Case No: PT-2021-LDS-000071

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST (Ch D)

IN THE MATTER OF THE ESTATE OF CHRISTOPHER STEWART RAMUS DECEASED

AND IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

Neutral Citation Number [2022] EWHC 2309 (Ch)

Cloth Hall Court,
Quebec Street,
Leeds LS1 2HA
Date: 8 September 2022

Before :
UPPER TRIBUNAL JUDGE MARK WEST
SITTING AS A JUDGE OF THE HIGH COURT

Between :

ELIZABETH MAY RAMUS

Claimant

- and –

(1) CLAIRE LOUISE HOLT
(as executor and beneficiary of the estate of Christopher Stewart Ramus)
(2) ANTHONY JOHN ARMITAGE
(as executor of the estate of Christopher Stewart Ramus)
(3) JOHN WILKINSON WARDLE
(as executor of the estate of Christopher Stewart Ramus)
(4) ALISTAIR STEWART RAMUS
(as beneficiary of the estate of Christopher Stewart Ramus)

Defendants

Nicola Phillipson (instructed by **Clarion Solicitors**) for the **Claimant**

Thomas Entwistle (instructed by **Raworths**) for the **First to Third Defendants (as executors and trustees)**

Duncan Heath (instructed by **Wilson Bramwell**) for the **First Defendant (as beneficiary)**

Hearing dates: 7-8 June 2022

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Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on Thursday 8 September 2022.

Introduction

1. This is a claim by Elizabeth May Ramus ("Mrs Ramus") under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") for reasonable financial provision from the estate of her late husband, Christopher Stewart Ramus ("Mr Ramus").

2. The First Defendant, Claire Louise Holt ("Mrs Holt"), is the daughter of Mr and Mrs Ramus. She is both an executor and trustee of the estate of her late father under his will and a beneficiary under it. The Second and Third Defendants, Anthony John Armitage ("Mr Armitage") and John Wilkinson Wardle ("Mr Wardle") are both executors and trustees of Mr Ramus's will. Although both Mr Armitage and Mr Wardle have professional expertise which is relevant to their role as trustees (the former as an accountant and insolvency practitioner and the latter as a director of a wealth management company), they were also longstanding friends of Mr and Mrs Ramus. The Fourth Defendant, Alistair Stewart Ramus ("Alistair"), is the son of Mr and Mrs Ramus and a beneficiary under the will of his late father.

3. Mrs Ramus was represented by Miss Nicola Phillipson of counsel, Mrs Holt in her capacity as beneficiary by Mr Duncan Heath of counsel and Mrs Holt, Mr Armitage and Mr Wardle in their capacity as executors and trustees by Mr Thomas Entwistle of counsel. Alistair, although a party to the action, took no part in the trial of the action. He did not appear before me and was not represented.

4. Mrs Holt has 3 children and Alistair has 2 children, all of whom are minors.

Background

5. Mr Ramus died by his own hand in tragic circumstances on 23 June 2020. Mrs Ramus is his widow. She was born on 14 November 1944 and is now 77. They had been married for 48 years, although in 2019 Mrs Ramus had decided to end the marriage.

6. Mr Ramus made his last will on 30 April 2014. In its original form it appointed Mrs Holt and Mr Armitage as executors and trustees. However, Mr Ramus made three codicils, on 15 September 2015, 13 July 2017 and finally on 20 September 2019, changing the identity of the executor and trustees. By his third codicil he appointed Mrs Holt, Mr Armitage and Mr Wardle as his executors and trustees.

7. By his will Mr Ramus provided that his sporting equipment was to go to Alistair and his personal chattels to Mrs Ramus. By clause 7 he provided that a fund of £50,000 be set aside for his 5 grandchildren in equal shares, contingent on attaining the age of 25. By clause 8 he gave further pecuniary legacies in a total sum of £9,000. He had 5 grandchildren: Reggie Ramus (13) and Ellery Ramus (10), Alistair's children, and Rock Holt (7), Axel Holt (5) and Hunter Holt (5), Mrs Holt's children.

8. By clause 11 Mr Ramus provided that

> "MY TRUSTEES shall hold my residuary estate upon the following trusts:
>
> 11.1 if my Wife shall survive me my Trustees shall pay the income of my residuary estate to my WIFE during her life
>
> 11.2 provided that my Trustees (being at least two in number) shall have power in their absolute discretion from time to time so long as my Wife is entitled to be paid the income (if any) of all or any part of the capital of my residuary estate
>
> 11.2.1 to pay transfer or apply the whole or any part or parts of such capital to her or for her benefit in such manner as they shall in their absolute discretion think fit and
>
> 11.2.2 to terminate by declaration contained in any deed or deeds her right to be paid the income (if any) of all or any part of the capital of my residuary estate from a date not earlier than the date of any such deed and so accelerate the trusts hereinafter contained or appointed under the powers hereinafter contained

and in any such deed my Trustees may also declare that my Wife shall thenceforth cease to be among the Discretionary Beneficiaries (defined below) and be excluded from all benefit of any kind whatsoever in relation to the capital and income of such part of my residuary estate

11.2.3 subject as aforesaid my Trustees shall hold my residuary estate upon the trusts and with and subject to the powers and provisions of clause 12 below".

9. By clause 12, so far as material, he provided that

"12.1 IN THIS clause the following expressions have the following meanings namely:

12.1.1 'the Trust Fund' means:

12.1.1.1 my residuary estate

12.1.1.2 all money investments or other property paid or transferred by any person to or so as to be under the control of and in either case accepted by the Trustees as additions

12.1.1.3 all accumulations (if any) of income added to the Trust Fund and

12.1.1.4 all money investments and property from time to time representing the above.

12.1.2 'the Discretionary Beneficiaries' means:

12.1.2.1 my children and remoter issue and

12.1.2.2 (subject to clause 1[1].2.2 above) my Wife

12.1.2.3 the said Royal National [Life]boat Institution and

12.1.2.4 such persons or Charities as are added under sub-clause 12.5.

12.1.3 'the Trust Period' means the period of 125 years commencing on my death

12.1.4 'Charity' means any Entity established only for the purpose regarded as charitable under the law of England a transfer of value to which would qualify in its entirety for exemption under section 23 of the Inheritance Act 1984

12.1.5 'Entity' means any company partnership trust foundation

> establishment association or other body established or resident in any part of the world and whether or not it has a separate legal personality and/or corporate identity
>
> 12.2 My Trustees shall hold the Trust Fund and the income thereof upon trust for all or such one or more of the Discretionary Beneficiaries at such ages or times in such shares and upon such trusts for the benefit of the Discretionary Beneficiaries as [my Trustees] (being at least two in number) may by deed or deeds revocable or irrevocable executed at any time or times during the Trust Period appoint and in making any such appointment my Trustees shall have powers as full as those which they would possess if they were an absolute beneficial owner of the Trust Fund …".

10. Thus, in summary, clauses 11 and 12 provided for Mr Ramus's residuary estate to be held on trusts under which:

(a) Mrs Ramus has a life interest;

(b) the trustees have power to apply capital for Mrs Ramus's benefit;

(c) the trustees also have power to terminate the life interest;

(d) subject to the life interest, the residuary estate ("the Trust Fund") is held on flexible discretionary trusts for a class of "Discretionary Beneficiaries", including Mr Ramus's children and remoter issue and Mrs Ramus (but subject to the trustees' power to exclude her from benefit).

11. On the same day as he made his third codicil, altering the identity of his executors and trustees, Mr Ramus also signed a letter of wishes by which he gave non-binding guidance to the trustees as to how he wished them to exercise their discretions. That guidance included the following:

> "DISCRETIONARY TRUST OF RESIDUARY ESTATE: GENERAL AIM OF THIS GUIDANCE
>
> 1.1 In my Will I have appointed you as trustees of my residuary estate, which subject to the life interest for my wife, Elizabeth May Ramus ('Liz'), you hold on discretionary trusts. I am writing

this letter so you will know my wishes and motivations in leaving my estate in this way. I hope you will take my wishes into account and carry them out wherever possible.

1.2 This letter is intended as general guidance only. It does not create any obligation on you, nor does it give any beneficiary of my estate any rights. It does not curtail or override the discretionary powers given to you by my Will. I am confident that you will exercise your discretions appropriately in the circumstances after my death and in the light of your own views.

2 WISHES ABOUT THE PRIMARY BENEFICIARY

2.1 My current matrimonial circumstances are uncertain. If my wife survives me I still wish that she will have a right to income from the Trust Fund to the extent that it prevents hardship and enables her to maintain her lifestyle. I would like this to continue for as long as you feel necessary.

If her own resources are such that she does not require that income then you should consider exercising your powers to remove her right to income in all or part of the Trust Fund.

2.2 I do not wish for my wife to receive capital payments from the Trust Fund in order to protect the fund for future generations.

2.3 If the trust contains my share of the family home and my wife wants to continue living in the house, then she will have the right to do so, subject to Liz keeping the property in repair and paying the usual outgoings and insurance premiums. If Liz wants to sell the family home and buy another house I would like you to co-operate with that sale and to buy another property for my wife to occupy as the family home.

2.4 If my wife remarries or enters into a civil partnership or cohabits as if she were married or in a civil partnership, I ask that you consider making no further distributions from the Trust Fund to her and preserve the remaining funds for my children and grandchildren.

3 WISHES ABOUT BENEFITING MY CHILDREN AND GRANDCHILDREN

3.1 If my wife's circumstances allow, and in any event after her death, I would like you to consider exercising your powers to benefit my children and grandchildren.

3.2 Distributions between children and grandchildren

> Whilst Alistair's financial and business circumstances are not settled and do not have a firm footing, I do not wish for Alistair to receive capital payments from the Trust Fund. I would like you to consider making income payments to Alistair to prevent him from living in hardship, but not to fund an extravagant lifestyle.
>
> In regards to my daughter Claire I would like you to consider exercising your powers to benefit Claire, about whom I do not have the same concerns.
>
> In regards to my grandchildren, in principle I would like them to be treated equally per head, but if one should have an extraordinary need (for example, health issues or suffering a serious accident), I would be happy for provision for that child to be greater than that of his or her siblings".

12. The trustees took out a grant of probate to Mr Ramus's estate on 24 November 2020 (having previously taken out a grant *ad colligenda bona* on 3 September 2020 to allow the sale of the former matrimonial property to proceed). The net value of the estate was sworn at £1,082,818. Mrs Ramus commenced proceedings on 21 May 2021, just within the primary 6 month period provided for by the 1975 Act.

Mrs Ramus

1st Witness Statement

13. Mr and Mrs Ramus met in 1967 and were married in 1972. They had two children together, Mrs Holt (born in 1976) and Alistair (born in 1978). When Mrs Ramus met her future husband she was a nurse, but in 1973 she gave up her nursing career to start a seafood business with him. She was an active participant in the business, in particular in the office and financial management. They ran the business jointly until they sold it in 1999. The business was very successful and they enjoyed a financially comfortable lifestyle.

14. Her personal relationship with her husband was, at times, difficult. He could be controlling and overbearing and matters came to a head in 2019 when she decided that it was time to leave him. There had been a history of difficulties between Mr Ramus and Mrs Holt and, for around six months in 2017, she would not let her father see his grandchildren. Mrs Ramus was instrumental in rebuilding the relationship between her daughter and her husband, but once the relationship was restored, he began putting Mrs Holt above his wife, which caused problems between husband and

wife. There was then an incident in which Mrs Holt called her mother an “absent grandparent”. Mrs Ramus was deeply hurt and upset by the remark and felt that it was entirely unjustified as she had frequently travelled up and down the motorway to see her daughter and assist with her grandchildren. Mr Ramus agreed that it was wrong of Mrs Holt to make such an accusation, but he refused to offer his wife any support in the face of her daughter’s criticism of her. After the efforts which Mrs Ramus had made to restore the relationship between father and daughter, she felt that the time had come to end the marriage and she therefore told her husband that she was leaving.

15. The breakdown of the marriage came as a great shock to Mr Ramus – he even telephoned his wife’s GP to suggest that she had dementia. He became depressed and Mrs Ramus accepted that her daughter provided a lot of support to her father at the time.

16. As part of the separation, they put their marital home in Duchy Road, Harrogate on the market in March 2020. It sold very quickly for around £1.1 million, with a completion date of September 2020. (The executors of the estate completed the sale with an *ad colligenda bona* grant, as mentioned above.)

17. Mr and Mrs Ramus continued to live together in the marital home during that time and she continued to care for her husband as she had throughout their marriage. On 23 June 2020 he viewed a furnished flat to move into and she offered to help him with his move. Mrs Ramus was also moving into rented accommodation until she could find a replacement property. She left her husband on that day for around an hour to visit a friend and upon her return to Duchy Road she found her husband, who had committed suicide.

18. Mrs Ramus was very concerned that the trustees had the absolute power to terminate the payment of income to her and it was for that reason that she had made this application under the 1975 Act. She did not believe that the will as drafted made reasonable financial provision for her, as the trustees could stop payment of the income to her at any time and could refuse to advance any capital. She had referred to details of difficulties which she had previously had with her daughter and would

characterise their current relationship as strained. She also had concerns over the way in which she had been treated by Mrs Holt and the other executors since the death of her husband.

19. The day after he died, Mrs Holt attended her home and took possession of his Defender vehicle, Rolex watch, telephone and wallet and subsequently arranged for the hard drive of their computer, which was in the repair shop, to be sent to her instead of to her mother. As executor, Mrs Holt was aware that all of her father's chattels, including his car, passed to Mrs Ramus under the will and in any event the computer was part owned by Mrs Ramus.

20. The seafood business which the couple ran had commercial premises on Kings Road in Harrogate. Following the sale of the business, the property was providing them with rental income of around £50,000 annually. However, the premises became vacant in April 2020 and they had discussed putting the property on the market. Following the death of Mr Ramus, Mrs Ramus felt pressurised by the executors into putting the property on the market and she had occasionally experienced difficulties in being reimbursed by the estate for 50% of the running costs of the empty property. She had also felt pressurised by the executors in relation to the sale of the property; the executors had unnecessarily brought in a second set of estate agents from Leeds, were attempting to agree a reduction in price, despite advice from the estate agents that there was interest in the property and they unilaterally obtained an asbestos report for the property without reference to her, without obtaining comparable quotes, and at a price three times that which her estate agent would have charged.

21. Mrs Ramus also felt that she was misled by the executors over the date on which probate was granted. She was told by the executors that probate was granted 'at the end of January' and also that it was obtained on 8 January 2021. Probate was, however granted, on 24 November 2020. She did not find that out until 19 March 2021, which left her with very little time to issue a claim under the Act within the relevant limitation period. Had she relied on the executors' information that probate was obtained in January 2021, she would have missed the limitation period.

22. Mrs Ramus did not have confidence that she would receive the income and/or capital from the trust which she needed to maintain her lifestyle and, as her future financial security was solely in the hands of the trustees, she did not consider that the will made reasonable financial provision for her.

23. At the time of her first witness statement, when the proceedings were launched, on 21 May 2021, Mrs Ramus was 76 years old, her date of birth being 14 November 1944. By the time of the trial she was 77.

24. Following the sale of the former matrimonial home which she shared with her husband, she was currently renting. That was, however, always intended to be a temporary arrangement and she was currently looking for a property to purchase.

25. Her current cash assets were high as they included £520,000 received following the sale of the former matrimonial home. However, they would be significantly depleted once she had bought a new property.

26. As at the commencement of proceedings, her assets included

Half share in business premises: (agreed sale price of £670,000; thus her half share would be in the region of £335,000 – although she was advised by her financial adviser that that sum would be reduced by the payment of CGT on her share)	£335,000
Premium bonds:	£50,000
Direct ISA:	£10,755
Income bonds:	£500,000
ISA portfolio:	£264,954
Cash in various bank accounts:	£64,707

Total: **£1,225,416**

(subject to amendment following sale of property and CGT calculation)

27. She also had a Volvo which she believed currently had a re-sale value in the region of £27,000 to £30,000.

28. She had income of around £1,800 per month, made up of pension income of around £1,000 per month and £800 per month in capital drawdown from her pension.

29. Her current expenditure was around £5,113 per month. That was an average of her expenses during the previous year whilst England was under COVID- 19 restrictions. She anticipated her expenses would increase as restrictions lessened. A schedule of her current monthly outgoings, prepared by her solicitors from information which she had provided, was tabulated as follows:

Rent	£1,400.00
Council tax	£223.95
Water	£10.00
Electricity	£80.00
Telephone	£36.81
Property and household insurance	£34.22
Home maintenance, cleaning and repair	£20.00
Life and endowment insurance	£34.00
Food and household	£500.00
Domestic help	£200.00
Clothing	£100.00
Hairdressing and personal care	£250.00
TV licence/ hire/ video rental	£13.15
Newspapers and journals	£25.00
Medical, dental, optical & pharmaceutical	£53.30

Dry cleaning, laundry, cleaning, shoe repairs	£20.00
Road tax	£40.00
Car insurance	£20.00
Petrol, parking, running and repairs for vehicle	£100.00
Provision for replacement vehicle / lease costs	£520.00
Financial planner's fees	
Osteopath/chiro fees	£60.00
Accountants fees	£25.00
Eating out and takeaway	£120.00
Sports and leisure	£98.00
Books, music, video hire/purchase	£10.00
Drinks and tobacco	£20.00
Holidays and breaks	£420.00
Computer (incl. ink) and internet	£20.00
Memberships and subscriptions	£5.00
Charities and covenants	£5.00
Gifts (birthdays, Christmas, etc)	£650.00
Total	**£5,113.43**

30. She accepted that, once she had purchased a new property, she would no longer need to pay rent. However, there would then be higher expenses associated with the upkeep of the property.

31. As to her future needs, she intended to purchase a new property. She anticipated that that would cost in the region of £700,000. She would also have to pay stamp duty on the property, legal fees and removal fees and it was highly likely that she would incur costs in relation to decoration of the new property.

32. She was currently only able to meet her monthly expenditure by using her capital and savings. However, that was clearly not a long-term solution and she therefore required a monthly income to enable her to pay her outgoings without using the capital which would be left after her purchase of a new home. She would need the remaining

capital both to generate an income and to provide her with a capital cushion should she have medical or care needs in the future.

33. She believed that her husband had an obligation to make financial provision for her. Had he not died, she believed that an arrangement would have been reached whereby he paid her a monthly sum to enable her to pay her outgoings. Although that would hopefully have been agreed between them, she understood that it was then common to have such agreements made into orders of the Court so that she could have enforced such an agreement against her husband.

34. She considered that the relationship between her and her daughter and between her and the other executors was likely to be of relevance as she was dependent upon the trustees to receive an income from the trust.

35. The letter of wishes written by her husband was a relevant document for the Court to consider. It was written after she had told him that she was leaving, but he still wished for her to have a right to the income from his estate. She also relied on a letter written to her by her husband and dated 16 June 2020, shortly before he died in which he said:

> "My dearest Liz
>
> Time suddenly feels so short and I just want to say thank you for your kindness to me when I really don't deserve it. You are a wonderful wife and partner in life. I don't deserve your kindness. You deserve better than the way I have been in recent times. I'm very proud that you are handling the current situation better than I am. You have been the best wife any man could wish for. You are loving and kind, always putting the needs of others before yourself. You have been a "one in a million" wife to me. I have been so lucky to have you beside me. I have come up short far too often in recent years!!
>
> I just want you to know that I will do all I can to support you going forward and I hope we can get this house sorted out for you. I'm so sorry that the last year has been so awful. Whatever happens going forward from today, I just want you to know that I have always loved you with all my heart. There has only ever been you in my heart!!

> Thank you for everything you have done for me. Thank you for being a wonderful mother to Claire and Alistair. Thank you for being my best friend and the one who has tried to always make our home the best it can be. I hope the next few weeks can be as good as possible. Thank you for just being there during the last year, and holding everything together.
>
> The best of luck in your new home — best wishes for the future.
>
> Love Chris
>
> Xx"

36. She also considered that it was relevant that, following the death of her husband, she was advised that he had amended the name of his pension nominee to Mrs Holt and that she therefore received his pension lump sum of £500,000. Mrs Ramus did not seek to interfere with that nomination or request that the pension trustees consider paying some or all of the lump sum to her, as she wanted to respect her late husband's wishes, but clearly such a lump sum would have given her financial security, rather than the financial difficulties which she now faced in maintaining her lifestyle.

37. As to the particular considerations under the Act where the application for provision was made by a spouse of the deceased, she reiterated that she was currently 76 years old (now 77), her date of birth being 14 November 1944. At the date of the death of her husband, they had been married for 48 years. She had made a full contribution to the marriage, the build-up of wealth within the marriage from their jointly run business and the raising of their family. Had the marriage ended in divorce rather than death, she believed that the settlement which they would have reached would have been that they each kept their own assets, but that her husband would have paid her a monthly amount to enable her to discharge her monthly outgoings.

38. Mrs Ramus did not seek a large capital lump sum from the estate or seek to break the trust. Her financial circumstances were such that her capital was required to purchase a new home and to provide a capital cushion and her monthly income was not enough to pay her monthly outgoings. She was the named income beneficiary under the trust, and the letter of wishes prepared by her late husband in September 2019 made it clear that he wanted to ensure that the lifestyle which she had enjoyed for many years could be maintained. She was, however, very worried by the fact that

the executors, as trustees, had absolute discretion as to whether or not that income was in fact paid to her, or how much of the income was paid. She was uncomfortable that her financial security was in the hands of the executors, particularly given the difficult relationship which she had had with the executors subsequent to the death of her late husband.

39. She therefore sought an order which enabled her to be satisfied that she would receive sufficient income and/or capital from the trust to enable her to discharge her outgoings and which did not leave her subject to the unfettered discretion of the trustees. She was aware that it had been suggested by the executors that, as a beneficiary under the trust, she could always issue trust proceedings if she were unhappy about the way in which the trust was being administered. She accepted that she would have that right, but the purpose of the proceedings was to ensure that she did not have to. She was also aware that such litigation would be expensive and could be protracted, with the risk that there would be many months where she did not have the benefit of income from the trust, placing her in a difficult financial position.

2nd Witness Statement

40. Mrs Ramus amplified her concerns as to her financial position and the reasons why she had made an application for reasonable financial provision under the Act in her second witness statement. Mrs Holt had confirmed that she intended to take her up role as trustee. It was therefore clear that, going forward, her financial security would be in the hands of her daughter. That caused her concern to the extent that she did not believe that reasonable financial provision had been made for her by her late husband's will. Although she said that her overriding concern was to honour the wishes of her father, the tone of her daughter's witness statement and the words used in it led Mrs Ramus to believe that there would be significant difficulties between her as a discretionary income beneficiary and her daughter as a trustee with absolute discretion.

41. The letter of wishes referred to her maintaining her lifestyle. She had enjoyed a comfortable standard of living and now lived in a house which enabled her to entertain visitors and have family and friends to stay. Mrs Holt appeared to query her lifestyle choices, stating that her "alleged expenditure is highly exaggerated" and that her claim

was “entirely without merit” as she was “a millionaire and [has] sufficient income and capital to live comfortably”. Mrs Ramus confirmed that her outgoings were not exaggerated, as could be seen from her schedule of average monthly outgoings which was based on her average monthly expenditure. It also appears to be Mrs Holt’s opinion that her outgoings were excessive and that she already had sufficient income to cover her expenses. In those circumstances, she was very concerned that, although her daughter stated that she would honour her father’s wishes, her willingness to provide her mother with the income from the trust would be coloured by her views as to her needs and lifestyle, particularly her stated opinion that her mother did not require any additional income to meet her monthly outgoings and maintain her lifestyle.

