Neutral Citation Number [2016] EWHC 3215 (Ch)

IN THE HIGH COURT OF JUSTICE Claim No: HC201400258

CHANCERY DIVISION (PROBATE)

The Rolls Building,

Fetter Lane, London EC4A 1NL

Date: 2 December 2016

Before:

Mr John Martin QC (sitting as a Deputy Judge of the High Court)

- -

IN THE ESTATE OF MICHAEL JOHN CHANTREY INCHBALD DECEASED

BETWEEN:-

CHARLOTTE AMANDA INCHBALD **Claimant**

- and –

(1) COURTENAY CHARLES ILBERT INCHBALD

(2) PATRICK NEVILLE DONALDSON

(3 MICHAEL BOYDE GLYNN **Defendants**

- -

Peter John (instructed by Butters David Grey LLP) for the Claimant

Richard Wilson QC and Oliver Jones (instructed by Farrer & Co) for the first Defendant

Anthony Allston (instructed by Donaldson Dunstall) for the second Defendant

The third Defendant did not appear and was not represented

Hearing dates: 4 – 8, 14 July 2016

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APPROVED JUDGMENT

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

John Martin QC

JOHN MARTIN QC:

Introduction

1. These proceedings concern the estate of the well-known interior designer Michael Inchbald ("the Deceased"), who died on 28 February 2013. The principal issue is which of two wills, made respectively on 1 July 2005 (“the 2005 Will”) and 17 September 2007 (“the September 2007 Will”), is his true last will. The claimant ("Amanda"), who is the Deceased's daughter and the younger of his two children, claims proof in solemn form of the September 2007 Will. The first defendant ("Courtenay"), who is the Deceased's son and his elder child, claims that the Deceased did not know or approve of the contents of the September 2007 Will, and that his true last will is the 2005 Will. Courtenay also claims rectification of a provision contained in the September 2007 Will if it is admitted to proof.
2. The Deceased was born in March 1920, and so was 85 at the date of the 2005 Will, 87 at the date of the September 2007 Will, and 92 at his death. In 1955, he married: his wife, Jacqueline, is now Mrs Duncan ("Mrs Duncan"). Courtenay was born in 1958, and Amanda in 1960. Sometime between 1963 and 1965, the Deceased and Mrs Duncan divorced. Courtenay suggests that for some time after the divorce there was little contact between the Deceased and Mrs Duncan; but whether that is so or not they were on good terms by 1996, and remained so for the rest of the Deceased's life.
3. In 1996 Mrs Duncan was instrumental in introducing to the Deceased the second Defendant, Patrick Donaldson ("Mr Donaldson"), a solicitor who is her half-brother. In 1996 Mr Donaldson prepared a will for the Deceased, which the Deceased executed on 21 October 1996. This will ("the 1996 Will") left the Deceased's residuary estate equally to Courtenay and Amanda. On 31 December 2004 another firm of solicitors, Radcliffe LeBrasseur (“Radcliffes”), sent to the Deceased a draft will which divided the residuary estate as to two-thirds to Courtenay and one third to Amanda. This will was never executed. On 1 July 2005, however, the 2005 Will, prepared by Mr Donaldson, was executed by the Deceased. This will gave a life interest in half the residue to Amanda, the other half interest and the reversion on Amanda's life interest being given to Courtenay or (if he predeceased the Deceased) his children. This is the will that Courtenay claims is the Deceased’s true last will.
4. Mr Donaldson subsequently prepared two further wills for the Deceased: one dated 31 August 2007 ("the August 2007 Will") and the September 2007 Will, dated 17 September

2007. Courtenay and Mr Donaldson are named as executors in the August 2007 Will, and they and the third defendant, Michael Glynn, a partner in the Deceased's accountants Gibbons Mannington, are named as executors in the September 2007 Will. The August 2007 Will dealt with residue in the same way as the 2005 Will had done, with Amanda taking merely a life interest in half the residue, the other half and the reversion on Amanda's life interest going to Courtenay or his children; but in the September 2007 Will the residuary estate was once again divided equally and absolutely between Courtenay and Amanda. The September 2007 Will was the last document executed by the Deceased that purported to contain testamentary dispositions; and Amanda claims that it is his true last will.

5. The August 2007 Will contained for the first time a provision relating to certain clocks, the Deceased expressing a wish that his trustees "at their discretion do not dispose of [the clocks] and that they are to be put in display at the British Museum in London from time to time". This provision ("the clocks clause") appears also in the September 2007 Will. The clocks otherwise form part of the Deceased's residuary estate; but Courtenay asserts that the Deceased meant to give them to him, and he claims rectification to that effect if either the August 2007 Will (which is not said by anybody to be the Deceased's true last will) or the September 2007 Will is admitted to proof.
6. At the conclusion of the argument, I indicated that I would grant proof in solemn form of the September 2007 Will and would reject the rectification claim. These are my reasons.

Want of knowledge and approval: the law

7. Courtenay's case is that the Deceased did not know and approve of the contents of the September 2007 Will (or of the contents of the August 2007 Will). An assertion of want of knowledge and approval is an assertion that the testator did not understand what he was doing or its effect. The requirement of knowledge and approval "covers the propositions both that the testator knows what is in the document and that he approves of it in the sense of accepting it as setting out the testamentary intentions to which he wishes to give effect by execution": *Gill v Woodall* [2011] Ch 380 per Lloyd LJ at [71]. Once an allegation of want of knowledge and approval is made, it casts on those propounding the will the burden of establishing that it represented the testator's testamentary intentions. That burden may often be discharged by establishing due execution after the will has been read over to the testator. "As a matter of common sense and authority, the fact that the will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it represents the testatrix's intentions at the relevant time,

namely the moment she executes the will": *Gill v Woodall* per Lord Neuberger of Abbotsbury MR at [14]. Nevertheless, as *Gill v Woodall* itself shows, that presumption may be displaced – in that case, by evidence that the testatrix suffered from agoraphobia with panic disorder to such a serious degree that she was incapable of taking in the explanation of the terms of the will given to her by her solicitor. Although she had testamentary capacity, and so was in principle able to understand what she was told, she did not in fact do so. "It is one thing to say that on a relevant date Mrs Gill had the necessary understanding of the nature and extent of the property of which she could dispose by her will, and of the claims of relevant persons on her benevolence. It is quite another to examine whether, in particular circumstances, she did in fact understand what was said to her that a given meeting and what was in the document which she signed": *Gill v Woodall* per Lloyd LJ at [70]. In the present case, too, it is common ground that the Deceased had testamentary capacity at the date of the September 2007 Will; but that does not necessarily mean that he understood its nature and effect. Capacity to understand is not the same as actual understanding.

8. Until the decision of the Court of Appeal in *Gill v Woodall*, the traditional approach to a case of want of knowledge and approval was to consider the matter in two stages. The first stage was to consider whether the circumstances attending the preparation and execution of the will were such as to "excite the suspicion" of the court. The paradigm example of such circumstances was involvement in the preparation of the will by an intended beneficiary under it; but the question was one of fact in every case, and was to be judged in the light of the full background of the relationships between the relevant parties: see *Burns v Burns* [2016] WTLR 755 at [52]. The first instance judge in *Gill v Woodall* adopted this approach. In the Court of Appeal, however, Lord Neuberger said this at [22]:

> "Where a judge has heard evidence of fact and expert opinion over a period of many days relating to the character and state of mind and likely desires of the testatrix and the circumstances in which the will was drafted and executed, and other relevant matters, the value of such a two-stage approach to deciding the issue of the testatrix's knowledge and approval appears to me to be questionable. In my view, the approach which it would, at least generally, be better to adopt is that summarised by Sachs J in *In re Crerar* (unreported) but see (1956) 106 LJ 694, 695, cited and followed by Latey J in *In re Morris, decd* [1971] P 62, 78, namely that the court should
>
> > "consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the

> burden of establishing that the testatrix knew and approved of the contents of the document which is put forward as a valid testamentary disposition. The fact that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption".

It is to be noted that the statement at the end of that quotation to the effect that execution after reading over does not raise a presumption is in conflict with an earlier passage in Lord Neuberger's own judgment which I have quoted above. They may perhaps be reconciled by treating Sachs J as speaking of a legal presumption, and Lord Neuberger of an evidential presumption. Whether that is so not, however, it appears to me that the correct approach is to treat execution after reading over as being merely one of a number of factors which may lead to the conclusion that the testator knew and approved of the contents of the will, although it will often be of great importance to that conclusion. In that respect, and indeed overall, I have adopted the holistic approach to the evidence enjoined on me by *Gill v Woodall*. I have also borne in mind the policy argument referred to by Lord Neuberger in paragraphs [16] and [17] of *Gill v Woodall*,

> "which reinforces the proposition that a court should be very cautious about accepting a contention that a will executed in such circumstances [i.e. after reading over to or by a capable testator] is open to challenge. Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or to persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose, and it would run the danger of encouraging people to contest wills, which could result in many estates being diminished by substantial legal costs.
>
> [17] Further, such disputes will almost always arise when the desires, personality and state of mind of the central character, namely the testatrix herself, cannot be examined other than in a second-hand way, and where much of the useful potential second-hand evidence will often be partisan, and will be unavailable or far less reliable due to the passage of time. As Scarman J put it graphically in *In the Estate of*

Fuld, decd (No 3) [1968] P 675, 714E: “When all is dark, it is dangerous for a court to claim that it can see the light". That observation applies with almost equal force when all is murky and uncertain."

9. I should record that between the start of the trial and the making of closing submissions, a further decision on this area of the law was given by the Court of Appeal in *Fitzgerald v Henry* [2016] EWCA Civ 701. It does not appear to me that it sets out any different principle from those underlying previous decisions, and it is not necessary to refer further to it.

