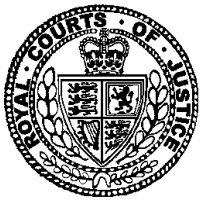


Neutral Citation Number: [2024] EWHC 1972 (Ch)

PT-2022-000121

Case No: PT-2022-000121

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

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

Date: 02/08/2024

Before:

MR JUSTICE MICHAEL GREEN

- -

Between:

(1) Charles Steven Bond
(as executor of the estate of Reginald Charles Bond, and personally)
(2) Graham Reginald Bond
(as executor of the estate of Reginald Charles Bond, and personally) **Claimants**

- and -

(1) Denise May Webster
(as executor of the estate of Reginald Charles Bond, and personally)
(2) Karen Joyce Daddy
(as executor of the estate of Reginald Charles Bond, and personally)
(3) Michael Ian Bond
(4) Lindsay Bond **Defendants**

- -
- -

Clare Stanley KC, Harry Martin and Arabella Adams (instructed by **Howard Kennedy LLP**) for the **Claimants**
The First and Second Defendants did not appear and were unrepresented
Penelope Reed KC and Emilia Carslaw (instructed by **Withers LLP**) for the **Third and Fourth Defendants**

Hearing dates: 30 April, 1-3, 7-10, 13-17, 21 May and 6-7 June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on Friday 2 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE MICHAEL GREEN

Mr Justice Michael Green :

A. INTRODUCTION

1. Reginald Charles Bond ("**Reg**"), a self-made successful businessman from selling tyres and a racehorse owner and breeder, sadly died on 15 March 2021 at the age of 77. His four children have been at war ever since about various matters, including the validity of a will and codicil he executed in late 2019. This culminated in the 4-week trial I heard concerning whether Reg had testamentary capacity and/or whether he knew and approved the contents of that will and codicil. It is unfortunate, to say the least, that this family fallout had to come to this, with all the time and expense incurred in fighting such a bitter trial.

2. Reg was married to Margaret Elizabeth Bond (known as "**Betty**") but she died on 5 September 2015 after 51 years of marriage. Together they had three sons and one daughter: the Claimants, Charles Steven Bond ("**Charlie**") and Graham Reginald Bond (known as "**Greg**") who were the two youngest children, born in 1980 and 1972 respectively; and the Third and Fourth Defendants, Michael Ian Bond ("**Mike**") and Lindsay Bond ("**Lindsay**"), born in 1970 and 1968 respectively. Charlie and Greg are seeking to uphold the will executed on 19 November 2019 (the "**2019 Will**") and the codicil executed on 20 December 2019 (the "**Codicil**") (together the "**Disputed Documents**"), the 2019 Will being greatly in their favour. Mike and Lindsay challenge the Disputed Documents and say that Reg's last valid will was one he executed on 22 August 2017 (the "**August 2017 Will**") and which largely split his estate equally between his four children.

3. The focus of this case must be on the will-making process and, in particular, how Reg's instructions were taken and whether the 2019 Will reflected his true testamentary intentions. However the evidence ranged far and wide, at some points seeming to stray into a purported contest as to who was more devoted to Reg and therefore likely to have been acting in his best interests. There is no

dispute that the terms of the 2019 Will were not based on any change in Reg's attitude and affection for Mike and Lindsay; it is also common ground that the Disputed Documents were prepared in secret and that Mike and Lindsay were not involved at all, whereas Charlie was. It will be important not to be distracted by irrelevant side-issues that do not impact on the validity of the Disputed Documents.

4. Reg was diagnosed with a brain tumour in 2010 after suffering from a sudden seizure. He underwent surgery at the time and radiotherapy. He continued to receive treatment for this throughout the rest of his life. In March 2014, Reg fell in his garden and broke his arm and he became seriously unwell with pneumonia and sepsis during a long stay in hospital. His health went considerably downhill for some time thereafter, being bed-bound and putting on a lot of weight. He also suffered the further tragedy of Betty being diagnosed with cancer at that time and dying quite soon after. From 2016 his health and mobility did improve, but he remained confined to a wheelchair and needed round-the-clock care. The effect of this on his cognitive abilities and capacity is a major issue to be decided.

5. The Disputed Documents were drafted by Ms Geraldine Martin who is a private client practitioner, not a qualified solicitor, but a full member of the Society of Trust and Estate Practitioners ("**STEP**") since September 2010. At the time, she was a director of a small solicitors' firm called Duncan Rann Associates ("**DRA**") which had been set up by Mr Duncan Rann in 2012. Mr Rann features large in this case as he acted for various parties at the relevant time, in particular Charlie and Greg, and he was appointed as an executive director of Reg's tyre company in April 2019. It was at his instigation that Ms Martin was brought in to draft a new will for Reg and some Lasting Powers of Attorney (the "**LPA(s)**"). In a further twist, Charlie's wife, Ms Katie Atkinson-Bond ("**Katie**") is a solicitor, and she worked at Ms Martin's previous firm, Sandersons (Mr Rann was managing partner there until he left to set up DRA) and, in October 2018, Katie joined up with Ms Martin and Mr Rann at DRA.

6. Ms Martin had never acted for Reg before in relation to his wills. He had previously used Ms Pamela Precious of Harrowells (formerly at Powell & Young before it merged with Harrowells). Ms Martin met with Reg on six occasions, always at the Marriott Hotel, York, at which he was accompanied by three women: the First and Second Defendants, Denise May Webster ("**Ms Webster**") and Karen Joyce Daddy ("**Ms Daddy**"), both of whom were named as executors, together with Charlie and Greg, in the 2019 Will; and Ms Rita da Silva ("**Ms da Silva**"), one of Reg's carers and a cleaner for various members of the Bond family. Ms Webster had primarily worked as Reg's PA and Ms Daddy was his stud manager from 2007 and also one of his carers. They did not defend the proceedings in their capacity as executors but they did give evidence for Charlie and Greg.

7. Ms Martin is clearly a central figure in this case. Charlie and Greg say that her involvement in the will-making process, including supervising the execution of the 2019 Will and taking Reg carefully through the relevant documents while having no concerns about his capacity, is an insuperable obstacle to Mike and

Lindsay's challenge to the Disputed Documents. Mike and Lindsay, however say that she was an unsatisfactory witness, was not independent and did not comply with basic professional obligations, such as the Golden Rule, so as to render the circumstances around the making of the 2019 Will highly suspicious. I will deal with the detailed facts below.

8. The main contentious clause of the 2019 Will is a specific gift of Reg's shares in R & RC Bond (Wholesale) Limited ("**Wholesale**") and R & RC Bond (Holdings) Limited ("**Holdings**") to Charlie and Greg in equal shares. The shares in Holdings, which Reg did not own at the time he made the 2019 Will, were his most valuable asset on death, said in the IHT400 to be worth £11 million. Under the August 2017 Will, Reg's shares in the tyre business, Wholesale, were distributed equally among the four children. The effect of the 2019 Will was to cut Mike and Lindsay out of what remained of the family wealth.

9. It will be important to understand the context and backdrop for the 2019 Will. It was prepared and executed while a buy out of Mike and Lindsay's shares in the business was being negotiated (the "**Buy Out**"). That transaction eventually completed in February 2020 and Mike and Lindsay sold their shares in Wholesale to the newly incorporated Holdings, which was majority owned and controlled by Charlie and Greg. Reg exchanged his shares in Wholesale for shares in Holdings (Mike and Lindsay say his shareholding was thereby diluted). He did not at any time receive independent advice in relation to these transactions even though everyone seemed to recognise that he should have. Reg's understanding of the Buy Out transaction is in dispute and it is said to have affected his ability to understand the effect of the 2019 Will. This will be explored below.

10. As I have said in another contested will case that I tried – *Reeves v Drew and ors* [2022] EWHC 159 at [5] and [6] – testators can do what they like in their wills and they do not have to justify what they have done. Nor do those who seek to propound such wills. Nevertheless, if there is doubt as to the testator's capacity or whether the will does truly reflect their testamentary wishes, both capacity and knowledge and approval do need to be proved on the balance of probabilities by those seeking to uphold the will.

11. I heard oral evidence from 16 witnesses called by Charlie and Greg and from 6 witnesses called by Mike and Lindsay. There was one witness statement on each side that was admitted into evidence without requiring cross examination – Mr Paul Darling OBE KC for Charlie and Greg, and Mr Tom Roseff for Mike and Lindsay. Each side also provided expert evidence in the field of old age psychiatry: Charlie and Greg instructed Professor Robert Howard; and Mike and Lindsay instructed Dr Hugh Series. Both were cross examined but there was not much on which they disagreed, perhaps only with some slightly different emphases.

12. I have been greatly assisted by the excellent submissions and conduct of their cases by Ms Clare Stanley KC, leading Mr Harry Martin and Ms Arabella Adams on behalf of Charlie and Greg and by Ms Penelope Reed KC leading Ms

Emilia Carslaw on behalf of Mike and Lindsay. I was pleased that the advice of the Lady Chief Justice was followed by the two leaders in allowing their juniors to conduct some of the cross examination, which they did well.

13. As can be seen, I have used the first names of family members in this judgment, as this was adopted by both sides during the trial. This is done for convenience only, so as to identify more easily which member of the family is being talked about. No disrespect is intended.

B. ISSUES

14. As stated above, there are only two issues to be decided:

(1) Whether Reg had testamentary capacity at the time he executed the Disputed Documents; and/or

(2) Whether Reg knew and approved of the contents of the Disputed Documents.

15. Originally in pre-action correspondence, Mike and Lindsay had raised questions about undue influence and/or fraudulent calumny (where a person dishonestly poisons the mind of a testator against someone who would be a natural beneficiary of the testator's estate – see *Re Edwards* [2007] EWHC] 1119 (Ch)). These were not pursued in the proceedings and care must be taken not to allow the allegation of want of knowledge and approval to be used to run a case of dishonesty or undue influence – see *Burns v Burns* [2016] EWCA Civ 37 at [52].

16. Ms Stanley KC raised certain points on the pleadings in her closing submissions, with the suggestion being that Mike and Lindsay had broadened their case at trial from what they had originally pleaded in their Defence and Counterclaim. I do not accept this and consider that the points that were run by Ms Reed KC on behalf of Mike and Lindsay in relation to both issues are captured by their pleaded case. It is inevitable that more evidence will come to light since the pleadings were originally drafted and served and it is not necessary to amend the pleadings each time that happens. The touchstone is whether the Claimants knew the case they had to meet and I am in no doubt that they did and that therefore the pleading points go nowhere.

17. There is no real disagreement between the parties as to the legal principles involved in relation to the two live issues. I discuss those principles in section H below. Before then, I will make some general findings on the witness evidence I have heard after a short description of Reg's life and character.

C. REG

18. Reg was born on 21 March 1943. He lived most of his life in Pocklington, Yorkshire, a town situated between York and Hull. He married Betty at the age of 21 in 1964 at All Saints Church in Pocklington.

19. In 1966, at the age of 22, Reg suffered an accident at his work as a car mechanic which left him blind in one eye. He received £350 by way of compensation which, apocryphally, he invested into a garage business in Pocklington, which he ran in partnership with his father, also called Reg ("**Reg Senior**"). That business grew and grew and became the multi-million pound empire known as "**Bond International**", one of the largest wholesalers of tyres in the UK, employing several hundred people. Wholesale was incorporated in 1971 and Reg bought premises on the Pocklington Industrial Estate in the 1980s and the business' headquarters remain there today. All four of Reg's children came to work in the business at some point, starting when they were at school and without any formal qualifications. The garage business, in which Mike and Lindsay worked, was sold in or around 2006. They thereafter, until February 2020, worked for Wholesale, as did Greg and Charlie.