42. It was also clear that Mrs Holt and her mother were in disagreement as to the type of property which Mrs Ramus intended to purchase. During the course of her marriage, Mrs Ramus lived in a large six-bedroomed house with a large garden. She currently rented a property with four bedrooms and no proper garden. As she had explained, she wanted to live in a house with sufficient bedrooms to enable friends and family to come and stay, including her children and grandchildren. She had a large circle of friends who liked to visit and, now that restrictions had eased, she wanted that to continue. Gardening was also a passion of hers and she therefore wanted a property with a garden. She did not want constantly to worry if she could afford it. Again, her daughter was critical of her choices, referring to her desire to continue to live in a comparable property as a “demand to live in a property valued at £700,000”. Property in Harrogate was expensive and Mrs Ramus believed that a property of the type for which she was looking for cost in the region of £700,000. At the current time property for sale in Harrogate was very scarce and there did not seem to be any which met her requirements. She did not want to live in a small house or flat which her daughter deemed “suitable for a lady of advanced years who lives on her own” and again Mrs Ramus foresaw difficulties ahead with her daughter as trustee if she believed that her mother had unnecessarily spent money on a home which she considered to be too big.

43. Mrs Holt criticised her for not considering the minor beneficiaries. However, Mrs Ramus did not seek to interfere with the pecuniary legacies or the legacy fund established by the will for the benefit of her minor grandchildren. She had also

confirmed that she did not seek a large capital sum from the trust or seek to break the trust. She simply sought an order which enabled her to be satisfied that she would receive sufficient income from the trust during her lifetime to enable her to continue her current lifestyle. As she was the income beneficiary under the trust, she failed to see how her claim adversely affected the interests of her grandchildren or threatened the capital within the trust. Her daughter's concern actually appeared to be that Mrs Ramus was seeking a capital sum for the benefit of Alistair. That was simply not the case. She was seeking monthly income from the trust, not a capital sum. However, Mrs Holt's comments and her suspicions as to her mother's motives for bringing the claim and seeking income from the trust gave Mrs Ramus very real concern about her future financial security being in her daughter's hands, particularly if her daughter believed that any income given to her mother would find its way to Alistair.

44. Mrs Ramus's claim was based upon her financial needs and her financial security for the remainder of her life and she was not seeking a capital sum from the estate to give to Alistair or for any other reason. She confirmed that she had not been pressurised by Alistair to bring the claim. She emphasised that her son did not play any part in the breakdown of her marriage and she also noted that the £65,000 given to Alistair was his share of a property which his parents had purchased in the names of both of their children as an investment for them. Mrs Holt also received the sum of £65,000 at the same time in 2002 as a result of the sale of Mrs Ramus's mother-in-law's house.

45. When Mrs Ramus received the hard drive of her computer back, Mrs Holt had deleted and/or amended some of the files. She did not recall receiving her husband's telephone back from her daughter and she did not know where it was.

46. Mrs Ramus said that she issued her claim as she was concerned that there would be friction between her and the trustees going forward and that the trustees would be able unilaterally to decide not to pay her the income from the trust, which would cause her financial hardship. Having read her daughter's witness statement, she was even more concerned. It was clear from that witness statement that Mrs Holt believed that her mother did not need any income from the trust to maintain her lifestyle and that any money which she did receive from the trust will be given to Alistair, either

voluntarily by Mrs Ramus, or by Alistair manipulating or threatening her. In those circumstances she was very strongly of the opinion that she needed an order which would ensure that she received the income which she needed to maintain her lifestyle and that her financial security was not dictated by Mrs Holt. One solution would be for all of the named trustees to be replaced with independent professional trustees, as that would ensure that the difficulties between Mrs Ramus and her daughter did not colour the exercise of the trustees' discretion and she confirmed that that would be an acceptable outcome to her.

47. In response to the assertions of Mr Armitage and Mr Wardle that her current assets were able to generate sufficient income to cover her outgoings, Mrs Ramus relied on the letter dated 5 October 2021 from her long-term financial advisor, Richard Eaden in which he stated that

> "I was first introduced to Mr Christopher and Mrs Elizabeth Ramus by a client in 2010, in my capacity as an appointed representative of SJP. They initially instructed me in relation to Mr Ramus' SIPP, however their instructions expanded and in the last couple of years I have also taken care of Mrs Ramus' SIPP. Mr Ramus ran most of the financial side of their business and marriage, however both he and Mrs Ramus attended every meeting. I saw them at least once a year, and had regular contact with them outside of this. I consider that I had a good relationship with Mr Ramus.
>
> Mr and Mrs Ramus enjoyed a comfortable lifestyle, they enjoyed entertaining friends and family as well as more luxurious holidays. I recall that their last holiday included flying business class to Australia. Their lifestyle was largely funded by the rental income from a commercial property on Kings Road, which has recently been sold. Mrs Ramus will be unable to maintain this lifestyle with her assets alone, and in light of the fact that her only income currently comes from pension payments, Mrs Ramus will need to receive income from alternative sources to maintain her lifestyle.
>
> I believe there have been suggestions that Mrs Ramus already has sufficient capital to generate an income sufficient to maintain her lifestyle. I am aware that Mrs Ramus' priority is to first buy a property which meets her needs. The capital remaining after the purchase will not be sufficient to generate an income which would effectively support her for the rest of her life. This is particularly the case when we take into account the current low

> expected investments yields, which do not provide a significant return and certainly not compared to the income Mrs Ramus was receiving from the Kings Road property.
> To be able to generate an income at a rate which matches the income received from Kings Road, for example, Mrs Ramus would be forced to deplete her capital and accept an unnecessarily high-risk profile, which is not advisable to clients of her age with no certain income. Should she choose to invest her own capital she would then have few funds to meet future capital expenditure, be they expected (such as replacing her car or renovations on her property) or unexpected costs which commonly arise and can be expensive, and which she now must meet the cost of herself.
>
> A final factor which I do not believe the executors have sufficiently considered is inflation. Inflation is currently, and expected to remain for some time, higher than the cash rate. This is an important financial planning consideration for retired clients such as Mrs Ramus.
>
> In the light of the above, I consider Mrs Ramus requires additional income in order to supplement her personal assets and maintain her lifestyle."

48. Mrs Ramus noted that Mr Armitage and Mr Wardle said that they intended to pay the trust income to her and therefore her claim was unnecessary. However, she remained concerned that that would not remain the position going forward. She was also aware that both Mr Armitage and Mr Wardle were of a similar age to her and it was therefore entirely foreseeable that they would wish to retire as trustees during her lifetime, being replaced with a trustee or trustees chosen by the existing trustees.

3rd Witness Statement

49. Mrs Ramus updated her financial position in her third witness statement dated 11 March 2002.

50. She was still living in rented accommodation at a cost of £1,400 per month plus property outgoings. She had been actively looking for a property to purchase for the last year or more and was registered with Verity Frearson estate agents in Harrogate, as well as for Rightmove alerts. However, property for sale in Harrogate was very scarce at the moment and she had not been able to find anything suitable. There were

new builds on offer, but they would not be suitable for her. During her married life they did not live in a new build and it would not suit her furniture either.

51. Her wish was to buy a house comparable with the house in which she lived when her husband was alive and with the house which she was currently renting. She had previously said that she believed that such a property would cost in the region of £700,000. She produced sale particulars of a house similar to the type of house which she wished to purchase, but in an unsuitable location and with a small garden. That property sold for £650,000, but was not in a suitable location and did not have a suitable garden. She anticipated that a similar property in Harrogate, with a suitable garden, would cost more than that. Given the scarcity of property available at the present time, there were no examples in the location in which she wished to live which would be suitable for her. It seemed to her that prices had increased over the past year and that £700,000 was likely on the low end for the type of property which she required. She had also budgeted around £50,000 to cover stamp duty, legal and removal fees and the cost of redecorating the property. Nothing suitable had come up recently and her last viewing was 3 months ago. That property was on the market for £695,000 and needed gutting and new windows. The estate agent had laughed when she asked whether there was any leeway on the price and a lot of people had put in offers over and above the asking price.

52. She explained her position in relation to the house purchase in more detail in her oral evidence. She accepted that she held an unusual amount of cash, but she needed to be a cash buyer, since in her view cash buyers received preferential treatment. She had been advised not to rent on a long-term basis. She had been renting for nearly 2 years and could break the tenancy, as to which 3 months' notice would be "fine", although she knew the landlord and he was very amiable. Nothing had been said as to whether she could stay after 3 years. She would otherwise have put the money into NS&I income bonds, but had been advised not to because she was hoping to buy a house and so held a large sum in cash on the basis of that advice. She did not expect to buy a large house, but one of similar standard to her matrimonial home and the house which she was currently renting. She did not want a new build or a bungalow (since she liked the exercise of going up and down stairs). She loved gardening, cooking and entertaining. They were what she was used to. She did not like the

proposal to downsize and did not want to live in what she described as a “poky place”. She wanted space to entertain guests. She shopped in the butcher’s, supermarkets, tea shops and farm shops. She bought good food as she had always done. She ate out in restaurants, more some weeks than in others, but did not buy takeaways. House prices had gone up 11% in the previous year and her capital was diminishing. She filled up the car with petrol every 10 days or so, certainly twice a month, and that cost her £120 to £150 twice a month. She had not led an extravagant lifestyle. As she put it:

> “I want to do what I want without worrying. My top priority is finding a house.”

53. She received Rightmove updates on her computer. The filters were set between £500-£600,000 and £800,000, but excluded new builds. The filters were also set for 3 bedroomed properties with a radius of 5 miles of the centre of Harrogate. The property in Pannal, of which the sales particulars were in the trial bundle, was not suitable because of its proximity to the main Leeds-Harrogate Road, although the inside was perfect. She confirmed to Mr Heath that she did not need 4 bedrooms or 3 bathrooms; two reception rooms would be better. Mr Heath asked her whether, if her husband had not died, she would have limited herself to a budget of £525,000 (being her half share of the proceeds of sale of the matrimonial home). She replied

> “I would have considered the style of house rather than pricewise. A year of cooling off to decide what I wanted. Travelling to Harrogate would also have to be taken into consideration. I hadn’t got round to looking at values.
>
> Q. Did you consider £750,000 when your husband was still alive?
>
> A. It never entered my head. I never intended to divorce. I didn’t want to divorce. It was just that I couldn’t live with him any more.”

54. By the time of her third witness statement, the business premises on Kings Road which she owned jointly with her husband had been sold. Her net share (£312,440) of the proceeds of sale was transferred into her NatWest account ending in *893 on 6 August 2021. She had been advised by her accountant that she would have to pay CGT on that sum, but did not know how much that was at the present time. Those

funds remained in her NatWest account for the time being, save what she had spent in the months since and she intended to use that cash towards the purchase of her new house once she found a suitable one.

55. Mr Entwistle explored with her in more detail the potential CGT liability on the Kings Road property. Mrs Ramus said that she had contacted her accountant as recently as last week. He had told her that the top line was a liability of £64,000, but that he was hoping to get that reduced. It might be between £40,000 and £60,000. It could end up at £50,000, but she did not know. She was hoping to get the figures completed shortly. The property had been purchased in about 1980 or 1981; it had cost about £45,000 to buy it, but she was not sure.

56. Her updated asset schedule was therefore as follows (including her half of the business premises proceeds, but subject to the payment of CGT):

No.	Description	Amount
1	Cash - RBS Bank Account ending in *888	£517.28 (as at 30 Dec 2021)
2	Cash – RBS Bank Account ending in *896	£273,769.90 (as at 30 Dec 2021)
3	Cash – NatWest Select Bank Account ending in *893	£287,681.38 (as at 24 Dec 2021)
4	Cash – NatWest Premium Saver Bank Account ending in *850	£33,112.50 (as at 24 Dec 2021)
5	Cash – YBS Bank Account ending in *207	£2,000 (as at 22 Dec 2021)

No.	Description	Amount
6	Cash – Aldermore Bank Account ending in *330	£750 (as at 22 Dec 2021)
7	Investments – NS&I Direct ISA	£10,755.89 (as at 16 Dec 2021)
8	Investments – NS&I Premium Bonds	£50,000 (as at 16 Dec 2021)
9	Investments – NS&I Income Bonds	£200,500 (as at 16 Dec 2021)
10	Investment – St James's Place Unit Trust (ending in *307)	£0 (account to be closed)
11	Investment – St James's Place Unit Trust (ending in *780)	£7,092 (as at 8 March 2022)
12	Investment – St James's Place Retirement Account (ending in *094) This fund was ring fenced to provide a monthly income.	£488,326 (as at 8 March 2022)
13	Investment – St James's Place ISA (ending in *469)	£263,073 (as at 09 March 2022)

No.	Description	Amount
14	Outstanding loan owed by Alistair	£47,000
15	Personal vehicle (Volvo)	27,000 – 30,000 (estimated)

Total - £1,664,625.95 (excluding the Volvo).

57. She still had a monthly income of around £1,800, which was made up of her statutory pension, income from Scottish Widows and Clerical Medical and a payment of £816.80 from SJP which was capital drawdown from her pension. For example, in the month of December 2021, she received the following income:

Statutory pension: £634.80
Scottish Widows: £98.66
Clerical Medical: £181.83
SJP: £816.80
Total: £1,732.09

58. She was aware that the trustees had suggested that she could generate additional income by investing her cash. That was not a long-term solution because she was allocating the sum of £750,000 towards allowing her to be a cash buyer once she found a suitable property. She had her financial adviser, Richard Eaden, who helped her manage her investments and all her funds which were not held in cash (on the basis that she would be buying a house as soon as she found a suitable one) were invested in accordance with his professional advice.

59. She was asked about her ability to generate more income by Mr Entwistle. He put it to her that if she paid £750,000 for a house and kept her ringfenced £500,000 retirement fund, she would still have £450,000 of assets which could be invested. Mrs Ramus wondered how much income that would generate. Would interest rates warrant a big income? She was in good health, but who could say as to the future? She had always been confident of having capital there if needed. She accepted that the balance

of her assets could provide at least some income and that her investment ISA of £263,000 was accessible if she wanted it. She thought that the income of £16,000 derived from that asset had probably been reinvested since it had not been paid to her directly. She left everything to her financial adviser, Mr Eaden.

60. Mr Heath also explored that question with Mrs Ramus. If she paid £750,000 for a house and kept her ringfenced £500,000 retirement fund, she would still have £420,000 of assets which could be invested. If her income were guaranteed, she would not need to touch that sum. What, then, would happen to that sum? Mrs Ramus replied that it would be to provide for hardships and for basic expenditure. It would not be for holidays. Mr Heath pointed out that £4,800 had already been earmarked for holidays. Would she spend £420,000 on other holidays. Mrs Ramus said that she did not know:

> "Q. Yes or no?
>
> A. I don't know. Probably not
>
> Q. So you don't know what the £420,000 is to be spent on?
>
> A. I don't know. Perhaps I might need surgery. I have always had a cushion in case of emergencies."

61. Her outgoings also remained in the region of £5,000 per month, excluding the significant legal fees which she was incurring (which varied month-to-month). As at 10 March 2022 her schedule of outgoings was tabulated as follows:

	Current	Expected
Rent	£1,400.00	
Council tax	£234.95	
Water	£14.00	
Electricity	£59.23	
Gas or oil	£150.00	
Telephone	£46.75	
Property and household insurance	£30.89	

Home maintenance, cleaning and repair	£25.00	
Life and endowment insurance	£34.00	
Food and household	£600.00	£750
Domestic help	£220.00	
Clothing	£120.00	
Hairdressing and personal care	£250.00	
TVlicence/hire/video rental	£13.15	
Newspapers and journals	£25.00	
Medical, dental, optical & pharmaceutical	£53.50	
Dry cleaning, laundry, cleaning, shoe repairs	£25.00	
Window cleaner	£30.00	
Road tax	£40.00	
Car insurance	£39.81	
Petrol, parking, running and repairs for vehicle	£170.00	Increase expected as petrol prices rise
Provision for replacement vehicle/lease costs	£250.00	
Financial planner's fees		
Osteopath/chiro fees	£25.00	
Accountants fees	£25.00	
Eating out and takeaway	£200.00	
Sports and leisure	£110.00	
Books, music, video hire/purchase	£10.00	
Drinks and tobacco	£15.00	
Holidays and breaks	£400.00	
Computer (incl. ink) and internet	£15.00	
Memberships and subscriptions	£5.00	
Charities and covenants	£10.00	
Gifts (birthdays, Christmas, etc)	£650.00	

Total	**£5,296.28**	

62. She anticipated that her outgoings would rise given the increased cost of living. Already her electricity direct debit was going up and her expenditure on petrol had increased considerably due to increased petrol prices. She had noticed a generalised increase in prices for food and purchase. As an example of her outgoings, in the month of December 2021 they were as follows:

Outgoings from NatWest Select Account *893: £3,875.32
(including a cheque of £3,395 towards legal fees, which were variable)

Outgoings from RBS account *888: £4,504.67
(including rent of £1,400, which would not be required after she purchased a new house)

63. Her total outgoings over the 7 month period from June 2021 – December 2021 were as follows:

Outgoings from NatWest Select Account *893: £24,834.80

Outgoings from RBS account *888: £37,776.28
Total £62,611.08

64. That showed average monthly outgoings of £8,944.44 over the period. That included cheque payments totalling £23,335.00 towards legal fees, which were variable month-to-month. Her average monthly outgoings, excluding legal fees, were £5,610.87

65. Mr Heath asked her about the insurance premiums of £34 per month which she paid for life and endowment insurance. She explained that the policy had been taken out by her husband and that she had not known about it. After his death she had found it in the safe and gave it to the executors. It was a policy with Aviva, which was

transferred to her. The trustees were Mr Wardle and her daughter. She had passed it to Mr Eaden and he advised her that to cash in the policy was not worth it: she should just carry on paying it. In other words, she was led to believe that it was not cost effective to cancel it.

66. Her monthly income did not cover her monthly outgoings and she was currently paying the shortfall each month from her savings. However, that could not continue long term as she needed to ensure that she had sufficient savings to purchase a house and retain a capital cushion.

67. Those monthly outgoings did not take into account that she would like to resume going abroad on holiday like she and her husband used to, with the same standard and quality of air travel and accommodation as they used to. She intended to resume travelling as soon as possible. She and her husband always flew business class, which was the biggest element of their holiday costs (they had spent £2,500 on Etihad flights to Qatar and £4,000 to fly to Australia, a direct 17 hour flight from Heathrow to Perth; flights to South Africa had cost them £2,800 each.)

68. She confirmed that she had not received any payments from the estate to make up the income shortfall which she had. She had not at that stage been provided with estate accounts so could not comment further on the financial position of the estate, save to say that she expected that there would be enough funds to generate a substantial income.

69. However, when asked by Mr Heath how much she needed from the estate to supplement her income, she said that there had been no mention of a figure and that nothing was ascertained. She needed to safeguard her interest and needed additional income to help her.

Gifts

70. She was aware that the trustees had asked questions about gifts which she had made since the death of her husband. She confirmed that she had given his Rolex watch to her brother. Whilst she appreciated that the watch could have been sold and the proceeds invested, the watch had sentimental value and she wanted her brother

to have the watch both as something to remember her husband by, and as a thank you for all the love and support he had shown her since her husband's death.

71. She also gave Alistair the sum of £2,000 as a belated gift for his 40th birthday in May 2018. She and her husband did not give him a gift at the time because he did not yet know what he wanted. The cheque was cashed on 30 December 2020. The reason that she gave him that sum was because she and her husband had spent around £2,000 on an aquamarine ring which they gave to Mrs Holt for her 40th birthday in July 2016 and she tried to treat her children equally. The aquamarine ring was also a belated birthday gift (given about a year after her daughter's birthday).

72. Mr Heath asked her about the £650 for gifts each month, which amounted to an annual sum of £7,800. Mrs Ramus explained that she had 5 grandchildren who would receive £200 each for birthdays and at Christmas (she always gave them that) and she also had a large circle of friends. For example she had paid £3,000 for a group of 10 people from the family to take over a 5 bedroomed barn conversion in March 2022 in which a chef had come in and cooked meals for the party. She had also given Alistair £1,000 for his recent birthday in May (he had already paid her part of the loan monies before his birthday).

Alistair

73. Mrs Ramus had included as one of her assets the sum of £47,000 which she loaned to Alistair in October 2021. He had made regular repayments of £1,000 per month since December 2021. He was committed to paying her back as quickly as possible and she expected him to increase the amount of those monthly repayments as soon as he was able. She and her husband loaned him in the region of £65,000 in or around December 2017 and Alistair paid them back in full by May 2019, which she understood was as soon as he was able. She therefore considered the sum of £47,000 to be an asset and had no concerns about it being paid back in full.

74. Alistair had obtained the wherewithal to pay them back as a result of a business buy out after several months of negotiation and the amalgamation of two businesses. The money had never been a gift to Alistair, a point which she reiterated when pressed by Mr Heath. She appreciated, however, that when you loan something to someone,

there was always the risk that you would not be repaid. She and her husband had not said anything to Alistair about that, but they had agreed that if he did not repay them they would give their daughter £65,000 so that they were treated equally. They did not tell anyone else about their decision. It was always better to help family when they needed it than leave it to them when you died. Alistair had been in a situation where a company had been paying him every month and he had been knocked for 6 when the source of the funds was ended. He was then desperate and his own business would have folded. Nevertheless her husband wanted payment back very quickly.

75. Mr Heath put to her the email from Mr Ramus to Mrs Holt on 19 October 2019 in which he had said to his daughter

> "He is furious at having to repay the £65,000 to me in May, especially since Liz had made it clear that she didn't want Claire to know about the loan and she wanted to make a gift to Alistair of the money.
>
> Where the £65,000 came from to repay me in May 2019 is unclear. Various possibilities exist. Including the idea that he has taken a loan from shark lender and Liz has guaranteed to repay it. Or he has debts, which Liz wants to cover for him. In any event it is clear that Liz wants to get her hands on cash quite quickly.
>
> …
>
> **He now knows further loans or gifts are NOT possible from me**. So, the only way is to get Liz and I divorced and then he systematically sets about parting Liz from large amounts of cash.
>
> He has now brain washed Liz into hating me. This is my punishment, for wanting my £65,000 back.
>
> Alistair doesn't want Claire anywhere near Liz as he knows there are 2 people who won't put up with his lies. **Myself and Claire.**
>
> By causing Liz to cut Claire and her family [out] of her life, it makes his route to cash even easier.
>
> The situation now looks like this.
>
> Alistair has created a situation where the Ramus family has been divided into 2 fractions.

> Claire and I, Alistair and Liz. He is now firmly in the driving seat at Ramus Seafoods and he has brought about Liz wanting to divorce me, presumably with the idea of targeting Liz's wealth.
>
> With Claire and I without any influence on Liz – Alistair is left with a clear path to her wealth".