Preliminary

10. At the outset, I wish to say something about Courtenay’s approach to this case and to his evidence. He has made this case his full-time work for the last three years or so, and appears to me to have lost all sense of perspective about it. He had no involvement in the preparation or execution of either of the wills made in 2007, and his oral evidence in relation to those and many other matters consisted of nothing other than the inferences he had drawn from the material he had assembled. He appears to have persuaded himself that there was a policy, amounting in effect to a conspiracy, masterminded by Mrs Duncan, to surround the Deceased with servants and advisers who would impose on the Deceased their own views, or those of Mrs Duncan, about how his life and relationships should be conducted and how his estate should be disposed of. He is a prime example of the relative with feelings of disappointment or worse referred to in *Gill v Woodall*, who has set out to find evidence, or has persuaded himself that evidence exists, which shows that the September 2007 Will did not, could not, or was unlikely to, represent the intention of the Deceased. In his substantive witness statement, dated 31 March 2016, he sets out in great detail a history of the life of the Deceased and his relationships with his family and others. Except where he says something that is supported directly by documents or by other convincing direct evidence, I am not prepared to accept the picture he paints. In particular, his assertions about the Deceased’s relationships with his family are coloured by Courtenay’s own relationships, especially his extremely poor relationship with his mother Mrs Duncan and his denigratory attitude to Amanda’s lifestyle.
11. It is nevertheless necessary in this case, as in most cases involving an allegation of want of knowledge and approval, to form some assessment of the character and intellect of the testator. As I have said, the Deceased was a well-known interior designer. His work included designing the interior of the QE2, the penthouse at Claridges and the American Bar at the Savoy. He enjoyed great professional success. At his death in 2013, his estate was worth

some £16,000,000. He was a meticulous man with a well-known eye for detail, which in the context of his will-making often caused him to write manuscript corrections or comments on drafts supplied to him. He was often intemperate in the expression of his views: Richard Price of Radcliffes described him as "always irascible", and Mrs Duncan described him as tetchy and capable of being extremely and embarrassingly rude, without apparently noticing the effect his rudeness had on others. She said also that he was a strange and vulnerable man. His relations with his children were often uneasy; but he had a strong sense of family loyalty and was particularly proud of his connections, through his uncle, with the Ilbert family.

12. The only persons able to give direct evidence of the instructions given for the 2007 Wills and their execution were Mr Donaldson (who took the instructions, prepared the wills and was present at their execution) and Daniel Corbett, who had an office on the ground floor of the Deceased's house at 10 Milner Street, London and witnessed the wills. I deal with their evidence later in this judgment. I also heard evidence from the following:

    (a) Amanda;

    (b) Courtenay;

    (c) Mrs Duncan;

    (d) Isabella Inchbald, Courtenay's elder daughter;

    (e) Venetia Inchbald, Courtenay's younger daughter;

    (f) Sarah Smart, the Deceased's niece and daughter of his sister Presiley Sikes;

    (g) Roga Pillay, sometimes known as Roggie, the Deceased's secretary from 1998 until his death;

    (h) Guy Oliver, a friend of the Deceased. Mr Oliver came forward to give evidence having read initial press reports of the trial. His evidence was to the effect that he had frequent conversations with the Deceased in which the Deceased made clear that he intended to leave his estate equally between his children. He expressed surprise when told that for the two-year period between the 2005 Will and the September 2007 Will Amanda was to have only a life interest in half the residue. Unfortunately, his ignorance of this fact deprives his evidence of any value: accepting, as I do, that Mr Oliver was doing his best to tell the truth, the position must be either that the Deceased was not being frank about his testamentary intentions or that the Deceased did not understand the distinction between a life interest and an absolute interest. Neither position advances

resolution of the case, although the latter possibility is one raised by Courtenay in relation to the 2007 Will.

In addition, there was written evidence from

(i) Angelina Martins, the Deceased's housekeeper from 2004 until his death;

(j) Richard Elkington, who worked with Daniel Corbett;

(k) Bryan Mayou, a consultant plastic surgeon who saw the Deceased on various occasions between March 2006 and January 2008;

(l) Dr Audrey Giles, a well-known expert in disputed documents; and

(m) Prof Robert Howard, a consultant old age psychiatrist.

13. Where necessary, I refer to the evidence of these witnesses in the course of the narrative.

14. Although the critical events are those surrounding the preparation and execution of the August 2007 Will and the September 2007 Will, it is useful to start the relevant history with the events leading up to the execution of the 1996 Will – the validity of which is not in issue.

The 1996 Will

15. The genesis of the 1996 Will, and the start of Mr Donaldson's involvement in the Deceased's affairs, can be seen in a letter from Mrs Duncan to the Deceased, dated 29 March 1996, in which she said this:

> "With reference to the matters you raised in association with your Will, I would repeat what I said to you on the telephone; it really is much better to keep it simple. I assume we both agreed that it was a straight division down the middle with one or two bequests. I know for example, because you told me, that you are leaving all the family silver to Courtenay and on this basis I am leaving all my silver to Amanda so she will be compensated.
>
> If we both play it this way, then the only real problem that might occur is a disagreement over the final divisions and I think that is where I feel that an Executor who is also a judicious and detached arbitrator would be useful. I have explained to you that I am using Patrick Donaldson, my half-brother, who is a solicitor….
>
> Patrick is about forty so he is the right age; I don't think he is an inspired lawyer but he's a gentle and careful man and I would trust him absolutely."

16. On 24 June 1996 the Deceased telephoned Mr Donaldson. According to Mr Donaldson's attendance note, he "said he would be sending me a draft Will which solicitors in Haslemere had prepared for him. He said that the Will was very complicated and he wondered whether

I would advise him about a new Will. I said I would be happy to do so and meet up with him to discuss matters." On the same day, the Deceased wrote to Mr Donaldson, saying:

> "I was very pleased to make contact with you on the telephone this afternoon. Accordingly I enclose a copy of my (previously) proposed Will. Main points as follows: 1) probably too complicated 2) trustees round legatees' neck for ever. 3) if you were a trustee, who would be the other one? (Courtenay w'd be resented by Amanda) I can think of no relation or friends. Jacqueline knows the most about the situation but of course might die before me. I am about 12 years older. 4) neither my son or daughter have any interest in this house or contents (other than monetary values). ... Looking forward v much to meeting you in the near future."

17. The draft Will, which had been prepared by Burley & Geach and ran to 17 pages, was considered by Mr Donaldson on 26 June 1996. According to his attendance note of that date,

> "Perusal of Michael Inchbald's draft Will. It was quite complicated.
>
> I telephoned Jacqueline to discuss matters. The reason for doing so was because Jacqueline and Michael appeared to be on good terms and they have been discussing Michael's Will.
>
> I did not go into too much detail except to say that Michael's Will was complicated. Jacqueline said that she had been urging Michael to keep the Will simple and with regard to the children she felt there would be no friction if Courtenay was appointed executor without Amanda being appointed. Amanda respects her brother's brains!
>
> I expressed a hope that Michael would simplify the Will because it would be expensive to administer and there would be 15% surcharge of income tax because of the discretionary trust mentioned in the Will….
>
> Telephone call to Michael Inchbald and we agreed to meet up between 11 and 11.30 on Tuesday 2nd July. I said that Jacqueline had arranged to have lunch with me and Michael said he would be quite happy to be invited.
>
> Telephone call to Jacqueline who agreed that we should have lunch together. She suggested that we meet at the Inchbald School before going out to the Calvary [sic] and Guards Restaurant.
>
> Telephone call to Michael Inchbald when he confirmed he would be happy with the arrangements."

18. Perhaps at about this time, the Deceased prepared a manuscript note, dated only 7/96, addressed to a Mary Sweeney, stating: "Because of my forgetfulness now; my lawyers are Radcliffes".
19. On 3 July 1996, the Deceased sent a note to Mrs Duncan, headed "Dearest J" and ending "Much love from M", in which he said:

    > "I was very pleased to meet Patrick Donaldson and feel much better about my Will now. I thought he was very nice and knew what he was talking about."

20. On 5 July 1996, Mr Donaldson wrote to Mrs Duncan, saying: "I enjoyed meeting up with Michael. There is a great deal of work to be done in preparing a new draft Will for Michael which I hope to do sometime within the next week or so. If Michael does make enquiries of you as to what is happening I do confirm that I shall be in touch with Michael within a matter of days."
21. On 8 July 1996 Mrs Duncan wrote at length to the Deceased, recording that they had discussed plans for their children's future and setting out her views on a number of topics including how the Deceased was to be looked after in his old age, what was to be done with his house and what payments might be made to the children then or in the future. Although the letter recorded that Courtenay had hardly spoken to Mrs Duncan in the previous three years, she was at pains to rebut the Deceased's feeling that their children were only interested in the value of the Deceased's collection saying that she did not think that was true from the point of view of either Courtenay for Amanda. She concluded by saying: "Finally, I think it is worth noting that it is terribly difficult to get these things right; one can only do one's best with one's children and grandchildren's future in view." It seems likely that the Deceased responded to this letter: there is in the bundle what appears to be a draft in which he engages fully with Mrs Duncan's comments and sets out his views, hopes and fears. I do not need to quote from these documents; but what they appear to me very clearly to show is two parents, still very fond of each other despite their divorce, doing their best to consider how the Deceased's future could be managed and the interests of both their children advanced. I specifically reject any suggestion that Mrs Duncan was attempting to exert improper pressure, or procure the Deceased to leave half his estate to Amanda against his true wishes; and I specifically reject any suggestion that the Deceased was incapable of maintaining his own views in the face of opposing views expressed by Mrs Duncan, or was otherwise unable to bring his own mind fully to bear on the issues they were discussing.
22. On 18 July 1996 Mr Donaldson wrote to the Deceased in the following terms:

"I now enclose a freshly drafted Will which I have prepared and which is a lot simpler than the previous draft Will which you showed me.

…

Otherwise the residue is to be divided between Courtenay and Amanda subject to their children inheriting if Courtenay or Amanda were to predecease you. If you are able to approve of the Will please let me know in which case I shall engross it and send the engrossed Will to you for your signature. Please do not hesitate to let me know if there are any queries or points which you wish to raise concerning the draft Will which I have prepared."

23. On 12 August 1996 the Deceased telephoned Mr Donaldson, whose attendance note of the conversation is in the following terms:

"Rather than repeat everything that he had to say at length on the telephone I refer to my letter addressed to him dated the 15th August. Apart from the extraordinary wishes Mr Inchbald related to me about preserving the house he mentioned at length the trauma of his divorce from Jacqueline…. Engaged on the telephone 56 min!"

24. It is clear from Mr Donaldson's letter of 15 August 1996 that the Deceased had sent him back the draft Will, heavily annotated in manuscript. Much of the letter expresses Mr Donaldson's views and advice about these annotations and the matters discussed in their telephone conversation, including in particular whether the Deceased's house should be sold or left to the children; and it enclosed "a freshly drafted Will but which does not contain all the amendments which you mentioned to me". Although again I have not found it necessary to quote at length from this letter, it is in my view an entirely proper letter for a solicitor to write to his client, expressing views about and giving advice in relation to the client's testamentary intentions. It depicts a solicitor doing his best to grapple with and suggest solutions to his client's problem in reconciling his wish to preserve the house that he has made his life's work with an awareness that neither of his children wished to take on the burden of caring for the house after the Deceased's death. I specifically reject any suggestion that Mr Donaldson was seeking improperly to influence the terms of the Deceased's will, or was disregarding the instructions that he was given; and I specifically reject any suggestion that the Deceased was unable to maintain his own views in the face of those expressed by Mr Donaldson, or was unable to bring his own mind fully to bear on the issues relating to the intentions that came to be embodied in the 1996 Will.

