in the end, apart from some generalised complaints about the time taken, the level of costs incurred and the complaint about the delay and cost in dealing with the CGT issue, Terence had little to say about the estate accounts.

95. I asked BLS to provide back-up details as to the amounts claimed, which they did, and I was taken through them by Mr Fryer-Spedding. Save for the one qualification mentioned below, I am satisfied that the amounts claimed have been evidenced by invoices and back-up, that they were reasonably incurred in relation to what has plainly been a contentious sale and distribution process, and that they are reasonable in amount. I am not satisfied that Patricia should be liable in relation to the £100 late CGT return fee.

96. The one qualification relates to my previous conclusion that I am satisfied that one of the reasons why the process was so protracted was that Patricia had no real interest in bringing it to an end until the costs payable by Terence and Rita were agreed or assessed so that they could be deducted from the distributions to Terence and Rita. The other reason was Terence's intransigence. In that respect, I am satisfied that one of the reasons why Patricia reasonably required the assistance of BLS in relation to the conveyancing process was because Patricia was, reasonably, not prepared to take at face value everything which Terence had previously done in relation to the conveyancing and title issues, given his conduct both generally in relation to this dispute and, more specifically, in obtaining sole grant of probate and in having the unregistered land registered in his name only.

97. In my judgment, the appropriate way of dealing with this is to make a proportionate reduction of the amount which Patricia should be entitled to deduct for BLS' costs over this period, so that the beneficiaries are not unfairly penalised for this element of delaying tactic by Patricia.

98. I am not however prepared to go further and make any positive allowances in Terence's favour or, indeed, in favour of Rita or Marie, given that none of them have complied with the objections procedure in the directions order so as to allow Patricia to address the same.

99. My decision is that Patricia should be allowed to deduct the accountancy fees of £1,620 in full and that of the remainder of £4,788.20 in relation to dealing with the sale and £1,761.43 in relation to dealing with the estate accounts Patricia should be entitled to deduct only 75% rounded down of each, namely £3,500 and £1,300 respectively. Thus, £6,420 in total.

100. However, it is nonetheless clear in my judgment that on the face of the open materials there is no basis for not allowing Patricia her costs of this element of the application.

Other matters

101. I am asked to approve the draft TP1 produced by Patricia in the supplementary bundle. Terence asks me to approve his draft TP1 at p.217 of the bundle. I have no doubt that Patricia's draft is to be preferred. It is in a conventional dispositive form, which clearly and accurately sets out the

rights granted under the ROW and is far more appropriate for conveyancing purposes than Terence's draft. It is to have the plan as produced by Insepes attached, which is far preferable because it clearly identifies the extent of the property to be conveyed, including Field 84, and its precise boundaries as well as the precise location of the ROW so as to avoid, or at least minimise, the risk of future dispute.

102. In oral submissions, Terence also submitted that the TR1 should provide for the hardstanding to be laid only with the consent of, or at least after notification to, the relevant National Park authority and Highways Authority. Given that this was not raised in any notice of objections, so could not be investigated in advance of the hearing, and given that if there is any question of breach of any relevant requirements that will be a matter for Patricia to resolve, I am not persuaded that it is appropriate to include such a provision.

103. I am also asked to approve the draft order as produced by Mr Fryer-Spedding including the revisions in the draft handed up at the hearing. The only substantive changes I require are: (a) to paragraph 2, to make clear that this is not a variation to the trial order but a recording that the court sanctions with retrospective effect the payment of the net proceeds of sale by Greenhalgh to BLS and their distribution by BLS in accordance with the directions in this order; (b) to paragraph 4, to provide for the amendments to the approved Account as above; (c) to paragraph 6, to replace "or that" with "and/or that"; and (d) to reword paragraph 8, so that it only forbids Terence from preventing or impeding Patricia's surveyor from marking out the route of the stock proof fence to be erected and maintained by Terence along the line in question or from erecting the stock proof fence in any position other than as marked out by the surveyor. Paragraph 9 will also need amending in due course to reflect my eventual costs order and summary assessment. I will need to be persuaded that it is appropriate to include paragraph 11, given that in reality this is hostile litigation between Patricia and Terence. Finally, I will of course consider any further suggestions as to the form of the order made in accordance with the procedure referred to below.