20. By all accounts Reg was a hard-nosed and highly-successful businessman who worked tirelessly, building the business from nothing. As the business grew, he started travelling a lot, in particular to Singapore, Dubai and the United States. In or around 1990/91, Ms Webster started working for Reg at Wholesale, becoming his PA and often travelling with him when he went overseas.

21. In the early 2000s, Reg began his passion for horse racing and he began buying, breeding and training racehorses. These activities were run by him as a sole trader business under the trading name Bond Thoroughbred Corporation ("**BTC**"). He ran his own stud farm at Yapham Mill, next door to his house called The Paddock at Yapham Mill, just outside Pocklington. Ms Daddy was employed as the stud manager and they achieved remarkable success against the much bigger and wealthier racehorse owners.

22. As I have already said, in 2010, at the age of 66, Reg had a seizure and was diagnosed with a brain tumour. He underwent surgery in Hull Royal Infirmary. The parties disagree over the effect that this had on his personality and cognitive abilities but he certainly reduced his workload at the business and let others take over the day to day running of the office. He still managed the odd trip abroad but his driving licence was revoked.

23. It was the fall in March 2014 that really set Reg back. During his long stay in hospital he contracted pneumonia and urinary sepsis. When he came home after two months, he was incontinent and lost his mobility, requiring full time care to wash and dress him and take him to the toilet. He had to be hoisted into a wheelchair. He almost completely had to step back from the business. His short term memory had deteriorated and his neurosurgeon referred him to a neurologist, Dr Raman, suspecting early dementia.

24. Betty was still alive at this time and responsible for Reg's care, helped by Ms Daddy. On 1 July 2014, Reg signed a Lasting Power of Attorney for Property and Affairs that appointed Betty and Lindsay as his attorneys on a joint and

several basis (the "**2014 LPA**"). This was drawn up and then registered on 3 September 2014 by Ms Precious. It remained in force until the events of 2019/2020 and the signing of the Disputed Documents.

25. On 11 November 2014 both Reg and Betty executed similar wills prepared by Ms Precious (the "**2014 Will**"). This was in materially the same terms as his previous wills – he had made wills in 1976 (before Charlie was born), 2007 and 2011 – whereby his residuary estate was left to Betty but if she predeceased him to his four children equally, and if any of them predeceased him to the relevant grandchildren. The only material change by the 2014 Will was to appoint Betty as executor with the four children as substitute executors (this replaced Ms Precious and Mr Melvyn Sadofsky).

26. In early 2015, Betty was diagnosed with cancer and her health deteriorated rapidly. She was unable to continue caring for Reg and she was persuaded to employ a team of professional carers through an agency. Mike's daughter, Chantelle Bond ("**Chantelle**"), sat with Reg as his companion every day. Charlie and Greg mounted an unseemly attack on Chantelle in her cross-examination suggesting that in some way she was responsible for the decline in Reg's health and his increasing weight problems. I have little hesitation in rejecting that contention but a confrontation between Charlie and Chantelle together with her brother Kieran Bond ("**Kieran**") did lead to a major falling out between Charlie and Mike, which meant that Mike and his family did not attend Charlie and Katie's wedding in August 2015. Reg did manage to attend the wedding but left shortly after the ceremony.

27. Betty sadly died some three weeks later. By her will, her residuary estate, which included 244 shares in Wholesale, was left to Reg. That meant that Reg owned 990 of the 1,000 ordinary shares in Wholesale.

28. Reg had been in and out of hospital with bouts of pneumonia, sepsis and gastroenteritis. He was very ill with extremely poor mobility in the months following Betty's death. But from early 2016, things began gradually to improve, with Lindsay and Ms Daddy taking over responsibility for the care team and introducing Ms da Silva into it, together with others from an agency. Reg started to do physiotherapy. However, because of a slow progression of his brain tumour, in April 2017 Reg started a new course of chemotherapy which he appeared to tolerate well.

29. Various transactions to do with the shares in Wholesale took place in 2017 and 2018 which will be described in detail below. First of all, Wholesale's articles of association were amended so as to entrench Reg's voting rights even if he transferred his shares to his children. The changes also divided the shares into classes so as to ensure that each of his children received an equal amount of shares in Wholesale both before and after his death. Reg made a new will on 29 March 2017 (the "**March 2017 Will**") to bring it into line with the amendments to the articles of association which preserved the equal treatment of all four children. Ms Precious prepared the March 2017 will and her colleague, Mr Matt Rowley, was involved in the drafting of the new articles of association. Neither solicitor had any concerns about Reg's capacity to sign the documents

approving the new articles of association, which were somewhat complex, or to execute the March 2017 Will.

30. On 22 August 2017, Reg executed a deed of variation of Betty's will gifting 234 of the 244 shares in Wholesale that he inherited from her to his four children, so they ended up with equal amounts of shares in their respective families (the "**Deed of Variation**"). The Claimants have estimated that the total value of such shares was approximately £12.87 million. On the same day, Reg executed the August 2017 Will which was in the same terms as the March 2017 Will except that he gave his horses to Charlie, on the basis that he alone of Reg's children, together with his wife Katie, was interested in the horses. Again both documents were prepared by Ms Precious after meeting with Reg and she was unconcerned about Reg's capacity to execute them. Mike and Lindsay seek to uphold the August 2017 Will.

31. In late 2017/early 2018, the family began to discuss selling the business. Katie introduced Mr Rann in relation to such a sale. But before that really got off the ground, arrangements were made for Reg to make lifetime transfers of most of his shares in Wholesale such that the four children and Reg were each left with 20% of Wholesale. Reg executed those transfers on 14 June 2018. He did not have the benefit of any independent legal advice and neither Ms Precious nor Mr Rowley were involved. It was all arranged by Mr Rann. No one is challenging this transaction. The shares transferred to the children on this occasion were valued at £30.58 million. This meant that a large part of Reg's estate had already been distributed equally to his four children prior to the making of the 2019 Will.

32. Reg was not involved in the steps taken to sell the business during 2018/19. After some negotiation, on 2 April 2019 Heads of Terms were signed with a private equity fund called Bregal Freshteam LLP ("**Bregal**"). The structure of the deal was that Charlie and Greg would stay in the business, whereas Mike and Lindsay would leave together with Reg. The latter three would each receive cash consideration of £11 million and the former would receive £3.7 million each. The respective balances would be earned over time. As part of the arrangements under the Heads of Terms, six new directors were appointed to the board of Wholesale, including Mr Rann who replaced Mike as Wholesale's Operations Director.

33. However, the due diligence requirements of the Bregal deal were proving to be onerous and Charlie and Greg decided to withdraw the family from it and instead pursue a buy out by them of Mike, Lindsay and Reg, funded by a bank loan. This will be described in more detail below, but it will suffice to say at this stage that by the end of July 2019, the terms of the Buy Out agreed in principle between the siblings was that each of Mike and Lindsay would receive £3 million on completion, with the balance of the £11 million consideration for their shares in Wholesale to be payable when certain profit levels were achieved. Reg, however, like Charlie and Greg would be exchanging his shares in Wholesale for shares in the purchasing company, Holdings. Again, Reg had not received independent advice. Mr Rann was acting for Charlie and Greg; and Mr Rowley was acting for Mike and Lindsay.

34. It was while the Buy Out was being negotiated that the major fallout among the siblings occurred and which shaped the events that followed. There is no doubt that the relationship between Charlie and Lindsay, who had previously been quite close, had deteriorated sharply during July 2019, when Charlie maintained, together with the witnesses that he and Greg called, that Reg had wished to "*take back control*" of his life, or "*get his life back*", something which Lindsay was said to be preventing. There was alleged to have been a conversation between Lindsay and Reg, probably in the week of 22 July 2019, in which Lindsay is alleged to have told Reg that he had no money left and that this had left Reg distraught. This is all highly contentious but there is no dispute that there was a falling out and Charlie mounted a secret campaign to ensure that he was in control of Reg's affairs, both health and financial.

35. On the evening of 30 July 2019, Reg suffered a TIA (transient ischemic attack or mini-stroke) presenting with slurred speech and facial droop. He attended hospital the next day but there were no beds available for him. He was admitted on 1 August 2019 and discharged on 5 August 2019. The discharge summary suggested that the symptoms had been brought on by stress.

36. On the day he came out of hospital, Reg signed a "care team letter of wishes" which had been drafted by Mr Rann. This stated that he wanted his core care team to comprise Ms da Silva, Ms Daddy and Ms Webster and for his care to be paid for out of BTC. Even though they denied it in their evidence, Charlie admitted that Ms da Silva, Ms Daddy and Ms Webster were all spying for him against Lindsay and Mike and various WhatsApp messages evidence that. In order further to prevent Lindsay and Mike from having access to Reg, there was instituted, purportedly by the care team, a chaperone rule, requiring a carer to be with Reg at all times.

37. On 7 August 2019, Reg signed a General Power of Attorney under s.10 of the Powers of Attorney Act 1971 (the "**August PoA**"). For some reason Mr Rann dated it 15 August 2019, although he could not remember when he did that. The meeting at which the August PoA was signed by Reg was videoed by Greg and it shows Reg not receiving a full and proper explanation of it and he appeared tired and disengaged. The August PoA was in favour of Charlie and Ms Webster in relation to the business, the provision and payment of his care team and his horse enterprise. Ms Daddy can be heard on the video trying to explain what it was about and Ms da Silva, Charlie and Greg were also there. Mike and Lindsay were never told about this and it appears that it was never used.

38. On 5 September 2019, Reg signed the Heads of Terms for the Buy Out. He signed them at Wholesale's offices, before Mike and Lindsay were there. A buffet lunch was laid on for the family and certain employees. According to the Heads of Terms: Holdings would purchase the entire share capital of Wholesale; Mike and Lindsay would each receive £3 million on completion for some of their shares; the remainder of their shares were subject to put and call options; Reg would receive £1 million on completion and exchange the remainder of his shares for shares in Holdings; Greg and Charlie would each receive £500,000 on completion and exchange the remainder of their shares for shares in Holdings.

39. The meetings with Ms Martin to prepare a new will and LPAs for Reg began on 24 September 2019. Ms Martin had been told beforehand by Mr Rann that Reg wanted to make a new will and LPAs. All six meetings were attended by Reg and Ms da Silva, Ms Webster and Ms Daddy and they all took place in a meeting room at the Marriott Hotel, York. The other meetings were on 1, 18 and 25 October 2019 and 14 and 19 November 2019 at which the 2019 Will was executed.

40. On 2 October 2019, Reg attended a routine appointment with his oncologist, Dr Mohammed Khan. Charlie was with him for this appointment together with Ms da Silva and another carer, Mr Sam Duerden. Ms Martin had wanted them to get from Dr Khan a statement regarding Reg's capacity. In a letter dated 3 October 2019, upon which much reliance was placed, including by Ms Martin, it was stated: "*As things stand Mr Bond is fit and well for all purposes including running his business and making decisions. If he requires any formal statement in this regard I would be happy to provide it on request*." No further statement was obtained from Dr Khan. He gave evidence and the extent of his assessment of Reg at the time is crucial on the capacity issue.

41. Following the execution of the 2019 Will, on 26 November 2019 Reg flew to Dubai for a holiday. He went with Ms Daddy, Ms da Silva, Ms Webster and Mr Duerden. It was organised by and long-promised to Reg by Charlie. Reg enjoyed it greatly and he was able to meet up with his good friend, Mr Surender Singh Kandhari, who gave evidence at the trial, that, despite his physical problems, Reg seemed to be in "*perfectly good mental health*". The trip was arranged secretly and Mike and Lindsay knew nothing about it.