25. On 20 August 1996 the Deceased both telephoned and wrote to Mr Donaldson. The letter was delayed in the post, so that when on 21 August 1996 Mr Donaldson sent a draft will he was accepting or reacting to the comments made in the telephone call. He made a number of amendments to the draft will, and gave his advice on some of the issues the Deceased had raised.. Again, his letter is in my view an entirely proper one for a solicitor to have written to his client.
26. On 10 September 1996, Mr Donaldson replied to the Deceased's delayed letter of 20 August 1996. Again, he enclosed a draft will, and explained what he had included, what he had omitted and why he had not dealt further with certain of the Deceased's comments. Yet again, I regard this as a perfectly proper letter.
27. The Deceased made a number of manuscript comments on Mr Donaldson's letter of 10 September 1996, some of them in intemperate terms. On 15 October 1996 he telephoned Mr Donaldson and, in the words of Mr Donaldson's attendance note, "expressed his fury at the number of spelling mistakes which had been made throughout the course of our correspondence". The note records discussion on a wide range of topics, and includes the statements: “He says that he is anxious to ensure that Courtenay is financially secure. Allegedly Courtenay has not had financial support from his mother. He also wanted his daughter, Amanda, not to feel left out of the Will. He felt that she was being compensated by the fact that she was going to inherit all her mother's family silver."
28. On 21 October 1996 Mr Donaldson went to the Deceased's residence by arrangement to supervise execution of the 1996 Will. His attendance note records that the Deceased "was furious that clause 16 of the Will not been amended in accordance with his instructions and I profusely apologised and repeatedly did so. Eventually Michael Inchbald executed the Will".
29. The 1996 Will left of the residue to be divided into two equal shares to be held on trust as to one of them for Amanda (or, if she died before the Deceased, her children or, failing them, for Courtenay or his children) and as to the other for Courtenay (or, if he predeceased the Deceased, for his children at 23).
30. On 22 October 1996 Mr Donaldson wrote to the Deceased, enclosing a copy of the Will. The letter contained the following statements:

> "You indicated that you intend shortly to make a substantial payment to Courtenay and that you then wished to equalise that payment by making a similar one to Amanda in the next tax year. … Obviously you wish to be as far (sic) as possible in the bequests which you do make to Courtenay and Amanda. I would hope that they both realise that you have given considerable thought to the Will and that you have

done everything possible to be as fair as you can about provisions which you have made for them. I should stress that you are free to make whatever provisions you like and that it is your right to decide what provisions to make to individual members of your family".

31. The Deceased responded to this letter by letter erroneously dated 21 October 1996, but received by Mr Donaldson on 28 October 1996. The letter included the statement that “I am very glad that, as Jacqueline's 1/2 brother, you are dealing with both our wills, so that all will be dovetailed and understood by you, so that it is fair to both my offspring."
32. The final document in this sequence is a letter dated 28 October 1996 from Mr Donaldson to the Deceased, which includes the statement that "as you say it is helpful that I am also instructed by Jacqueline. She is anxious to be as fair as possible in the provisions which she makes to Courtenay and Amanda and I am sure that between you there will be sufficient and fair provision for Courtenay and Amanda".
33. As I have already indicated, nothing in the circumstances surrounding the 1996 Will appears to me to be at all out of the way. It is clear, in particular from the concluding correspondence, that the Deceased welcomed the intervention both of Mrs Duncan and of Mr Donaldson. It is also clear that, although he was more than capable of expressing views contrary to those expressed by either of them, he subscribed fully to Mrs Duncan's thesis that there should so far as possible be equality between Courtenay and Amanda. In my judgment, there can be no criticism of either Mrs Duncan or Mr Donaldson in relation to the way in which they handled this matter.

1996 – 2004

34. In the period between 1996 and 2004, the only thing to occur that is said by Courtenay to be of significance is the introduction to the Deceased of the accountancy firm of Gibbons Mannington. Courtenay suggested that this was an extension of a plan formed by Mrs Duncan to surround the Deceased with advisers who could be relied on to do her bidding. On 23 June 1997 Mrs Duncan wrote to Michael Dodge of that firm, mentioning a conversation she had had with the Deceased and saying : "In the course of this conversation, having established that he has now got an accountant who handles his affairs but only in general terms as opposed to detail, I suggested that you might be able to help him. He is not particularly mathematical and he is also getting on in years! He said to me rather irritably that he was old and hated maths anyhow! … I suggested to him that it would make life easy

for him if his accountants and his solicitors were in close contact. I hope you don't mind my putting this plan forward and I hope also that you may be able to help".

The 2005 Will

35. On 10 September 2004 the Deceased telephoned Mr Donaldson, whose attendance note records that "he wants to leave a legacy to his housekeeper. When I suggested £3000 he said that was far too high, but he agreed to give £1000 provided he can afford it! I assured Michael that his assets were more than adequate to cover the proposed legacy". On 16 September 2004 Mr Donaldson sent a draft codicil to the Deceased, with instructions for its execution. There was evidently a further telephone conversation between them, because on 24 September 2004 Mr Donaldson sent a fresh codicil, again with instructions for its execution. That codicil left pecuniary legacies of £1000 each to his secretary Roga Pillay and his housekeeper Angelina Martins. It was duly executed on 1 October 2004, and on the same day the Deceased sent the executed codicil to Mr Donaldson. On 7 October 2004 Mr Donaldson confirmed that he had placed the codicil with the Deceased's Will for safekeeping.
36. On the following day, 8 October 2004, the Deceased contacted Richard Price, a solicitor and partner in Radcliffes. Mr Price's former partner John Bieber, and subsequently Mr Price himself, had acted for the Deceased on and off since about 1969. In particular, Mr Bieber had acted for the Deceased in relation to the preparation of a will dated 3 May 1978 and a codicil dated 27 August 1980.
37. Mr Price made an attendance note of his conversation with the Deceased. The note is dated 8 August 2004, but Mr Price's evidence, which I accept, was that that was a mistake for the true date, which was 8 October 2004. In part, the attendance note reads as follows:

> "Receiving a call from Michael Inchbald concerning changes that he wanted to make to his Will. He believes that we have his Will.
>
> He wants to amend the gifts of residue. At present he says that half of his residue goes to his son Courtenay and the other half to his daughter Amanda but he now wants to change this and give more to his son and less to Amanda whom he describes as being worthless and someone who does not do anything and does not work and who, it would seem, he feels is neglecting him.
>
> The idea is that Michael Inchbald should give more to Courtenay who has greater needs because he has two daughters whereas Amanda is single and does not have the same responsibilities. In conversation he seemed to think Courtenay and

Amanda were around about the age of 40. He said he was married in 1961 and the children came along three or four years later.

[Mr Price] saying that of course Michael was free to do whatever he wanted with his estate but that one should always be slow to make changes to Wills particularly if there was any possibility that one had got a bee in one's bonnet about one of the beneficiaries and was not feeling particularly warm towards them but which state of affairs could always change. He understood what [Mr Price] was saying nevertheless seemed fairly determined that this was what he wanted to do and he certainly appeared to know and understand fully what he was saying. He wanted [Mr Price] to word things so that it looked as though what he was doing was fair. RPJP said that however he worded it only a moment's thought would cause Amanda to realise that instead of getting a half of her father's estate which she probably expected she would be getting less than that. However Michael Inchbald was determined that he wanted to benefit Courtenay, his wife (who Michael described in glowing terms as a very good wife) and their daughters."

The note also records Mr Price as suggesting that it would be worth investigating if there were any opportunities for saving inheritance tax; and the matter was left on the basis that Mr Price would see if Radcliffes held the Deceased's existing will and the Deceased would try to get on paper details of the assets in his estate with approximate values.

38. On 23 December 2004, Mr Price wrote to the Deceased. He said that it had been agreed in the telephone conversation earlier that year that Radcliffes would look into the possibility of inheritance tax savings; but “you will recall that I said to you we would not be in a position to offer advice on inheritance tax savings until such time as you are able to let me have a rough note of the assets that are comprised in your estate together with their approximate value. I cannot trace having received this from you and without those details, we really cannot make a start”.

39. On 31 December 2004 Mr Price wrote again to the Deceased, saying:

> “I enclose, for your consideration, a draft Will, reflecting the outline instructions that you have given me and running these together with your existing Will and Codicil…. Clause 13 contains the gift of residue. I understand that you wish to benefit your son to a greater extent than your daughter and so I have suggested, but this is only a suggestion, that the Trust Fund be left to your surviving children and, if both survive you, it will be divided as to two-thirds for your son and one-third your daughter. If your son predeceases you, then his children will take his share equally at 25."

40. At 3 PM on 8 February 2005 somebody – probably Roga Pillay – made a manuscript note on a piece of paper apparently last used by the Deceased in 2002. The note, part of which they Deceased seems to have underlined, read:

> "As per MI instructions.
>
> 4 persons = Courtenays family – ie more money to Courtenay as Amanda is on her own (ie a single person).
>
> Use legal wording as must not upset Amanda".

41. At 7:27 PM on 8 February 2005 Roga Pillay sent to David Cockett of Gibbons Mannington by fax "letters from RadcliffesLeBrasseur regarding MJC Inchbald's Will as discussed on the telephone this afternoon".

42. The draft will enclosed with Radcliffes' letter of 31 December 2004 was in part based on the previous will drafted by Mr Bieber in 1978, and was in many respects out of date. At some point prior to 25 February 2005 the Deceased tried to ring Mr Price to say that he was not happy with the draft. That emerges from a letter dated 25 February 2005 from Mr Price's colleague Clare Yates, in which she says that she would be happy to amend the draft so that it reflects the Deceased's wishes; and she said that it would be possible for she or Richard Price to visit the Deceased, but enclosed a reply-paid envelope so that the Deceased could return the draft marked with his comments. The Deceased appears to have taken that opportunity: there is in the trial bundle a copy of the draft, heavily annotated by the Deceased.