104. As to costs, as will be apparent from what I have already said, my provisional view on the open material is that Patricia should recover her costs of both applications, either in full or to a substantial part, no less than 80%, to reflect her overwhelming success and my views on respective conduct and other relevant matters. I will of course consider any further submissions in accordance with the procedure made below. As indicated at the end of the hearing, I will also summarily assess costs at the same time. I will decide after submissions whether it should be on the standard or indemnity basis.

105. I have approved an order recording the directions given by me at the end of the hearing. This includes for the parties to make submissions on costs, including reference to any costs admissible offers) and consequential matters, including a draft form of order, with a view to my making a final determination on the papers thereafter.

106. In terms of the timetable, I will direct that: (a) Patricia should file and serve submissions and accompanying material (including any suggested amendments to this draft judgment, any relevant admissible costs offers and a revised draft order) within 7 days of receipt of this judgment; (b) Terence should file and serve response submissions and accompanying materials (including comments on the draft order and schedule of costs) within 7 days of receipt; and (c) Patricia should

file and serve reply submissions within a further 7 days of receipt. Her solicitors should at the same time send a composite pdf of all such submissions and materials to me direct at my judicial email address. I will then determine all outstanding matters on the papers and hand down my approved judgment and make a final order at a remote hearing on a date and at a time to be notified, which none of the parties need attend, but will fix the time for any application for permission to appeal to be made.

Consideration of post draft judgment submissions and conclusions

107. There was a large measure of agreement. The remaining issues are: (a) whether a penal notice is required on the order; (b) various other observations on the terms of the order; and (b) costs.

108. As to a penal order, given the protracted history of this matter and my conclusions as to Terence's conduct, I am satisfied that one is necessary to ensure compliance with paragraphs 6, 7 and 8 of the order, which deal with the right of way, the removal of existing obstructions and the pegging and fencing out of the boundary, but not otherwise.

109. As to his other observations: (a) there is no basis for adding the words "without prejudice" to paragraph 1; (b) there is no basis for redrafting paragraph 6 as suggested; (c) as to paragraph 8: (i) I agree that – as I envisaged in my judgment – only Mr Hainsworth of Insepes should mark out the boundary, on the basis of a direct instruction from Patricia, unless there is some good reason for permitting a different surveyor to do so, but: (i) there is no need for the right of way to be physically marked out, since there will be no fence or similar structure separating it from the rest of the field. I shall specify the time for compliance by executing the Transfer (paragraph 5) and removing the new fence and rehanging the road gate (if not already done) (paragraph 7) to be 4pm on 11 February 2025 (i.e. 2 weeks from this judgment being emailed to the parties).

110. As to costs, I am satisfied, having considered the submissions and the without prejudice save as to costs correspondence, that Terence should pay 100% of Patricia's costs, but on the standard rather than the indemnity basis. I will assess those costs in the sum of

111. Whilst Patricia did not succeed in full on everything claimed by her, or wholly avoid any criticism, she was overwhelmingly the successful party, and further: (a) her relative success and/or her conduct are at least, if not more, outweighed by Terence's conduct as identified in the judgment above, including those items identified in Mr Fryer-Spedding's first post-trial submissions at paragraph 4.4; and (b) she made a very reasonable settlement offer of 4 November 2024, given that has achieved at least as good a result substantively and, had Terence accepted – as he should have done – the costs of the trial could have been saved.

112. However, whilst Patricia also seeks indemnity costs, on the basis of his alleged highly unreasonable conduct which led to these contested applications being necessary and having to go to a trial, and his alleged highly unreasonable refusal to accept Patricia's, made shortly before trial and following an unsuccessful mediation, on balance I am not satisfied that his conduct can be characterised as justifying that description.

113. As to the assessment of such costs, having regard to the schedule provided, in my judgment the costs are properly to be summarily assessed in the sum of £45,000 plus VAT, total £54,000. In particular: (a) the hourly rates are reasonable for the complexity and importance of the work done;

(b) the time spent in attendances on client and opponents and others is mostly reasonable, as are the time spent on attendance at the hearing and the work done on documents; (c) counsel's fees and other expenses are mostly reasonable; and (d) VAT is plainly payable.