42. On 10 December 2019 Reg went to the Gimcrack dinner, a horseracing function for those in the industry, held that year at York Racecourse. He was accompanied by Ms da Silva and Lindsay. Mr Darling KC was there and this is what his witness statement was mainly about. He had a long chat with Reg and he thought "*it was all pretty normal, and Reg was plainly "with it"*".

43. On 20 December 2019, Reg executed the Codicil. This was done because Ms Martin had been told by Ms Webster on 19 November 2019, her last meeting with Reg, that Reg wished to increase the legacies to those who came with him to the meetings, namely Ms Webster, Ms da Silva and Ms Daddy, from £5,000 each to £10,000 each. As it was too late to change the 2019 Will, they agreed to put it in the Codicil to be executed when he was back from Dubai. Ms Webster arranged for its execution when she and Reg were in a café together and two of the people working in the café were the witnesses. Neither were called to give evidence and there is no attendance note of what happened. The correspondence between Ms Martin and Reg about the Codicil was sent to Ms Webster's home address, so that Lindsay and Mike would not find out about it.

44. In relation to the Buy Out, a tax issue had arisen concerning Charlie, Greg and Reg, and it had to be restructured so that Charlie and Greg were not selling any of their shares in Wholesale for cash and were instead simply exchanging their shares for shares in Holdings. This meant that Charlie and Greg would not need to be party to the Share Purchase and Option Agreement in relation to the Buy

Out ("**SPOA**"). It was also decided that Reg should not be a party to the SPOA, only the Share Exchange Agreement, as this would mean that he would not need to receive independent legal advice and as he was in the same position as Charlie and Greg, Mr Rann could advise him. The Buy Out had originally been due to complete on 22 November 2019 but was delayed due to issues with the bank financing.

45. Eventually, Reg signed the paperwork in relation to the Buy Out on 6 February 2020 and it formally completed on 12 February 2020. The result of the Buy Out so far as Reg was concerned was that he had 19.7% of Holdings, whereas Charlie and Greg held 39.5% each and the balance of 1.3% was held by Mr Rann. Reg also signed various documents waiving his pre-emption rights in both Wholesale and Holdings and transferring his shares in Wholesale to Holdings.

46. It is unclear the extent of Reg's awareness of the events following the Buy Out. The new LPAs were registered in March 2020. A letter dated 6 March 2020, which has been called the "***My Affairs***" letter, and which was drafted by Mr Rann but was ostensibly from Reg to his four children, set out that new LPAs had replaced the 2014 LPA but that Reg was intending to run his own affairs, both financial and in relation to his health and care team, and that he currently has capacity to do so.

47. The Covid pandemic intervened and visits to Reg by family were severely curtailed, on the advice of Dr Khan, and he was essentially just living with his carers, who carefully managed any visits but it was mainly speaking through windows or doorways or over the phone. In early 2021, Reg was testing positive for Covid, and he went into hospital on 12 January 2021, staying for a week. He was again admitted on 2 February 2021 to 24 February 2021 and then for the final time on 4 March 2021. He had also developed pneumonia, infections and septic shock. He died on 15 March 2021. On that same day, the sale of Yapham Grange to Ms Daddy and her son Jacob for £400,000 completed, with Charlie signing the transfer as Reg's attorney.

48. Mike and Lindsay only discovered that Reg had made the 2019 Will on 7 April 2021 and were "*dumbfounded*".

49. I have set out in this section on Reg a summary of the main events with which this case is concerned. This is covered in much more detail below. But I should say at this stage that, whilst there was a lot going on at the relevant time, in particular in relation to the Buy Out, and there is a full documentary record of that together with many of the protagonists' private messages, there is extremely limited involvement by Reg himself. I will have to consider the medical records and the experts' opinions, but on a very general level, it seems to me that Reg's voice and involvement is difficult to discern and this lack of engagement makes it hard to get a clear impression of Reg's character and personality in 2019.

D. THE CLAIMANTS' WITNESSES

50. As noted above, Charlie and Greg put in witness statements from 17 witnesses, of which 16 were cross examined. It is striking that all but one of those witnesses are either employed by Wholesale or Bond Thoroughbred Limited ("**BTL**"), the successor to BTC, or in some other way connected with Charlie and Greg. Ms Stanley KC fairly said that Charlie and Greg would have been criticised if they had not called these witnesses. Nevertheless it does mean that they cannot be considered independent witnesses and I do not accept Ms Stanley KC's submission that they gained nothing by giving evidence in this case and so their evidence can be relied upon.

51. Of the Claimants' principal witnesses, there are the following close ties to Charlie and/or Greg:

    (1) Katie is Charlie's wife and she is employed as in-house counsel at Bond International;

    (2) Mr Rann remains an executive director of Wholesale and a director and shareholder of Holdings; there are also other Bond International entities of which he is a director;

    (3) Ms Webster is now Charlie and Greg's PA;

    (4) Ms Daddy is a director of BTL, which is controlled by Charlie;

    (5) Ms Martin acts for the executors appointed by the 2019 Will, namely Charlie, Greg, Ms Webster and Ms Daddy.

52. The more minor witnesses also have close associations. Mr Bryan Smart and Mr Geoffrey Oldroyd, both horse trainers, work for BTL, the latter living in a mobile home at Reg's old house, The Paddock; Mr Mark Warters is Charlie and Greg's gardener and attends York races as a guest of Bond International; Mr Jason Dowsett, a builder, carries out work for Charlie and Bond International; Mr Darren Mizon is a customer of Bond International; Mr Chris Ostler, who was one of Reg's carers, now works in purchasing at Bond International; and Mr Kandhari supplies tyres to Bond International and pays sponsorship money into BTL. Even Dr Khan has been involved with Charlie since Reg's death, with his book and cancer prevention organisation being promoted by Bond International and attending the races to see the horse, Dr Khan Junior, which Reg named after him, running.

53. That is not to say that I should just dismiss that evidence as in some way tainted. One thing that has shone through, from both sides' evidence, is that there was genuine love and affection for Reg from all his family, friends, carers and employees. Most of the witnesses were from in and around the close-knit community in Pocklington where the Bond family business is a significant presence. But the recollections of the Claimants' witnesses about Reg at the material time do seem to me to have been heavily influenced by Charlie and Greg's narrative that the steps they took in 2019 were all about Reg "*taking back control*" of his life, presumably from Lindsay and to a lesser extent Mike.

54. There is a large amount of contemporaneous documentation and in particular WhatsApp messages, texts, care diaries and Ms Martin's attendance notes, which reveal a fairly clear picture as to what was going on. As Ms Stanley KC reminded me, there are now plenty of authorities that emphasise that such documentary evidence is a much more reliable guide to the truth than oral evidence from witnesses - see for instance what Males LJ said in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 at [48].

55. In contentious probate cases, the most important witness, the testator, is not available to give evidence. Even though it was said in a case that was only concerned with knowledge and approval, I consider that Norris J's comments in *Wharton v Bancroft* [2011] EWHC 3250 (Ch) at [9] are applicable to the case before me:

> "The task of the probate court is to ascertain what (if anything) was the last true will of a free and capable testator. The focus of the enquiry is upon the process by which the document which it is sought to admit to proof was produced. Other matters are relevant only insofar as they illuminate some material part of that process. Probate actions become unnecessarily discursive and expensive and absorb disproportionate resources if this focus is lost."

56. In an emotionally charged case such as this one, where four siblings are fighting over their father's last will and true testamentary intentions, the evidence has strayed far and wide. I understand the need for the evidence to deal with background and context, for instance the progress of the Buy Out negotiations which may have impacted Reg's thought process in relation to the 2019 Will and possibly to explain the relationships within the family and why they were acting as they did. But the reality is that the Claimants' main witnesses were variously involved in the will-making process, whereas Mike, Lindsay and their witnesses were not. The Claimants' witnesses are therefore more relevant and I am left with the lingering suspicion that there has been quite a lot of *ex post facto* reconstruction of events to fit the Claimants' narrative. That is not to say that the witnesses did not genuinely believe the truth of what they were saying but it is a recognition of the side they are on and the influence that may have had on their actual recollection of events.

57. I will now make some general comments on the main witnesses' evidence, but the detailed findings, so far as they are relevant, will be dealt with in the factual narrative section below.

(a) Charlie

58. Charlie is the youngest child and by some way, being born 8 years after Greg. Despite his age, he is probably the most dominant and dynamic of the siblings. He said that he started helping out in the business at the age of 8; by age 16 he was working part time in the Pocklington warehouse whilst studying for his NVQ in Business Studies. In his early 20s, he became head of sales at Wholesale and in 2006 he was appointed as a director at the age of 25 (at the same time as Mike and Lindsay, who were much older). He has continued to work for Bond

International ever since, although he failed to mention in his witness statement that he resigned as a director in 2008 and 2011 after clashes with his father, when he did not get his own way. That is perhaps an indication of his headstrong and temperamental personality, although he would say that he was standing up for what he thought was right.

59. Until around 2012, Charlie was friendly with Mike and his wife, Rebecca. The relationship deteriorated however and in 2015, when Mike was in charge of Reg's care, there was a major falling out between them. However, from around 2012 until the events in mid-2019, Charlie and his wife, Katie, had a good relationship with Lindsay. Apart from apparently working well together and being on the same side of the Buy Out, I do not believe that Charlie and Greg have ever had a close relationship. It can be seen that the family dynamics are not straightforward and there was a lot of volatility around their relationships.

60. Ms Stanley KC described Charlie's evidence as "*resolute and dignified*". I am afraid that I did not regard his evidence as "*dignified*". While he was firm in his answers, he had a strange, rather dismissive air, almost of exasperation, when giving his evidence, never looking at his questioner and sometimes laughing at the questions. He could not resist on many occasions from sniping at and making barbed comments against Lindsay and Mike and their families, suggesting that they only wanted Reg's money and in some way were responsible for precipitating Reg's physical decline. He wanted to give the impression that only he really cared about Reg, and his siblings were so ungrateful to Reg despite him having gifted many millions of pounds worth of his shares in Wholesale to them. It was almost as though he was trying to suggest that Mike and Lindsay deserved to have been cut out from their father's will because he disapproved of the way they had treated him. But Reg did not think that of Mike and Lindsay.

61. Charlie became very tearful when towards the end of his evidence he was being asked about whether he knew what was in his father's 2019 Will. He said that "*this*", meaning this case, I think, was "*so wrong*", I assume because he wanted to convey that his father was allowed to do what he wanted with his remaining shares in the business. Greg also became emotional at some point in his evidence. I could not help but think that this was a little confected and part of the strategy to show that they were the only siblings who really cared about their father. That may be unfair and unduly harsh but I felt that, if they were really that upset, it might have been because it dawned on them that what they had done in relation to their father was fairly extreme.

62. To his credit, Charlie did not shy away from admitting that he was using Ms Daddy, Ms Webster and Ms da Silva to spy or "*keep tabs*" on Mike and Lindsay; he also was frank about the fact that he had a "*plan*" in relation to Reg. That plan was ostensibly so that Reg could "*take back control*" of his affairs and to "*get his life back*". These phrases were repeated constantly by Charlie (and others on his side) and he used it to justify the steps that he took secretly, with Mr Rann's assistance, to put control of Reg's life into his hands. He maintained that the August PoA and the new LPAs, which effectively gave Charlie control, were so that Reg could be able to do the things that he was allegedly being

prevented from doing. The fallout with Lindsay stemmed from two meetings that she had with Reg towards the end of July 2019 which because of alleged "*raised voices and slamming of doors*" and Reg being left in a terrible state, in "*floods of tears*", it was necessary for Lindsay and Mike to be sidelined. At the same time, the Buy Out negotiations were becoming fraught, but Charlie insisted that the steps he took were nothing to do with that.