43. On 3 March 2005 an attendance note was made within Mr Donaldson's office of a telephone call from Mr Cockett. It said this:

> "Telephone call from David Cockett. He has been advised by Michael Inchbald's secretary that Michael has now received a letter from the London Solicitors asking him to go and see them to draft the new Will. He clearly wants to change his Will and David thinks that [Mr Donaldson] should telephone Michael to say that he has been reviewing his clients' Wills and ask Michael if he wants to make any changes. David agreed that it would appear that Michael has forgotten about the Discretionary Trust he entered into."

44. On 19 April 2005 Mr Donaldson wrote to Michael Dodge of Gibbons Mannington, saying: "You are, of course, aware that Michael Inchbald was approached by his previous Solicitors to make a new Will. I do not know whether to approach Michael and request his instructions for an updated Will. Alternatively, do I leave matters in abeyance? I look forward to hearing from you".

45. On 19 May 2005 the Deceased was visited by Courtenay, who handed him a note about inheritance tax. Among other things this note said

> "I have long been concerned about the amount of inheritance tax you will pay…. I have never pushed this matter because: it is so awkward to talk about someone else's death; your grasp of numbers and financial matters, as you readily admit, is poor, which makes it very difficult to discuss the details with you; and that, since it would involve some loss of control on your part, and you have been so stung by people in the past, you would have been wary of taking any significant steps. Nevertheless, I urge you to ask your accountant about ways of further reducing your liability."

The note also suggested that there would be tax advantages if the Deceased were to pay the school fees of Courtenay's daughters Isabella and Venetia. The total cost of those fees was estimated in the note at £270,000.

46. Also on 19 May 2005 Mr Donaldson went to see the Deceased. His attendance note reads as follows:

> "Michael now wants to leave half the residue to Courtenay as before but with regard to Amanda (whom he has been led to understand is financially imprudent) she is to be the primary beneficiary under a discretionary trust for the remaining half of the residue. Ultimately the Estate would pass to Courtenay's side of the family. He believes Amanda is not likely to have any children. … However, with regard to Amanda, after considering the matter of a discretionary trust he wanted to confer a life interest on Amanda which would ensure that the money that Amanda received would not go astray from the family but that there should be a discretion about capital advances for any needs. Michael spoke at length about the whole family and was not particularly complimentary about anyone."

47. A manuscript note, apparently made on the same date by the Deceased, says "more to Courtenay (grandchildren) because they are 3+4 more compared with Amanda who is single". On the same piece of paper a further manuscript note – probably made by Roga Pillay – says “All recent correspondence and Will draft done by Radcliffes has been taken away by Patrick Donaldson for update – said it's a lot to adjust”.

48. On 20 June 2005 Mr Donaldson wrote to the Deceased, enclosing a draft will. In relevant part, his letter says the following:

> “"We discussed how you feel about Amanda. You thought that if she was to receive a very large capital sum then she would not appreciate it. I discussed whether there

should be a Discretionary Trust with income being provided for Amanda, but then any income under a Discretionary Trust would attract tax at 40% irrespective of whether Amanda is a basic rate taxpayer. I advise, therefore, that it would be simpler to leave Amanda a life interest in respect of half the residue of your Estate but with a discretion for capital advances to be made if there is a need for such capital advancement. Ultimately, you wish your Estate to go to Courtenay's children and a life interest **for** Amanda would ensure that this will happen as the remainder capital will be vested in Courtenay but only in the event of Amanda predeceasing him. If Courtenay predeceases Amanda then the life interest which she enjoys will eventually fall into the hands of Courtenay's children but not until they attain the age of twenty-two years."

49. The draft will was this time very lightly annotated by the Deceased. He inserted the word “Ilbert” in the wording of one request, and beside the initials C.A.I. he wrote "Courtenay Adrian Ilbert”. He also signed and dated the draft.
50. Formal execution of the 2005 Will took place on 1 July 2005 in Mr Donaldson's presence. His attendance note says: “Attendance on Michael Inchbald when he went through the new Will which he approved having read it through very carefully. It was duly executed in my presence and Daniel Corbett, whom I called up from his office to witness the Will".
    At some point the Deceased again amplified the initials C.A.I, and inserted an “S” (denoting South) before the word "Devon".
51. As mentioned in Mr Donaldson's letter of 20 June 2005, the residuary gift in the 2005 Will was in the following terms:

    "MY TRUSTEES shall hold the residue of my estate upon trust to divide the same into two equal parts or shares and to stand possessed thereof upon trust:

    (a) As to one such share for my son but if he shall predecease me then to such of them his children who shall survive me and attain the age of 22 years and if more than one in equal shares but if there shall be no such children then these shares shall be held upon the trusts declared by sub-clause (b) of this clause
    (b) As to one such share for my Trustees on trust to pay the income to my daughter during her lifetime and with power at any time and from time to time to raise capital (even to the extent of exhausting it) and to pay such capital to her or apply it for her benefit and subject thereto for my son absolutely but if she shall predecease me then to such of them his children who shall survive me and attain the age of twenty-two years".

52. On 4 July 2005 Mr Donaldson wrote to the Deceased, enclosing a copy of the Will as executed.

The period from 4 July 2005 to August 2006

53. On 8 August 2005, Mrs Duncan wrote to Courtenay. Courtenay was at that time employed by the Inchbald School of Design, of which Mrs Duncan was the principal. The letter raised a number of concerns about Courtenay's attitude, and concluded by saying the following:

> "Please come and see me as soon as you are back – I am proposing that your salary level will revert to the same level as Alan's, that is £54,000 per annum. If you cannot accept this and wish to look elsewhere, I will have to understand but I shall also have to revert to the idea of a technician so we must have an early discussion".

54. On a date estimated by Courtenay to be 17 August 2005, Mrs Duncan wrote to the Deceased a manuscript letter which I quote in full:

> "Dear M,
>
> We spoke today about the dilemma Courtenay faces regarding Isabella's education. You asked me what you should do.
>
> My answer was a request that you pay the Benenden bills for the sake of Isabella. I take the view that Courtenay has been very silly not to have made a proper provision for the £24,000 required and further that he should have known long ago that the School's finances would not be able to support his disproportionate salary. However, I do beg you to pay for Isabella – she is our grand-child and I feel badly that I cannot offer to help; but I'm going to have to put money that I can ill afford into the School and I do feel that you have the resources.
>
> Please!
>
> Love,
>
> Jacqueline
>
> PS And Amanda is still unwell, although she can now walk properly. I will see you soon –
>
> J"

55. I quote this letter because it appears to me to demonstrate that Courtenay's apparent belief that his mother has in some way set out to promote Amanda's interests over his own is misplaced.

56. On 23 August 2005, the Deceased wrote to Mr Donaldson, referring to a telephone conversation of that day and agreeing to pay Isabella's school fees for the current academic

year only, the money to come from the Michael Inchbald Discretionary Settlement. However, on 13 September 2005, Mr Donaldson received a telephone call from David Cockett, who was with the Deceased; and his attendance note records that "Understandably, Michael is reluctant to pay the second lot of fees which Courtenay has provided in respect of his younger daughter. Rightly he feels that there has been no discussion about paying the younger daughter's fees." On 14 September 2005, Mr Donaldson met David Cockett, and his attendance note says this:

> "I was horrified to hear that Michael Inchbald is annoyed about the way Courtenay has not acknowledged the generosity of Michael and that Michael is becoming a little "wobbly" about making any payment of school fees.
>
> The trouble is that Courtenay has now presented Michael with fees for Venetia and not just Isabella. That has not gone down well. Courtenay must be made to realise that Michael has only promised to pay school fees for one year and that his discretion to pay further fees is a matter for Michael to decide in the future.
>
> David handed me notes which Courtenay had prepared and which made sensible reading, but ultimately Courtenay is emphasising about ways to benefit himself and his own family."

The notes referred to were those relating to inheritance tax saving given to the Deceased by Courtenay on 19 May 2005.

57. Shortly after 20 September 2005 Courtenay wrote to the Deceased a letter, which he had first shown to Mr Donaldson, about inheritance tax. The letter ran to 3 pages and was forcefully expressed. It suggested that the likely inheritance tax liability was £3,000,000; it said ""Sometimes I think you feel that we shouldn't have any money because we will waste it all. You have no reason to believe that we will"; and it concluded by saying:

> "it is excruciating to watch as you struggle with your imaginary money worries, yet resolutely build up this liability for £3,000,000. … Please don't throw all this money away unnecessarily by paying a tax that no one else pays, and please don't delay taking action to sort out your affairs any longer".

58. The Deceased appears to have mislaid the original of this letter, because on 24 September 2005 Courtenay sent him a copy, saying that he was sorry the Deceased was upset by it. On 3 October 2005 the Deceased made a diary entry saying: "Although I am "furious" with Courtenay it is only right that he should have power of attorney in conjunction with Patrick Donaldson. I cancelled it [a meeting with Mr Donaldson and Mrs Duncan] because it does not seem right to give power of attorney to my ex-wife and Patrick is her half brother".

59. On 4 October 2005 Courtenay sent to Mrs Duncan an e-mail that I can only describe as extraordinary. It was headed "Your behaviour", and it said this:

> "it must be plainly obvious to you and, I expect, to Patrick Donaldson that you are a totally inappropriate person to take power of attorney over my father's affairs. There are none of your business, you know very little about financial matters, you are not part of his family, and you have very little real concern for him. You divorced him 42 years ago, you spent my entire childhood criticising him and arguing with him about money, and you have complained about him ever since. You resent his obvious talent to the extent that, even though you have used unattributed pictures of his work to promote the School in the past, you refused to allow me to mention him on the website for fear that people would attribute some of the School's success to his reputation. Furthermore whilst you are widely regarded as extravagant, he is very obviously not, so you are not at all well qualified to make the decisions that he would make. Do not pretend that you are motivated by an urge to protect Amanda's interests. You have no reason to believe that I would abuse a position of trust to favour myself. Indeed, whilst you have been shamelessly trying to manipulate him and his advisers, and therefore been continuing to neglect the management of the School, I have easily resisted all temptation to damage your interests despite the wide-open opportunities to do so, even notifying you of the issues needing immediate attention. I have instituted the unfair dismissal procedure only because my dismissal was so ineptly handled, despite the numerous opportunities I gave you to resolve the situation, that it would be embarrassing not to. Step back and take a good look at your behaviour. Then modify it."