76. In cross-examination the exchange between Mr Heath and Mrs Ramus was as follows:

> "Q. Your husband was under the impression that you wanted to gift it?
>
> A. No. This is between Claire and my husband. "Brainwashed [me] into hating him"? Rubbish.
>
> Q. He said it was a gift. Was that wrong?
>
> A. No, I never said that. No, no, no. It was between my husband and me. We wouldn't tell anyone else. In October we told Claire – she was so angry.
>
> This is totally wrong.
>
> I said to my husband "You do know it's wrong."
>
> He said "Yes, I know it's wrong. [But] I won't support you. Fight your own battles."
>
> I said " there is no future in this marriage."
>
> Q. I am not asking you about who initiated the divorce, just about the £65,000.
>
> A. Rubbish. I knew nothing [about the email].
>
> The money to repay us came from the amalgamation of his business …
>
> I have no idea where this came from. The loan was a joint decision, not just mine. It is rubbish that I wanted to make him a gift.
>
> Q. Was there a time when you doubted repayment?
>
> A. I had no reason to think that he wouldn't."

77. She appreciated that the Court might wonder why she was loaning a large sum of money to Alistair whilst also maintaining a claim for reasonable financial provision under the Act. Her current position was cash rich as she was looking to purchase a property. However, after she had purchased a property and paid CGT on the sale of the Kings Road property, her cash and investment assets would not be sufficient to provide her with enough monthly income to cover her monthly expenditure. Given that he repaid his previous (and larger) loan in full within two years and that he was repaying his current loan, she was confident that Alistair would repay her current loan quickly enough that it would not significantly affect her medium- or long-term finances. She never asked him to create a charge to secure repayment; it never entered her head to ask, although she accepted that , since he had been made bankrupt before, it would have been sensible to ask for security.

78. Mr Heath put it to her that she could afford to be generous, to which she replied

> "No, so much had been going on it didn't cross my mind to ask"
>
> Q. The £50,000 might not be seen again?
>
> A. It would be deducted from any benefit under the will. You help your family when you can. If the need is now, you help when you can.
>
> Q. You could walk out of here and release Alistair?
> A. No, he was explicit that it was not a gift. A lot of businesses were struggling because of Covid. He was struggling with working from home."

79. Mrs Ramus confirmed that she had made a new will in August 2019 before her husband died. She had not looked at it since then. Under it her grandchildren all received lump sums (they were the main beneficiaries) and there were charitable and other legacies. Other family members also benefited under it, including her nephews, brothers and son, although she could not remember the details; a lot had happened in the last 3 years. She could not remember who received how much, although she confirmed that her daughter did not benefit since she had received £500,000 from her father's pension. Whether her daughter would benefit under her intended future dispositions she could not say at this moment in time. She had recently asked the

solicitor who had drafted it to make amendments to it, but he had been ill. She had not definitively decided on the new dispositions:

> "I may change my mind again even if I told you now."

80. Her daughter had received nearly £500,000 from her father's pension and Alistair had not been treated equally in that respect. Mr Heath put it to her that she wanted to even things out, to which she replied

> "Not through him; through his children.
>
> Q. One way to even it out would be to write off the £50,000 loan and leave the £420,000 to Alistair and his children?
>
> A. I would not write it off. He would keep paying me."

81. Alistair had always told her to spend her money. She wanted to go on holiday (she had friends in Canada, South Africa and New Zealand) -

> "I just want that freedom"

82. She did not necessarily want to leave money to anyone, although it would be nice to leave it if there were some:

> "Q. If there is capital to leave, so be it?
>
> A. So be it.
>
> Q. If it is all gone, so be it?
>
> A. So be it."

Mr Armitage

83. Mr Armitage is a chartered certified accountant and insolvency practitioner by profession. He set up his own business, Armitage & Co, in 1982. It continues in existence, although he no longer takes formal insolvency appointments, but acts as an insolvency consultant.

84. He first met Mr and Mrs Ramus in 1983 as near neighbours with their respective children attending the same schools. The relationship between all of the family members was close and happy, enjoying many social and leisure occasions together. He and Mr Ramus would often discuss business generally, but he had never acted for Mr or Mrs Ramus in a professional capacity. During the last year of Mr Ramus's life he and Mr Armitage met regularly for a day's walking during which they discussed his problematical personal and family relationships and the likely investment returns from the Kings Road premises, which were of considerable importance to him for future income. Mr Armitage accepted in cross-examination that the Kings Road property was a significant investment, resulting in a rental income of some £50,000 when tenanted and that the investment income was important to both Mr and Mrs Ramus. Although he was aware that Mr Ramus was very troubled by his personal and family issues, Mr Armitage was nevertheless shocked to hear of his suicide.

85. He confirmed that a grant of probate to Mr Ramus's estate was issued on 24 November 2020 which declared a net value of the estate of £1,082,818. Since that time, he confirmed that the commercial property (which was jointly owned by Mr and Mrs Ramus) at 132-136 Kings Road had been sold for £640,000, realising a gain and the net proceeds had been divided equally between the estate and Mrs Ramus, her share being £312,000. With the exception of Mr Ramus's fishing timeshare, now valued at only £1,000, all of the assets of the estate had now been realised. As at the date of his first witness statement on 2 September 2021 the estate had cash funds of £1,016,243.80, but £50,000 of that was to be set aside and held on trust for the benefit of Mr Ramus's grandchildren on attaining the age of 25 in accordance with the terms of his will. The estate's tax affairs also needed to be agreed and settled. At that point there was an estimated liability of about £6,000.

86. Mr Armitage was quite clear that it remained the position of the trustees that the monies held within the will trust should be invested and the income paid to Mrs Ramus and that that was their intention. The only matter which had prevented the establishment of the will trust, the making of investment decisions and the payment of income to Mrs Ramus had been waiting for completion of the sale of the Kings Road property on 6 August 2021 and the current pending claim. He accepted, however, in answer to Miss Phillipson's questions, that Mrs Ramus had no guarantee of income,

that the trustee's discretion remained throughout and that they must exercise their discretion at the relevant time.

87. However, Mr Armitage said that it was the view of himself and his fellow trustees that it was unrealistic of Mrs Ramus to expect some form of guaranteed income. To the extent to which Mrs Ramus suggested otherwise, namely that the events which had happened demonstrated a heightened risk that either he or his fellow trustees would act in breach of their obligations, he regarded that situation as misplaced. He had no intention whatsoever of acting in breach of his obligations as an executor or a trustee and he was very conscious of Mr Ramus's wishes as expressed in the letter of wishes.

88. Nevertheless, he and his fellow executors and trustees did not see the present application as an obvious one under the 1975 Act. Primarily, Mrs Ramus disclosed assets as at the date of her first witness statement of just over £1,250,000 (including the Volvo car). Further, she disclosed a monthly income of approximately £1,800 from her pension. However, she had not provided any credit for the income which could be generated by her investments.

89. During the earlier inter-solicitor correspondence, being mindful of the concerns expressed by Mrs Ramus that she would be in financial difficulties and also being mindful of her late husband's wishes that she was adequately provided for, the trustees had considered in some detail the financial information provided and had carried out a number of calculations as to the additional income which her assets could generate. In particular, Mr Armitage referred to two documents setting out a number of calculations which in his view clearly demonstrated that, even if the Court were to accept that Mrs Ramus needed to spend £700,000 on a property at the age of 76 (now 77) and her stated income need was reasonable, she could manage her investments to produce further income to support her pension income to meet all her stated needs and would not therefore be reliant on the will trust. The income which she would receive from the will trust would therefore be a welcome addition. (So as not to disturb the flow of the narrative, I have included these schedules, marked JM1 and JM2 respectively, as appendices to the judgment. To be clear, the schedules were not

tendered as expert evidence, nor did Mr Entwistle seek to rely on them as expert evidence.)

90. In the first of those documents, Mr Armitage had taken Mrs Ramus's schedule of outgoings as at 21 May 2021, which she said were £5,113.43. From that figure he had deducted sums and added in one by way of proposed adjustments. The four items of expenditure eliminated from the expenditure schedule were (1) rent of £1,400 per month (which would be eliminated on the purchase of a house by Mrs Ramus), (2) the £34 per month spent on the Aviva life and endowment insurance on the basis that that was a discretionary sum (although he accepted that he knew little about the Aviva policy and had not seen the policy document), (3) the provision of £520 per month for the replacement of her car (because in accounting terms that was depreciation rather than an outflow of funds; the replacement would come out of capital rather than from monthly payments) and (4) the sum of £650 per month for gifts, again on the basis that it was discretionary and not a necessity like food or fuel. He added in a figure of £400 per month for home ownership costs in place of rent. That reduced her expenditure figure from £5,113.43 per month to £2,909.43; on an annual basis that reduced her expenditure from £61.361.16 down to £34,913.16. He thought that those figures represented a reasonable compromise and that was still his opinion.

91. In answer to Miss Phillipson, Mr Armitage accepted that Mr and Mrs Ramus always drove new cars. She probably replaced hers every 4 or 5 years; her husband had done so more often. He agreed that they were high value cars or good cars.

92. He did not dispute her updated expenditure schedule which showed a monthly expenditure of £5,610.87.

93. It was Mrs Ramus's case that she did not require a large capital sum from the estate or to seek to break the trust in some way. Given that stance, Mr Armitage was unclear as to the purpose of the proceedings or the order which she was asking the Court to make and which it had power to provide.

94. He was asked by Miss Phillipson about his understanding of the terms of the will, the obligations laid on the trustees and Mrs Ramus's position under the will and the

letter of wishes. He understood that Mrs Ramus had no absolute right to the income and that under clause 11.2.2 the trustees could terminate her interest in the capital; the trustees had the power to pay her, but they also had the power to decide to terminate her interest and not to pay her. He understood that termination of Mrs Ramus' interest in the income of the trust would accelerate the interests of the class of discretionary beneficiaries. Equally, he accepted that the trustees had the discretion to remove Mrs Ramus from the class of discretionary beneficiaries. He agreed that it was up to him and his co-trustees when they retired and that it was for them to appoint their successors. He confirmed to Miss Phillipson that he intended to follow the terms of the will and the letter of wishes.

95. Miss Phillipson put it to him that, when Mrs Ramus wanted to fly abroad and see friends, she would not know whether she would actually be in receipt of income under the terms of the will. Mr Armitage said that he would think that it would be right to tell her in advance if that were the decision taken, although he accepted that she could not be assured of the income. It was put to him that when the trustees exercised their discretion, they would so on the basis of the schedule which he had provided setting out what the trustees regarded as being reasonable expenditure. He agreed, but pointed out that they would also take into account the capital sum available to her to meet her expenditure rather than to take it from the estate.

96. So far as the cost of a new house was concerned, Mr Armitage had produced his schedule on the basis of a new property costing Mrs Ramus £500,000. Miss Phillipson put it to him that in reality it was not possible to buy the sort of house for which she was looking in Harrogate for £500,000. Mr Armitage said that that was very subjective, but that he understood Mrs Ramus's expectations and that the market had gone up since 2021. Miss Phillipson put it to him and if she wanted a 3 bedroomed house with a garden, she would not get it for £500,000 in Harrogate, to which he replied "Not now." She put it to him that £750,000 was a reasonable sum. He said that that was very subjective, but he had no strong views. That could be what she would have to pay, though it would be a big effort to maintain an old house. He thought that a reasonable property would cost £600,000 to £700,000. Indeed he had produced his second schedule on the basis that the new property would cost her £700,000. He had

not put back into that second schedule a sum of £400 per month to cover household costs after purchase of a new property because Mrs Ramus had not put such a figure in her updated schedule, but he had no objection to putting it back in to his second schedule.

97. He accepted that her income was £1,800 per month, but believed that she could obtain further money from her pension. Based on her disclosed assets of £1.175 m, she would have £475,000 surplus cash available for investment to obtain a return. From her £525,000 SIPP, from which she currently drew down £800 per month, she could in fact draw down £2,187.50 per month on a 5% drawdown (or £26,250 per year), making a net increase of £1,387.50 per month or £16,650.00 per year. He considered that it was reasonable to draw down more at her age and with her life expectancy. What her advice was on that matter from her own financial adviser was for her to decide; that was between her and her adviser.

98. Miss Phillipson put it to him that the relevant figures were as set out in Mrs Ramus's most recent witness statement. They disclosed assets in the region of £1.6m, of which £488,326 was ringfenced as her retirement fund. Her new house would cost her £750,000, leaving a balance of £426,000, from which she might have to pay about £50,000 in CGT. That would leave a balance of £76,000. Mr Armitage responded that it depended on what was meant by "free capital". He accepted that she needed a capital cushion, but believed that she had that. If she bought a property she would then have a £700,000 asset in lieu of cash.

99. Miss Phillipson put it to him that given her actual spending, she had a shortfall of £45,700 per year, which he accepted, but he said that she would then have the asset of a house as well. Many people could produce further funds through equity release. In any event, the trustees had not made any decision not to end her interest in the trust fund. They would make that decision on the facts at the time. As a result Mrs Ramus's financial position could be better or it could be worse.

100. Mr Armitage said that he could not express an opinion as to whether she needed an emergency fund of £130,000; he could not tell her what cash reserve she ought to have.

101. Miss Phillipson put it directly to him that

> "Mrs Ramus is not living the life which you are putting forward, is she?",

to which he replied

> "Yes, I do see the tension; I put the figures in there because we though them to be reasonable; we had no further information to change our opinion.
>
> …
>
> If she wishes to put a request to us, we will consider it at the time it is made, but we cannot consider a hypothetical situation.
>
> Q. Would you pay her the income?
>
> A. Yes, we have said we would pay income as and when it arises; I accept that we have a discretion as long as that situation goes on.
>
> She is entitled to an interest in the trust; if circumstances change, we will look at that."

102. As to the investment of the fund Mr Armitage was adamant that the trustees ought morally to maximise the return on their investment. They would certainly take advice to get the maximum return, particularly with interest rates changing rapidly.

Mr Wardle

103. Mr Wardle was now retired, but his occupation just before retirement was that of a director of a wealth management company, Brewin Dolphin Limited.

104. He first met Mr and Mrs Ramus on a purely social basis approximately 35 years ago. The relationship which developed and was sustained was one of friendship with both of them by Mr Wardle and his wife. In later years, Mr and Mrs Ramus became clients of Brewin Dolphin, although Mr Wardle did not involve himself directly in the

day to day management of their investment assets. Although he was aware that Mr Ramus had suffered with depression for some time, Mr Wardle was saddened to hear of his suicide.

105. For his part Mr Wardle was sorry if Mrs Ramus believed that she had reason to question his role or indeed the role of any of the executors/trustees. For the avoidance of any doubt, he had no intention whatsoever of acting in breach of his obligations as an executor or a trustee.

106. Furthermore, it was his intention and that of his fellow trustees to pay the income generated by the will trust to Mrs Ramus even though it appeared to him that, by careful management of her finances, Mrs Ramus was financially self sufficient.

107. Mr Armitage and Mr Wardle both gave further evidence by way of supplementary witness statement as to the ongoing value of the trust fund, the latter on 28 March 2022 and the former on 5 May 2022. As at the end of March, Mr Wardle explained that the estate had only one substantive liability to resolve, namely the CGT liability on the King's Road property. There was a chargeable gain of £33,676.58 which they believed would create a CGT liability of £6,735.32. The estate's solicitors were then taking steps to agree the liability with HMRC. As at 25 March 2022 the amount held in the estate's solicitors' client account was £971,546.40. There were professional fees of the estate's solicitors and those incurred by the professional fees which were unbilled work in progress in the order of £14,500 plus VAT. Taking into account the likely CGT liability and the unbilled professional fees, Mr Wardle's best estimate was that the undistributed estate had a value of £947,411 as at 25 March 2022. Considering the pending outcome of the proceedings and the possible orders which could be made by the Court, the trustees had not yet been able to invest or make any longer-term investment decisions concerning the funds in the estate's solicitors' client account. If proceedings had been discontinued as at 25 March 2022, he thought that the best estimate of the likely residue passing into the trust would be £897,411 once provision had been made for the grandchildren's pecuniary legacies in the sum of £50,000.

108. Mr Armitage was able to update those figures a month before the trial. The cash balance of the estate held by the solicitors as at 5 May 2022 was £949,839.00. The

CGT liability had been paid in March 2022 at £6,807.82. As at 5 May 2022 there were unbilled legal fees of approximately £6,700 plus VAT and additional professional fees of the executors amounting to approximately £2,000 plus VAT. Allowing for the pecuniary legacies of £50,000, the amount of monies presently available to pass into the trust was £889,599, although that amount was likely to reduce further as the litigation costs continued to rise.

109. As matters stood and because of the nature of the will trust, no inheritance tax had yet been paid on Mr Ramus's estate. Mr Armitage's understanding was that Mrs Ramus was treated as absolute owner of the trust fund for tax purposes. In particular, her life interest was created by her late husband's will and took effect immediately on his death. That was an immediate post-death interest for inheritance tax purposes. The trust fund would be aggregated with her own estate in due course when determining the inheritance tax liability. The tax attributable to the trust fund would be the primary liability of the trustees rather than that of Mrs Ramus's personal representatives and would therefore in due course reduce the value of the trust fund. That liability could be up to 40% of the value of the fund, although part of Mrs Ramus's nil rate band and related reliefs might be available to the trustees in due course. In such circumstances, the trustees had to make provision for the payment of inheritance tax on the worst case scenario by ringfencing resources. Given that the estate was declared at £1,082,018 and allowing for the tax free threshold, a suitable provision at the present time would be £305,000. That would leave a balance of approximately £634,599 for the will trust for the benefit of Mrs Ramus, her two children and five grandchildren, although the actual amount was likely to reduce further because of the costs of the litigation.

110. Mr Armitage said that of the sum of £305,000 and £635,000, the former could be held on a short-term investment (because of the potential need to realise funds to pay any IHT) and the balance on a higher return with a longer investment period. The trustees had not yet got to the stage where they could say what might be their anticipated income from the trust.

111. Mr Wardle was cross-examined only very briefly, Miss Phillipson having taken the view that she did not need to go through all of the questions which she had asked

Mr Armitage with him again. He confirmed that he knew of the Aviva policy and that it was a joint life policy, taken out by Mr Ramus before his death. Mr Wardle confirmed that he and Mrs Holt were the joint trustees. He was not aware that there were any other trustees. The beneficiaries of the policy were Mrs Holt and Alistair.

Mrs Holt

112. As a starting point, Mrs Holt wished to assure the Court that she had every intention of acting properly and appropriately as a trustee and executor of her father's estate. Indeed, her mother had not suggested otherwise.

113. As an executor and trustee, the overriding concern for her was to honour her father's wishes regardless of her relationship with her mother and to carry out the duties which he entrusted to her in good faith (alongside her co-trustees). His last will and letter of wishes, drawn up in conjunction with his long-standing solicitors, were clear and she understood and had been advised of her responsibilities with respect to the income payment to her mother.

114. She reiterated in cross-examination that it was her father's wish that her mother should enjoy the income from the estate:

> "My father wished her to have income, so she will be paid the income."

115. Her father had given her the responsibility under his will and letter of wishes and she intended to carry out his wishes. How her mother wished to spend her money was up to her.

Mrs Ramus's finances

116. Mrs Ramus had confirmed that she had assets of at least £1.2m. She was 77 years old and lived on her own. Although Mrs Holt said in her witness statement that she thought that her mother had health problems, she admitted that she had no first-hand knowledge of her mother's health and could be wrong about that. She had always enjoyed a relatively modest, albeit comfortable, lifestyle. In her witness

statement she had said that what she described as her mother's alleged expenditure was highly exaggerated and had been queried in correspondence by the estate's solicitors. However, when Miss Phillipson asked her whether she accepted that the figure of £5,610.87 per month represented her mother's actual expenditure, she was not disposed to disagree. As she put it, her mother could spend her money as she wished or "if she says she spends it, she spends it. I don't think it's too much; she can spend it as she wishes … if that's how she wishes to spend her money". The only item of expenditure with which she took issue was the amount of £7,800 for gifts. She did not see why the trust should have to pay for that.

117. Her mother had not explained why she demanded to live in a property valued at £700,000. From Mrs Holt's own limited research, the sorts of properties at that price ranged in the Harrogate area would be four-bedroom detached homes spread across two or three floors, i.e. family homes rather than a house or flat suitable for a lady of advanced years who lived on her own. In her witness statement Mrs Holt doubted that she would have to spend even half of that amount to find something suitable for her needs.

118. Mrs Holt said that from her limited research such a property would cost between £500,000 and £700,000. It was put to her that Mr Armitage had accepted that a property such as her mother wanted would cost between £600,000 and £700,000. She responded that there were 4 bedroomed properties available for £500,000, although some were substantially more than that. Her 6 bedroomed matrimonial home, for example, had been sold for £1.1m. Mrs Holt assumed that her mother liked entertaining. She did not think that gardening was, as her mother put it, a passion, but believed that she had pottered in the garden in the past. In summary, she had no difficulty with where her mother wanted to live and was not disapproving of her choices. Her mother was entitled to live in whatever property she chose. On the basis that Alistair and his wife and two children came to stay regularly with her mother, she accepted, when asked by Miss Phillipson, that it was reasonable for her to buy a 3 bedroomed property.

119. Furthermore, her father told her that he had transferred monies both from premium bonds and part crystallised his pension into the joint account with his wife to

the value of approximately £70,000, so that those assets became Mrs Ramus's upon his death. She also received all of her husband's chattels, such as his two cars and personal number plate, which Mrs Holt understood had been sold for at least £27,000. There were many other valuable items in his chattels and Mrs Holt was unclear as to what had happened to them or any proceeds of sale. As far as Mrs Holt was aware, her mother's financial position was substantively better than it would have been if her father had lived and they had divorced.

120. Her mother did not even say that she was in financial hardship. Her claim was entirely without merit and should never have been brought. Simply put, she was not in financial need. As she conceded, she was a millionaire and had sufficient income and capital to live comfortably. Mrs Holt understood, for example, that her mother had recently purchased a new car.

121. As to the income from her father's estate, she referred to Mr Armitage's witness statement which explained the issues which arose in the administration of the estate. The estate had only recently been in a position to pay her mother an income.

The minor beneficiaries

122. Mrs Holt was also very concerned about the minor beneficiaries, who did not appear to have been in her mother's thinking when she hastily issued the claim. There were five grandchildren (her 3 and her brother's 2). Her father's great wish was that his legacy should be that his grandchildren should benefit from education – in whatever form that should be – and that capital should be protected for future generations' education. That was entirely in keeping with his values. She accepted that there was a tension between assisting the grandchildren from the trust in the lifetime of her mother and assisting her mother, but said that the trustees would review matters on an ongoing and needs basis. She could not predict the future. For example, a grandchild might have an accident and be in greater need. The trustees would exercise their discretion on a need-by-need basis.

123. Given that her mother did not have any real financial need, Mrs Holt had to question why she had brought the claim. Her very strong belief was that it was Alistair who was behind the dispute and that he wished for his mother to be paid a capital sum

not for herself, but for him. She explained to the Court why she had very serious and grave reservations that any capital payment made to her mother might not even be for her benefit, although she accepted that it would not necessarily be the case that everything from the trust would benefit Alistair. Her mother said that she had living expenses which would need to be paid.