63. Charlie was adamant that the 2019 Will was not part of his "*plan*" in relation to Reg. Although he knew that Ms Martin had been instructed to prepare a new will, as well as new LPAs, for his father, he maintained that he never knew what the provisions of the 2019 Will were. Seeing the way he is, and his controlling nature, together with his and Katie's communications with Ms Martin and Mr Rann during the will-making process, I find it difficult to believe that he did not know that he and Greg were, by the 2019 Will, being left Reg's remaining shares in the business.

64. In summary, I do not feel able to rely on Charlie's evidence unless it is supported by or consistent with contemporaneous documentation. I consider that he not only has constructed a narrative, relatively recently, about Reg wanting to "*take back control*" (this was not pleaded in their statement of case), but also he managed to inculcate, so as to get them on his side, Ms Daddy, Ms Webster and Ms da Silva with the notion that only he was acting in Reg's best interests and Lindsay and Mike were seeking to prevent Reg from doing the things that he wanted to do. It is actually extraordinary how this was achieved and I will have to decide its impact on the validity of the 2019 Will.

(b) Greg

65. Greg is very different to Charlie. He is 8 years older and has been involved in the business since he was 7 years old. He left school at 16 and started working full time at Wholesale with his father. He was the first to be appointed as a director on 1 July 1991 when he was 19 years old. Apparently he never went away on holiday and instead always stayed behind to work.

66. Greg does not seem to have socialised with his siblings or had much of a relationship with them. He was also the most distant to Reg. In relation to the relevant events in 2019, he seems to have left it all to Charlie. They were on the same side because of the Buy Out, but I do not believe that he was particularly involved in Charlie's plan, although he was content to go along with whatever Charlie was suggesting, including keeping everything secret from Lindsay and Mike.

67. He came across as very nervous in the witness box. He started his evidence by providing wholly new evidence as to a meeting that he, Charlie and Reg had at York Racecourse on 27 July 2019 at which Reg had allegedly told them that he wanted "*to take back control, I want to go to Dubai, I want my credit card and I want £1million*". There had been no mention of this meeting in his witness statement, although he had referred to going to York races on 27 July 2019 with Reg. Apparently this addition to his evidence was notified to Ms Reed KC on the second day of the trial. But it was clearly an attempt to bring Greg's evidence

into line with his and Charlie's newish case and to pinpoint the time that Reg allegedly gave instructions to Charlie and Greg to "*take back control*". It must be no surprise that I regard this evidence with some scepticism. It also undermines not only Greg's credibility but also Charlie's whole narrative in this respect. This is the lynchpin of their case, yet Greg only remembered this crucial meeting during the trial, after skeleton arguments had been filed and his counsel had made her opening submissions.

68. The other piece of unsatisfactory evidence from Greg was as to his videoing of Reg's signing of the August PoA. He did this secretly and this was the moment when he became very emotional in his evidence, being asked why he was recording this event and the reason for the August PoA. Originally he said that he was recording it because he was representing Reg, following the newly-disclosed meeting on 27 July 2019. But later he accepted that he was recording it in case there was a challenge that Reg had been pressured into signing it. Again, while it must have been, and was, distressing for all the siblings to see their father on a video recording, I believe that Greg also began to realise the enormity of what he and Charlie were doing and how Reg, in the video, was not really aware of what he was signing.

69. Greg's evidence does not touch on the will-making process, as he does not appear to have been involved. But like with Charlie, I treat his evidence with some considerable caution.

(c) Mr Rann

70. Mr Rann first qualified as a lawyer in the US, being admitted to the New York State Bar in 1988. He returned to the UK in 1990 and qualified as a solicitor in England and Wales in 1994. He did his articles at a firm called Sandersons in Hull, became a partner and then in 1996, managing partner. He specialised in corporate and tax work; he was also head of Sandersons' Private Client department from 2001 to 2012; Ms Martin was a member of that department.

71. At the beginning of his oral evidence, Mr Rann wished to clarify that he had recently heard that he had been suspended from the New York State Bar, because he had not paid his registration fees. It turns out that he had actually been suspended back in 2009, following the receipt of various notices requiring the payment of fees. He claimed that he thought his registration would simply lapse after 1990 when he came to the UK and so he ignored the notices. He said that he had no idea that he had been subject to a disciplinary process and then suspension. However, this does not really square with the fact that his email signature at the material time (and probably until recently) described Mr Rann as a "*Solicitor, Attorney at Law (State of New York)*". If Mr Rann thought his registration had lapsed in the 1990s, he could not explain, or justify, his continued use of that description of him.

72. This is an example of his slapdash approach to his professional obligations. He seemed completely unaware of who he was acting for during the various stages that he was involved with the Bond family. He was first brought in after being introduced to Charlie by Katie, who had worked with him at Sandersons, in

2018 when he was at his own firm, DRA. He was unclear whether he was acting for all the siblings and Reg in relation to the gifts of Reg's shares. He actually suggested he was acting for Wholesale, as that was the addressee of the engagement letter. He fairly accepted that Reg should have probably had his own independent advice.

73. He was then acting in relation to the potential sale to Bregal and, following that, on the Buy Out. It is extraordinary, in my view, that during this time he was appointed to the board of Wholesale, not as a non-executive director, but as operations director, despite having no relevant experience. By this time Katie had moved to DRA, where Ms Martin also worked. There were only five lawyers at DRA, including Ms Martin. Despite his new job at Wholesale, Mr Rann continued to act as a solicitor in relation to a whole host of matters. He incorporated Holdings as the vehicle for the Buy Out and was given shares in it. He also incorporated a company called at the time Tyre Wholesale Direct (Hull) Ltd ("**TWDHL**") deliberately with a name to conceal its true purpose from Mike and Lindsay. TWDHL became BTL after the Buy Out had completed, and it took over from BTC in relation to the horses and other matters. TWDHL/BTL was left to Charlie in the 2019 Will.

74. Mr Rann was fully on Charlie's side and knew that his plan was to remove Mike and Lindsay from any control over Reg. He was acting for Charlie and Greg in relation to the Buy Out. He was concerned about Reg's position and thought he should be getting independent advice. In the end the Buy Out deal was structured in such a way that Reg did not need to be a party to the SPOA and Mr Rann was comfortable that he was then in the same or a similar position to Charlie and Greg and would not need independent advice. However, Reg did sign the Heads of Terms and the Share Exchange Agreement without any independent advice.

75. But it was Mr Rann's involvement with Reg's personal affairs, in particular the August PoA, the new LPAs, the will-making process and the various letters purportedly sent by Reg such as the "care team letter of wishes" dated 5 August 2019 and the "*My Affairs*" letter dated 6 March 2020 that is a cause for concern. He seems hardly to have met Reg and was taking instructions largely from Charlie in this respect. Pursuant to this, it was Mr Rann who instructed Ms Martin to meet with Reg in relation to new LPAs and a new will. A major issue to be determined is whether the instructions in relation to the shares in Wholesale and Holdings in the 2019 Will came from Mr Rann and/or Charlie, or from Reg himself. Ms Reed KC relied heavily on a manuscript note of Ms Martin's appearing to record what Mr Rann told her when they met on 8 November 2019. Both Mr Rann and Ms Martin deny that she received instructions from Mr Rann in relation to the 2019 Will.

76. There are many examples in Mr Rann's evidence of him being unable to explain why he did certain things, such as not dating the August PoA until much later or why the "*My Affairs*" letter inaccurately set out the attorneys that Reg had purportedly appointed. He also sought to justify not seeing Reg on his own, despite knowing that he was vulnerable and he was drafting important personal

documents for him, by saying that he was worried about "*presumed undue influence*".

77. Mr Rann seemed to think that the normal rules did not apply to him. He was and is so closely aligned with Charlie and with his scant regard for his professional obligations, I am afraid that I do not feel able to accept his evidence unless it is corroborated by contemporaneous documents. As he did not keep attendance notes, those documents would be confined to emails and WhatsApp messages and third party documents, such as the care diaries.

(d) Ms Martin

78. Ms Martin is the key witness for Charlie and Greg and I have considered her evidence very carefully. I will be going through the will-making process in detail below, during which I will make findings as to the way this was conducted by Ms Martin and whether I can be satisfied in relation to Reg's capacity to make the 2019 Will and whether he knew and approved its contents.

79. As I mentioned above, Ms Martin was working at, and was a director of, DRA when meeting with Reg and preparing the LPAs and the 2019 Will. Mr Rann and Katie were also at DRA at that time. All three were previously at Sandersons. By this time, Ms Martin had a lot of will-writing experience and was well aware of the need to take instructions from the testator and ensure that potential beneficiaries were not orchestrating matters in their own interests.

80. Reg must have presented himself as pretty vulnerable. While Ms Martin professed to be unconcerned about his capacity, it must have been clear when he turned up each time with three carers and after he got emotional at the first meeting when Ms Martin tried to discuss his proposed new will, that there may be issues in such respect. Thereafter, she wanted Ms Webster to be in the meetings and she asked Ms Webster to take instructions from Reg outside of the meetings. And she clearly was concerned about capacity as she asked for Dr Khan to assess Reg at the consultation on 2 October 2019. Her initial denials that this was in relation to Reg's capacity were unconvincing, and she later confirmed that she was asking for a capacity opinion. She accepted that she did not comply with the Golden Rule and get a doctor's opinion on Reg's testamentary capacity, even though she had done so in other cases.

81. Ms Martin's evidence will need to be tested against the contemporaneous documents, principally her attendance notes and electronic time recording sheets. It is curious, to say the least, that the only meeting in respect of which she did not make an attendance note was the one on 25 October 2019 when she has maintained she took specific instructions from Reg that he wished to leave his shares in the business to Charlie and Greg, not Lindsay and Mike. Ms Martin said that, instead, she completed a standard form will questionnaire at that meeting, but the trouble with that explanation is that there are two versions of the will questionnaire and the date of 14 November 2019 on the front page has been scratched out, and on one version the 25 October 2019 date written in. Between those two dates, Ms Martin met with Mr Rann and spoke with Charlie on the phone, and her manuscript note suggests that Mr Rann told her about the

bequest of the shares. According to her records, she only started drafting the 2019 Will after she had spoken to Mr Rann and Charlie.

82. She was adamant, even addressing this point before being asked about it, that she did not, and would not ever, take instructions about a will from anyone other than the testator. She said she would not jeopardize her hard-earned reputation and practice in this area by doing so and that this was the only case where there had been any challenge to a will that she had prepared.

83. Ms Martin was willing to admit to some mistakes that she made but she mainly put those down to a lack of time to do her work carefully and accurately. I can say at this stage that her approach has concerned me, particularly as there should have been alarm bells ringing about how she was instructed, the ability of Reg to give proper instructions and the involvement of so many people – Charlie, Mr Rann, Katie, Ms Webster – who she knew were on one side of the family and that this all had to be kept very secret from the other side of the family, namely Mike and Lindsay, who were being cut out of the will and Lindsay having the LPA appointing her as attorney revoked. Her lack of curiosity about Reg's previous wills is suspicious. And her inaccurate *Larke v Nugus* statement does not help her credibility – she admitted in cross examination that it was incorrect in a number of respects.