60. This e-mail, and the claim by Courtenay of unfair dismissal to which it refers, demonstrates the extent to which relations between him and Mrs Duncan had broken down. That fact has, in my assessment, coloured his attitude to her ever since, so that he is deeply mistrustful of her motives.
61. On 5 October 2005 Mrs Duncan wrote to the Deceased, referring to a walk they had had the previous day. Her letter said this:

> "three times yesterday you asked me what you should do about your current circumstances and the dilemma is clearly distressing to you. I am very sorry that you had an unpleasant letter from Courtenay. It is strange that when you tried to show it to me it had disappeared

overnight, in spite of the fact that both Roggie and Angelina knew exactly where it had been left. One is left thinking that Courtenay removed it.

The pressure on you seems to me to be both unnecessary and intolerable, but in accordance with your request I have given the matter careful thought.

In the first place one must ask why you would be wise to grant a Power of Attorney to anyone.

The answer lies solely in convenience. You are quite forgetful now and clearly happy to rely on Roggie for the day-to-day management of your affairs. If you were finally unable to cope, the only use of the Power of Attorney is to sign everyday cheques which are already written out for you by Roggie anyhow. Roggie and Angelina look after you brilliantly and I have no doubt that they will continue to do so. They are both very fond of you.

There is absolutely no financial expertise required in these circumstances.

The next question is do you want to do this? Under no circumstances must you do it reluctantly and in my view you should not give this power to either of your major beneficiaries because it would constitute a serious conflict of interest which appears to exist at the present moment.

Further, there is no doubt in my mind that two people should be involved, and that one of them should be your solicitor Patrick Donaldson who, you remember, is my half brother and Courtenay's Uncle. You could appoint Courtenay if, after his behaviour, Patrick is prepared to work with him.

You could appoint me if you wish: in the past you asked me to be your Executor and I suggested that I might be too close to you in age, though in fact there is eleven years between us.

However, there is another alternative. What about asking Roggie to do it? You know her well, you trust her implicitly and she knows all there is to know about your affairs. It does seem a sensible and reliable solution don't you think? It will also take the heat off family pressures.

I hope this has served to clarify your mind a bit; do ring me and tell me what you think.

Love from J".

62. Also on 5 October 2005, Courtenay sent an e-mail to Mr Donaldson. In part, it said this:

> "Although I, as do you, believe that you and I would be the best people to have power of attorney, I am not particularly concerned about the who, as long as it is arranged in time and the people appointed are likely to act reasonably. I would, however, be horrified if my mother, who is continuing to badger my father, were to gain any influence over his affairs from the point of view of my father, myself, my wife and my children. I don't think it would do Amanda much good either. …
>
> I know you are finding this extremely difficult to. Whilst I understand you must ultimately do what my father instructs, you should also advise him well. If you have doubts about me or my mother's conflicting positions, I suggest that you ask his housekeeper and his secretary their independent opinions about the pressure being exerted on him. Unfortunately I fear that they may be reluctant to open up to you because of your obvious association with my mother.
>
> I certainly have no doubts about your integrity and good intentions and I think you are an entirely reasonable person, but if you find it difficult to advise my father against my mother, which I expect you might, particularly when she is present, or if you are finding yourself giving my mother advice about influencing my father, there is a dangerous conflict.
>
> However, whatever happens, my mother is a totally inappropriate person to receive power of attorney, shared or not."

63. On 12 October 2005 Mr Donaldson responded to Courtenay's e-mail, saying:

> I understand your concerns about your father but you must know that the problems between you and your mother are a separate issue. This firm acts for the Inchbald School. There is no conflict between the School and your father.
>
> Earlier this year I prepared a will which your father approved after some discussion. I can say without divulging confidences that he is primarily concerned for you and your family and Amanda. My concern is that your father is increasingly frail and forgetful to the point where he should grant a power of attorney without delay. In view of the recent recriminations between you and your mother I am aware of my responsibility of preventing your father from becoming involved. He wishes you and Roggie and myself to be joint attorneys. Roggie says she will consider this proposal only on the basis that all three attorneys act unanimously. I see no conflict when the three attorneys act accordingly".

64. On 4 January 2006 Mrs Duncan wrote to the Deceased, according to her letter at his request, to explain why Courtenay had left the Inchbald School of design. Her letter concludes in this way:

> I did my best to help our son in his difficulties and was rewarded with a spate of venomous letters, sent to me and to others.
>
> We are now in a position where both of us have tried to help Courtenay. I have three times employed him in the School and received nothing but abuse and you are now paying £24,000 a year for School fees.
>
> I think you have been extremely generous to him. I understand that you have lent him money in the past and I know you have given him generous gifts.
>
> Courtenay is taking the School to the Industrial Relations Court in an effort to get more money.
>
> I consider him to be irresponsible and shatteringly ungrateful. He certainly has no sense of parental respect.
>
> You did ask – it is a most unhappy situation –
>
> Love from Jacqueline".

65. On 6 January 2006 Mr Donaldson received a telephone call from the Deceased. His attendance note is in the following terms:

> Telephone call from Michael Inchbald, who told me that he was disturbed by a communication which he had received from Jacqueline. He wanted to know more about what had happened between his former wife, Jacqueline, and their son, Courtenay.
>
> I explained that Courtenay had written extremely confrontational letters to his mother and it would appear that he had e-mailed them within the Inchbald School premises so that members of staff were able to read the e-mails. I said that by any criterion the e-mails which Courtenay had sent were very damaging. Furthermore, Courtenay is now taking his mother to an industrial tribunal.
>
> I was also concerned that Courtenay appears to be in financial difficulties. Certainly his financial commitments are very expensive, particularly having regard to the educational commitments. I understood that Courtenay had upset Michael and had written a vituperative letter to him. Michael was appalled by what Courtenay had done. Michael said that he did not want Courtenay to become an Attorney and neither did he want him to attend the meeting fixed for 11th January. He wanted me

to contact Roggie to cancel the arrangements with Courtenay. He wants Jacqueline to be a co-Attorney."

66. Also on 6 January 2006, the Deceased sent a manuscript note to Mr Donaldson, saying: "This is to confirm my telephone call on 6th January that the three people that I want to have power of attorney are yourself, Jacqueline and Courtenay".

67. There was a meeting on 11 January 2006 between the Deceased, Mr Donaldson and Courtenay about the power of attorney. Mr Donaldson's attendance note contains the following relevant passages:

> "Attending on Michael Inchbald who was quite clear about his intentions. Courtenay was also in attendance.
>
> Michael asked me what he should do. I reminded Michael that there had been a number of occasions when he had instructed me about the Power of Attorney during the last couple of months and when he had changed his mind. He wanted Roggie or his former wife, Jacqueline, to be attorneys along with myself. On another occasion he wanted Courtenay to act jointly with Jacqueline, but now he said that he wanted Courtenay and myself.
>
> Michael then showed me a note which he said he had been told to write. Courtenay interjected and said Michael had written than those of Michael's suggestion that he would forget what he wanted to say. In the note Michael said that he wanted to avoid inheritance tax.
>
> I then discussed the nature of the Enduring Power and suggested that in view of the controversy which had occurred over who should act (or not act) and having regard to Michael's frailty, we should obtain medical evidence. In that way it would be difficult to challenge the Enduring Power of Attorney. …
>
> Michael was looking more robust than I have seen him for a while. He expressed dismay about Courtenay's conduct with regard to Jacqueline and said how upset Jacqueline was. I challenged Courtenay (tactfully) about his own conduct, but Courtenay feels that he has done nothing wrong and that virtually all the wrong is on his mother's side.
>
> I pointed out the Jacqueline's motive for becoming involved had to do with her wish to protect Amanda. I said that Amanda was apprehensive about what Courtenay might do, Courtenay said that his sister need not worry. I was authorised to disclose that Courtenay is the main beneficiary of the Estate and that Amanda's interest is subject to a life interest in favour of her brother and then her two nieces."

68. On 3 February 2006 the Deceased wrote to Mr Donaldson, saying "I would like to remind you of my wish not to be put in a nursing home and I would prefer to spend my last days in my own house. Would you kindly forward your copy of this letter to my son Courtenay and daughter Amanda".
69. On 21 February 2006 Mr Donaldson attended on the Deceased and finalised the power of attorney. He and Courtenay were the attorneys.
70. On 24 February 2006 the Deceased had a mild stroke.
71. On 25 April 2006 Courtenay visited the Deceased. Following that, he sent an e-mail to Roga Pillay asking her to prepare and send letters to Michael Dodge and Mr Donaldson, in the following terms: "I am writing to let you know formally that I want my son Courtenay to be involved in my affairs. Please give him any information that he requires, keep him informed, and act on his instructions, whilst also keeping me informed. In order to avoid confusion, please do not discuss my affairs with my ex-wife Jacqueline". He also asked her to prepare a letter to Kelly Noel-Smith at Radcliffes saying: "Prior to our meeting at 3.00 on 5th May, arranged by my son Courtenay, I attach a copy of my current will which includes a trust which may be inappropriate following the Budget. I should like Courtenay to be involved in my affairs, so, should I instruct you as my solicitors, please give him any information that he needs, keep him informed, and act on his instructions, whilst also keeping me informed". A copy of the will was to be enclosed. The e-mail ended as follows:

    > "Richard Price and Kelly Noel-Smith will be coming next Friday, 5th May at 3.00. I haven't put them in the diary in case my mother reads it and interferes. Perhaps you should just put me in the diary for that time. If possible, it would be helpful if you could attend in case they need to see anything".

72. The letters that were in fact sent contained amendments made by the Deceased. The one addressed to Mr Donaldson ultimately said: "I am writing to let you know formally that I want my son Courtenay to be involved in my affairs. Please give him any information that he requires, keep him informed, and only act on his instructions after my consent". The other letters contained amendments to similar effect.
73. A meeting took place on 5 May 2006 between the Deceased, Courtenay, Richard Price and Kelly Noel-Smith. Among other things, inheritance tax savings were discussed. Paragraphs 8 to 10 of Kelly Noel-Smith's attendance note were in the following terms:

"8. A new Will is to be drafted making [Courtenay] executor with his sister, Amanda, acting as his substitute. [Courtenay] would act jointly with a RadcliffesLeBrasseur partner (Richard Price? with a substitute KNS?).

9. A power of attorney should be drawn up with similar provisions.

10. Although this was not covered at the meeting, presumably the solicitors who drew up his existing Will and power of attorney should be instructed that their retainer has come to an end."

74. On 10 May 2006 Kelly Noel-Smith wrote to the Deceased saying that she was doing so as agreed, to summarise the points discussed and to suggest steps which might be taken to organise his estate tax-efficiently. She enclosed a strategy paper.