124. She said in cross-examination that one instance of her mother's desire to benefit Alistair was the £50,000 loan which she had made to him when she was nevertheless at the same time saying that she was in financial need. The loan was made for a kitchen extension and not on the basis of Alistair being in financial difficulty

The events that led to her Father's death

125. Mrs Holt accepted that she had had difficulties with her father in 2017, but did not agree that she had a history of difficulties with him. Her father tragically committed suicide on 23 June 2020 following the breakdown of his marriage. His extremely difficult relationship with Alistair was unquestionably a very strong contributing factor to his deep unhappiness. That was not just Mrs Holt's opinion: at the inquest into her father's death, the coroner's verdict was that the divorce proceedings and the breakdown of his family were the main reasons for his suicide. She and her father had very serious concerns about Alistair's relationship with his mother in the last two years of his life, given his criminal past and history of manipulation and coercion of others. Both she and her father believed that Alistair persuaded Mrs Ramus to divorce her father because her father had cut him off financially whereas he knew that his mother could be more easily be manipulated and was willing to fund his excesses.

126. As with the present claim, Mrs Ramus instigated divorce proceedings in haste and without any prior warning to her husband. Notwithstanding the profound upset that caused him, her parents agreed to take steps together to split their finances. Their matrimonial home was sold and her mother rented a property for herself.

127. As to Mrs Ramus's comments that her daughter somehow prompted their divorce, that was utterly untrue (it was not even what she said in her divorce proceedings as Mrs Holt understood it). More importantly, Mrs Holt could not see their relevance to her mother's claim. Mrs Holt had a very close relationship with her father.

He stayed with Mrs Holt and her children a number of times during the latter years of his life, both at her home in Surrey and in Harrogate. She also supported him mentally, paid for his counselling sessions and was in constant communication to listen and help where she could at a time when he was in great distress due to the breakdown of his marriage and the ongoing and very serious problems which Alistair was causing.

128. It was notable that Mrs Ramus made some petty comments about her daughter, but said nothing about the horrendous way in which her father was treated by Alistair, particularly from October 2018 to the time of his death. That included Alistair threatening and attacking Mr Ramus in his own home with a baseball bat (two weeks before her father's suicide).

129. Contrary to what her mother said, although Mrs Holt knew the identities of all three executors (including herself), she did not know what the terms of her father's will were until the day after he died (24 June 2020). On 24 June, in front of two witnesses, and with her mother's agreement, Mrs Holt took her father's Rolex watch, telephone and wallet. The Rolex was returned to her mother at the first opportunity when she returned to Yorkshire on 14 July 2020. The telephone was returned in the post a week later.

130. The first time that Mrs Holt saw her father's will was a day later at 2.18pm on Friday 25 June 2020 after his solicitors had sent it to her and she had returned home to Surrey. Her actions were to protect the assets of the estate, not least as she had every reason to be concerned that Alistair would have stolen them if he had the opportunity.

131. Mrs Holt's relationship with her brother had broken down irretrievably due to his behaviour: he was not just a convicted fraudster, but he could also turn violent. It was so serious that she paid for personal security to protect herself and her children as she lived in fear of him becoming violent towards her family. Since 2019, on the two occasions on which Mrs Holt had been in his presence, she had employed personal protection to ensure that she was kept safe. Her brother was a very tall and imposing individual with a highly volatile personality.

132. Alistair pleaded guilty to fraud and false accounting in March 2009 and was sentenced to 3 years and 3 months in jail. He was subjected to a £340,000 Proceeds of Crime Act Order and filed for bankruptcy. He had been gifted the sum of £65,000 by his parents, who had in fact been very generous to him and that gift fell into his bankruptcy estate.

133. Upon his release, he was made subject to a Bankruptcy Restriction Order which remained in force until September 2022. Despite that, he had persistently breached the order by establishing and running The Fine Seafood Company Limited (now dissolved), claiming to be second generation owner of Ramus Seafoods Limited and Ramus Seafoods Retail Limited, as well as Sales Director of D&A Seafoods Limited. His wife, Donna Ramus, was a teacher, but was named as a director at Companies House of those companies as well as the controlling company, MBR Group. His own social media accounts confirmed him to be the 'figure head' of all of these businesses. It was clear that he was involved in the "promotion, formation and management" of those companies.

134. Mrs Holt had informed the police that she was submitting her witness statement to the Court and they were taking the contents very seriously, to the extent that they had assisted in providing her with further protection at her home, as they believed there to be a risk to her safety and possibly her life. They had explained to her that due to other ongoing investigations (unrelated to her) they believed her brother to be involved in organised crime.

135. Mr Ramus did not approve of Alistair's illegal business dealings and tried to help him but in the years following his release from prison (and particularly after 2018) he was convinced that Alistair was trying to turn his wife against him, so as to put pressure on him to give Alistair money. On several occasions, Mr Ramus told Mrs Holt that he had previously been coerced into loaning substantial sums of money to Alistair and when he asked Alistair for the money back Mrs Ramus put pressure on her husband to back down. Her father detailed that at length in his own notes. By way of an example of her father's feelings, in October 2019 he sent Mrs Holt an email in which he detailed Alistair's coercion of Mrs Ramus – with the motive being for Alistair to relieve his parents of their capital.

136. On 10 December 2019, Alistair visited his father unannounced and verbally abused him in front of Mrs Ramus. Mr Ramus told Mrs Holt of that and sent her some distressing WhatsApp messages the following day.

137. By early 2020, her father was clearly struggling to cope. Mrs Holt spent a long time talking to him and trying to support him. For her part, her mother was behaving in an increasingly erratic manner, subjecting her husband to prolonged periods of silent treatment and meeting Alistair behind his back. At that time Mrs Ramus and Alistair had the Kings Road property (jointly owned by Mr and Mrs Ramus) valued by Feather, Smailes and Scales Surveyors without her father's knowledge. Mr Ramus only discovered that in May 2020 and it was yet another (but this time very obvious) and troubling example of Mrs Ramus and Alistair acting in tandem.

138. On 18 March 2020 Mr Ramus had a colonoscopy in hospital. To give an indication of his mental state, he took the deeds to Kings Road and other critical documentation with him in his briefcase as he was afraid that his wife and son might be involved in duplicitous activity relating to Kings Road. Indeed, whilst he was in hospital, Mrs Ramus rang round various local solicitors trying to locate the deeds to Kings Road. At that point, Mr Ramus went to extreme lengths to change passwords, create new email accounts and secure his electronic devices as well as his private documents.

139. Mr Ramus also told his daughter that he had asked a number of his advisers to speak to his wife to urge her to protect her capital from her son. He became increasingly frustrated that his wife did not listen, but chose instead to back her son regardless of the illegalities of his behaviour and the distress which he caused.

140. Just weeks before his suicide, Mr Ramus and Mrs Holt looked into Alistair's activities using professional investigators. On 2 June 2020, Mrs Holt met her parents at their home in Harrogate to discuss their concerns with her brother. This was specifically at Mr Ramus's request. They provided her mother with evidence of Alistair's financial improprieties and explained why they were both so concerned. They hoped that she would listen and both urged her to take steps to protect herself and her capital from Alistair.

141. Mrs Ramus then fed that information to Alistair, who then attacked his father in his home on 9 June 2020. Mrs Holt had no doubt whatever that that contributed to her father's mental health problems and suicide just two weeks later. Mrs Ramus was aware that Alistair was coming to visit the property and of his angry state of mind and propensity to violence. Despite that she left her husband on his own, with no warning that Alistair would show up. Mr Ramus's telephone was stolen (and never returned), his computer smashed with a baseball bat, and Alistair pushed him to the floor. Mr Ramus told Mrs Holt that Alistair threatened to kill him if anyone called the police.

142. Mr Ramus was terrified and felt very vulnerable. Within minutes of the attack, he left a voicemail message on Mrs Holt's phone saying that he had been attacked by Alistair. Mr Ramus warned her that Alistair threatened that his next step was to attack her and her children. That threat prompted her to establish private security for herself and her family, which remained in place today.

143. On 23 June 2020 Mr Ramus took his own life in his own home. He left Mrs Holt a card in which he thanked her for all the support which she had given. He did not leave a card for Alistair.

144. That was not an isolated incident on the part of Alistair. Aside from his conviction for fraud and current police investigation into his activities, Mrs Holt understood that he was acting in breach of the restrictions against him acting as a company director. He had a history of making threats, of violent attacks, dishonesty and coercion, including adopting the identities of others.

145. In conclusion, it was both Mrs Holt's and her father's belief that Mrs Ramus's misplaced loyalty to her son and her willingness to overlook his criminal activities led her to dissolve her marriage of nearly 50 years and also to cut Mrs Holt and her children out of her life. Mrs Holt's understanding was that Alistair stayed at his mother's home on a weekly basis and was therefore in a position to take advantage of her.

146. Mrs Holt explained all of this so that the Court had a true understanding of Mrs Ramus's circumstances and of the tragic actions that led to her husband's suicide.

She denied in evidence that she blamed her mother and her brother for her father's suicide. She also wished to assure the Court that, despite all of what was said, her firm wish was to honour her father's memory and his clearly expressed wishes, which included providing an income to his wife from his estate:

> "I take my duties very seriously; I know my father wanted for my mother to be paid income."

147. The claim should never have been issued. As Mrs Ramus acknowledged, if she ultimately believed that the executors had acted in breach of their duties she had a right of action, but she did not even give them a chance to carry their duties out before she involved the Court.

148. Mrs Holt said that she had tried to build bridges with her mother by sending her flowers and offering support and that she had great sadness that her mother wanted to have no relationship with her:

> "I asked her whether we could have a relationship and she said "I don't know whether I want a relationship with you"."

The Legislation

149. So far as is material, the 1975 Act provides that

> **"1 Application for financial provision from deceased's estate**
> (1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:—
>
> (a) the spouse or civil partner of the deceased
>
> …
>
> that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.
>
> (2) In this Act "reasonable financial provision"—

(a) in the case of an application made by virtue of subsection (1)(a) above by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance …

2 Powers of court to make orders

(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

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

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

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.

(g) an order varying any settlement made—

(i) during the subsistence of a civil partnership formed by the deceased, or

(ii) in anticipation of the formation of a civil partnership by the deceased, on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.

(h) an order varying for the applicant's benefit the trusts on which the deceased's estate is held (whether arising under the will, or the law relating to intestacy, or both).

…

(4) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;

(b) vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient.

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

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

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

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

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

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

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

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

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

(2) This subsection applies, without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(a) or (b) of this Act.

The court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a) the age of the applicant and the duration of the marriage or civil partnership;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce; but nothing requires the court to treat such provision as

> setting an upper or lower limit on the provision which may be made by an order under section 2.
>
> …
>
> (5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing".

The Claimant's Submissions

150. Miss Phillipson asserted that the will had not made reasonable financial provision for Mrs Ramus.

151. She referred to clause 11.1 of the will which provided that the trust income should be paid to Mrs Ramus for life. However, clause 11.2 provided that the trustees could terminate the right to income at any time and that any decision to do so was "in their absolute discretion". Upon the right to income being terminated, the trust provided for a number of "Discretionary Beneficiaries" as defined at clause 12.1.2 which included not only Mrs Ramus, but also the deceased's children and remoter issue, the Royal National Lifeboat Institution and any other persons or charities added by the trustees. Pursuant to clause 11.2.2, the trustees might declare that Mrs Ramus should

> "cease to be among the Discretionary Beneficiaries … and be excluded from all benefit of any kind whatsoever in relation to the capital and income of such part of my residuary estate."

152. She reiterated that the deceased had prepared a letter of wishes which accompanied the will in which he asked the trustees, at paragraph 2.1, to consider paying income to his wife

> "… to the extent that it prevents hardship and enables her to maintain her lifestyle. I would like this to continue for as long as you feel necessary.
> If her own resources are such that she does not require that income then you should consider exercising your powers to remove her right to income in all or part of the Trust Fund."

153. At paragraph 3.1 he stated

> "if my wife's circumstances allow, and in any event after her death, I would like you to consider exercising your powers to benefit my children and grandchildren".

154. The decision as to whether Mrs Ramus received any income from the trust, and the quantum of the same, was therefore entirely at the discretion of the trustees, who could simply determine, at any time, that her right to income should be terminated and that she should be removed from the class of discretionary beneficiaries. As trustees acting under an absolute discretion, they would not be obliged to provide reasons for their decision to her, but in any event they could rely upon the letter of wishes and determine that, in their opinion, Mrs Ramus did not require additional income to prevent hardship and maintain her lifestyle.

155. By contrast, Mrs Ramus argued that her finances were such that she would require the monthly income from the trust to enable her to maintain her current lifestyle. That was not accepted by the trustees, particularly her daughter who asserted that Mrs Ramus's "alleged expenditure is highly exaggerated" and stated "Simply put, [she] is not in financial need. As she concedes she is a millionaire and has sufficient income and capital to live comfortably. … the Claimant does not have any real financial need." Mrs Ramus and her daughter had a strained relationship and were not on good terms.

156. As the widow of the deceased, the provision to which Mrs Ramus was entitled was defined by s.1(2)(a) of the Act as 'such financial provision as it would be reasonable in all the circumstances of the case for [her] to receive, whether or not that provision is required for ... her maintenance.' She was therefore entitled to the higher of the two standards considered under the Act and was not limited to maintenance.

157. Mrs Ramus's financial security was solely in the hands of the trustees, which caused her ongoing uncertainty and anxiety about her future. She therefore argued that reasonable provision had not been made for her and she sought an order under the Act to ensure that she received sufficient income from the trust to meet her outgoings.

158. S.3 of the Act set out a list of factors to which the Court must have regard in determining whether reasonable financial provision had been made by the will and, if

not, what award should be made. Miss Phillipson summarised the evidence with reference to each relevant factor.

159. **S.3(1)(a)** -Mrs Ramus's resources and needs were set out in her witness statements (the most up to date evidence was in her third witness statement). Her monthly outgoings averaged £5,610 and her monthly income was around £1,800, which left a shortfall of around £3,810 per month, which equated to £45,720 per annum. She was currently renting, but had a housing need and was looking to purchase a property of her own. It was acknowledged that, once Mrs Ramus purchased a property, she would be relieved of the obligation to pay rent of £1,400 per month, but she would then have the expense of upkeep of the property. Miss Phillipson submitted that a reduction of £1,000 per month would be appropriate to reflect Mrs Ramus's likely position once her housing need had been met, which adjustment would equate to a monthly shortfall of around £2,810, or £33,720 per annum.

160. In relation to Mrs Ramus's income shortfall, it should be noted that, until shortly before the death of the deceased, she and her husband were enjoying a rental income of around £50,000 per annum from their business premises on Kings Road, Harrogate. Subsequent to the death of the deceased, the property had been sold.

161. Mrs Ramus's assets (excluding her car) totalled £1,664,577.95. From these assets, the sum of £488,326 had to be ringfenced as that represented Mrs Ramus's retirement fund and was being used to provide income and drawdown of £816.80 per month. From the remaining assets of £1,176,251.95, Mrs Ramus had set aside £750,000 to purchase a property, leaving the sum of £426,251.95, out of which she would need to pay an as yet unspecified CGT bill.

162. It could be seen from the breakdown of her assets that she already had the sum of £481,420 invested (plus £50,000 in premium bonds), which investments were made under advisement from her financial advisor and which contributed to her monthly income. She therefore did not have the ability to generate the income required to meet her monthly outgoings. She was supplementing her income by using her capital, which position was unsustainable in the long term.

163. **S.3(1)(c)** – Mrs Ramus did not seek to interfere with the pecuniary bequests or the legacy fund created by the will. None of the beneficiaries (including the minor beneficiaries under the trust) had provided details of their resources and needs and it was therefore assumed that they did not have a needs-based defence to her claim. It was noted that Mrs Holt received the deceased's pension lump sum of £500,000.

164. **S.3(1)(d)** – Mrs Ramus was the deceased's wife, and although she and the deceased were in the process of separating at the time when the deceased took his own life, Miss Phillipson submitted that the deceased had a responsibility to ensure that reasonable financial provision was made for his wife.

165. **S.3(1)(e)** – The size and nature of the estate had been summarised above. The trust fund of £889,599 was clearly of reasonable size and was sufficient to enable the Court to make an award of reasonable provision for Mrs Ramus. Miss Phillipson noted that it had been proposed by Mr Armitage that the sum of £305,000 should be "ringfenced" to allow for inheritance tax ("IHT"), which he said the trust would be liable to pay following the death of Mrs Ramus. Miss Phillipson submitted that, whilst it was accepted that the trustees would need to ensure that the trust retained sufficient capital to pay any IHT, the position of the trustees was that the liability would only arise after the death of Mrs Ramus and she was seeking the income of the trust during her lifetime. There was therefore no reason why the 'ringfenced' sum could not be used during the lifetime of Mrs Ramus to generate income for her benefit.

166. **S.3(1)(g)** – the nature of the relationship between Mrs Ramus and the trustees, particularly Mrs Holt, was relevant to Mrs Ramus's claim. Mrs Ramus's receipt of any part of the trust was entirely in the hands of the trustees. The trustees had said that they intended to follow the deceased's wishes and pay the income to Mrs Ramus, but the position was that Mrs Ramus did not have any faith or confidence that they would not choose to follow the deceased's wishes as expressed in his letter of wishes, that if they considered that her resources were such that she did not require income from the trust, then that right should be removed. Their witness statements made it abundantly clear that all of the trustees were of the opinion that Mrs Ramus had assets and income in excess of that which she needed, and her claim, which had always been based upon her seeking income from the trust rather than a large capital sum, had

been vigorously defended by the three defendants in their capacity as trustees rather than the trustees taking the more usual neutral role in response to the claim.

167. **S.3(2)(a)** – Mrs Ramus was 77 and had been married to the deceased for 48 years at the time of his death.

168. **S.3(2)(b)** – she played a full part in the raising of the children whom she and the deceased had together, running the home, and the couple's joint business ventures.

169. **S.3(2)** – in considering the 'divorce cross check', Miss Phillipson accepted that, if the Court considered the assets of Mrs Ramus and the estate at the time of the hearing (as suggested by Black J in ***P v G, P and P (Family Provision: Relevance of Divorce Provision)*** [2004] EWHC 2944 (Fam) at [61], [69] (including the £500,000 paid out to Mrs Holt arising from the deceased's pension), Mrs Ramus had around 50% of the combined assets. She submitted, however, that s.3(2) specifically provided that "nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2". She also referred to ***P v G*** in which Black J noted that the divorce cross check "is only one of the factors to which the court is required to have regard" and at [224-225] approved the dicta of Oliver J in ***Re Besterman*** [1984] Ch 458 when it was said that "the overriding consideration is what is reasonable in all of the circumstances". Black J further noted at [242]

> "I am struck by the force of the repeated observations in the decided authorities about the difference between divorce where there are two surviving spouses for whom to make provision and death where there is only one. It seems to me probable that this difference will not infrequently be reflected in greater provision being made under the 1975 Act than would have been made on divorce, and that this may legitimately be so even where the estate is a relatively large one."

170. Miss Phillipson accepted that a casual glance at Mrs Ramus's finances might lead to the initial assumption that she had sufficient assets to provide adequately for herself without assistance from the trust. However, when considering whether reasonable financial provision had been made for the claimant and the nature and quantum of any award made to the claimant under the Act, the applicable standard of

living was that which the claimant was accustomed to prior to the death of the deceased:

> "24. … in assessing in any particular case what is or is not reasonable maintenance, the court must have regard to the nature and quality of the lifestyle previously enjoyed by the applicant and the deceased.
>
> 25. … If, in fact, as in the present case the lifestyle was indeed lavish and extravagant then, in my judgment, consistently with the authorities, it was perfectly permissible for the judge, in determining what the proper answer was to each of these two questions, to say that the reasonableness or otherwise of the provision made for the claimant by the deceased, and the provision which it would be reasonable for the judge to make for the claimant, had to be assessed having regard to the lifestyle she had previously enjoyed with the deceased"

(per Munby J in ***Bahouse v Negus*** [2008] EWCA Civ 1002).

171. Prior to the death of the deceased, Mrs Ramus lived in a large 6 bedroomed house with a large garden, which was owned by her and the deceased and which was sold for around £1.1M in 2020. Mrs Ramus was currently cash rich due to both her home and her business premises having been sold and the fact that she was renting her house. It was entirely reasonable that she should purchase her own home rather than having to rent and that the property purchased was a property in line with that in which she was accustomed to living, with a garden and spare bedrooms so that guests could stay. She should not have to live in "a house or flat" which Mrs Holt considered "suitable for a lady of advanced years who lives on her own".

172. Mrs Ramus also intended to resume travelling abroad again.

173. Once she had ringfenced the cash required to purchase her home, her capital assets were insufficient to generate the income which she required to meet her average monthly outgoings. Mrs Ramus therefore required additional monthly income from the trust.

174. Mr Armitage's first witness statement averred that Mrs Ramus could, and presumably should, manage her investments to produce sufficient income to meet her

monthly outgoings. He exhibited two schedules based upon her investing her remaining capital assets at 4% investment return. There was no evidence before the Court to suggest that a return of 4% was possible, or, for an investor in the position of Mrs Ramus, advisable. As noted above, Mrs Ramus already had over £481,000 invested, which sum was in excess of that which she anticipated would be left after her property had been purchased. She was simply not in a position to generate additional income. She further relied upon the letter written by her IFA, Richard Eaden, which stated that her remaining capital would not be sufficient to generate the necessary income.

175. As the Court must consider the parties' financial situation as at the date of the hearing, the Court must also take into account the prevailing financial landscape generally, and in that respect Miss Phillipson submitted that the Court could take judicial notice of the fact that inflation was currently 9% and that the cost of living was expected to continue to rise.

176. Reminiscent of the widow claimant in ***Fielden v Cunliffe*** [2005] EWCA Civ 1508 (who was one of a class of discretionary beneficiaries under a will trust with a net estate of 1.4M) the discretionary and therefore precarious nature of Mrs Ramus's provision under the will did not constitute reasonable financial provision (at [104]) (see also ***Cowan v Foreman*** [2019] EWCA Civ 1336*,* ***Sargeant v Sargeant*** [2018] EWCA Civ 8 and ***P v G***). Mrs Ramus was "entitled to look forward to financial security throughout her remaining lifetime" (at [77]), and as Black J said in ***P v G*** at [207]

> "I do not consider it unreasonable for someone in Mrs P's position, who has had the luxury of a life entirely without money worries in recent years, to wish to continue in this way as far as possible."

177. The removal of financial anxiety was also stressed in ***Re Besterman*** at page 476D:

> ".. having regard to the fact that this lady is the widow of a more than ordinarily wealthy man, reasonable provision would in my judgment require that she should have access to a sufficient sum

> to ensure beyond any reasonable doubt that she is relieved of any anxiety for the future."

178. Miss Phillipson acknowledged that the trustees had said that they intended to honour the wishes of the deceased. However, the reality for Mrs Ramus was that those 'wishes' could be said to be that she should have her right to income removed due to her perceived wealth and ability to generate income. She did not have the security of knowing that she had an absolute right to the income from the trust and Miss Phillipson also argued that there was no obligation upon the trustees to invest the trust so as to provide meaningful income. Mrs Ramus was entirely at the mercy of the trustees in relation to her provision from the trust.