84. Having said that, the accuracy of her attendance notes was not challenged; nor was the fact, as recorded in the attendance note for the 19 November 2019 meeting when the 2019 Will was executed, that Ms Martin took Reg through a summary of the will and that he asked for an amendment to be made to the summary, indicating that he was following what was being said to him. Mike and Lindsay do not suggest that she acted dishonestly or was party to any sort of conspiracy. They do not need to go that far. It is for Charlie and Greg to prove that Reg had capacity and knew and approved the contents of the Disputed Documents. Ms Martin's real evidence is contained in her attendance notes and other documents, but where those documents require explanation to understand what they indicate, I am unwilling simply to accept Ms Martin's explanation if that is not supported by other reliable evidence.

85. I am afraid that I cannot say, in general terms, that I will just accept Ms Martin's evidence as she is a professional person and was doing her best to assist the court. There are too many unusual features about the will-making process that means it is not so simple as to say that I will accept her evidence in full. As I said above, it needs to be tested against the reliable evidence.

(e) Ms Webster, Ms Daddy and Ms da Silva

86. All of these witnesses I found unsatisfactory in certain respects. They were all involved in Reg's care and all attended the meetings with Ms Martin, although only Ms Webster went in with Reg to the meeting room on four occasions. They all stood to benefit under the 2019 Will and their legacies were doubled to £10,000 each by the Codicil. They were all so plainly on Charlie's side and, as I have said above, their denials that they were spying on Mike and Lindsay to Charlie were absurd given the WhatsApp messages from which it was obvious

that that was precisely what they were doing. Even Charlie admitted that he was using them to spy. And their adoption of Charlie's mantra of Reg "*taking back control*" of his life was actually not a credible explanation for the secretive steps that they participated in so as to place Reg under Charlie's exclusive control.

87. Ms Webster had worked with Reg for some 30 years as his PA. They travelled together and Reg must have trusted and liked her. In the midst of the Bregal deal, Ms Webster was told she would have to leave Bond International and in April 2019 she received a pay-off of £200,000, of which Reg personally paid £170,000. However she returned in July 2019, at Lindsay's suggestion, to work part time for Reg, driving him and assisting the carers. Very quickly she was brought in to be an attorney in the August PoA and then the LPAs, including on Reg's business and financial affairs.

88. Even Ms Stanley KC admitted that Ms Webster was not "*highly educated*" and she did not have any real memory as to the relevant events. Ms Stanley KC turned that around by submitting that one would not have chosen Ms Webster to implement a devious plan to suborn Reg's wishes and make him do something he did not want to do or did not know he was doing.

89. But she did remember to say that Charlie did not know what was going on in relation to the will-making process and she repeatedly said that she went through documents "*line by line*" with Reg to make sure he was happy with them. But she demonstrated in her evidence that she did not understand much of what was going on, which makes one wonder why it was thought appropriate to appoint her as Reg's attorney or even as an executor in the 2019 Will. The obvious answer is because she could be relied on to do whatever Charlie wanted her to do.

90. Ms Daddy was a far more forceful, even quite aggressive, person and I do not think she would take any nonsense. She made it perfectly clear that she had always hated Mike and Rebecca; she also had issues with Lindsay but recognised that she was in charge and respected that. However, after the fallout between Lindsay and Charlie, she came down very firmly on Charlie's side, and even though she said that early on she was not sure who to believe, she very soon decided that she was going to support Charlie and what he was proposing for Reg. She was the main spy for Charlie, as was amply demonstrated by her daily WhatsApps to Charlie watching what was going on at Reg's house.

91. Ms Daddy gave very short answers to the questions put to her: normally "*that is correct*"; or "*that is incorrect*". Reg apparently asked her to marry him on quite a lot of occasions, starting soon after Betty died. She said that initially it was because he was depressed but then it became a bit of a joke. Having said that, Reg knew that Ms Daddy had a partner and she accepted in cross-examination that he asked that because he felt insecure and wanted to know that he would have a shoulder to cry on. It seems to me that this is a bit strange and should have led to a serious concern about his mental state.

92. Ms Daddy gave evidence about the signing of the August PoA which she attempted to explain to Reg, as per the video that Greg took. Her suggestion that

either Reg had read it through himself or that she had adequately explained its terms were not supported by the video and indeed she had given a misleading impression as to what the August PoA contained and its effect. She seemed unconcerned that Reg was signing this document while not properly understanding it. The fact that she was prepared to go along with this secret process does not give me confidence that she was truly acting in Reg's best interests, as opposed to her own and Charlie's.

93. Ms da Silva was highly defensive in her evidence, treating every question as though it was an attack on the quality of the care she was giving Reg. In reality, no one was accusing her of that. Nor was anyone accusing her of not being able to account for money she had used for Reg, although she seemed to think they were. I take the point that English is not her first language (she is of Portuguese origin) and it would have been difficult for her giving evidence in this trial. She was unable to understand many of the questions she was being asked about the various WhatsApp and text messages that were sometimes put to her out of context.

94. I found her evidence in relation to the chaperone requirement to be worrying and unattractive. She claimed that she had instituted the requirement for any person not to be allowed to be alone with Reg without a carer present following his TIA on 29 July 2019. She said she had talked to Charlie about it and he had thought it was a "*best interests*" decision for Reg. However, this was obviously directed at Lindsay and Mike because of Charlie's paranoia that they would try to get Reg to sign something or make a decision that might affect Charlie's interests. Charlie did not deny in his evidence that the chaperone rule had been instituted on his instruction. The precise rule was not thought through or consistently applied but it at least had the intended effect of preventing Mike and Lindsay seeing Reg alone. This shows the extent to which Ms da Silva was firmly on Charlie's side. And she totally bought into the narrative of Reg "*getting his life back*".

(f) Katie

95. Katie qualified as a solicitor in December 2013 while at Sandersons. In October 2018, she joined Mr Rann and Ms Martin, both of whom had been at Sandersons, at DRA. In mid-2020 she left DRA and became in-house counsel at Bond International, dealing predominantly with employment issues.

96. After Charlie had fallen out with Mike in around 2011/12, Katie became very friendly with Lindsay, and remained so until mid-2019.

97. The main legal issue that Katie was directly involved with in relation to the family, concerned Yapham Grange, which is a house close to the Paddock with two fields that backed on to the stud farm and Charlie and Katie's driveway at Yapham Manor. Reg owned Yapham Grange and rented it out but from around 2018 there were steps taken to sell it to Ms Daddy. As it turned out, this was to be in the form of an option agreement for her to purchase it for the sum of £400,000 and a tenancy agreement in the meantime, so that she could live there with her son and partner. Katie's evidence was that she felt uncomfortable

dealing with Reg over this during 2019 but she claimed that this was nothing to do with concerns over Reg's capacity.

98. The main thrust of Katie's evidence was that she did not get involved in Reg's private affairs and that when emails or post came from Mr Rann or Ms Martin to Charlie, via her, that she was merely being used as a convenient conduit or post box. However, this seems to me to be unlikely and is undermined by the fact that certain important documents, such as Mr Rann's "*RCB - Private Affairs*" document setting out the things that needed to be done in relation to Reg, including new LPAs and a new will, was sent to Katie by Mr Rann on 10 September 2019, saying it was for "*you and Charlie*". Katie insisted that this was for Charlie, but it is not credible that she did not know what was happening. In October 2019, she set up a new gmail account for Charlie so that Ms Martin could use it to send private emails to them. Katie admitted that the account was operated by her.

99. Katie's actual involvement may have been minimal but I do not accept the implication of her evidence that she did not really know what was going on and did not look at anything that was sent to her if it was predominantly meant for Charlie. It may not matter much in relation to the issues in this case, but insofar as Katie gives evidence as to the events in 2019 and in particular Reg's capacity, that will need to be corroborated by independent credible evidence.

(g) Dr Khan

100. Dr Khan's letter of 3 October 2019 was relied on by Ms Martin, Professor Howard and the Claimants in support of their position that Reg had capacity when he made the 2019 Will. In his evidence it became clear that Dr Khan did not carry out any proper assessment of Reg's testamentary capacity; indeed he did not know the test for testamentary capacity. That is not a criticism of Dr Khan, because he was not asked to carry out such an assessment. He said that he carried out the 10-point abbreviated mini mental state examination, and he would only have carried out the more detailed 30-point examination if the patient had not scored well on the 10-point examination. The results were not recorded anywhere and only the statement in Dr Khan's letter of 3 October 2019 is evidence that some sort of assessment was made.

101. It appears that Dr Khan developed a close relationship with Reg over the years and they enjoyed chatting. Reg felt at ease with him and, as I have said above, was so fond of him that he named one of Charlie's horses after Dr Khan. I have no reason to doubt the honesty of Dr Khan's evidence but I do not feel able to go so far as to say (as Ms Stanley KC urged me to) that he was an "*entirely independent witness*". He still retains a relationship with Charlie.

(h) Claimants' other witnesses

102. The Claimants' other witnesses did not really add to the evidence relevant to the issues in the case. Their evidence was, I think, adduced in relation to Reg's capacity through their respective interactions with him in 2019 and beyond.

103. The person with the most contact with Reg was Mr Ostler, one of his carers, normally working at night time, but who is now closely connected with Charlie as he works for Bond International. I found his most significant evidence to be that, in the middle of the night, Reg would sometimes ring people or blast the television or cry "*no*" in his sleep. Reg would also be very unaware of what time it was and sometimes would forget that he had had dinner and ask for it at 3am. Mr Ostler would often be with Reg in the evenings when he was at Charlie's house to watch their team, Liverpool, playing in a televised match. He confirmed that Reg and Charlie never talked about business on those occasions.

104. As I have set out above the other witnesses were and still are closely associated with Charlie. Mr Mizon, who had previously been fired by Mike from his job at the garage, is a close friend of Charlie and stayed with him when his relationship broke down. He could only give some evidence as to the social chitchat with Reg and Charlie while watching football. Similarly, Mr Dowsett, the builder, and Mr Warters, the gardener, were only able to give evidence on Reg's ability to choose tiles or give instructions about the garden.

105. Mr Smart and Mr Oldroyd only became involved with Reg's horses again in 2020 and their evidence was to similar effect that, even though they spoke to Charlie about the horses (and were still working for Charlie), that Reg knew what was going on and was making all the decisions. This is fairly worthless evidence as to Reg's testamentary capacity. In the same vein, Mr Darling KC's witness statement refers to a single conversation he had with Reg at the Gimcrack dinner in December 2019. And Mr Kandhari's evidence that Reg was mentally perfect when he saw him in Dubai in November 2019 must be overstated by reference to the medical evidence. In any event, Mr Kandhari had been told by Charlie before the trip not to talk to Reg about business and when he was shown Ms Daddy's text to Charlie that suggested Reg had got confused in his conversation with him, Mr Kandhari accepted that he would not have known if Reg was confused or not.

E. LINDSAY AND MIKE'S WITNESSES

106. Lindsay and Mike were not involved in the will-making process. It was deliberately kept secret from them, as were all the other elements of Charlie's plan. Accordingly their evidence cannot touch on Reg's knowledge and approval. It is only really background information about the relationships within the family and as to Reg's capacity at that time. That did not stop the Claimants from mounting a full-scale attack on Mike and Lindsay and the witnesses they called. While I understand that the family tensions might have required that approach, in my view, it was unhelpful and possibly backfired.

107. The Claimants also criticised Mike and Lindsay for not calling other witnesses, such as Ms Precious, as they had indicated they would at an earlier stage of the proceedings. The Claimants surmised that that was because Ms Precious would not have supported some evidence that Lindsay gave about what she had said in 2017 about Reg's capacity. They also said that Mike and Lindsay could not find

anyone outside of their families, save Mr Rowley and Mr Roseff, who would have supported their case on capacity.