75. On 1 June 2006 a letter was sent to Kelly Noel-Smith, apparently signed by the Deceased, referring to her letter of 10 May 2006 and a subsequent letter (not in the trial bundle) dated 22 May 2006, and saying this: "I have discussed these matters and considered them carefully. I regret that I am not prepared to take your proposal further and prefer to leave my Will in the hands of my present solicitors". This letter was received by Kelly Noel-Smith's on 2 June 2006. On that day she replied to the Deceased, expressing surprise, and copied her letter to Courtenay. Courtenay then rang her and, according to her attendance note, said that on receipt of her letter he had immediately contacted the Deceased who had no recollection of sending the letter disinstructing her.

76. There is an issue as to whether the letter of the 1 June 2006 bears the genuine signature of the Deceased. Courtenay adduced evidence from Dr Audrey Giles, a well-known expert on questioned documents. Dr Giles'**s** view was that the number and nature of the differences she observed between the signature on the letter of 1 June 2006 and other genuine signatures written by the Deceased amounted to strong positive evidence that the former signature was not genuine but was an attempt to simulate his signature. In her view, although the evidence was not conclusive, it was unlikely that the signature on the letter of 1 June 2006 was a genuine signature of the Deceased. Dr Giles was not cross examined on her report.

77. Roga Pillay gave evidence that she could remember typing the letter of 1 June 2006 at her home and then bringing it to the Deceased to sign, which he did in her presence. She then posted it. She stated that the signature was not a forgery. In cross examination, she said that she never signed letters on the Deceased's behalf. When it was pointed out to her that there was no record in the Deceased's diary of her having been to his house on 1 June 2006, although she had been there on 31 May 2006, she said that it was her practice often to drop

into the Deceased's house on her way between her home in Ealing and her exercise class in Fulham. Although there was some doubt about the accuracy of her recollection of her involvement in the production of a letter (referred to below) stating the Deceased's wish to remain in his own home, she was generally unshaken in her evidence, and I accept what she says about the letter of 1 June 2006. She had no reason to lie, or to become involved in the forgery of a document. Moreover, although the Deceased was by this stage undoubtedly often forgetful, it was inevitable that – as in fact happened – Kelly Noel-Smith would respond to the letter, with the result that (if it were not his signature) the Deceased would ask questions about it. It was not suggested to Roga Pillay that she or anyone else planned deliberately to withhold from the Deceased Kelly Noel-Smith's letter of 2 June 2006. In the face of Roga Pillay's evidence, I cannot accept Dr Giles's opinion – which is only an opinion – that the signature on the letter of 1 June 2006 was a forgery.

78. I return to the narrative. On 18 July 2006 the Deceased made a diary entry saying: "Ring Solicitor re my will. I did NOT – + still to do. This was an instruction to me by Courtenay + I forgot to do it + what his instruction was".

79. On 24 July 2006 Michael Glynn of Gibbons Mannington wrote to the Deceased, referring to a recent meeting, and saying that he was "putting in writing some of the matter is that we discussed, and others which will require further thought, before I meet and discuss the relevant points with Patrick Donaldson, so that he can, if it is your wish, re-draft your Will". He then said that the main purpose of the letter was "to obtain your confirmation that you agree my understanding of certain points regarding your Will and other matters that we discussed when I came to see you". Two of these points were as follows:

> "1. With regard to the Clocks, although there is a definition included in your Will for the "Ilbert Horological Items" I cannot see any reference to your wishes with regard to these items. In our discussions, I indicated that I would look into the various options with regard to these and the implications of various courses of action. As I understood it, if there was a very significant Tax Liability attaching to these items, you indicated that you might consider giving them to the British Museum, to be added to their existing collection of Clocks purchased by them from the Estate on the death of your Uncle. This I believe would then remove these items from any calculations for both Inheritance Tax (under the Charities Legislation) and Capital Gains Tax for the reasons stated in [Radcliffes'] Report. …
>
> 3. With regard to the residue of your Estate, I understood that the current Will does not in fact deal with this as you had intended, because according to my reading of

the current Will, half the residue is left to Courtenay absolutely with provisions if he should pre-decease you, and the other half is left in Trust for Amanda for life, with any remainder going to Courtenay, if he is alive at her death, and only on to Courtenay's children, if he should, once again have pre-deceased you. As I understood your wishes, they were that half should go to Courtenay absolutely, whilst the other half went in to Trust with a life interest to Amanda, and that on her death, the remaining Assets of the Trust should pass directly to Courtenay's children.

…

Finally, I understand that your son may have been pressing for a meeting on Inheritance Tax which I personally feel would be inappropriate, as any legal, taxation or financial advice should be provided to you solely by your professional advisers".

80. In his diary for the period 7-14 August 2006, the Deceased made the following notes:

"NB Courtenay's instructions to me to have my will re-written or altered";

"Courtenay came + gave me instructions on way he wanted my will altered";

"Nickey came today to forcefully repeat Courtenay's instructions re way he wants me to get solicitor to alter my will i.e. re-write it";

"Nicky said it's nothing to do with Jacqueline";

"Trouble is I can't remember the details. He must write down his orders and instructions to me";

"When Courtenay and Nickey call a meeting, I want Jacqueline to be there";

"Must ring Co/Nicky re giving me their orders re my will on paper – or I shall not remember details";

"Must ring Jacqueline".

81. Nothing more appears to have happened at this stage, since on 5 March 2007 Michael Glynn rendered an interim account which details no contact with the Deceased after 24 July 2006.

The 2007 Wills.

82. On 11 June 2007 Mrs Duncan sent the Deceased a letter in the following terms:

"Dearest M,

I enclose herewith a draft for you to get Rogi to type out and then you can sign it.

I suggest that you send it to four people, myself, Patrick Donaldson, Amanda and Courtenay and that you make sure that you get an acknowledgement from each one of them.

I think there is a very slim chance that you would ever be put into a home because I am perfectly sure that all four of us are aware you would not need or want to go anywhere else but Milner Street. However, this is a precaution and should make you feel better.

I look forward to seeing you soon.

Love from J."

The draft letter said: "I am very concerned that with failing health, whether mental or physical, it may be deemed sensible to move me into a home for full-time care. I want to make it absolutely plain to all addressees, namely Patrick Donaldson, Jacqueline, Courtenay and Amanda, that I do not wish under any circumstances at all to be moved from my own house.. My resources are amply sufficient to provide for full-time care, whether it be 24 hour nursing as well as housekeeping and secretarial help. I am sending this letter to all four of you and I would be grateful if you would send me a personal acknowledgement of its receipt."

83. On 16 July 2007 Mr Donaldson spoke on the telephone to Roga Pillay in response to an earlier call from her. His manuscript attendance note records as follows:

"Jacqueline has composed a letter which Roggi said she will e-mail to me.

I rang again to approve the latter subject to amendments which I will make.

Roggi says that neither Courtenay nor Amanda has been in contact with their father (apart from phoning) for some months. Amanda says she is too ill. Courtenay was curt to his father and said that he is absorbed by other commitments - looking after Nikki.

I made an appointment to see Michael next week at 2 pm on 25th July."

The typed-up attendance note makes clear that the request for a meeting came from the Deceased, and I find as a fact that that was so.

84. Also on 16 July 2007 Mr Donaldson wrote to Michael Glynn of Gibbons Mannington, including the draft letter prepared by Mrs Duncan. He said this: "I entirely agree with Jacqueline's sentiments about Michael Inchbald's needs. I know that he would wish to continue to live in his own house (10 Milner Street) without ever having to enter a nursing home. However, I have changed the letter slightly as I feel Jacqueline's name on the letter may only antagonise Courtenay and so I have prepared a newly drafted letter (copy enclosed) which I shall get Michael to sign. This is assuming that Michael is happy to sign it. As for Jacqueline, I can write to her separately merely to confirm that Michael's wishes will

be respected by me and that I shall do my best to ensure that they are respected by Courtenay and Amanda".

85. On 25 July 2007 Mr Donaldson attended on the Deceased. The Deceased's diary entry records his visit at 2pm, and says "Will – changes". Mr Donaldson's attendance note of the meeting reads as follows:

> Attendance on Michael when we went through the previous Will. I had my own copy.
>
> Michael made some specific alterations to the previous Will. He did not want the Courtenay Ilbert Clocks sold and wanted them to go to the British Museum for a reasonable period. He wanted to increase the legacies to Roga to £10,000 in thanks for her part-time care and to Angelina to £25,000 in thanks for her full-time care. The legacies to his nieces, Sarah and Susan, and his sister, Presiley, are to remain the same. He confirmed the legacy of £50,000 to the Charities.
>
> Michael grumbled again about his children and felt they were not bothered about him. He said that Courtenay drove past regularly and could easily drop in during the day or at the end of the day. Amanda could easily come and visit him as well.
>
> I asked Roga to join us. I then read out the deed of retirement and appointment which I had prepared in respect of the Settlement. I explained that Michael Glynn is taking over as Trustee from Michael Dodge, who is now completely retired. Michael understood the document and we both signed it in the presence of Roga, who witnessed our signatures."

86. On 24 August 2007 the Deceased was admitted to hospital for a planned hernia repair operation. He was discharged on the following day and went back to his house.

87. On 28 August 2007 the Deceased made an entry in his diary saying "My will", and underneath that, linked by an arrow, he wrote "Get my lawyer to visit me re will". Also on 28 August 2007, Mr Donaldson spoke to Roga Pillay on the telephone. His manuscript attendance note says the following:

> "Michael's operation was a success but he was very sick. Angelina has spent many hours nursing Michael. Amanda came to the hospital for half an hour but wouldn't help Michael get back into his property leaving him to Angelina.
>
> Rogay asked me not to repeat what she has said. Courtenay has not visited his father at all. I said I would see Michael on Friday 31st August.
>
> Later I rang to make the appointment for 3.00 pm on 31st August."