179. In relation to the suggestion by her daughter that her mother should have given the trustees the opportunity to run the trust rather than making an application under the Act, Miss Phillipson referred the Court to ***Berger v Berger*** [2013] EWCA Civ 1305 and ***Sargeant v Sargeant***, both cases in which a widow applied for permission to bring a claim under the Act out of time following dissatisfaction with her provision under will trusts. In both cases, the claimants were found to have taken the decision to work with the trusts rather than pursue any other options, despite having identified likely problems with the same, and both were refused permission to bring a claim out of time.

180. Miss Phillipson therefore submitted that reasonable provision would be achieved by either of the following orders:

(a) an amendment of the trust terms to remove the discretion afforded to the trustees to remove Mrs Ramus as the income beneficiary and to order that she should receive a minimum fixed sum from the trust each month (such sum to be increased annually to allow for increase in inflation). Mrs Ramus proposed that the minimum monthly sum should initially be set at £2,810;

alternatively,

(b) an amendment of the trust terms to remove the discretion afforded to the trustees to remove Mrs Ramus as the income beneficiary, and the replacement of the trustees with trustees either agreed between the parties or independent trustees appointed by agreement or by the court.

181. In relation to option (a), Miss Phillipson submitted that, if the current trustees remained in position, due to the relationship between Mrs Ramus and the trustees the order of a minimum monthly sum was required to ensure that Mrs Ramus's needs were met. She acknowledged that the payment of a monthly sum might, in some months, require the use of some capital from the trust. However, such capital expenditure was likely to be small and would not significantly affect the preservation of the capital for the remaindermen of the trust.

182. Option (b) retained the trustees' discretion in relation to the quantum of income and the provision of any capital to Mrs Ramus, but Mrs Ramus was satisfied that the appointment of independent trustees would safeguard her interests under the trust. When considering the payment of fees for professional trustees, it was noted that Mr Armitage and Mr Wardle were currently charging the trust for their services as trustees.

Mrs Holt's Submissions

183. For Mrs Holt, Mr Heath noted that Mrs Ramus had disavowed any claim to a lump sum from the deceased's estate, nor did she wish to break the trust. She invited the Court to direct that the trust pay her monthly periodical payments in a fixed sum. She had not, however, identified the amount of the fixed sum. She had not adduced any evidence (expert or otherwise) as to the likely income from the trust.

184. Mrs Holt, in her capacity as a beneficiary, opposed the claim. The trustees had had difficulty understanding the rationale for the claim.

185. As a surviving spouse, Mrs Ramus was not limited to an award which merely satisfied her maintenance needs. The Court was bound to have regard to the divorce cross-check, but that was neither a ceiling nor a floor on the award.

186. As to the divorce cross-check, Mrs Ramus advanced no claim based on compensation or sharing principles. She only argued that she had an income need, which should be met by the trust.

187. As to sharing, she had not disputed that she owned more than half the matrimonial assets. Her assets were worth over £1.61m. The deceased's net estate was declared at c.£1.08m. Both Mrs Ramus and the deceased were retired. On a divorce, she would not have received more than she already had.

188. Taking her case at its absolute highest:

(a) she asserted an income need of about £5,200 per month (£62,400 per annum);

(b) she asserted a current shortfall of about £3,400 per month (£40,800 per annum);

(c) on a ***Duxbury*** calculation, a 77-year old female with a lifetime net annual need of £40,000 needed a lump sum of £310,000 to satisfy her income needs;

(d) she said that she needed to use her assets to buy a house worth £750,000;

(e) she had ample assets (of at least £1.61m) to buy a house worth £750,000, cover her lifetime needs and still have a substantial capital cushion;

(f) the only evidence that she did not have sufficient assets to cover her lifetime needs was from her own financial adviser. However, his evidence was partial, hearsay, inadmissible opinion evidence. His view was not supported by ***Duxbury*** calculations.

189. In summary, asserted Mr Heath, Mrs Ramus had not made out a case for asserting that the will failed to make reasonable financial provision for her.

190. There were, moreover, some curious features to the case:

(a) Mrs Ramus had not adduced any evidence (expert or otherwise) as to the likely annual yield from the trust's investments. It was difficult to see how the Court could simply award her all of the income from the trust without knowing how much that would

be. The Court would be abnegating its task to award her only reasonable financial provision.

(b) Mrs Ramus's main complaint appeared to be that she had a poor relationship with her daughter, who was one of the trustees. She had stated in terms that she would be satisfied with an order removing the current trustees and replacing them with independent professionals.

(c) she had made a formal application by notice dated 29 November 2021 for permission to amend her claim form to include an application to remove the trustees. Permission was refused.

(d) she had tacitly admitted that she regarded the *financial provision* made for her by the will as reasonable. Her real complaint was the identity of the trustees. It was a novel argument that reasonable financial provision had not been made because a claimant objected to the identity of a trustee based on a personality clash. Such a clash would not justify the removal of an executor or trustee under a removal application. It was difficult to see how it could support a successful claim that the will fails to make reasonable financial provision.

(e) Mrs Ramus asserted a tension between the trustees opposing her claim and stating that they intended to pay the income from the trust to her. There was no such tension. The fact that the trustees considered that she did not have an income need was only one matter relevant to the exercise of their discretion. The trustees' position was tolerably clear: they did not regard the claim for reasonable financial provision as necessary or viable, *but* that would not prevent them from honouring the deceased's wishes to pay the income from the trust to his widow.

(f) After issuing her claim, Mrs Ramus made an unsecured loan to Alistair of £50,000 ("the Loan"). It must be unheard of for a claimant simultaneously to advance a claim based on her own income needs and make a substantial unsecured loan to one of the defendants.

(g) It was always suspected that her motivation for bringing the claim was to enable her to pass assets to Alistair because she could not sustain an argument that she needed recourse to the trust to maintain her lifestyle. She only needed such assistance if she were intent on passing her assets to her son. It was not the purpose of the Act to provide inheritances for an applicant's adult children. The Loan merely confirmed her motivation.

(h) her case had deteriorated since issue. Her first witness statement declared assets of £1,225,416, but she now admitted to having assets worth over £1.61m.

191. The correct legal test was set out by Lord Hughes JSC, giving the leading judgment in the Supreme Court in ***Ilott v Mitson (No 2)*** [2017] UKSC 17; [2018] AC 545 at [23]-[24]:

> "23. It has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process, viz. (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made?"

Interest in a discretionary trust

192. An interest in a discretionary trust was capable of amounting to reasonable financial provision for a surviving spouse. Whether it did so was a matter of fact in each case.

193. In ***Cowan v Foreman*** the Court of Appeal held at [60] that, on the facts, it was arguable that there had been a failure to make reasonable financial provision where a widow had only been left an interest in her late husband's estate under a discretionary trust. The claimant in that case did not even have autonomy or security in relation to the roof over her head. However, the Court of Appeal emphasised that every case was fact specific and that there was no rule that a spouse's beneficial interest in a discretionary trust could never amount to reasonable financial provision under the Act.

S.3 Factors

194. The Court must have regard to the usual s.3 factors together with the special factors listed in s.3(2):

(a) the age of the applicant and the duration of the marriage;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family; and

(c) the provision which the applicant might reasonably have expected to receive if on the date on which the deceased died the marriage, instead of being terminated by death, had been terminated by a court order (but nothing required the court to treat such provision as setting an upper or lower limit on the provision which might be made by an order under s.2).

The special factors

195. There was no dispute that:

(a) Mrs Ramus was 77 years old;

(b) the marriage lasted about 48 years;

(c) she contributed to the welfare of the family of the deceased, including looking after the home and caring for the family.

The usual s.3 factors

196. In Mr Heath's submission the most relevant factors for the Court in this claim were Mrs Ramus's financial resources and needs; the divorce cross-check; and the size and nature of the estate.

197. **S.3(1)(a)** Mrs Ramus had no legal responsibilities or obligations to any third parties.

198. Her assets were worth at least £1,617,625.95, excluding her car. She ring-fenced c. £488,000 in her Retirement Account, even though it was a realisable asset. If the Retirement Account were left untouched, she still had accessible assets of £1,129,389.90.

199. She had a monthly income of £1,732.09.

200. Her latest expenditure schedule was pitched at £5,296.28 per month. It included the following challengeable claims:

(a) £1,400 per month for rent; that expenditure would cease as soon as she purchased a property. It should not be taken into account when considering her annual lifetime needs;

(b) £250 per month for a replacement vehicle; that was not an ongoing expense. For a 77-year old, it was likely to be a one-off future expense. She owned a car worth at least £27,000, so she should be able to trade in that car;

(c) £650 per month for gifts at birthdays and Christmas equated to £7,800 per annum; there was no reason why the trust should fund such lavish gifts.

201. If those elements were deducted, her monthly expenditure fell to £2,996.28. Her shortfall figure would therefore fall to £1,264.19 per month (£15,170.28 per annum).

202. An expenditure figure of £3,000 per month should be more than ample for a 77-year old woman living alone in an unencumbered property.

203. On a ***Duxbury*** calculation, a 77-year-old female with a lifetime net annual need of £15,000 per annum required a lump sum of £74,000.

204. Even at a lifetime net annual need of £36,000, Mrs Ramus required a lump sum of less than £300,000.

205. She needed to buy a property. She originally suggested that it would be reasonable for her to purchase a property worth c. £700,000 in Harrogate, but had now increased the figure by £50,000 to £750,000. Surprisingly, she had adduced evidence of just one comparator, namely a property worth £650,000 in Pannal placed on the market on 20 December 2021. Remarkably, she complained that there was a dearth of suitable properties available in Harrogate.

206. Mr Heath made it clear that it was not contended that Mrs Ramus should live in a shoe-box property with no room for guests. However, it was not reasonable for a

single 77-year-old with no dependents to spend £750,000 of her own cash on a property and then say that the trust should fund her income for the rest of her life at a fixed monthly sum.

207. Mrs Ramus's financial adviser, Mr Eaden, "consider[ed]" that she needed "additional income from the trust to supplement her personal assets and maintain her lifestyle". There were numerous problems with Mr Eaden's letter:

(a) it was inadmissible opinion evidence;

(b) she had neither sought nor obtained permission to rely upon expert evidence;

(c) Mr Eaden trespassed upon the function of the Court;

(d) his evidence was hearsay and could not be tested;

(e) his evidence was not supported by any statement of truth;

(f) he was not independent; on the contrary, his company would profit if Mrs Ramus were given increased funds to invest because it would charge management fees referable to the amount of the invested fund;

(g) his letter was not supported by any analysis or reasoning.

208. **S.3(1)(c)** None of the beneficiaries had disclosed their financial positions. However, the deceased wanted future generations, including his grandchildren, to benefit from the trust.

209. **S.3(1)(d)** The deceased had a potential legal obligation to comply with any Court orders made in his wife's favour if they divorced. However, she would not have been the beneficiary of more than half of the matrimonial assets. Therefore, there would have been no order in her favour.

210. The deceased clearly felt a moral responsibility to use his estate to benefit his children and grandchildren if possible.

211. By the date of his death, the deceased was particularly well disposed to his daughter and recognised that she had helped him a great deal.

212. **S.3(1)(e)** Mrs Ramus did not challenge any pecuniary legacies. The deceased's net residuary estate would be held on a discretionary trust. The draft estate accounts showed that the net residue to pass into the trust amounted to £914,427.57, but that sum was likely to be depleted by the continuing legal costs of this litigation, resulting in less than £889,000 being held by the trust.

213. **S.3(1)(f)** None of the parties had adduced relevant evidence on that point.

214. **S.3(1)(g): Alistair's conduct:** The Court should not ignore the elephant in the room: Alistair played no active part in the proceedings, but he enjoyed a close relationship with his mother. Given that she had ample assets to invest to fund her own income, the overwhelming inference was that she wanted the trust to subsidise her income so that she could pass her capital to Alistair (either before or after her death).

215. He was a convicted fraudster; he was subject to a bankruptcy restriction order, but still acted unlawfully as a *de facto* director or shadow director of companies; the deceased did not want the trustees to make payments to him to fund an extravagant lifestyle.

216. Even after Mrs Holt drew her concerns to her mother's attention (in her witness statement dated 7 September 2021), Mrs Ramus almost immediately made an unsecured loan of £50,000 to her son on 20 October 2021. The loan was not advanced to help Alistair out of poverty, but to allow him to build an extension.

217. Mrs Ramus's **financial conduct** was pertinent:

(a) her actions were not the actions of an applicant in need of an income from the trust;

(b) an applicant who brought a claim based on her income need could hardly expect the Court to find that a will failed to make reasonable financial provision for her when she was so well-off that she could afford to take the risk of making an unsecured, unnecessary loan of £50,000 to her son;

(c) she purchased a new car before even making her claim;

(d) she appeared to have gifted away some of the deceased's chattels, such as his Rolex watch; and

(e) she did not appear to have maximised her assets or income in recent months.

218. Her **litigation conduct** was also relevant. She would have been content to have the trustees removed and replaced by independent professionals. It was unlikely that professional trustees would guarantee her an income from the trust. Her litigation conduct showed that she had no real complaint that the provision under the will was inadequate.

219. **The divorce cross-check** The law on the issue was comprehensively set out in the judgment of Briggs J in ***Lilleyman v Lilleyman*** [2012] EWHC 821 (Ch) at [34]-[60]. In essence:

(a) when considering any award under the Act to a widow, the Court would apply a divorce cross-check, i.e. the Court would consider what the claimant would have received if she and the deceased had been divorced on the date that he died.

(b) on a divorce, the Court would have regard to the principles of sharing, needs and compensation.

(c) equality was the yardstick. If the estate were sufficiently large, a spouse could expect to share the matrimonial assets, i.e. receive half the matrimonial assets.

220. Mrs Ramus did not present a case based on compensation or sharing. Nor did she dispute that she had already had her half share of the matrimonial assets. She contended that, on a divorce, she would have received monthly maintenance payments. There was no basis for that assertion. Both she and the deceased were retired. The deceased did not have a substantial income stream from an ongoing occupation. The couple had commenced dividing up their assets. Mrs Ramus had received c.62% of them (£1.61m as opposed to the deceased's £1.02m). She already owned almost two thirds of the matrimonial assets.

221. The lump sum of £500,000 paid to Mrs Holt by the deceased's pension providers was not an asset available in divorce proceedings. However, even if it were now notionally taken into account as a matrimonial asset, Mrs Ramus had received more than half of the matrimonial assets.

Award

222. Mr Heath submitted that Mrs Ramus had not shown that the deceased's will failed to make reasonable financial provision for her. No financial provision at all would have been reasonable.

223. Mrs Ramus had accessible assets worth £1,129,389.90. It was perfectly reasonable to expect her to purchase a house for less than £500,000, to invest her own assets of £74,000 to produce an ample income for the rest of her life and still to have more than £555,000 left as a capital cushion (leaving her Retirement Account worth c. £488,000 untouched).

224. Even if the Court assumed that she would buy a property for £750,000 and needed to invest £300,000, she would still have a capital cushion of more than £129,000 (plus her Retirement Account worth c. £488,000).

225. She did not need recourse to income from the trust.

226. This was not a case where Mrs Ramus had no autonomy over any assets or where the trustees could remove the roof from over her head. She had substantial personal assets. In addition, she had been fortunate enough that:

(a) the will named her as the income beneficiary;

(b) the deceased had directed his trustees to pay her the entirety of the income from the trust during her lifetime; and

(c) all three trustees had indicated that they intended to honour the deceased's wishes and to pay her the income regardless of their view that she did not need it.

227. Mr Heath therefore invited the Court to dismiss Mrs Ramus's claim.

The Executors' And Trustees' Submissions

228. For the trustees, Mr Entwistle also submitted that the deceased's will did make reasonable financial provision for Mrs Ramus. There had been some criticism of the trustees' stance from those acting for Mrs Ramus, who had suggested that they should be neutral. Such criticism was misplaced: although neutrality was appropriate for disinterested *executors*, the position was quite different here because there were substantive trusts, which included minor and unborn beneficiaries whose interests the trustees (in that capacity) were obliged to defend.

229. The trustees were fully aware of their duties and intended to act strictly in accordance with them. They would therefore (a) pay the income of the residuary trust fund to Mrs Ramus as the life tenant and (b) consider, from time to time in accordance with all relevant considerations (including the terms of the letter of wishes), whether to exercise their overriding powers.

230. As was reiterated in the ***Ilott v. Mitson (No.2)*** at [16], the question for the Court was whether the provision made was reasonable, not whether the deceased acted reasonably, but that did not mean that the deceased's wishes were irrelevant. On the contrary, the Supreme Court held at [47] that

> "they may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors"

The s.3 factors

231. Mr Entwistle did not propose to address all of the matters referred to in s. 3, but only those which were relevant in the case.

232. **S.3(1)(a)** Mrs Ramus had provided updated details of her financial position in her third witness statement dated 11 March 2022. That statement indicated that:

(a) Mrs Ramus was presently living in rented accommodation for which she paid £1,400 per month. She wished to buy a house in Harrogate which was comparable to where she lived when the deceased was alive, for which she expected to pay about £750,000 (including costs and SDLT).

(b) her capital amounted to £1,664,577.95, excluding her car. That was subject to a CGT liability arising out of the sale of commercial premises which the deceased and Mrs Ramus owned as tenants in common and which was sold in August 2021. Rather surprisingly it appeared that Mrs Ramus's accountant was not yet able to put even an approximate figure on that liability.

(c) her income was about £1,800 per month.

(d) her outgoings were in the region of £5,000 per month, excluding legal fees. That also included rent, which Mrs Ramus would no longer have to pay when she had purchased a new house. Thus her outgoings in the future would be about £3,600.

233. The evidence in support of Mrs Ramus's housing needs was thin, consisting of one property for which the guide price was £650,000. Even if Mrs Ramus did require £750,000, however, that would leave her with over £900,000 in remaining capital. The ***Duxbury*** tables indicated that that would allow expenditure of over £100,000, more than double Mrs Ramus's stated outgoings, for the rest of her life.

234. Clearly, therefore, Mrs Ramus's existing resources were enough to provide for her needs, even without taking her entitlement to the income of the trust fund into account.

235. **S.3(1)(c)** No evidence of the beneficiaries' finances was before the Court. That did not mean that they should be disregarded: as Lord Hughes said in ***Ilott*** at [46] "it cannot be ignored that an award under the Act is at the expense of those whom the testator intended to benefit". In this case Mrs Ramus was of course

herself one of the beneficiaries of the trust fund, but she was only one. It was also significant that, as matters stood, the trust fund would be subject to a very substantial inheritance tax liability which would reduce the amount available for the beneficiaries: Mr Armitage estimated that at over £300,000.

236. **S.3(1)(d)** Obviously the deceased owed very substantial obligations towards Mrs Ramus as his wife of many years. As was clear from the letter of wishes, he also recognised that he had responsibilities towards his children and grandchildren.

237. **S.3(1)(e)** The interim estate accounts revealed that, including the substantial gain on the commercial property after the deceased's death, the estate was worth about £1.17m. The projected value of the trust fund was about £915,000. Assets worth about £65,000 were held on joint tenancies and so passed to Mrs Ramus by survivorship.

238. **S.3(2)(a)** Mrs Ramus was 77 and the marriage lasted for 48 years.

239. **S.3(2)(b)** The trustees made no comment on Mrs Ramus's evidence in that regard.

Divorce cross-check

240. If (as the 1975 Act required the court to hypothesise) the deceased and Mrs Ramus had divorced on the day he died, their assets would have been dealt with in accordance with the well-established principles set out in ***White v. White*** [2001] 1 AC 596 and the subsequent cases in the financial remedy jurisdiction. In ***Miller v. Miller; McFarlane v. McFarlane*** [2006] 2 AC 618 3 factors were identified as important to achieving fairness: (i) the parties' needs; if (and only if) the available assets were more than sufficient to provide for needs (ii) compensation; and (iii) equal sharing, expressed by Lord Nicholls at [16] as follows:

> "This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work

> together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: "unless there is good reason to the contrary". The yardstick of equality is to be applied as an aid, not a rule."

241. It had been confirmed in several claims under the Act that those principles were applicable to the divorce cross-check, albeit that it "should be treated neither as a floor nor a ceiling" and was not "something which requires a meticulous quasi divorce application to be analysed side by side with the application of the separate provisions in section 3 of the Act": see ***Lilleyman v. Lilleyman***.

242. In this case it did not appear that there would have been any reason for a departure from equality. Mrs Ramus stated that she and the deceased would have each kept their own assets and on a pragmatic basis that did indeed seem a likely outcome. But she went on to say that "the deceased would have paid me a monthly amount to enable me to discharge my monthly outgoings". No explanation was given for that statement. Given that Mrs Ramus's assets were worth significantly more than the deceased's it seemed to lack any basis.

Conclusion

243. It remained unclear what provision Mrs Ramus sought from the estate. In her first witness statement she said that "I do not seek a large capital lump sum from the estate or seek the break the trust". In her second statement she said that "I am seeking monthly income from the trust, not a capital sum". It was not clear what form Mrs Ramus said this income provision should take. It had been suggested in correspondence that she sought a "guaranteed minimum level" of income, but it had not been explained how the trustees could give such a guarantee or how it would be proper for them to do so.

244. In any event, however, the matters to which the Court was to have regard under s. 3 did not, individually or in combination, provide any support for the contention that the will failed to make reasonable provision for Mrs Ramus. Plainly

the divorce cross-check could not avail her as her own assets were worth more than the estate.

245. The crux of Mrs Ramus's case appeared to be that, once she had purchased a new house, she should be in a position to provide for her income needs while leaving her capital untouched. That was not the correct approach to assessing needs under the 1975 Act and there was no justification for applying it in this case. Instead the ***Duxbury*** tables should be used: see e.g. ***Ilott***, ***Lilleyman*** and see also ***JL v. SL (No. 3)*** [2015] EWHC 555. On that basis it was clear that Mrs Ramus's own assets were sufficient for her requirements.

246. Given Mrs Ramus' own assets, there was nothing unreasonable in her having a life interest in the trust fund, nor in the trustees having power to terminate that interest. That power was subject to the fiduciary obligations referred to above. The trustees had no intention of acting otherwise than in accordance with those obligations, which were in any event subject to the Court's control. If it were being suggested that provision of this sort was inherently unreasonable, that was plainly incorrect: see ***Cowan v. Foreman***, in particular at [60] where it was said that "each case is fact specific and must be considered in the light of the relevant factors". In this case, the factors of magnetic importance were that the value of Mrs Ramus's own assets significantly exceeded that of the estate and that she had sufficient to meet her needs.

247. Mr Entwistle likewise invited the Court to dismiss the claim.

Analysis

248. As explained by Lord Hughes JSC in ***Ilott v Mitson (No. 2)*** [2017] UKSC 17; [2018] AC 545 at [23]-[24]:

> "23. It has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process, viz. (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made?"