108. I do not draw any such inferences. Ms Precious did not see Reg in 2019 and she has retired as a solicitor. I can understand that her evidence would not have contributed materially to the case. In relation to other witnesses, Mike and Lindsay are entitled to say that the burden of proof is on the Claimants and they had sufficient evidence to raise a real doubt about capacity, requiring the Claimants to prove that Reg did have capacity.

(a) Lindsay

109. It is indicative of the Claimants' approach that they focused on whether Lindsay (and Mike) showed emotion in the witness box when discussing Reg's and/or Betty's decline and ultimate deaths. They try to contrast this with the emotion shown by Greg and Charlie, which only adds to my feeling that this was a part of the Claimants' strategy. It also assumes that it is proof of the fact that Lindsay did not really care about her parents and was only interested in money and lifestyle and has therefore shown herself to be undeserving of anything further from her father's estate. Needless to say, even were I to accept that (which I do not) it is irrelevant to the issues that I need to decide.

110. I found Lindsay to be calm, credible and willing to admit mistakes, both in her evidence and at the time. She was constantly apologising. But when she was being asked about very trivial matters, such as who had initiated a trip to view potential Bentleys for Reg and her to purchase, or whether Charlie was or was not at a meeting some 5 or 6 years ago, she was quite prepared to accept that she could not recall these things clearly. It was unfairly put to her many times that she had in some way failed in her duties as Reg's attorney under the 2014 LPA, the answer to which was that she did not at any time use her powers as an attorney, and in any event Lindsay was not on trial in respect of any of her alleged failings.

111. I will have to consider Lindsay's anecdotal evidence in relation to Reg's capacity because it appears that she was not concerned about his capacity to sign many other documents, from the 2014 LPA, the 2017 Wills and amendments to the articles of association of Wholesale, the gifts of shares to the children in 2017 and 2018 and the Bregal Heads of Terms. She maintained that she ran everything by Reg and he remained in charge. On 29 August 2019, an attendance note of Ms Precious records that Lindsay told her that she was reluctant to lodge the 2014 LPA as although she did Reg's banking she "*discussed everything with him and he still understood [Lindsay] didn't want anybody to think [she was] claiming that [her] dad didn't have capacity*." However, she could not have known what sort of mental state Reg was in when he executed the Disputed Documents, and her evidence was that Reg had "*good days and bad days*", meaning that "*sometimes he would take things in, sometimes he wouldn't*".

112. The meetings between Lindsay, Mike and Reg at the end of July 2019, upon which the Claimants now heavily rely, were hardly dealt with in Lindsay's

witness statement because they did not have any real prominence when the statement was prepared. That is also an indication of the fact that they were not the pivotal events that the Claimants were later suggesting them to be. Lindsay accepted that she did meet with Reg and they had a conversation about money but denied that she had raised her voice or upset him unduly.

113. I do not accept that Lindsay is the sort of scheming and devious person that the Claimants have attempted to portray her as. It is also a bit rich for Charlie to be suggesting that he was worried about what Lindsay might do in relation to Reg when it is clear that he had his own secretive plan in that respect which he carried into effect.

114. Again I do not just accept Lindsay's evidence in general. Instead it will have to be tested against the contemporaneous documentation. But insofar as there is any issue of credibility as between Lindsay and the Claimants' witnesses, I would tend to prefer Lindsay's evidence.

(b) Mike

115. Mike also remained calm and coherent, even when being asked about irrelevant matters, designed to expose his alleged lack of credibility and flawed character. However I came to the opposite conclusion and felt that Mike came across as essentially truthful. The attempt to paint him as someone who was only interested in money and did not care about his father or the business failed.

116. Mike admitted lying to his solicitor, Mr Rowley, as to whether he had spoken to Reg about the terms of the Buy Out in mid-July 2019, which Mr Rowley then referred to in a letter to Mr Rann. Ms Stanley KC submitted that Mike made a calculated decision to admit that he lied to Mr Rowley in order to maintain their case on Reg's lack of capacity in respect of which Lindsay had allegedly made some "*devastating admissions*" leaving their case on capacity "*dead in the water*". She said that this shows that Mike and Lindsay's case on capacity "*is a lie*". I do not accept that there was anything so Machiavellian going on. Mike frankly admitted lying to his solicitor and the Claimants seem to agree that he did so. That means that what he said in the witness box was the truth. So it is a little difficult to see how the Claimants can use that to say that all his evidence should be rejected.

117. I come back to what I have said above, that Mike and Lindsay essentially put the Claimants to proof of Reg's capacity and knowledge and approval of the 2019 Will. They do not challenge earlier documents, including wills, signed by Reg, but the validity of those documents have not been challenged by anyone and they are not in issue in these proceedings. Therefore, the lack of challenge to those documents cannot reasonably be used to demonstrate that Mike and Lindsay's case on capacity must be a "*lie*".

(c) Mike and Lindsay's families

118. Mike and Lindsay have two children each and they all gave evidence. Tom Lanham (born in 1992) and Demi Lanham (born in 1997) are Lindsay's children

(she is divorced from their father). Chantelle (born 1995) and Kieran (born in 1998) are Mike and Rebecca's children.

119. Their evidence was to support Mike and Lindsay's case on capacity but I did not think it added in any material way to the evidence on that. While Tom was not close at all to Reg, his sister Demi clearly was and Reg was fond of her. She maintained her mother's line that Reg had good and bad days.

120. Chantelle was a confident witness; she had been part of Reg's care team, as a sitter, during 2015 when Reg was in a bad way. Both at the time and at the trial, Charlie accused her of contributing to Reg's poor condition, in particular because she allegedly fed him junk food. The incident in 2015 when Charlie confronted Chantelle, and then Kieran, over a McDonald's takeaway that Betty had requested for Reg, led to the bulk of Kieran's evidence. This was wholly disproportionate and irrelevant. All that it demonstrated to me was Charlie's capacity to fall out with people over the slightest incident. I reject the notion that Chantelle was in any respect responsible for any decline in Reg's health.

121. Rebecca's evidence similarly did not advance Mike and Lindsay's case. She was accused of having asked Reg, after Betty had died, about the transfer of shares in the business. One of Mr Rowley's attendance notes in 2017 recorded that Reg had told him and Ms Precious that Mike and Rebecca had asked this. Rebecca denied this, but it seems to me that I am bound to accept that Reg at least did say this to his solicitors, as per the attendance note. Mike said that Reg had probably suffered some amnesia to do with the Deed of Variation. In any event, this does not prove anything in relation to the validity of the Disputed Documents.

(d) Mr Rowley

122. In 2016 and 2017, Mr Rowley advised on the redesignation of, and adoption of new articles of association for Wholesale. He met Reg three times, together with Ms Precious, and he prepared thorough and diligent attendance notes. He did not have any concerns about Reg's capacity at that time and he recorded this in the attendance notes. In 2019, Mr Rowley acted for Mike and Lindsay in relation to the Buy Out.

123. Mr Rowley was a candid and careful witness and I have no hesitation in accepting his evidence as honest and truthful. He was dependent on the written documents, as one would expect of a busy professional who could not possibly remember the details of transactions that took place many years before giving evidence. He considered that his partners at Harrowells were mistaken in thinking that they would not have a conflict of interest if they acted for Reg in the Buy Out. He remained concerned about Reg not having any independent advice in relation to the Buy Out, but he fairly accepted that Mr Rann was also concerned about this.

124. While his evidence is of interest in relation to the course of the Buy Out negotiations, he did not meet Reg in 2019 and cannot therefore comment on his capacity then.

F. EXPERT EVIDENCE

125. At the CMC on 9 November 2022, the parties were given permission to adduce expert evidence from one expert in the field of old age psychiatry in relation to Reg's capacity to make the Disputed Documents.

126. The Claimants' expert is Professor Robert Howard MB BS MD MRCPsych. He is Professor of Old Age Psychiatry at University College London and Honorary Consultant Old Age Psychiatrist with Camden and Islington Mental Health Foundation Trust. He has been involved in research into dementia and psychosis in older people since 1991 and has published widely in the international academic literature in this area. From 2002 until 2015 he was Professor of Old Age Psychiatry at King's College London. There was no dispute as to his expertise as an internationally recognised authority on the assessment and treatment of older people with dementia and delusional disorders.

127. Professor Howard produced a main report, a supplemental report and answers to written questions, as well as the Joint Statement from both experts after they held a joint discussion.

128. Mike and Lindsay's expert is Dr Hugh Series DM, FRCPsych, LLM, MA, MB, BS. Since 1995, he has practised as an Old Age Psychiatrist consultant. He is approved under s.12 of the Mental Health Act 1983 and trained and approved as a Deprivation of Liberty assessor. He is a medical member of the First Tier Tribunal (Mental Health) and a Fellow of the Royal College of Psychiatrists. He is a member of the Faculty of Law at the University of Oxford where he was, from 1991 to 2014, an honorary senior clinical lecturer in the Department of Psychiatry. He has published over 40 specialist papers and book chapters and prepared many hundreds of reports for courts and tribunals.

129. Dr Series produced a main report and an addendum report, as well as signing the Joint Statement.

130. While both experts have eminent reputations in relation to the assessment of capacity in older people with dementia, Reg did not have a recognised form of dementia. The experts were agreed that, as a result of Reg's brain tumour, he was suffering from frontal lobe syndrome which, together with the treatment for it, including surgery, radiotherapy and chemotherapy, had caused cognitive and behavioural changes. Neither expert was able to examine Reg in his lifetime and they were dependent on the contemporaneous medical records and the evidence of the factual witnesses. I am in the same position and ultimately, as the experts recognised, it is for me to assess that evidence and come to a view as to whether it shows that Reg had capacity at the time he executed the Disputed Documents. The expert's differing conclusions – they were in reality not very far apart – was because of the reliance placed by them on different pieces of that evidence.

131. Professor Howard concluded in his reports that the frontal lobe syndrome did not appear to have affected Reg's judgment, memory or awareness to a significant extent and that it was therefore "*very likely*" that he had adequate

testamentary capacity to make the Disputed Documents. Nevertheless he agreed in his oral evidence that Reg's capacity would have been fluctuating and that his executive function was very difficult to measure. He also accepted that chemotherapy was likely to have an impact on capacity.

132. Professor Howard placed quite a lot of reliance on both Dr Khan's 3 October 2019 letter and Ms Martin's apparent lack of concern over Reg's capacity. Whether he was right to do so, which I discuss below, will affect whether he was right to conclude as he did.

133. Dr Series pointed out the lack of assessments of Reg's cognitive function in the medical records making it difficult to evaluate the extent of his cognitive impairment as a result of frontal lobe syndrome. Ultimately Dr Series was unable to come to a clear view as to his testamentary capacity at the time, but thought that his cognitive impairments and the complexity of the 2019 Will and the changes in the structure of and the shareholdings in the Bond companies as a result of the Buy Out, raised a significant doubt as to his testamentary capacity at the material time.

134. I refer below, in the legal section, to the longstanding common law test for testamentary capacity that is still applicable as set out in *Banks v Goodfellow* (1869-70) LR 5 QB 549 ("***Banks***"). At p.565, the Court, through Cockburn CJ, set out the now familiar four limbs of the *Banks* test, and the experts seem to agree that Reg satisfied limbs (a) and (d), namely that it is more likely than not that: (a) Reg was able to understand the nature and effect of the act of making a will in general terms; and (d) Reg was not suffering from any delusion which might have affected the testamentary disposition(s) that he made.