88. Mr Donaldson attended upon the Deceased on 31 August 2007. His typed attendance note is the following terms:

> "Attendance on Michael at 3 pm. Roga was present but without prompting she left the room.
>
> I went through the engrossed Will which I had brought with me. Michael approved it save that under clause 4 he said that he wanted to delete the legacies to his sister, Presiley, and his two nieces. He explained that he never saw them, but he realised that Presiley found it difficult to come up to London.
>
> I then went downstairs and requested Daniel Corbett to come up and witness the Will with me. Just before the Will was executed by Michael I deleted the legacies to Michael's sister and two nieces. Michael placed his initials against the deletions as did Daniel Corbett and myself. The Will was then duly executed.
>
> Daniel then left and then Michael and I had further discussions. He was very upset with Courtenay and Amanda. He said that Courtenay had not visited him in hospital at all or since then. I did not contradict him as this had been reported to me. I did say that I understood Amanda had visited him in hospital, but Michael complained that she had not been to see him since.
>
> He said that he now wished to divide his residuary estate between Courtenay and Amanda equally. I agreed to prepare another Will on that basis and delete any reference to Michael's sister and his two nieces. There was some discussion about Michael's two granddaughters, but Michael said that he did not want them to have too much. He suggested legacies of £10,000 each, but I pointed out that was not a particularly large sum having regard to his estate and Michael decided to increase the legacies to £25,000 each upon them attaining 25 years of age. I suggested that the legacies could be paid sooner and that I was sure that Michael's two granddaughters would be responsible by the age of 22 years.
>
> There was also some discussion about Jacqueline. Michael said he was most unhappy with the way Courtenay had treated her. He was aware that there had been a Court case. I said it was all very difficult and sad, but that Michael was being fair."

89. The Will that was then executed was the August 2007 Will. It named Courtenay and Mr Donaldson as executors; gave to Courtenay certain items, which were defined with great specificity; and defined "the Ilbert Horological items" and set out the clocks clause in the following terms:

"I express the wish that my Trustees at their discretion do not dispose of the Ilbert Horological items and that they are put in display at the British Museum in London from time to time".

The August 2007 Will then gave the residue of his estate to his trustees "upon trust to divide the same into two equal parts or shares and to stand possessed thereof upon trust:

(a) as to one such share for my son but if he shall predecease me then to such of them his children who shall survive me and attain the age of 22 years and if more than one in equal shares but if there shall be no such children then these shares shall be held upon the trusts declared by sub-clause (b) of this clause

(b) as to one such share for my Trustees on trust to pay the income to my daughter during her lifetime and with power at any time and from time to time to raise capital (even to the extent of exhausting it) and to pay such capital to her or apply it for her benefit and subject thereto for my son absolutely but if he shall predecease me then to such of them his children who shall survive me and attain the age of twenty-two years".

90. On 5 September 2007 Mr Donaldson wrote to the Deceased. His letter said this:

"Dear Michael

Re Your Will

Further to my attendance on you on Friday 31st August, I enclose a copy of the Will which you executed.

Just prior to the execution of the Will you indicated that you no longer wish to provide legacies to your sister, Presiley, or to your nieces. In the case of Presiley you felt there was little point. You also said that you have had little or no contact with your nieces.

However, you also said that you wish to provide legacies to your granddaughters, Isabella and Venetia (£25,000 each) upon them attaining the age of 22 years.

Subject to those legacies and subject to the legacies which you are giving in respect of chattels, you then said that you wish to treat Courtenay and Amanda equally.

I have, therefore, taken the liberty of preparing a newly drafted Will for your consideration. You will see that clauses 1 to 3 of the Will are exactly the same as before save that I have also inserted Michael Glynn as an Executor under clause 2 (a) of the Will. I have altered clause 4 whereby the legacies to your sister and nieces are deleted.

I have then inserted legacies for your granddaughters, Isabella and Venetia, and thereafter the residuary Estate is divided between Amanda and Courtenay subject to the proviso that if either of them (or both of them) predecease you then the residuary Estate is to be shared between Isabella and Venetia upon them attaining the age of 22 years.

You also expressed concern about there being any problems if two Executors disagree and so I suggest that Michael Glynn is also made an Executor. You will see that I have, therefore, inserted Michael Glynn as an Executor of the Will as well as myself and Courtenay.

Please feel free to telephone me when you have had an opportunity to consider the contents of the new Will which you may compare with the contents of your current Will which you executed on 31st August.

Kind regards,

Yours sincerely,

PATRICK N. DONALDSON"

91. 14 September 2007: attendance note Donaldson: "Please call Roga Pillay (Michael Inchbalds Secretary) regarding the Will today". I rang Roga. Will approved. I arranged to see Michael at 5:30 pm on Monday 17th September."
92. A note in the Deceased's diary for 17 September 2007 says "Patrick Donaldson – re last will".
93. Mr Donaldson's attendance note of his meeting with the Deceased on 17 September 2007 is in the following terms:

"Attendance on Michael shortly after 5:30 pm. Michael was pleased to see me and said that he had read the draft Will, which he had approved. He wanted me to go through the Will again and so without anyone else being present I duly did so. Michael was very happy that Michael Glynn should be a co-Executor as in his words he did not want a stalemate between me and Courtenay. He was also content to divide the residue of his estate equally between Amanda and Courtenay. He was particularly concerned that Courtenay would receive the specific legacies in clause 3a of the Will. He said they were of great value.

After going through the Will I went downstairs and asked Daniel Corbett to come up and witness the Will which Michael then executed in our presence and we duly witnessed.

I explained to Michael that I had to get back to Bexhill and so I left shortly afterwards but made it clear that Michael could call me any time either through Roga or Angelina."

94. The gift of residue in the September 2007 Will was in the following terms:

"I GIVE all the residue of my estate subject to the payment of my just debts funeral and testamentary expenses ("my residuary estate") to such them MY SON and MY DAUGHTER who shall survive me and if more than one in equal shares provided that should either of them predecease me then I give the share of my deceased child to such of them ISABELLA and VENETIA who shall survive me and attain the age of twenty-two years and if more than one in equal shares".

95. On 19 September 2007 Mr Donaldson wrote to Roga Pillay in the following terms:

"I enclose a copy of the Will which Michael executed on Monday 17th September together with my bill of costs to cover the two attendances on Michael.

Michael executed a Will on 31st of August 2007, but then he wanted make more changes to the Will as indicated in my letter to him which I have inserted separately in an envelope for you to hand over to Michael.

As you know there have been two attendances on Michael to include travel up to London and also time spent in preparing the two wheels.

I think everything is up-to-date, but if there are any queries no doubt you will let me know on Michael's behalf."

96. Enclosed with that letter was, as it said, a letter, also dated 19 September 2007, addressed to the Deceased in the following terms:

"Dear Michael

Re: Your Will

it was a pleasure to see you again on Monday 17th of September.

We went through your new Will whereby the legacies which you had given to your sister, Presiley, and to your nieces were deleted.

You have also decided to divide your residuary Estate between Courtenay and Amanda but subject to your grandchildren, Isabella and Venetia receiving £50,000 (£25,000 each) upon them attaining 22 years of age. There had been some debate about when they should inherit the legacies but you felt that 22 years of age was a suitable compromise.

You also indicated to me that you would not wish there to be a stalemate or disagreement in the case of two Executors and hence your wish to appoint Michael Glynn as an Executor as well as myself and Courtenay.

I now enclose a note of my charges for your kind attention to cover my visits to you and preparation of the Wills. Everything is good order.

You have a very substantial Estate and so the legacies which you have provided in your Will are well within your means. I think the Will is very fair in the circumstances.

In the meantime, I am aware that Roga and Angelina keep an eye on you personally and, of course, they are free to contact me at any time if there are problems.

Kind regards,

Yours sincerely

Patrick"

97. Also enclosed with the letter was a bill, again dated 19 September 2007. The relevant part of the narrative read as follows:

> "Personal attendance on you on 31st August 2007. There was a lengthy discussion about the Will when you indicated that you wish to provide legacies to your granddaughters but that you wish to cancel out legacies to your sister and nieces. You signed the new Will in view of the increased legacies which you wish to provide to Roga and Angelina. Consequently I attended on you again on 17th September 2007 when you executed a new Will whereby the legacies to your sister and nieces have been deleted but instead you are providing legacies to your granddaughters, Isabella and Venetia."

98. On 27 September 2007 the Deceased paid Mr Donaldson's bill.

99. I now turn to the Deceased's state of health, physical and mental, at the time of the 2007 Wills. That is the subject of Prof Howard's report, dated 16 December 2013, which in summary expresses the opinion that "In August and September 2007 when Mr Inchbald executed his final Wills he was mildly to moderately affected by dementia caused most probably by a combination of Alzheimer's and vascular pathology. On the balance of probabilities I consider that he would have retained adequate testamentary capacity to make a valid Will". The report traces the Deceased's cognitive history from December 2003 onwards. It makes reference in particular to loss of short-term memory, and to Mini-Mental State Examinations carried out in April 2006 (when the Deceased scored 18/30) and in January 2007 (when he scored 21/30). It records the view expressed by the doctor engaged

to assess the Deceased's capacity to enter into an Enduring Power of Attorney in January 2006 that "He is physically somewhat frail and suffers from some degree of short-term memory loss. He is in sound state of mind". Prof Howard's opinion on testamentary capacity at the time of the 2007 Wills was expressed in the following terms:

> "By August and September 2007 Mr Inchbald's dementia had progressed to the point where he was on the borderline between mild and moderate severity. In an unfamiliar and disorientating environment, such as the hospital where he was admitted for his inguinal hernia surgery in August 2007, he would have been vulnerable to episodes of worsened confusion and severe disorientation as would appear to have been the case when he pulled out his intravenous line. But within familiar surroundings and his domestic and social routine he would probably have been able to remain orientated and function at a reasonably high level. This is not to say that he would not have shown evidence of his underlying memory difficulties which would have become quickly evident to anyone who spent more than a few minutes with him. … As Mr Inchbald was on the borderline between mild and moderate dementia severity at the time that he made his last Wills (by convention a Mini-Mental State Examination score of 20 or more defines a mild dementia), from my reading of the medical records alone I would consider that on the balance of probabilities he is likely to have had adequate testamentary capacity to make a Will in August and September 2007."

There was no cross-examination of Prof Howard on behalf of Courtenay, and I accept his views. They are consistent with other evidence, particularly from Roga Pillay and Angelina Martins, that the Deceased's cognitive difficulties only became so severe as to be disabling in about the middle of 2008. What Prof Howard's views appear to me to indicate is that the Deceased remained capable, at the date of the 2007 Wills, of giving instructions and understanding written and spoken information. His real problem, as he himself from time to time acknowledged, particularly in his diary entries, was his lack of memory.

100. The circumstances in which the August 2007 Will were executed were the focus of intense examination in cross-examination. Their importance is not so much in the execution of the August 2007 Will itself, but in the fact that at the same meeting Mr Donaldson says that he was given the instructions for the September 2007 Will. It was Courtenay's case that there had not been time for Mr Donaldson properly to obtain those instructions, and that he had not in fact been given any. This thesis was bolstered by reference to the language of Mr

Donaldson's letter to the Deceased dated 5 September 2007, in which he said that he had "taken the liberty of preparing a newly drafted Will for your consideration".