249. S.3 of the Act sets out the list of factors to which the Court must have regard in determining whether reasonable financial provision has been made by the will and, if not, what award should be made. By virtue of s.1(2)(a), as the widow of the deceased the provision to which Mrs Ramus would be entitled is such provision as it would be reasonable for her to receive, whether or not that provision is required for her maintenance.

250. The orders which the Court may make, if it is satisfied that the disposition of the deceased's estate is not such as to make reasonable financial provision for the applicant, are as set out in s.2(1)-(4). I shall consider below whether that includes the power to order the removal of the trustees, which was part of Miss Phillipson's option (b) (coupled with a guarantee of income).

251. In this case the following s.3(1) factors are potentially relevant:

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

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

(d) any obligations and responsibilities which Mr Ramus had towards his wife or towards any beneficiary of the estate of the deceased;

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

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

252. In addition, the special factors in s.3(2) also fall for consideration since the applicant is the spouse of the deceased:

(a) the age of Mrs Ramus and the duration of the marriage;

(b) the contribution made by Mrs Ramus to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(c) the provision which Mrs Ramus might reasonably have expected to receive if on the day on which her husband died the marriage, instead of being terminated by death, had been terminated by a decree of divorce (although nothing requires the Court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under s.2).

253. By virtue of s.3(5), in considering all of those matters, the Court must take into account the facts as known at the date of the hearing.

254. I shall consider the evidence relating to each of those factors in turn.

S.3(1)(a)

Assets

255. Mrs Ramus had assets amounting to £1,225,416 at the commencement of the proceedings. By the time of the trial, and following the completion of the sale of the business premises on Kings Road, those assets had increased to £1,664,577.95, together with a new Volvo which had a resale value in the region of £27,000-£30,000. She has an as yet unascertained CGT liability on the sale of the business premises between £40,000 and £64,000 (possibly in the region of £50,000). I am bound to say that it is unsatisfactory that a likely figure for the CGT liability had not been produced by the time of the trial of the action in June 2022 given that the sale of the property had taken place as along ago as August 2021. I shall, however, assume in Mrs Ramus's favour that a higher figure is likely rather than a lower figure. I will therefore ascribe to her a potential CGT liability of £60,000. Deducting that figure from the combined value of her assets (together with the value of her car) results in a figure of £1,634,925.95. In round figures that means that she has assets of £1,630,000.

Income

256. Her income is currently £1,732.09 per month, made up of three pensions and £816.80 by way of capital drawdown from her pension.

Outgoings

257. Her outgoings were £5,113 per month at the commencement of the proceedings and £5,296.28 per month according to her latest expenditure schedule. According to her evidence her average outgoings for the period from June 2021 to December 2021 (excluding legal fees) were £5,610.87 and her daughter was not disposed to disagree with that figure. Whilst I see the force of Mr Entwistle's point that the schedule may well be more accurate than the figures averaged over recent months, nevertheless her average outgoings over the most recent period were £5,610.87 and I shall proceed on the footing that Mrs Ramus's monthly outgoings are £5,610.87 per month (subject to what I say in the immediately following paragraphs).

258. There were, in fact, only 4 figures in her latest expenditure schedule which were potentially contentious:

(a) the rent figure of £1,400 per month

(b) the payment of £34 per month for the Aviva life policy

(c) the provision of £250 for a replacement car and

(d) the figure of £650 per month for gifts.

259. The payment of £1,400 rent would cease when Mrs Ramus purchased a house and the figure of £400 for monthly expenditure on the new property was not seriously disputed. It is appropriate to remove the rental element of the outgoings from the schedule because what is relevant for the purposes of s.3(1)(a) are the financial needs which the applicant has or is likely to have in the foreseeable future and in the foreseeable future Mrs Ramus will have purchased a new house. That reduces the figure for monthly outgoings by £1,000.

260. I am satisfied that Mrs Ramus was entitled to continue to pay the monthly instalment on the Aviva policy (of which Mr Wardle and Mrs Holt were the trustees and of which Mrs Holt and Alistair were the beneficiaries) on the basis that it was cheaper to keep up the monthly payments than to cash in the policy; it would not be cost

effective to cancel it. I have therefore left the figure of £34 per month for the insurance premiums in the schedule of outgoings.

261. I do, however, agree with Mr Armitage that the provision of a car is not an ongoing monthly expense, but that it would be a one-off expense from capital rather than income. Moreover, the Volvo would have a significant resale or trade-in vale when replaced (if replacement is as frequent as every 3 or 4 years). I also bear in mind that Mr Ramus is 77 and I entertain some doubt as to whether she will have a need for a new car several years into the future (or, indeed, if she needs a car that she will need to have one as expensive as a new Volvo of similar make to the one which she now has). I have therefore removed the figure for the provision of a new vehicle from the schedule of outgoings.

262. Mrs Ramus justified the figure of £650 per month (which equates to £7,800 per year) for gifts on the basis that she had 5 grandchildren, to whom she each gave £200 for their birthdays and again at Christmas. She had given Alistair £1,000 for his birthday in May and had spent £3,000 for a group of 10 people from the family to take over the barn conversion in March 2022 which included the hire of a chef and the provision of cooked meals for the party.

263. Mr Heath and Mr Entwistle criticised that figure as excessive, but I am satisfied that Mrs Ramus is generous and open-handed in the provision which she makes for her family at birthdays and Christmas and in the hospitality which she provides for friends (as witness the party for 10 in the barn conversion) and I have left the sum of £650 per month in the schedule as reflecting what Mrs Ramus actually sets aside and spends on gifts and hospitality.

264. On that basis, given the reduction of £1,000 per month once her new house is purchased and the removal from the schedule of a monthly figure for a new car, Mrs Ramus's outgoings are £4,360.87 per month, or £52,330.44 per annum.

265. In that event her monthly shortfall is £4,360.87 - £1,732.09, which equates to £2,628.78 per month, or £31,545.36 per annum.

Purchase Of A House

266. As regards the purchase of a new house by Mrs Ramus, there was not much between the parties once the matter had been ventilated in evidence. Mrs Ramus said that she needed to spend £700,000 on a property and that she had budgeted an extra £50,00 for stamp duty and associated sale and removal costs. She did not want a bungalow (because she enjoyed the exercise of walking up and down stairs) and she did not want a new build (since she had always lived in older houses and a new build would not suit her furniture). She accepted in cross-examination that she did not need a fourth bedroom and that three bedrooms would be adequate for her purpose.

267. Mr Armitage understood Mrs Ramus' expectations and appreciated that the market had gone up since 2021. Although his schedules were produced on the basis of Mrs Ramus buying a house for £500,000, he accepted that she would not now get the sort of property for which she was looking at £500,000. As to the estimate of £750,000 for a new house (including the accompanying costs), he had no strong views and he accepted that that could be the price which she would have to pay. He thought that reasonable property would cost between £600,000 and £700,000 and had no objection to taking into account in her expenditure schedule a figure of £400 per month to cover the household expenses of the new house once it was purchased.

268. Mrs Holt accepted that it was reasonable for her mother to want to buy a three bedroomed house, particularly when her brother and his wife and their two children came to visit her. On her own limited research a house of that sort would cost between £550,000 and £700,000. She accepted that her mother was entitled to live in whatever property she chose.

269. There was a virtually complete dearth of sales particulars of comparable properties in the Harrogate area before me (in fact only one set of particulars was provided and that property was, quite understandably, not acceptable to Mrs Ramus because of its proximity to the main Leeds to Harrogate road). Although she accepted that a three bedroomed house with two bathrooms would be sufficient for her needs, Mrs Ramus was not, however, really shaken in her evidence that the cost of a new house of the sort that she wanted (together with the associated costs of moving) was in the region of £750,000. Mr Armitage had no strong views on the matter and

accepted that £750,000 was potentially the sort of price which she would have to pay. Although Mrs Holt put a lower price on such a property, she accepted that the research which she had done had been limited and she did not produce that research to the Court. She did not dissent from the proposition that it was reasonable for her mother to want to buy a three bedroomed house and she accepted that her mother was entitled to live where she chose. In the light of Mr Armitage not having any strong views on the matter and the concessions made by Mrs Holt, I am satisfied that it would now cost Mrs Ramus in the region of £700,000 to buy an older three bedroomed house in the immediate environs of Harrogate and that it would not be unreasonable for her to budget an additional £50,000 for associated sale and removal costs. I therefore find that it would cost her £750,000 in all to purchase the sort of property which she wants in Harrogate.

270. If one deducts the cost of the house purchase from her assets of £1,630,000, that leaves a figure of £880,000. Of that sum £488,000 is ringfenced as her retirement fund from which she draws down each month to provide income, together with her 3 pensions. That still leaves her a separate fund of £392,000.

271. Miss Phillipson's case was that Mrs Ramus had an income shortfall every month and therefore needed additional income every month to make up that shortfall. Her ability to access and secure income every month was not secure under the terms of her late husband's will and could be terminated or reduced at any time. She was approaching her twilight years; she wanted to enjoy herself and lead the life which she used to lead.

272. The fact that a widow is made the object of a discretionary trust (or of a terminable life interest) does not of itself mean that the disposition of her husband's estate under his will does not make reasonable financial provision for her. As Asplin LJ said in ***Cowan v Foreman***

> "60. First, [the judge] rejected the submission that a claim for outright provision from the estate could have any merit on the basis that such a claim was tantamount to saying that every widow has an entitlement to outright testamentary provision from her husband and would in effect, introduce a form of forced

> spousal heirship. He did so despite the fact that it was not being suggested that every widow is entitled to outright testamentary provision or that in every case a beneficial interest in a discretionary trust can never amount to reasonable financial provision for the purposes of the 1975 Act. He was being asked to consider the circumstances of Mrs Cowan's case. There can be no question of forced spousal heirship. Each case is fact specific and must be considered in the light of the relevant factors."

273. Miss Phillipson sought to rely on what was said in paragraph 57 of that decision, but what Asplin LJ there said was that

> "Before us, however, Miss Reed submitted that, in the circumstances, the distinction took the matter no further, that "needs" trumped "sharing" in any event and that the heart of the matter was whether in the circumstances of the case, there was real prospect of success in arguing that reasonable financial provision for Mrs Cowan required outright provision. She pointed out that it had been conceded in numerous cases, including *Cunliffe v Fielden* [2006] 2 WLR 481, *P v G* [2007] WTLR 691 and *Sargeant v Sargeant* [2017] WTLR 1451 that making a widow the object of a discretionary trust did not make reasonable financial provision for her and submitted that the Judge had given insufficient weight to Mrs Cowan's lack of security under the provisions of the Will Trusts."

274. With regard to the provision of a cushion in the form of available capital which will enable the applicant to meet all reasonably foreseeable contingencies, Oliver LJ said in ***Re Besterman*** at p.478

> "I accept Mr. Johnson's submission that reasonable provision, in the case of a very large estate such as this and a wholly blameless widow who is incapable of supporting herself, should be such as to relieve her of anxiety for the future. I say "in the case of a very large estate" not because there is any difference in principle but simply because the existence of a large estate makes that which is desirable also practically possible. It has been pointed out more than once that the calculation in cases of this sort is, of necessity, not one where any precision is possible, but for my part I take the view that reasonable provision in this case would dictate that, in addition to the secure roof over her head, the widow should have available to her a capital sum of sufficient size not simply to enable her to purchase an adequate annuity according to present day needs, but to provide her with the income which she needs and a cushion in the form of

> available capital which will enable her to meet all reasonably foreseeable contingencies."

275. However, the facts of that case were very different from the present one. As is apparent from what was said at pp.363-364, the applicant in that case had very little money of her own; apart from the provision to be made for her out of her husband's estate, she had only a few personal chattels and her state widow's pension. For the widow of a millionaire, accustomed to the sort of standard of living to which she had hitherto been accustomed, the provision in the will of personal chattels and an income of £3,500 for life was clearly not reasonable provision and the University had properly acknowledged that throughout. The question which had to be determined was not whether further provision should be made, but what should be the extent of it and what form it should take. In addition, the case was decided long before a number of other authorities, as is apparent from the citations below.

276. I also bear in mind that Oliver LJ went on to say at p.479

> "I have ventured to criticise the judge's annuity approach but I wish to emphasise that I do so only in the context of these particular facts. There may well be circumstances where it is not only a right approach but it is the only right approach. Again, it is a case of a surviving spouse where, under the Act, very special considerations apply and where the obligations owed by the deceased may be thought to be paramount over his testamentary intentions. I desire to emphasise what has been said, no doubt, many times before, that each case in this jurisdiction depends upon its own particular facts and I think that it would be a pity if this case should be used as a basis for drawing general deductions of principle to be applied in other and probably quite different cases, whether of large or small estates."

277. Miss Phillipson also relied on the decision of the Court of Appeal in ***Fielden v Cunliffe***. The facts of that case were again different from the instant case in that the marriage was only a very short one, lasting just over 12 months before the death of the husband, and the widow did not have assets of any substance nor any income, which is far removed from this case. As Wall LJ explained

> "17. It was also common ground that Mrs. Cunliffe had benefited by survivorship in relation to a number of funds and policies in the joint names of herself and the deceased. The judge assessed this sum at £226,000, which did not form part of the estate. He also recognised that Mrs. Cunliffe had been obliged to spend some of this money on costs and living expenses. That apart, however, she did not have any assets of substance, nor any income. It was common ground that she had an earning capacity, the extent and relevance of which I will discuss in due course."

278. He continued

> "76. *Re Besterman (deceased)* must, I think, be viewed with a substantial element of caution, not least because Oliver LJ, giving the leading judgment, warned against using it as a basis for drawing general decisions of principle to be applied in other and probably quite different cases. Furthermore, its comparison with awards made in divorce is based on the now long repealed injunction previously concluding section 25 of the Matrimonial Causes Act which required the court :—
>
> > "So to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not irretrievably broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."
>
> 77. *Re Besterman*, self-evidently, pre-dates the change of thinking in matrimonial cases brought about by *White v White*. In its discussion of annuities, it also predates *Duxbury*. The *Besterman* "cushion" is no longer considered a proper approach in financial proceedings following divorce. The case remains, nonetheless, I think authority for the proposition that the blameless widow of a wealthy man is entitled to look forward to financial security throughout her remaining life-time, and that "reasonable financial provision", which is not limited to maintenance, must be viewed accordingly."

279. Miss Phillipson submitted that the position of Mrs Ramus was reminiscent of the widow in that case, who was one of a class of discretionary beneficiaries under a will trust with a net estate of £1.4m) and that the discretionary and therefore precarious nature of her provision under the will did not constitute reasonable financial provision. I do not, however, accept that the position of Mrs Ramus was reminiscent of that of the widow in ***Fielden v Cunliffe.*** As is apparent from what I have said immediately above, the facts of the case were very different, not least in

the brevity of the marriage and in the widow's dearth of assets of any substance or of any income.

The *Duxbury* Calculation

280. Mr Heath and Mr Entwistle submitted that on a ***Duxbury*** calculation, a 77 year old woman with a lifetime net annual need of £30,000 needs a lump sum of £216,000. A 77 year old woman with a lifetime net annual income need of £31,545.36 would obviously need a slightly larger sum. However, even on the assumption that her current monthly shortfall was as much as £3,400, or £40,800 per annum, on a ***Duxbury*** calculation Mrs Ramus would need a lump sum of £310,000. By contrast, in this case, if one deducted the cost of the house purchase from her assets of £1,630,000, that still left a figure of £880,000 (including £488,000 ringfenced as the retirement fund and, even excluding that fund, a separate fund of £392,000). Even putting her case at its highest, Mrs Ramus's claim, they asserted, could not succeed.

281. Miss Phillipson relied on the judgment of Singer J in ***A v A*** about the potential problems of using ***Duxbury*** tables in the case of an aged spouse. In that case the second holding in the headnote was summarised thus:

> "Because of the husband's advanced age and the length of the marriage, a conventional *Duxbury* calculation did not help the court to compute the size of the fund which the husband would need to provide him with an appropriate income. Where an aged spouse had made full contributions to a lengthy marriage it was unjust to calculate a sum based on actuarial life expectancy. Each individual had an appreciable chance of doing better than the life tables upon which *Duxbury* calculations were based, and where individuals had already reached an advanced age, reliance on the tables could, if the individual lived longer than the average, have disastrous results. An aged spouse, like this husband, was at relatively proximate risk that he would survive the demise of the fund, rather than vice versa, and each year of survival increased the statistical chance that he would survive the previous year's prediction of life expectancy. The husband had the right to recognition in money terms for his significant contribution to this lengthy marriage, and a result based upon the *Duxbury* technique, however flexibly it was applied, would not meet the justice of the case."

282. In the body of his judgment Singer J explained at pp.976-977 why the approach of the district judge had been wrong in principle

> "On the face of it, therefore, the district judge fell into the fallacy clearly identified by the Court of Appeal in *Preston v Preston* [1982] Fam 17, (1981) 2 FLR 331. In that case each of the three Court of Appeal judges was critical of the acceptance by the first instance judge of the calculation put before him that a capital sum of £500,000 would at then current rates of taxes yield a net income of £20,000. Ormrod LJ pointed out (at 28E and 339C respectively) that:
>
> > 'This computation overlooks the important fact that the capital is at the wife's disposal and available to her to invest or spend as she thinks fit.'
>
> Brandon LJ (at 36D and 346G respectively) expressed the view that:
>
> > 'It does not … assist at all, in arriving at a proper lump sum to order, to have regard to the income which a given sum would produce on the basis that the capital consisting of such sum remains intact.'
>
> And that the judge had erred in his approach to the exercise of his discretion:
>
> > '… because he attached importance to the net income which the lump sum sensibly invested would produce for the wife on the basis that the lump sum itself was not touched but remained intact throughout, a consideration which … was not a proper or even a relevant consideration for him to take into account.'
>
> Hollings J was of the like opinion, saying (at 40F and 350D respectively) that:
>
> > '… it is … wrong to assess a lump sum by reference to the amount of gross or net income it could produce, since in cases such as this where the lump sum is provided for no one specific purpose, the recipient must be expected to expend in one way or another both capital and income.'"

283. Singer J continued at pp.978ff

> "The impact of advancing and advanced age upon *Duxbury* calculations has been noted elsewhere. Thus, for example, in

White v White [1998] 2 FLR 310, 319 Thorpe LJ cited Holman J's reference at first instance to 'the well-known paradox that the longer the marriage and hence the older the wife, the less the capital sum required for a *Duxbury*-type fund'. The paradox is no less true if the husband is the claimant. Of it Thorpe LJ said that the observation 'is acceptable if it means no more than that the method of calculation is paradoxical. *Duxbury* is a tool and not a rule.' He continued (at 320A):

> In the case of a young wife and a relatively short marriage the slavish application of the *Duxbury* method would be unjust to the husband. So would it be unjust to the wife were she confined to a *Duxbury* award in the late phase of life at the end of a long marriage. The utility of the *Duxbury* methodology depends in part upon the skill of the user. It must be applied with flexibility, with a due recognition of its limitations, and with intelligent perception of special features which are capable of being incorporated within the computer program.'

It is worth pausing to consider wherein lies the perceived risk of injustice. It is obvious that a *Duxbury* calculation for a young claimant after what is therefore likely to be a relatively short marriage would, because of her considerable life expectancy, project a disproportionately high award. For this reason no one in the ordinary way attaches much significance to such a calculation for, say, a 30-year-old. Conversely, at the other extreme of age *Duxbury* results reduce by larger leaps as years advance, although the marriage in question may be of extreme length. The logical extension of what Thorpe LJ is saying in *White* is surely that there may be cases where any amount of flexibility in application should not be permitted to mask recognition of *Duxbury*'s limitations. In cases of that sort the technique aids not at all, and thus should not at all be relied upon as a tool.

Therefore, when I consider first whether and to what extent I should have regard to the *Duxbury* approach it seems to me that it is permissible to take into account the special features which I here regard as relevant: namely the combined effect of the length of the marriage, what is now accepted as the full entitlement of the husband, and his advanced age.

Of a *Duxbury* fund it has been said by its originator Mr Lawrence that the only thing about it of which one can be certain is that it is a mistake to believe that life will work out like that. So can the same be said of the mortality tables. It is a mistake to suppose that the actuarial figure for life expectancy will be the actual length of life experienced by any particular individual.

Neither do the life expectancy tables purport to show the average number of years and months which an individual of their particular population at a given age would have an average (in the sense of an even) chance of exceeding. It is not the case that they suggest that half the given class will die before the life expectancy watershed, and the other half survive it.

Rather, they take the mean view, aggregating for the whole of that sample the years and months which statistical data show them to survive, and deriving thus a prediction of the average of the period that they will live thereafter. For some samples more than half may predictably die before that point. For others the majority will surpass it.

In fact (for so I am informed by Mr Adrian Gallop of the Government Actuary's Department who has done his best to protect me from heresy as I have prepared this part of this judgment), the age at which an ELT group of men aged exactly 78 would reduce by exactly half is 84.4 years, which is a little lower than the 85.2 years which that table declares as their life expectancy. According to the mortality data upon which the table is based, more than one half of men aged exactly 78 can therefore expect to die before having lived for the period of time which is equal to the expectation of life at their age. As against that, the same data show that there is a 25% probability that a person aged 78 will live for at least a further 10.5 years, to age 88.5. For other ages and with other characteristics different conclusions will be just as predictable for the group in question, and predictably as accurate. Actuaries, therefore, do not presume to foretell any particular individual's human span. To suppose otherwise would be to demonstrate lunacy deserving of the straitjacket, and would lead into as much fallacy as blinkered and unthinking adherence to *Duxbury* calculations alone.

An important consideration which flows from an understanding of what life expectancy tables do and do not mean, and of the way they are constructed, can be shown with ease and now regimented to one decimal point by table 23 of the 1999/2000 edition of *At A Glance.* For if a member of the battalion of men aged 78 (of an age where life expectancy according to ELT 15 is 7.2 years, and as was the husband at the date of the first instance hearing) marches on to age 85, the table gives a revised life expectancy of 4.8 years for the reduced company who arrive at that age. The platoon who then survive to 89 (and have thus already climbed well past the ridge envisaged when they were only 78) would be greeted with an extended vista of 3.7 years as the life expectancy offered by the table, beyond even which new horizon a squad of their number can indeed expect on to slog. Survival can thus be described as a continuously encouraging and refreshing process: each year the

individual survives along the way increases the statistical chance that he will meet and perhaps survive what was the preceding year's prediction of his life expectancy.

The foregoing exercise is not to decry nor to diminish the validity of these tables, but does no more than parade how much individual uncertainty rules. The tables with great statistical accuracy reflect what for a proportion of their population is the prospect of accident or ill health claiming earlier deaths so that as actuarial exercises they are not at all confounded by the personal disadvantage to the individual for whom the risk of such premature death materialises. But it would be a cruel disadvantage of another sort to outlive a *Duxbury* fund. These are conventionally calculated upon a basis that does not take the subtlety of these progressively revising expectancies into account, nor the additional complexity that actuaries can also project the rate of future improvements in mortality experience. For most part and at most ages the effect of more sophisticated computations on the outcome would be marginal, and would still firmly relate to the group rather than to the individual. Moreover, that extra sophistication might of itself tend to encourage another illusory expectation, that *Duxbury* is some alchemical touchstone rather than a rule (if at all) only of thumb.