135. As to limbs (b) and (c) of the *Banks* test, Professor Howard also considers them to be satisfied on the balance of probabilities. Limb (b) concerns the ability of the testator to understand the extent of the property being disposed of; and limb (c) concerns the ability to understand the claims to which the testator ought to give effect. Dr Series however feels unable to offer an opinion either way on the basis of the medical and other documentary records and considers that the evidence of cognitive dysfunction, together with the complexity of the estate and the 2019 Will, raises a substantial doubt about Reg's ability to be able to understand the extent of his estate or to weigh up the claims of others.

136. These are not unreasonable positions for the experts to adopt. I will have to see which fits better with the facts as I find them to be. Ms Reed KC accepted that Professor Howard is a renowned expert in the field of old age psychiatry. It is unfortunate that the Claimants do not appear to have accepted the same in relation to Dr Series and seemed to mount an attack in cross-examination on Dr Series' expertise and competence. They then submitted that Dr Series was very defensive in his oral evidence and that this undermined his reliability. I do not accept this at all. If he appeared defensive, and I would say he became a little combative, that was probably because the cross-examination from the start was attacking his credibility and this was his way of responding to this. I can understand why he might have reacted in this way but in my view it did not undermine the substance of his evidence, which I take into account, together

with Professor Howard's evidence, in coming to my conclusions on Reg's capacity.

G. FACTUAL NARRATIVE

137. I have summarised some of the facts above, but now set out my detailed findings of the background and relevant facts to determine the issues before me.

(1) General Background of Business and Family

(a) The business

138. Reg started the business in the 1960s, with his compensation money, which at that time comprised a garage with one petrol pump and a pit. The premises eventually moved to Hallgate and Reg took on a Ford dealership. Reg was joined in the business by Reg Senior. Reg realised quite soon that the real business opportunity lay in tyre wholesale, and Wholesale was therefore incorporated in 1971. As the business grew, Reg bought premises on Pocklington Industrial Estate in the 1980s.

139. All four children worked in the business for most of their lives, starting when they were at school. Mike and Lindsay worked in the garage business, but then switched to the tyre business, Lindsay in 1999 and Mike, when the garage was sold in 2006. Greg and Charlie were always on the tyre side. Reg seemed to trust them all and gave them considerable responsibility from quite a young age.

140. As well as working for the business, Lindsay also managed Reg and Betty's personal affairs and worked alongside Ms Webster as Reg's PA, looking after his personal financial information and running personal and business errands. This included work-related issues, horse paperwork and transactions, and dealing with bank statements and arranging appointments with lawyers including Ms Precious.

141. Reg Senior died on 25 July 2001. He had married his second wife, Sylvia, on his deathbed, and this seemed to be a concern of Reg's children at various points as to whether Reg might do the same. Reg Senior held 10 shares in Wholesale at the time of his death and he left those shares to Sylvia. Following a mediation with the family, Sylvia agreed to leave 2 shares to each of Reg's then existing grandchildren, being Lindsay's children, Tom and Demi, and Mike's children, Kieran and Chantelle, and to Charlie. (Sylvia apparently thought that Charlie was Reg's grandchild.)

142. Therefore the 1,000 issued shares in Wholesale from about 2006 until 2017 were held as follows:

(i) 746 shares by Reg;

(ii) 244 shares by Betty;

(iii) 2 shares by Tom;

(iv) 2 shares by Demi;

(v) 2 shares by Chantelle;

(vi) 2 shares by Kieran; and

(vii) 2 shares by Charlie.

(b) Reg's brain tumour and management of his affairs

143. On 13 July 2010, Betty awoke to Reg having a seizure in bed next to her. He was admitted to York Hospital and diagnosed with a "*suspected low grade glioma*". He underwent surgery at Hull Royal Infirmary to remove as much of the tumour as possible, as well as radiotherapy treatment.

144. Thereafter Reg continued to remain involved with the business but handed over some control to his children. Lindsay said that he continued to come in to the office but did not do much when he was there. She said that board meetings were chaired by Stephen Tidmarsh, the then finance director, and that Reg would need to be prompted to speak about certain matters. She maintained that he had lost his fiery temperament and could not retain information like he used to be able to do.

145. It appears that Reg was still able to travel abroad: for instance, according to the medical records, he went to Singapore in early 2011 and then again in April 2011; and in November 2011 he went to Las Vegas; in November 2012 he went to Dubai; and again in March 2013 he celebrated his 70th birthday in Dubai with Mr Kandhari. Lindsay had forgotten about these trips when she made her witness statement.

146. By 2011, Reg had given Lindsay authority for full access to his medical records so that she could deal with doctors on his behalf. He was referred to a neurologist with suspected "*absent seizures*" in early 2013; and Lindsay had informed the oncology specialist nurse that Reg was "*fatigued and intermittently confused*".

147. As noted above, on 2 December 2011, Reg made a will. Ms Precious prepared the will, which removed the nil rate band trust as a result of the introduction of the transferable nil-rate band and reinstated that the entirety of the estate would be divided equally between the four children if Betty predeceased him (and Betty made the same provision, if Reg predeceased her). If any of the children predeceased Reg, their share would go to the relevant grandchildren.

(c) March 2014-2015: Reg's fall, the 2014 LPA and Betty's death

148. On 8 March 2014, Reg went out into his garden to see his gardener, Mr Warters, tripped over his undone shoelaces, fell and broke his arm. He was admitted to hospital and stayed there over two months, with many setbacks: pneumonia; urinary sepsis; and, after prolonged periods in a hospital bed, a huge struggle with mobility. He "*developed significant clinical deterioration with failing mobility and cognitive impairment*" and when he was eventually discharged on 19 May 2014, required full-time care. He was in a wheelchair, incontinent, had to be hoisted and was reliant on others for meals and to leave the house. He almost completely stepped back from running the tyre business, leaving it to his children.

149. In December 2014, Reg's neurosurgeon was concerned about deterioration in his short term memory and referred him to a neurologist, a Dr Raman, as he suspected early dementia. Dr Raman assessed Reg on 9 February 2015 and in his letter dated 10 March 2015 said as follows:

> "…He presents with a gait apraxia associated with cognitive impairment, particularly involving his frontal executive functions. The gait apraxia and his cognitive impairment can be explained by the abnormalities seen on his recent neuro-imaging with scarring and white matter disease of the right frontal lobe and white matter disease also evident in the left frontal lobes. I am sure this is related to his surgery and post radiotherapy white matter disease. There is also evidence of mild generalised cortical atrophy with mild to moderate atrophy of both hippocampi. This may indicate the possibility of an additional Alzheimer's type neurodegeneration but there is no definite clinical evidence for this.
>
> Mr Bond does not have much insight into his problems, in keeping with a frontal lobe syndrome. His family tell me that they noticed a sudden deterioration after he recovered from a severe pneumonia in March of last year. He was hypoxic for weeks and discharged home after a total of 11 weeks as an inpatient. On returning home there was a significant decline in his gait and cognition but both the gait and cognition have remained relatively stable since. He has not had any definite further seizures since his initial seizure 4 years ago which led to the diagnosis of the right frontal tumour. This was debulked and he had radiotherapy.
>
> …
>
> The main features on examination included a severe gait apraxia with good lower limb power. Left optic disc was clear. Eye movements were normal. The Montreal cognitive assessment demonstrated normal orientation in time and place. He had significantly impaired frontal lobe functions with complete inability to perform a trail making test and severe impairment of letter fluency. The cognitive speed was significantly diminished.
>
> I have explained to the family that Mr Bond's gait and cognitive problems are due to frontal lobe dysfunction which probably was exacerbated by cerebral hypoxia as a result of pneumonia. Unfortunately there are no pharmacological treatments for this. It is likely that both his gait disorder

> and cognitive disorder will gradually progress due to progressive white matter disease from his previous radiotherapy."

150. After the fall, Reg instructed Ms Precious to prepare and register the 2014 LPA appointing Betty and Lindsay as his attorneys in respect of his property and financial affairs. Lindsay had been managing Reg's personal finances at work anyway and Betty took over Reg's care and management of his affairs generally. Mike gave evidence that Charlie was not happy that he had not been made an attorney under the 2014 LPA, but Charlie denied this in cross examination, saying that Reg was on his deathbed at the time, that was his priority and that he loved him "*to bits*".

151. Reg made the 2014 Will on 11 November 2014 and it mirrored a will made by Betty on the same date. This was identical to their 2011 wills in that it split the residuary estate equally among their four children (and if any child predeceased them to their children). The only change was to the executors, Reg appointing Betty with the children as substitute executors. Betty's will gave Lindsay her jewellery. There is an attendance note of Ms Precious of a telephone call with Lindsay and Betty on 22 October 2014 in which Betty expresses disappointment with her children and her fear that, if she were to predecease Reg, they would put him in a home. Lindsay denied that they would have done so. I should further add that it does not appear that Ms Precious thought it necessary to carry out a capacity assessment on Reg before he signed the 2014 Will, or the 2014 LPA.

152. In early 2015, Betty who had been Reg's primary carer (she slept on a sofa in the living room) became very ill with cancer and her health deteriorated rapidly. She was unable to continue caring for Reg. Ms Daddy started caring for Betty at night. The family persuaded Betty to employ a team of professional carers provided by an agency for Reg. They were assisted by Chantelle who sat with Reg as his companion every weekday.

153. On 10 July 2015, Reg was admitted to hospital with pneumonia. This was around the time of the incident described above between Charlie, Chantelle and Kieran and led to the complete falling-out between Charlie and Mike's family. As a result Mike's family did not attend Charlie and Katie's wedding in August 2015. Charlie and Mike's relationship was non-existent from this point on. Lindsay said in her evidence that Charlie became obsessed with the possibility that Mike together with Stephen Tidmarsh might try to get Reg to execute a new will.

154. Betty died on 5 September 2015 at a hospice in York. By her 2014 will, she left her residuary estate to Reg and this included 244 shares in Wholesale. As a result, Reg owned 990 of the 1,000 ordinary shares in Wholesale, the remaining 10 shares split between Charlie and the grandchildren. The four children became the executors of Betty's estate rather than Reg and Lindsay largely dealt with this with Ms Precious.

155. Reg was very poorly in the months following Betty's death. He was in and out of hospital: he spent seven days in hospital in October 2015 with obstructive

sleep apnoea; four days in January 2016 with gastroenteritis; and six days in February 2016 with pneumonia.

156. Around the time of Betty's death, Lindsay had taken over the organisation of Reg's care and she brought in Ms da Silva and other carers from an agency. Although Ms Daddy was still working as BTC's stud manager, she also became involved as part of Reg's care team. It is not in dispute that, after Lindsay and Ms Daddy took over, Reg's mobility improved. He was going to Jack Berry House, a rehabilitation centre for injured jockeys in Malton where he could use their facilities, such as a treadmill in water. He also had a physiotherapist treating him at home. With this regular physiotherapy and proper established care and diet, Reg began to lose a little weight, and get a bit fitter and more mobile.

157. On 10 March 2016, Reg attended a clinic with his family by Mr Rajaraman, his Consultant Neurosurgeon at Hull Royal Infirmary. In his letter dated 23 March 2016, Mr Rajamaran noted Reg's fall in 2014 and the fact that he had been admitted to hospital seven times since and that he had put on weight. He said that "*his long term memory is fine but his short-term memory is variable. Also his short-term memory could depend on his moods.*" Mr Rajaraman referred to a separate discussion with the family about his prognosis for Reg saying "*It is difficult to predict but it may be some months rather than years in terms of his survival I think.*"

(d) 2016-2017: Amendment of Articles; new Wills; Deed of Variation

158. In January 2017, Reg gave some £26,700 to Lindsay in respect of tuition fees for Demi who was intending to study singing at the London College of Music. Reg apparently loved to hear Demi sing and Lindsay said that he insisted on paying for her to go to music college. Lindsay agreed to pay Reg back if Demi did not go and this was recorded in writing. Demi did not, in the end, go and Lindsay paid the money back. The Claimants sought to make something of this arrangement but in my view it went nowhere and it is irrelevant.