101. The first question that arises in relation to the meeting of 31 August 2007 is the time at which Mr Donaldson arrived. According to his own attendance notes of 28 August 2007 and 31 August 2007, his appointment and his arrival were at 3 pm. Over the course of his written and oral evidence, however, his position fluctuated. Initially, basing himself upon his reading of the Deceased's diary entry for 31 August 2007, he claimed to have arrived at 1:30 pm. He was progressively driven away from this position; but in the end managed to produce his train ticket and, by a process of extrapolation, suggested that he would have arrived at about 2.30 pm. There is no doubt that his evidence on this topic was unsatisfactory; but, doing the best I can, and in particular bearing in mind the conclusions I shall shortly express as to the content of his discussions with the Deceased, I think it is likely that he arrived a little in advance of the appointment – say, at 2:50 pm.

102. The second question that arises in relation to that meeting concerns the time at which it came to an end. There is no doubt that at some point during the course of the afternoon Mrs Duncan, Amanda, Isabella and Venetia came to visit the Deceased. According to his diary, they were expected to arrive at 3.30 pm. Although there were some difficulties and inconsistencies in the stories (such as whether they had come by appointment or, as Mrs Duncan initially, and in my view erroneously, suggested, on impulse, whether or not they had brought a cake with them, and whether or not Mr Corbett was wearing an overcoat), I find that they arrived, to the consternation of all, just as the August 2007 Will was about to be executed. The Deceased, Mr Donaldson and Mr Corbett were all present, and Amanda, Isabella and Venetia, and perhaps also Mrs Duncan, went into another room while the document was signed. It is impossible to be certain about the time of their arrival, but I take it to have been at about 3:30 pm.

103. I should refer specifically to Venetia's evidence. Although she was only 10 at of the time, she had a particular reason to remember the occasion, because it was the first time that she had been allowed to sit in a particular chair. Her parents would not normally allow her to do so, because on a previous occasion she had broken a valuable statue. She gave evidence that the Deceased was resistant to being moved from his usual armchair, and kept saying that he could not understand. Courtenay suggests that this indicates that the Deceased was being made to sign the August 2007 Will against its true wishes. I reject that suggestion: as Mr Donaldson at least would have known, the August 2007 Will perpetuated the unequal division between Courtenay and Amanda, so that to force the Deceased to

execute it would not have furthered the supposed purpose of the plan that Courtenay claims Mrs Duncan was pursuing. I accept that Venetia heard her grandfather complaining about something, but I do not accept that it had anything to do with his execution of the August 2007 Will.

104. The next question that arises is why, if the Deceased had given instructions that the residuary gift was to be changed so that Amanda and Courtenay were to take equal absolute interests, he executed the August 2007 Will in a form which did not reflect his wishes in that respect. If the chronology set out in Mr Donaldson's attendance note of this meeting, which suggests that the discussion about the residuary gift occurred after execution of the will, could be relied on, it would provide an explanation: the change to the residuary gift was an afterthought, which necessarily could not be incorporated in the already executed will. However, it is not possible to regard the attendance note as accurate in that respect. That is for two reasons. First, Mr Donaldson acknowledged that his note was not precisely contemporaneous, but had been produced some weeks after the event. Secondly, and more importantly, there cannot have been a meaningful discussion after execution of the will because of the presence of Mrs Duncan, Amanda and the two grandchildren. If there was such a discussion, therefore, it must have occurred before execution of the Will. Mr Donaldson's explanation was eventually that the alterations to the residuary gift were too complicated to make in manuscript, but the Deceased wanted to proceed so that at least the pecuniary legacies that were deleted would no longer have effect. Although Mr Donaldson's evidence on the whole of this topic was unsatisfactory, to such an extent that, were it not for other contemporaneous correspondence to which I will refer shortly, I would have difficulty in accepting it, I do find as a fact that the events described in his attendance note of this meeting in fact occurred, although not in the order set out in that note.

105. The main reason for that finding is the terms of Mr Donaldson's letter of 5 September 2007. Courtenay does not suggest that this letter was not received by the Deceased. It records that the Deceased had said that he wished to treat Courtenay and Amanda equally, and that after payment of legacies to Isabella and Venetia the residuary estate was divided between Courtenay and Amanda "subject to the proviso that if either of them (or both of them) predecease you then the residuary estate is to be shared between Isabella and Venetia upon them attaining the age of 22 years". Even without the accompanying draft Will, these statements are clear as to their effect. Although it was said on behalf of Courtenay that there is no reference to removal of the life interest, the Deceased would in my judgement have had no difficulty in understanding that the only

circumstance in which Amanda would not get an outright half share would be if she predeceased the Deceased. It is to my mind inconceivable that Mr Donaldson would have written in these terms unless they in fact reflected the Deceased's wishes as expressed in a discussion on 31 August 2007. He would have no interest in doing so; on the contrary, to do so would be a gross breach of his professional obligations. Nothing I have seen of his conduct in relation to the Deceased over the period between 1996 and 2007, conduct which is characterised by careful attention to the Deceased's wishes, suggests that he would act in the way Courtenay suggests. I do not regard Mr Donaldson's statement that he had taken the liberty of preparing a newly drafted will as casting any doubt on this conclusion: it seems to me to be merely a manner of expression, which does not import any suggestion that the wishes expressed in the letter and the draft came from Mr Donaldson rather than from the Deceased. Whatever the length of the discussion on 31 August 2007, the Deceased had an ample opportunity after receipt of this letter to understand, and the capacity to understand, the proposed dispositions contained in the draft of the September 2007 Will.

106. In my judgment, he had and took a similar opportunity on 17 September 2007 itself. The note in his diary for that day demonstrates that he knew the reason why Mr Donaldson was coming. Mr Donaldson's evidence, which is supported by his attendance note and I accept, is that he went through the will with the Deceased page by page, the Deceased saying "yes" at the end of each one. It is the case that the Deceased's initials, and those of Mr Donaldson and Mr Corbett who witnessed his signature, appear at the foot of each page. Mr Donaldson was more than well aware that his client was old and frail, and I accept that he took sufficient care to ensure that the Deceased understood what was being told to him. I am satisfied that the September 2007 Will was read over to the Deceased in ample detail and in circumstances where he was fully able to comprehend the nature of the dispositions he was making.

107. He had a further opportunity to understand those dispositions on receipt of Mr Donaldson's letter of 19 September 2007. Although the letter was sent to Roga Pillay, there is no reason to suppose that she did not pass it on to the Deceased, and I find that he received it. Although again it did not refer to the removal of the life interest, its terms made more than clear that the residuary estate was to be divided between Amanda and Courtenay outright. It is also worth noting that the letter does not seek to summarise all the terms of the will, but merely those which have been changed; and in my judgment the Deceased had both the capacity to understand and in fact an understanding of what he was being told in the letter.

108. The position accordingly seems to me to be that, in relation to the September 2007 Will, the Deceased was first told what the will would contain (Mr Donaldson's letter of 5 September 2007); then taken through the will in detail on the date of its execution; and then told what the terms were of the document that he had executed (Mr Donaldson's letter of 19 September 2007). In the circumstances, I had no hesitation in reaching the view that the Deceased was fully aware of the nature and effect of what he was doing when he executed the September 2007 Will. There was nothing to suggest that the dispositions made by the September 2007 Will were contrary to the Deceased's true intentions: an equal outright division of his residuary estate between his children was not only unremarkable but had been his intention until 2005, and in 2005 he recognised that what he was doing could be regarded as unfair to Amanda, and accordingly required legal language in an attempt to disguise what he was doing. I reject the idea that there was any plan or conspiracy to substitute the wishes of Mrs Duncan for the Deceased's own, if no other reason than that it is plainly inconsistent with the existence of the 2005 Will. The claim of want of knowledge and approval accordingly failed.

Rectification

109. Section 20 of the Administration of Justice Act 1982 gives the court a limited power to rectify a will in defined circumstances. Subsection (1) provides as follows:

> "If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions in consequence –
>
> (a) of a clerical error or,
>
> (b) of a failure to understand his instructions,
>
> it may order that the will should be rectified so as to carry out his intentions".

110. Courtenay's case is that Mr Donaldson failed to understand the Deceased's instructions that the Ilbert Horological items should be given to Courtenay rather than fall into residue.

111. None of the wills or draft Wills from 1995 onwards contained a gift of the clocks to Courtenay. Under the 2005 Will the clocks were dealt with as personal chattels not otherwise disposed of, and therefore were held on trust for Amanda and Courtney to be divided amongst them equally according to value. However, it was Mr Donaldson's evidence that the clocks were discussed by him and the Deceased on 25 July 2007, and that the Deceased said that he did not wish them to go to Courtenay because he would "flog" them. However, in a witness statement made in February 2014, he said (para 31) that after some

discussion the Deceased decided that Courtenay should inherit them. He explained this in two attendance notes made in April 2014 as meaning that the Deceased wanted Courtenay to retain them.

112. Again, this aspect of Mr Donaldson's evidence is less than satisfactory. It is also the case that he appeared to have very little idea as to how the clause he drafted would work. However, with some hesitation I have concluded that the Deceased's predominant intention was that the clocks should not be sold, and that he feared that if he left them to Courtenay they would be. I think it likely, on the basis of what I know of the Deceased's carefulness with money and his irritation that previous items had been sold, that his major concern would be to retain items of family interest within the family or, at least, put them on display at the British Museum (which, as one of the annotations he made on a draft will indicated, already had related items). I also think it likely that the word "flog" originated with the Deceased rather than Mr Donaldson. The clause drafted by Mr Donaldson, imperfect as it was, at least expressed the overriding intention that the clocks should if possible be retained. Ownership of the clocks or their proceeds of sale was a secondary consideration. I accept Mr Donaldson's evidence that he was not instructed that the 2007 Wills should contain a bequest of the clocks to Courtenay. It also seems to me overwhelmingly likely that, if the Deceased truly had intended them to go to Courtenay, he would have noticed the absence of them from the detailed list of specific bequests of items of family interest made to Courtenay in the 2007 Wills.

Disposition

113. For these reasons, I direct that the September 2007 Will be admitted to proof. On the face of it, my view is that the costs of all parties should follow the event and to be paid by Courtenay on the standard basis; but if any party wishes to propose a different order, the matter will be relisted for a hearing.