Thus a *Duxbury* calculation for a 78-year-old male would rely upon the more generous PMA 80 tables. These give a man the age of this husband a life expectancy of 8 years. The spreadsheet illustrating the calculation would assume he expires with the fund at 86. Yet if in reality this husband is one of those left who does indeed survive beyond 86, his updated life expectancy of 5 years of what would then be penurious if not bankrupt living will make a poor endurance prize! How much worse to be told, if he then survives to 91, that the table suggests a further 4 years may span ahead. And so, albeit diminishingly, on.

Therefore, at these higher age ranges it would in my judgment be permissible for the court to take a longer view than *Duxbury tout court* might predicate. For men and women of every age there is a prospect of beating the mortality tables. But at advanced age this prospect is literally more imminent, and its potential effects accordingly more imminently critical, than for those in younger age ranges. An aged recipient is at relatively proximate risk that he or she will survive the demise of the fund rather than vice versa. Why, after a marriage of this length and with contributions now accepted by this wife as entitling him to full financial provision, should a husband such as this not receive provision that takes into account longevity as one of the tarot cards death may in this endgame deal? For were it otherwise, to be doomed to stay in the game could well seem improvidential.

> If my understanding and analysis is correct, the husband has a real and significant chance of living longer than the deadline the tables seem to fix. Obviously, if increased provision to take this eventuality into account would itself impact upon the wife's ability to have the same security, then that fact would act as a balancing and constraining factor. At the level of award here under consideration that is not a constraint which applies having regard, not least amongst other factors, to Mrs A's own age and her own reasonable requirements.
>
> Thus, in this case, to allow to this husband the means necessary to sustain him for somewhat longer than the life tables and somewhat more than the *Duxbury* calculation would be precisely an example, as I see it, of using *Duxbury* correctly as tool not rule, and of applying the technique with that flexibility advocated by Thorpe LJ in *White*."

284. Miss Phillipson also referred to the later remarks of Wall LJ in ***Fielden v Cunliffe*** to the effect that

> "90. As I indicated in paragraphs 76 and 77, the concept of the *Besterman* cushion must in any event be viewed with caution. A *Duxbury* fund is not the same as an annuity. The *Duxbury* model was designed to meet criticisms made in this court in *Preston v Preston* [1982] Fam 17 that lump sums orders designed to produce income took no cognisance of the fact that the payee retained the capital. The *Duxbury* lump sum was designed to meet this criticism and thus to produce the same level of income, index-linked, for the remainder of the recipient's actuarial life-span, with the capital being spent in the process so that, on death, there was nothing left. A sophisticated *Duxbury* calculation could factor in a given number of years of gainful employment for Mrs. Cunliffe at a given notional rate, together with any state pension benefits to which she may be entitled.
>
> 91. We lack the material to undertake such a sophisticated calculation, and in any event it has to be accepted that the *Duxbury* exercise is highly artificial. As has been said more than once, the only thing one can be sure about *Duxbury* is that the figure is likely to be either too high or too low. It remains, nonetheless, a useful guide."

285. What emerges from this is that

(a) it does not assist in arriving at the calculation of a proper lump sum to be awarded by way of reasonable financial provision to have regard to the income which a given lump sum would produce on the basis that the capital consisting of such sum remains intact; where a lump sum is provided for no specific purpose, the recipient must be expected to expend both the capital and income in one way or another

(b) a ***Duxbury*** calculation is a tool and not a rule; it is nevertheless a useful guide

(c) at higher age ranges (such as in this case) it is permissible for the Court to take a longer view than ***Duxbury*** *tout court* might predicate

(d) to allow a spouse the means necessary to sustain her for somewhat longer than the life tables and somewhat more than the ***Duxbury*** calculation would be an example of using ***Duxbury*** correctly as a tool and not a rule and of applying the technique flexibly.

286. Miss Phillipson also relied on the speech of Lord Nicholls in ***White v White*** at p.609C-E

> "This approach [viz. returning to the actual language of the Matrimonial Causes Act and avoiding the expression "reasonable requirements"] also furnishes a solution to the so-called *Duxbury* paradox in this type of case. In the present case Holman J referred to "the well known paradox that the longer the marriage and hence the older the wife, the less the capital sum required for a *Duxbury* type fund". A *Duxbury* calculation is, no doubt, useful as a guide in assessing the amount of money required to provide for a person's financial needs. It is a means of capitalising an income requirement. But that is all. As I have been at pains to emphasise, financial needs are only one of the factors to be taken into account in arriving at the amount of an award. The amount of capital required to provide for an older wife's financial needs may well be less than the amount required to provide for a younger wife's financial needs. It by no means follows that, in a case where resources exceed the parties' financial needs, the older wife's award will be less than the younger wife's. Indeed, the older wife's award may be substantially larger."

That provides a solution to the so-called ***Duxbury*** paradox.

287. By contrast Mr Heath and Mr Entwistle submitted that ***Duxbury*** tables were used in countless cases and represented an "industry standard". Their underlying methodology and assumptions were widely accepted as the usual starting point, and where there was no countervailing evidence, the usual finishing point. In that context they relied on the remarks of Mostyn J in ***JL*** to the effect that

> "17. In *H v H* at para 31 Ryder LJ stated:
>
> > "In summary, it is not wise to assume that because the *Duxbury* Committee are of the opinion that in the context of their calculations 3.75% gross is achievable over the long term with a cautious investment strategy that the parties will agree that that rate is applicable to capital funds that are not to be amortised on the facts of a particular case. However, if they do agree or if the judge decides that assumption is valid on the facts of a case, I cannot for my part see how objection can be taken. If they do not, then the rate chosen by the court should be reasoned."
>
> Before me at the hearing Miss Campbell merely asserted a gross rate of return of 3%. No evidence was adduced as to why the views of the *Duxbury* Committee should not be followed, and for that reason I preferred, inevitably, to use the customary formula, with its stated economic assumption of an actual gross performance rate of 6.75%. In *H v H* at para 26 Ryder LJ stated that "I am very firmly of the view that there is no 'industry standard' even less an acknowledgement by the Family Division judges that there is or should be such a rate". Of course there is no "standard" rate in the sense that the economic assumptions underpinning the formula are written in marble from which there can be no deviation. But the *Duxbury* tables are used in countless cases. Their underlying methodology and assumptions are widely accepted as the usual starting point, and where there is no countervailing evidence, the usual finishing point. In that sense they do represent an "industry standard"."

288. They also pointed to the use of ***Duxbury*** tables in a number of other cases such as ***Lilleyman v Lilleyman*** and ***Ilott v Mitson (No. 2)***.

289. Miss Phillipson argued that the use of a ***Duxbury*** calculation in the circumstances of Mrs Ramus's case would be to fly in the face of reality. I do not accept that proposition, which seems to me to be far too widely stated.

290. I agree, by contrast, with Mr Entwistle that the ***Duxbury*** calculation should not be applied formulaically, but that it is nevertheless a useful tool or guide. The right approach is to start with ***Duxbury*** and to give the figure produced by the ***Duxbury*** calculation appropriate weight, but to understand that it does not of itself provide a definitive answer to the question of the amount of the lump sum required to meet the income needs of the applicant in question. One must also give weight to the potential divergence of life expectancy and then reach a conclusion as to the appropriate lump sum needed in all the circumstances of the case.

291. Moreover, as I said in paragraph 285, at higher age ranges (such as in this case) it is *permissible* for the Court to take a longer view than ***Duxbury*** *tout court* might predicate and that to allow a spouse the means necessary to sustain her for *somewhat* longer than the life tables and *somewhat more* than the ***Duxbury*** calculation would be an example of using ***Duxbury*** correctly as a tool and not a rule and of applying the technique flexibly, but that is no warrant for setting aside a ***Duxbury*** calculation altogether. Nor is it a permissible approach to have regard to the income which a given lump sum would produce on the basis that the capital consisting of such sum remains intact. Where a lump sum is provided for no specific purpose, the recipient must be expected to expend both the capital and income in one way or another, yet Mrs Ramus's case is predicated on the basis that "she therefore required a monthly income to enable her to pay her outgoings without using the capital which would be left after her purchase of a new home" (see paragraph 32 above).

292. On a ***Duxbury*** calculation, assuming a lifetime net annual need of £30,000, Mrs Ramus would need a lump sum of £216,000. An annual shortfall of £31,545.36 would require a slightly larger sum. Allowing for housing costs of £750,000, the purchase of a new house would still leave her with overall funds of £880,000. Even if one removes £488,000 from the equation as being her ringfenced retirement fund, that still leaves her with a fund of £392,000. That is very considerably in excess of anything she would recover on a ***Duxbury*** calculation. Capitalising her net income needs from even from that latter smaller figure would equate to a net lifetime annual need of somewhere in the region of (or just below) £50,000, as opposed to her actual annual income shortfall of £31,545.36.

293. In summary, the underlying methodology and assumptions of the ***Duxbury*** calculations are the usual starting point and where there is no countervailing evidence, the usual finishing point. As I explain below, I can place very little weight on the letter of Mr Eaden, who did not appear so that he could be cross-examined. Even on the basis that I should use the ***Duxbury*** calculation as a tool and not a rule and on the footing that I should apply it flexibly, and allow Mrs Ramus the means necessary to sustain her for *somewhat* longer than the life tables and *somewhat more* than the ***Duxbury*** calculation would allow, what she seeks is so far in excess of what she would receive under a ***Duxbury*** calculation that I am satisfied that it would be wholly inappropriate to make such an award. Capitalising her net income needs from a figure in the region of £880,000 would equate to a net lifetime annual need of somewhere in the region of (or just below) £100,000, as opposed to her actual annual income shortfall of £31,545.36.

294. Moreover, as Mr Entwistle pointed out, four items in the asset schedule, numbered 8, 9, 11 and 13, amounting in all to £520,665, were producing no income at all and Mrs Ramus had produced no evidence as to what income could be generated from those sums, if invested to produce an income. The retirement fund of £488,000 produced a monthly sum of £816.80, which amounts to an annual sum of £9,801.60 and a sum of £520,000 should produce a comparable (if not slightly larger) sum. As Mr Entwistle said, Mrs Ramus's assets could be doing much more for her, as was apparent for example, from the calculations which Mr Armitage had done as part of his schedule on page 2 of JM1.

295. What was to my mind telling in the context of s.3(1)(a) were the exchanges between Mr Heath and Mrs Ramus about what would happen to the very significant sum which would be available to her after the purchase of her new house. If she paid £750,000 for a house and kept her ringfenced retirement fund, she would still have several hundred thousand pounds of assets which could be invested. If her income were guaranteed, she would not need to touch that sum. What, then, would happen to that sum? Mrs Ramus replied that it would be to provide for hardships and for basic expenditure. It would be for holidays. However, Mr Heath pointed out that £4,800 had

already been earmarked for holidays. Would she spend £420,000 on other holidays? Mrs Ramus said that she did not know:

> "Q. Yes or no?
>
> A. I don't know. Probably not.
>
> Q. So you don't know what the £420,000 is to be spent on?
>
> A. I don't know. Perhaps I might need surgery. I have always had a cushion in case of emergencies."

As Mr Heath put it in his closing submissions, simply because one might have a financial emergency in the future does not mean that there has been a failure to make reasonable financial provision.

296. Again, when asked by Mr Heath how much she needed from the estate to supplement her income, Mrs Ramus said that there had been no mention of a figure and that nothing was ascertained. She needed to safeguard her interest and needed additional income to help her, but could not put a figure on it.

Mr Eaden's Evidence

297. Even on the assumption that Mr Eaden's letter was admissible, I did not have the benefit of hearing him give evidence and being cross-examined. As I made clear during the trial, on the assumption that the letter was admissible in evidence, I could place very little weight on its assertions and I see no reason to resile from that conclusion now that I have reread it whilst preparing this judgment.

298. In particular, he does not deal with the fact that his report seems to be predicated on the basis that the lump sum itself, from which the monthly income would be derived, would not be touched, but would remain intact throughout, nor does he deal with the question of the appropriateness (or otherwise) of a ***Duxbury*** calculation in the circumstances of this case. The letter makes a series of assertions, but does not provide the figures or analysis to back them up nor does it explain with figures or analysis why the contentions of the Defendants are wrong.

S.3(1)(c)

299. None of the beneficiaries (including the minor beneficiaries under the trust) has provided details of their resources and it is not alleged that any of them has a needs-based defence to the claim. Miss Phillipson made the point that Mrs Ramus did not seek to interfere with the pecuniary bequests or the legacy fund for the 5 grandchildren created by the will. However, it is apparent that Mr Ramus wanted future generations, including his grandchildren, to benefit from the trust fund and I agree with Mr Entwistle, in the light of Lord Hughes's comments in ***Ilott v Mitson (No.2)***, that it cannot be ignored that an award under the Act is at the expense of those whom the testator intended to benefit.

S.3(1)(d)

300. It is not in dispute that Mr Ramus owed very substantial obligations towards Mrs Ramus as his wife of many years, notwithstanding that they were in the process of separating when he took his own life, but it is also clear that he recognised, as is apparent from his letter of wishes, that he had responsibilities towards his children and grandchildren.

S.3(1)(e)

301. From the evidence of Mr Armitage and Mr Wardle it is apparent that the current value of the trust fund established by the will of Mr Ramus as at the date of the trial is £889,599. As far as the inheritance tax position is concerned, I accept Mr Armitage's evidence that a suitable and prudent provision at the present time would be £305,000, although that may not be the same as the tax liability when it finally crystallises. However, that liability only arises on the death of Mrs Ramus. As of now no such liability has fallen due because she is still alive and she is seeking income from the trust during her lifetime. There is therefore no reason why the ringfenced sum could not be utilised during her lifetime to generate an income for her benefit, although again I accept the evidence of Mr Armitage that, of the respective sums of £305,000 and the balance of £634,599, the former might have to be held on a short-term investment because of the potential need to realise funds to pay any inheritance tax when it fell due and only the balance might be held on a higher return with a longer investment period.

S.3(1)(g)

302. As I have explained above, the position under clauses 11 and 12 of the will of Mr Ramus is that the residuary estate is held on trusts under which

(a) Mrs Ramus has a life interest in the income of the trust fund

(b) the trustees have power to apply capital for her benefit

(c) the trustees also have power to terminate the life interest

(d) subject to Mrs Ramus' life interest, the trust fund is held on flexible discretionary trusts for a class of discretionary beneficiaries, including Mr Ramus's children and remoter issue and Mrs Ramus (but subject to the trustees' power to exclude her from benefit).

303. Moreover, as Mr Entwistle rightly submitted, the position in law is that the trustees are bound to act in accordance with the terms of the trust and could only exercise their power of termination under clause 11.2.2 if they unanimously decided to do so. One trustee does not therefore have the power of veto over the obligation to pay over the trust income to Mrs Ramus for life under clause 11.1. Mrs Holt alone could not prevent her mother from receiving the trust income under clause 11.1 and it is perfectly clear to me that neither Mr Armitage nor Mr Wardle is in any sense in thrall to her. Mr Entwistle was also right to say that the trustees could not terminate the interest in income "for any reason", as had been asserted. They had duties to act responsibly and in good faith, to take only relevant matters into account, to act impartially and not to act for an ulterior purpose (see *Lewin on Trusts*, 20th ed, para.29-033). In taking only relevant matters into account, they must have proper regard to the letter of wishes, although they were not bound to follow it slavishly (see *Lewin* at para. 29-046).

304. Furthermore, under the power of termination in clause 11.2.2 the trustees have the power (with emphasis added)

> "*to terminate by declaration contained in any deed or deeds her right to be paid the income (if any) of all or any part of the capital*

> *of my residuary estate* from a date not earlier than the date of any such deed and so accelerate the trusts hereinafter contained or appointed under the powers hereinafter contained *and in any such deed my Trustees may also declare that my Wife shall thenceforth cease to be among the Discretionary Beneficiaries* (defined below) and be excluded from all benefit of any kind whatsoever in relation to the capital and income of such part of my residuary estate".

305. The power of termination may therefore be exercised in relation to clause 11.1 without necessarily excluding Mrs Ramus from benefit as a discretionary beneficiary under clause 12.

306. In addition, under the terms of the letter of wishes, Mr Ramus stated (again with emphasis added) that

> "2.1 My current matrimonial circumstances are uncertain. If my wife survives me *I still wish that she will have a right to income from the Trust Fund to the extent that it prevents hardship and enables her to maintain her lifestyle*. I would like this to continue for as long as you feel necessary.
>
> If her own resources are such that she does not require that income then *you should consider exercising your powers to remove her right to income in all or part of the Trust Fund*.
>
> …
>
> 3.1 *If my wife's circumstances allow*, and in any event after her death, I would like you to consider exercising your powers to benefit my children and grandchildren."

307. It is noticeable that what Mr Ramus provided for in his letter of wishes was that he wanted his wife to have a *right* to the income (i.e. under clause 11.1) to the extent that it prevented hardship and enabled her to maintain her lifestyle and that, if her own resources were such that she did not require that income, the trustees should consider exercising their powers to remove her *right* to income under clause 11.1. As a discretionary beneficiary, she would have no right to income, but she would still be a potential object of the trustees' bounty in the exercise of their discretion. He said nothing about removing her from the class of discretionary beneficiaries in those circumstances. What he went on to say was that, if her circumstances allowed, the

trustees should consider exercising their powers to benefit his children and grandchildren. It is not therefore the case that the power of termination of the right to income for life under clause 11.2.2 goes hand in glove with the power of removal from the class of discretionary beneficiaries under that clause. The former may be invoked without any recourse to the latter and that course of action would be perfectly consistent with the letter of wishes.

308. I accept the evidence of all of the trustees that they take their obligations seriously and intend to follow Mr Ramus's wishes as set out in his letter of wishes. In particular I accept their evidence as set out in paragraphs 86, 99 and 102 (Mr Armitage), 105 to 106 (Mr Wardle) and 113 to 115 and 146 (Mrs Holt) above. As independent trustees I see no reason for either Mr Armitage or Mr Wardle to do otherwise. I find that both of them had a clear understanding of their obligations as executors and trustees and would exercise their powers in a thoughtful and proper way. I also accept that, in the case of Mrs Holt, whatever her differences between her and her mother, she too intends to carry out her father's wishes as set out in his letter of wishes. I certainly detected no desire among any of the trustees to invoke their power of termination under clause 11.2.2 of the will in the near future or in the medium term. I am satisfied that Mrs Ramus's position under the will trust is therefore in fact somewhat less precarious than has been made out.

309. I do not accept the contention that the trustees should have taken a neutral role in response to the claim in the way in which personal representatives with no other role than the administration of the estate might have taken. They are trustees of a trust fund with minor (and unborn) beneficiaries whose interests need to be protected and represented before the Court. I can therefore see no objection to the course adopted by the Trustees in seeking to defend the claim in the way in which they have done and to be separately represented before the Court by Mr Entwistle.

310. By the same token, I can see no basis for criticism of Mrs Ramus for launching proceedings within 6 months of the grant of probate. Given the potential difficulties which might face an applicant under the Act if there is a delay of more than 6 months in issuing proceedings (as exemplified, albeit on very different facts, in ***Berger*** and ***Sergeant***), it was prudent to issue proceedings in time to obviate any such difficulties.

I make no findings as to the allegations about Mrs Ramus being allegedly misled about the date of the grant of probate, although the likelihood is that there was a misunderstanding rather than any intent to mislead given that the grant of probate was a publicly available document. Nor do I make any findings about the allegations about alleged pressures by the trustees in relation to the marketing and sale of the Kings Road premises.

311. With regard to Alistair, I bear in mind that, although he is a party to the proceedings, he chose not to take any part in the trial of the action and I did not therefore have the advantage of seeing him give evidence and be tested on it in cross-examination. It is clear, however, that he has been convicted of fraud and is the subject of a bankruptcy restriction order and that his father did not want the trustees to make payments to him to fund an extravagant lifestyle. I also bear in mind the serious allegations made by Mrs Holt about his conduct towards her concerning the threats which he has made to her and the need for her to have police protection.

312. I am satisfied that the main impetus behind Mrs Ramus's claim under the Act is because of her concerns (whether rightly or not) over her financial security rather than to use the action as a covert vehicle to provide capital for Alistair. When she was cross-examined she was adamant that that was the reason why she had brought her claim and I see no reason to disbelieve her in that regard. As she put it

> "I want to do what I want without worrying. My top priority is finding a house".

313. In answer to the question as to what she would spend the additional £420,000 on, her response was that

> "I don't know. Perhaps I might need surgery. I have always had a cushion in case of emergencies",

which was in similar vein to her answer to Mr Heath that she needed to safeguard her interest and needed additional income to help her. When Mr Heath put it to her that she wanted to even things out between her children, she replied

> "Not through him; through his children.

Q. One way to even it out would be to write off the £50,000 loan and leave the £420,000 to Alistair and his children?

A. I would not write it off. He would keep paying me."

314. She said that her son had always told her to spend her money. She wanted to go on holiday (she had friends in Canada, South Africa and New Zealand) -

"I just want that freedom"

315. I am satisfied that she was telling the truth when she said that she did not necessarily want to leave money to anyone, although it would be nice to leave it if there were some:

"Q. If there is capital to leave, so be it?

A. So be it.

Q. If it is all gone, so be it?

A. So be it."

316. I have borne in mind the allegations made by Mr Ramus in his email of 19 October 2019, but that email was sent by a man who by then clearly had significant mental health issues and who was shortly thereafter to take his own life. In those circumstances I can place very little weight on the allegations which he made in that email.

317. However, even on the assumption that Mrs Ramus wanted to pass on her capital to son after her death, I do not see that that is conduct which is relevant to the questions which I have to decide, viz. whether the objective question of whether the will of Mr Ramus made reasonable financial provision for his wife and, if not, what order should be made under the act to make such reasonable financial provision for her. Mrs Ramus has freedom of testation and is entitled to leave her estate to whomsoever she will, whether that is to her son and his children or her daughter and her children or in some other combination or to third parties such as charities.

318. Where, however, Alistair's position and Mrs Ramus's conduct toward her son is relevant to the claim under the Act, is with regard to the fact that Mrs Ramus made her son an unsecured loan of £50,000 to fund a kitchen extension, which on no footing could be described as necessary expenditure, when she was at the same time asserting an Inheritance Act claim based on her income need (and indeed when she had purchased a new car even before making her claim).

319. I agree with Mr Heath that an applicant who brings a claim based on financial need can hardly expect the Court to find that a will fails to make reasonable financial provision for her when she is so well-off that she can afford to take the risk of making an unsecured and unnecessary loan of the very significant sum of £50,000 (a sum almost equivalent to her own annual outgoings) to her son, who on any footing has a chequered financial history. That is not consistent with a claim based on financial anxiety. To paraphrase Lord Nicholls in ***White v White***, as I have been at pains to emphasise, financial needs are only one of the factors to be taken into account in deciding whether reasonable financial provision has been made and, if not, in arriving at the amount of an award. In the list of factors in s.3(1) of the 1975 Act, conduct is also relevant and the unnecessary and very significant loan to Alistair, the terms of which were finalised only as recently as 20 October 2021, is mostly certainly relevant in that context.

320. For the sake of completeness I should say that I make no criticism of Mrs Ramus for giving away her husband's Rolex watch (as to which I have no evidence of value in any event) to her brother as a memento and to thank him for his help and support in recent years as her marriage had collapsed.

Special Factors

S.3(2)(a)

321. It is not in dispute that Mrs Ramus is 77 years old and that she had been married for 48 years.

S.3(2)(b)

322. I accept that Mrs Ramus made a full contribution to the welfare of the family, including looking after the house and caring for the family and playing her part in the joint business ventures with her husband.

S.3(2)(c)

323. On the facts of this case I see no reason why, on any putative divorce, the Court would have had any reason to depart from the principle of equality, as explained by Lord Nicholls in ***Miller v Miller***. Mrs Ramus stated that she and her husband would each have kept their own assets and on a pragmatic basis that does indeed seem to be the likely outcome of any putative divorce.

324. Moreover, I do not accept that on a divorce Mrs Ramus would have received monthly payment from her husband by way of maintenance. In all likelihood, on the facts of this case the Court would have ordered a clean break on divorce. I reach that conclusion for these reasons:

(a) both Mr and Mrs Ramus were retired

(b) Mr Ramus did not have a substantial and separate income stream from an ongoing occupation (the spouses in fact shared the rental income from the business premises on Kings Road equally)

(c) they had already begun to divide up their assets consequent on their separation

(d) as at the date of the trial, Mrs Ramus had received just under two-thirds of those assets: £1.61 million as opposed to her husband's £1.02 million

(e) the lump sum of £500,000 paid to Mrs Holt by her late father's pension providers was not an asset available in any divorce proceedings, but even if it were now notionally to be taken into account as a matrimonial asset, Mrs Ramus has still received more than half of the matrimonial assets.

325. Miss Phillipson wisely did not argue the point about monthly maintenance payments in her closing submissions.

326. Miss Phillipson relied on the remarks of Black J in ***P v G*** at [242] to the effect that

> "The spotlight that has been turned on the up to date figures and financial planning for the future has enabled me to look at what the realities of life are likely to be for Mrs P. I am struck by the force of the repeated observations in the decided authorities about the difference between divorce where there are two surviving spouses for whom to make provision and death where there is only one. It seems to me probable that this difference will not infrequently be reflected in greater provision being made under the 1975 Act than would have been made on divorce, and that this may legitimately be so even where the estate is a relatively large one, as it is here. In saying this, I have not ignored the importance of testamentary freedom. The wish to be in a financial position to make provision by will for adult children, whilst not a financial need as such for the purposes of s 25 of the Matrimonial Causes Act 1973, was recognised in *White v White* as a valid consideration where resources exceed need and I have already said that I take into account the obvious desire of the deceased to make provision by his will for his children, even though they do not seek to put forward a case of 'need' under the 1975 Act."

327. However, in that case, the net estate was in the order of £6.6m, which together with pension assets came to £10.6m (excluding the applicant's own pension and £11m including it). Under the will the matrimonial home was held on trust for the widow for life or until her remarriage. In addition, the defendants conceded that reasonable financial provision had not been made and the issue at the trial was the quantum of the revised provision which should be made. In those circumstances the widow was awarded £2m (including the matrimonial home valued at £900,000). That case is again far removed from this one.

328. On a divorce cross-check, the third factor in s.3(2) does not therefore assist Mrs Ramus.

Conclusion on the S.3(1) and 3(2) Factors

329. Each individual claim under the 1975 Act is fact specific and must be considered in the light of the light of the relevant facts, see ***Cowan v Foreman*** at [60]. In this case the value of Mrs Ramus's assets significantly exceeds that of the estate of her late husband and she has sufficient to meet her needs. This is not a case where the applicant has no assets or no autonomy over any assets or where the trustees could remove the roof from over her head. She has assets in the region of £1,630,000 and even the purchase of a 3 bedroomed house in a desirable area of Harrogate for £750,000 (taking into account removal and sales costs) would leave her with funds of £880,000, of which £488,000 is ringfenced as a retirement fund. On the basis of reduction in her outgoings of £1,000 per month once her new house is purchased (since she will no longer have to pay rent) and the removal from the schedule of a monthly figure for a new car, Mrs Ramus's outgoings are £4,360.87 per month, or £52,330.44 per annum. In that event her monthly shortfall is £4,360.87 - £1,732.09, which equates to £2,628.78 per month, or £31,545.36 per annum. Whilst a ***Duxbury*** calculation is not a definitive answer to the claim, since it is only a tool or a guide, nevertheless on a ***Duxbury*** calculation, assuming a lifetime net annual need of £30,000, Mrs Ramus would need a lump sum of £216,000 and a slightly larger sum for a lifetime net annual need of £31,545.36 per annum.

330. Standing back and looking at the matter in the round, this is a case of an applicant who in all likelihood would not have received anything on divorce (on the divorce cross-check), and who, even after the purchase of a 3 bedroomed house for £750,000, would have financial autonomy and still have net assets not far short of £900,000. In addition, her case was that she requires a monthly income to enable her to pay her outgoings without using the capital which would be left after her purchase of a new home (see paragraph 32 above). In those circumstances the conclusion that the disposition of Mr Ramus's estate under the terms of his will, under which Mrs Ramus has a life interest in income (albeit terminable) and an interest as one of the objects of a discretionary trust, was such as to make reasonable financial provision for Mrs Ramus in the circumstance of the case is in no sense a surprising one.

331. For these reasons, and taking into account all of the relevant factors under s.3(1) and s.3(2) of the 1975 Act, I am satisfied that the disposition of Mr Ramus's estate

under the terms of his will is such as to make financial provision for Mrs Ramus in the circumstance of the case and that the claim fails.

332. It follows therefore that the terms of the will trust do not fall to be amended to remove the discretion afforded to the trustees to remove Mrs Ramus as the income beneficiary and to order that she should receive a minimum fixed sum (initially £2,810) from the trust each month, such sum to be increased annually to allow for any increase in inflation.

333. I was not, in fact, addressed as to any mechanism or formula to be adopted to effect annual increase in the fixed sum payable to Mrs Ramus, but in the light of the conclusion which I have reached that question does not now fall for consideration.

The Removal of the Trustees

334. Mrs Ramus's original position, as set out in her second witness statement, was that the removal of the trustees would be an appropriate solution to her claim. However, reasonable financial provision from the estate of the deceased does not become unreasonable financial provision because of the identity of the trustees.

335. If the power to terminate the income were left intact, the replacement of the trustees would serve no purpose. The new trustees would have the same power as their predecessors and would give appropriate weight to the wishes of Mr Ramus, as set out in his letter of wishes. Mrs Ramus's position would therefore be potentially no better than it currently is, with the possible exception that her daughter would no longer be one of the trustees, although as both Mr Heath and Mr Entwistle pointed out, there would have to be unanimous agreement between the trustees before they could exercise their power to terminate the life interest

336. As presented at the trial, that original position had accordingly been refined. The removal of the trustees and their replacement by independent trustees was only part of Miss Phillipson's option (b). The removal and replacement of the trustees was to be coupled with the removal of the trustees' discretion and a guarantee of a fixed monthly income. However, if the discretion of the trustees were removed, it is difficult to see what purpose would then be served by the removal of the trustees, whose power to

terminate the life interest (which was seen by Mrs Ramus as the essential source of the perceived financial insecurity) would then have been removed. If the trustees no longer had the power to terminate Mrs Ramus's right to income, what would be the point of removing them since they would have no option but to pay her the income in any event?

337. So far as the guarantee of a minimum monthly fixed sum is concerned, it is questionable whether such a guarantee could properly be made, certainly where the trust fund has not yet been invested. Insofar as the income might be insufficient, recourse would have to be had to capital on an ad hoc basis. I agree with Mr Entwistle that, although such an order might technically be within the Court's powers, it would require an unwieldy structure and would involve a potentially difficulty exercise for the trustees.

338. In the light of what I have said above, namely that the will of Mr Ramus does make reasonable financial provision for his widow, the question of the existence of a power to remove the trustees does not fall to be decided, but in any event I am satisfied that there is no such jurisdiction under the 1975 Act. Miss Phillipson could not cite any authority for the proposition, but relied on a statement in *Francis, Inheritance Act Claims: Law, Practice and Procedure* at page 19 to the effect that

> "The order may specify those who are to be the trustees of any new settlement, or of any settlement created by the will or intestacy, and there seems no reason why the court cannot make an order under s.2, relying on subsection (4) to appoint new trustees in place of those already appointed".

339. There is a footnote 5 to the statement in the text which states

> "The power under s.2(1)(d) to settle property must imply the power to appoint trustees of it".

340. I note, however, that the text on page 19 continues

> "If the court is really in doubt about the power under s2(4) it can be asked to assume its inherent jurisdiction to appoint, or remove

> trustees, or under the Trustee Act 1925, s.36, if the conditions in that section can be invoked and satisfied."

341. What s. 2(1) provides is that the Court may make an order

> "(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified"

and s.2(4) is cast in terms that

> "(4) An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—
>
> (a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;
>
> (b) vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;
>
> (c) confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient".

342. I accept the proposition that the power under s.2(1)(d) to settle property must imply the power to appoint trustees of it, but I am satisfied that that power only applies to a new settlement under the Act, not to the removal of trustees under an existing settlement. In that context it is noteworthy that the Act provides a power in s.2(1)(h) to make

> "an order varying for the applicant's benefit the trusts on which the deceased's estate is held (whether arising under the will, or the law relating to intestacy, or both)",

but that no such explicit power is conferred in relation to the removal of a trustee.

343. I am satisfied that s.2(4) does not contain the power to order the removal of existing trustees under the Act. It is not apt to do so as a matter of construction. What it provides is for the existence of consequential or supplemental powers

> "for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another".

344. I do not see that the removal of trustees in a case such as this is either necessary or expedient for the purpose of securing reasonable financial provision for the applicant (on the hypothesis that such was not made under the will) or to ensure that the order operated fairly as between beneficiaries.

345. I also agree with Mr Entwistle that such a power would undermine the law concerning the removal of trustees under other statutory provisions in other areas

346. Moreover, I agree with Mr Heath that Mrs Ramus's real complaint is the identity of the trustees. It is a wholly novel argument that reasonable financial provision had not been made, not because of the terms of the will itself, but because a claimant objects to the identity of a trustee or trustees based on a personality clash with one of them. Such a clash would not of itself justify the removal of an executor or trustee under a removal application and it is difficult to see how it could support a successful claim that the will has failed to make reasonable financial provision.

347. In any event, Miss Phillipson had earlier in the proceedings failed in her attempt to amend the claim to include an order for the removal of the trustees and I saw no evidence that would justify the removal of the trustees either under the inherent jurisdiction of the Court or s.36 of the 1925 Act. Nor was I presented with any evidence from any potential new independent trustees as to their willingness to act.

Conclusion

348. I am therefore satisfied that Mrs Ramus has not demonstrated that there has been a failure to make reasonable financial provision for her under the terms of her late husband's will.

349. The claim is therefore dismissed.

Mrs Elizabeth May Ramus — **Claimant**

Claim Number PT-2021-LDS-000071

Defendants

Mrs Claire Louise Holt 1
Mr Anthony John Armitage 2
Mr John Wilkinson Wardle 3
Mr Alistair Stewart Ramus 4

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SCHEDULE OF MONTHLY OUTGOINGS AS AT 21 MAY 2021 per E M RAMUS

Ref	Items	Actual £	Annual equiv 12 £	%
1	Rent	1,400.00	16,800.00	27.38%
2	Council Tax	223.95	2,687.40	4.38%
3	Water	10.00	120.00	0.20%
4	Electricity	80.00	960.00	1.56%
5	Telephone	36.81	441.72	0.72%
6	Property & household insurance	34.22	410.64	0.67%
7	Home maintenance,cleaning & repair	20.00	240.00	0.39%
8	Life & endowment insurance	34.00	408.00	0.66%
9	Food & household	500.00	6,000.00	9.78%
10	Domestic help	200.00	2,400.00	3.91%
11	Clothing	100.00	1,200.00	1.96%
12	Hairdressing & personal care	250.00	3,000.00	4.89%
13	TV licence/hire/video rental	13.15	157.80	0.26%
14	Newspapers & journals	25.00	300.00	0.49%
15	Medical, dental, optical & pharmaceutical	53.30	639.60	1.04%
16	Dry cleaning, laundry,cleaning, shoe repairs	20.00	240.00	0.39%
17	Road tax	40.00	480.00	0.78%
18	Car insurance	20.00	240.00	0.39%
19	Petrol, parking, running repairs for vehicle	100.00	1,200.00	1.96%
20	Provision for replacement vehicle	520.00	6,240.00	10.17%
21	Financial planners fees	-	-	0.00%
22	Osteopath/chiro fees	60.00	720.00	1.17%
23	Accountants fees	25.00	300.00	0.49%
24	Eating out & takeaway	120.00	1,440.00	2.35%
25	Sports & leisure	98.00	1,176.00	1.92%
26	Books, music, video hire/purchase	10.00	120.00	0.20%
27	Drinks & tabacco	20.00	240.00	0.39%
28	Holiday & breaks	420.00	5,040.00	8.21%
29	Computer (inc.ink) and internet	20.00	240.00	0.39%
30	Membership & subscriptions	5.00	60.00	0.10%
31	Charities & covenants	5.00	60.00	0.10%
32	Gifts (birthdays, Christmas etc.)	650.00	7,800.00	12.71%
33				
	Total per EMR	5,113.43	61,361.16	100.00%

PROPOSED ADJUSTMENTS

	Proposed Adjustment £	Adjusted £	Annual equiv 12 £	%
Eliminated on house purchase	-1,400.00	0.00	0.00	0.00%
		223.95	2,687.40	7.70%
		10.00	120.00	0.34%
		80.00	960.00	2.75%
		36.81	441.72	1.27%
		34.22	410.64	1.18%
		20.00	240.00	0.69%
Discretionary	-34.00	0.00	0.00	0.00%
		500.00	6,000.00	17.19%
		200.00	2,400.00	6.87%
		100.00	1,200.00	3.44%
		250.00	3,000.00	8.59%
		13.15	157.80	0.45%
		25.00	300.00	0.86%
		53.30	639.60	1.83%
		20.00	240.00	0.69%
		40.00	480.00	1.37%
		20.00	240.00	0.69%
		100.00	1,200.00	3.44%
Currently owns Volvo £27,000 value	-520.00	0.00	0.00	0.00%
		0.00	0.00	0.00%
		60.00	720.00	2.06%
		25.00	300.00	0.86%
		120.00	1,440.00	4.12%
		98.00	1,176.00	3.37%
		10.00	120.00	0.34%
		20.00	240.00	0.69%
		420.00	5,040.00	14.44%
		20.00	240.00	0.69%
		5.00	60.00	0.17%
		5.00	60.00	0.17%
Discretionary	-650.00	0.00	0.00	0.00%
House ownership costs in place of rental	400.00	400.00	4,800.00	13.75%
	-2,204.00	2,909.43	34,913.16	100.00%

Summary

	Monthly £	Annually £
Outgoings per Claimant	5,113.43	61,361.16
Adjusted outgoings per Defendants 1,2,&3	2,909.43	34,913.16

Income Summary from page 2

Claimants potential income summary

	Monthly £	Annually £
Pensions	1,800.00	21,600.00
SIPP	1,387.50	16,650.00
Investment income	2,251.39	27,016.64
	5,438.89	65,266.64
Notional tax @ 20%	-1,087.78	-13,053.33
	4,351.11	52,213.31

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Mrs Elizabeth May Ramus — **Claimant** — **Claim Number PT-2021-LDS-000071**

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Defendants

Mrs Claire Louise Holt	1
Mr Anthony John Armitage	2
Mr John Wilkinson Wardle	3
Mr Alistair Stewart Ramus	4

Claimants disclosed income	Monthly £	Annually £	
Pension income	1,000.00	12,000.00	
SIPP drawdown	800.00	9,600.00	
	1,800.00	21,600.00	A

Claimants additional income potential	Monthly £	Annually £	
SIPP £525,000 Drawdown based on 5%	2,187.50	26,250.00	
Less existing drawdown as above	-800.00	-9,600.00	
Aditional possible drawdown	1,387.50	16,650.00	B

Claimants disclosed assets	£
Kings Road sale	335,000.00
Estimated sale costs & CGT	-50,000.00
Kings Road net proceeds	285,000.00
Premium Bonds	50,000.00
ISA	10,755.00
Income Bonds	500,000.00
ISA Portfolio	264,954.00
Cash	64,707.00
	1,175,416.00
Less house purchase	-500,000.00
Income producing assets (see below)	**675,416.00**
Add back house at market value, say	475,000.00
Claimants adjusted assets	**1,150,416.00**

	£	£	
Income producing assets as above	**675,416.00**		
	Monthly	Annually	
Investment return based on	£	£	
4.00%	2,251.39	27,016.64	C

Claimants potential income summary

	Monthly £	Annual £
A	1,800.00	21,600.00
B	1,387.50	16,650.00
C	2,251.39	27,016.64
A+B+C	5,438.89	65,266.64
Notional tax @ 20%	-1,087.78	-13,053.33
Net income	4,351.11	52,213.31

Mrs Elizabeth May Ramus — Claimant

Claim Number PT-2021-LDS-000071

Defendants

Mrs Claire Louise Holt 1
Mr Anthony John Armitage 2
Mr John Wilkinson Wardle 3
Mr Alistair Stewart Ramus 4

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SCHEDULE OF MONTHLY OUTGOINGS AS AT 21 MAY 2021 per E M RAMUS

Ref	Items	Actual £	Annual equiv 12 £	%
1	Rent	1,400.00	16,800.00	27.38%
2	Council Tax	223.95	2,687.40	4.38%
3	Water	10.00	120.00	0.20%
4	Electricity	80.00	960.00	1.56%
5	Telephone	36.81	441.72	0.72%
6	Property & household insurance	34.22	410.64	0.67%
7	Home maintenance,cleaning & repair	20.00	240.00	0.39%
8	Life & endowment insurance	34.00	408.00	0.66%
9	Food & household	500.00	6,000.00	9.78%
10	Domestic help	200.00	2,400.00	3.91%
11	Clothing	100.00	1,200.00	1.96%
12	Hairdressing & personal care	250.00	3,000.00	4.89%
13	TV licence/hire/video rental	13.15	157.80	0.26%
14	Newspapers & journals	25.00	300.00	0.49%
15	Medical, dental, optical & pharmaceutical	53.30	639.60	1.04%
16	Dry cleaning, laundry,cleaning, shoe repairs	20.00	240.00	0.39%
17	Road tax	40.00	480.00	0.78%
18	Car insurance	20.00	240.00	0.39%
19	Petrol, parking, running repairs for vehicle	100.00	1,200.00	1.96%
20	Provision for replacement vehicle	520.00	6,240.00	10.17%
21	Financial planners fees	-	-	0.00%
22	Osteopath/chiro fees	60.00	720.00	1.17%
23	Accountants fees	25.00	300.00	0.49%
24	Eating out & takeaway	120.00	1,440.00	2.35%
25	Sports & leisure	98.00	1,176.00	1.92%
26	Books, music, video hire/purchase	10.00	120.00	0.20%
27	Drinks & tabacco	20.00	240.00	0.39%
28	Holiday & breaks	420.00	5,040.00	8.21%
29	Computer (inc.ink) and internet	20.00	240.00	0.39%
30	Membership & subscriptions	5.00	60.00	0.10%
31	Charities & covenants	5.00	60.00	0.10%
32	Gifts (birthdays, Christmas etc.)	650.00	7,800.00	12.71%
33				
	Total per EMR	5,113.43	61,361.16	100.00%

PROPOSED ADJUSTMENTS

	Proposed Adjustment £	Adjusted £	Annual equiv 12 £	%
Eliminated on house purchase	-1,400.00	0.00	0.00	0.00%
		223.95	2,687.40	6.03%
		10.00	120.00	0.27%
		80.00	960.00	2.15%
		36.81	441.72	0.99%
		34.22	410.64	0.92%
		20.00	240.00	0.54%
		34.00	408.00	0.92%
		500.00	6,000.00	13.46%
		200.00	2,400.00	5.39%
		100.00	1,200.00	2.69%
		250.00	3,000.00	6.73%
		13.15	157.80	0.35%
		25.00	300.00	0.67%
		53.30	639.60	1.44%
		20.00	240.00	0.54%
		40.00	480.00	1.08%
		20.00	240.00	0.54%
		100.00	1,200.00	2.69%
		520.00	6,240.00	14.00%
		0.00	0.00	0.00%
		60.00	720.00	1.62%
		25.00	300.00	0.67%
		120.00	1,440.00	3.23%
		98.00	1,176.00	2.64%
		10.00	120.00	0.27%
		20.00	240.00	0.54%
		420.00	5,040.00	11.31%
		20.00	240.00	0.54%
		5.00	60.00	0.13%
		5.00	60.00	0.13%
		650.00	7,800.00	17.50%
		0.00	0.00	0.00%
	-1,400.00	3,713.43	44,561.16	100.00%

Summary

	Monthly £	Annually £
Outgoings per Claimant	5,113.43	61,361.16
Adjusted outgoings per Defendants 1,2,&3	3,713.43	44,561.16

Income Summary from page 2

Claimants potential income summary

	Monthly £	Annually £
Pensions	1,800.00	21,600.00
SIPP	1,387.50	16,650.00
Investment income	1,584.72	19,016.64
	4,772.22	57,266.64
Notional tax @ 20%	-954.44	-11,453.33
	3,817.78	45,813.31

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Mrs Elizabeth May Ramus	Claimant	Claim Number PT-2021-LDS-000071
	Defendants	
Mrs Claire Louise Holt	1	
Mr Anthony John Armitage	2	
Mr John Wilkinson Wardle	3	
Mr Alistair Stewart Ramus	4	

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page 2 of 2

Claimants disclosed income	Monthly £	Annually £	
Pension income	1,000.00	12,000.00	
SIPP drawdown	800.00	9,600.00	
	1,800.00	21,600.00	A

Claimants additional income potential	Monthly £	Annually £	
SIPP £525,000 Drawdown based on 5%	2,187.50	26,250.00	
Less existing drawdown as above	-800.00	-9,600.00	
Aditional possible drawdown	1,387.50	16,650.00	B

Claimants disclosed assets	£
Kings Road sale	335,000.00
Estimated sale costs & CGT	-50,000.00
Kings Road net proceeds	285,000.00
Premium Bonds	50,000.00
ISA	10,755.00
Income Bonds	500,000.00
ISA Portfolio	264,954.00
Cash	64,707.00
	1,175,416.00
Less house purchase	-700,000.00
Income producing assets (see below)	**475,416.00**
Add back house at market value, say	625,000.00
Claimants adjusted assets	**1,100,416.00**

	£	£	
Income producing assets as above	**475,416.00**		
	Monthly	Annually	
Investment return based on	£	£	
4.00%	1,584.72	19,016.64	C

Claimants potential income summary

	Monthly £	Annual £
A	1,800.00	21,600.00
B	1,387.50	16,650.00
C	1,584.72	19,016.64
A+B+C	4,772.22	57,266.64
Notional tax @ 20%	-954.44	-11,453.33
Net income	3,817.78	45,813.31