159. There were a number of documents executed by Reg during 2017 upon which Harrowells, in the form of Ms Precious and Mr Rowley, advised. These included amendments to Wholesale's articles of association, the 2017 Wills and the Deed of Variation of Betty's 2014 will. They were all inter-related and the Claimants spent some time cross-examining Mr Rowley and Lindsay about them, as Harrowells' files for this period had been disclosed. The Claimants seemed to be trying to draw parallels between these transactions, which are not the subject of challenge, and the preparation and execution of the Disputed Documents over two years later. It is true to say that both Ms Precious and Mr Rowley appeared to be satisfied as to Reg's capacity to execute these documents, some of which were quite complex. But Ms Reed KC submitted that there is no equivalence and in fact the diligence with which Harrowells dealt with the 2017 transactions should be contrasted with the way Ms Martin handled the preparation and execution of the Disputed Documents.

160. The transactions came about because of a consideration as to whether it would be in Reg's best interests to transfer some of his shares in Wholesale to his children and grandchildren during his lifetime. As Reg wished to retain control of Wholesale, it would be necessary to provide Reg with enhanced voting rights that would be exercisable even if Reg did not control the majority of Wholesale's ordinary shares. Reg also wanted to ensure equality between his children after he died.

161. The first meeting to discuss these issues was on 21 November 2016 at Lindsay's house attended by Lindsay, Reg, Ms Precious and Mr Rowley. The meeting is recorded in an attendance note made by Mr Rowley. Also recorded in the attendance note is a discussion between Mr Rowley and Ms Precious prior to the meeting, at which Ms Precious is explaining the family situation and structure of Wholesale. She told Mr Rowley that the four children "*often didn't get along and found it difficult to agree on work situations.*" Ms Precious also explained about Reg's health saying that his capacity "*came and went and that we would need to see on the day whether he had sufficient capacity in order to understand the steps that we were proposing to take*."

162. At the meeting with Lindsay and Reg, Mr Rowley first recorded that: "*It was apparent that [Reg] had full understanding of his environment and full capacity to understand the complexities of the discussions we were having.*" They went on to discuss with Reg "*measures … to control the governance of the company after [Reg] was no longer involved*" and suggested a revision of the articles of association of Wholesale with a view to "*controlling the board of directors and transfer of shares*". It was agreed that Lindsay should deal with the preparation of the documents necessary to take this forward but that Mr Rowley would need to go through them with Reg before execution.

163. The next meeting with Reg was on 20 March 2017, again at Lindsay's house between Reg, Mr Rowley and Ms Precious and this time they met Reg alone without Lindsay in the room. This is recorded in another detailed attendance note made by Mr Rowley. Mr Rowley explained that he and Lindsay had been preparing a set of articles of association for Wholesale "*to prepare for when* [Reg] *handed over control of the Company to the children*", and in particular so that Reg could "*transfer his shares to the children at any point, but would ensure that he always remain in total control.*" The note set out that:

> "[Reg] pointed out, that as far as he was concerned, Charlie and Greg were the bedrock of the Company at the minute with Charlie being in charge of "Sales" and Greg being in Charge of "Purchasing". We all agreed that each of them had their own strengths that they brought to the Company and that each of the children would provide a valuable contribution going forward. We therefore wanted to make sure that they all had parity in relation to shareholding in control going forward."

Mr Rowley's note also recorded that he and Ms Precious: "*were both content that [Reg] had capacity to understand the details of the Articles of Association and the operations of the Company.*"

164. On 23 March 2017, Mr Rajaraman again reviewed Reg in clinic with his family. In his letter following the review, Mr Rajaraman noted that Reg's long term memory was not good at all but his short term memory was improving (this may have been what Lindsay told him). The scans showed that the tumour had increased by about 2mm since July 2016. He had discussed the options, being surgery, chemotherapy or close observation with further scans in 3-4 months time. Mr Rajaraman said that he would discuss this in the MDT (multi-disciplinary team) meeting and let Lindsay know what they were recommending. Reg was prepared to consider surgery.

165. On 27 March 2017, there was a further meeting at Lindsay's house between Reg, Mr Rowley, Ms Precious and, for part of the meeting, Lindsay. This is also recorded in an attendance note made by Mr Rowley. Before Reg arrived, Lindsay had told Mr Rowley and Ms Precious about the consultation with Mr Rajaraman and the likelihood that Reg would need to go back on chemotherapy as he was unlikely to be eligible for surgery. After Reg arrived, Mr Rowley and Ms Precious spoke to him alone and he explained that his tumour had grown. Reg said that he had remembered the new articles of association that had been discussed the previous week and that he did not want go through them again. Mr Rowley briefly explained that they were to protect Reg and his children after shares had been transferred by Reg. Reg mentioned that he had some concerns about Mike and Rebecca, who he said had come to him to ask about transferring shares after Betty died. Reg said that he had an "*uneasiness*" about the situation but Mr Rowley reassured him that there were protections in place in the new articles in the event that any of his children fell out with their spouse. Reg was categoric that he did not intend to transfer any shares at that time and he was not ready to do so, although it was pointed out to him that a deed of variation could redirect the shares left to him from Betty's estate without incurring any tax liability. Reg said that he was content to adopt the new articles of association.

166. Therefore, at the meeting on 27 March 2017, Reg executed a written special resolution adopting the new articles of association for Wholesale that gave Reg a super vote (ie 76%), irrespective of the number of shares he held and giving rights of pre-emption on any proposed transfer of shares. Reg also redesignated Wholesale's share capital into 250 Ordinary A shares, 250 Ordinary B shares, 250 Ordinary C shares, and 250 Ordinary D shares. The shares held by Tom and Demi Lanham were redesignated as Ordinary A shares; the shares held by Chantelle and Kieran Bond redesignated as Ordinary C shares; and Charlie's 2 shares redesignated as Ordinary D shares. This was to facilitate each of the four children's families receiving an equal amount of shares on Reg's death.

167. Accordingly it was necessary for Reg to make a new will reflecting these changes to the shareholdings. On 29 March 2017, Ms Precious met with Reg at his home at which Reg executed the March 2017 Will. The March 2017 Will gave specific legacies to each of his children, that is: the Ordinary A shares to Lindsay; the Ordinary B shares to Greg; the Ordinary C shares to Mike; and the Ordinary D shares to Charlie. The residue was given to the four children in equal shares (and if any predeceased Reg, to their children). Ms Precious prepared a short attendance note that recorded that Lindsay was with Ms da Silva at Reg's

house when the will was executed. Lindsay said she put a copy of the March 2017 Will in Reg's filing cabinet. She also said that she did not think that Ms Precious asked for a capacity assessment on Reg; nor did she have any concerns about his capacity to make the March 2017 Will.

168. In April 2017, Reg started chemotherapy as a result of the growth in size of his tumour. On 5 April 2017, Reg attended the clinic with Dr Rehman and Dr Hingorani, together with Lindsay and Charlie and two carers. Charlie asked for the suggestion in Mr Rajaraman's letter of 23 March 2017 that Reg's long term memory was getting worse to be corrected as it was not right. Lindsay does not appear to have objected to this correction being made. Reg signed the consent form to begin chemotherapy in tablet form which would aim to slow down the disease progression. In May 2017, it was recorded that Reg was tolerating the first cycle of chemotherapy well.

169. In August 2017, Ms Precious reminded Reg and Lindsay that it was getting close to the two-year deadline since Betty's death for varying her will in a tax efficient way. Reg indicated that he still wished to retain control of Wholesale and Ms Precious reassured him that, even if he were to gift Betty's shares to his children, he would still have control of Wholesale because of the amendments that were made to the articles of association. Reg therefore agreed that he should effect a variation to Betty's will by gifting most of the shares to his children so that each of their families ended up with an equal number of shares.

170. At the same time, Reg also asked Ms Precious to change his March 2017 Will so as to leave his horses to Charlie. Ms Precious wrote to Reg on 15 August 2017 to confirm his instructions in relation to the Deed of Variation and a new will. In relation to the horses, Ms Precious stated that Reg wished to gift them to Charlie because "*Charlie has worked very hard regarding the horses*". She then pointed out the following: "*This is the first time that you have not left your estate equally between the 4 children. You are however clear that it is only fair that Charlie receives the horses.*" Lindsay said in her evidence that Charlie had been asking both her and Reg whether Reg was leaving the horses to him and that this was why Reg gave the instructions to Ms Precious to do so. Whether it came about in that way does not matter, because Ms Precious has clearly recorded Reg's instructions to her to leave the horses to Charlie. Charlie knew that this was in the August 2017 Will.

171. On 22 August 2017, Reg met with Ms Precious and another solicitor from Harrowells at his home pursuant to arrangements made by Lindsay by telephone. The meeting is recorded in an attendance note made by Ms Precious. Reg executed two documents:

> (i) The August 2017 Will, which was in the same terms as the March 2017 Will, other than that Reg left his horses to Charlie specifically.
>
> (ii) The Deed of Variation in relation to Betty's estate by which Reg gifted 234 of the 244 shares he had inherited from Betty to his four children in slightly differing amounts, so as to equalise the number held

by each 'branch', following the small amount of shares received after the death of Reg Senior. The gifts comprised: 57 shares to Lindsay; 61 shares to Greg; 57 shares to Mike; and 59 shares to Charlie.

172. As a result, the 1,000 issued shares in Wholesale were then held as follows:

Reg	756 shares, being 189 each of the Ordinary A, B, C and D shares	75.6%
Lindsay Tom Demi	57 Ordinary A shares 2 Ordinary A shares 2 Ordinary A shares	6.1%
Greg	61 Ordinary B shares	6.1%
Mike Kieran Chantelle	57 Ordinary C shares 2 Ordinary C shares 2 Ordinary C shares	6.1%
Charlie	61 Ordinary D shares	6.1%

Charlie and Greg estimate that the total value of shares gifted on this occasion to have been approximately £12.87 million.

173. On 21 September 2017, Reg was admitted to Castle Hill Hospital with urinary sepsis. He was discharged after seven days.

(e) 2018: potential sale of Wholesale; and the further Gift of Shares

174. The Claimants think it was early 2018, whereas Mike and Lindsay think it was late 2017, when the four children started talking about a sale of the business. This was in part prompted by the fact that their biggest customers were being bought by their competitors. But also Charlie said in his oral evidence that he felt they had got to the point where they could not work together anymore and that he and Greg were doing 70 hours a week and working themselves into the ground. It is clear that all four were keen to sell, as their relationships were strained, including with the non-family directors. Greg had also expressed a wish to retire at 55.

175. They went to see Reg to discuss a sale of the business and Reg agreed to them looking into it. They instructed RSM, the company's accountants, to assist in the preparation for and marketing of the business for sale.

176. In or around May 2018, Mr Rann became involved with the business in relation to the proposed sale. He was invited to do so by Katie, who knew of him from Sandersons, and, at the time, she was intending to leave Sandersons, knowing that she had effectively been promised a job at DRA should she want it. Having said that, Mike had no problem with Mr Rann becoming involved as he had been vouched for by his friend in the insurance industry, Mr Rob Worrell. Katie and Charlie had both suggested that they had "*a low opinion of Harrowells' competency*" as a justification for taking on a new lawyer, but Katie was unable

to explain in her oral evidence how she could have formed that opinion without knowing anyone in Harrowells' corporate team.

177. Shortly after this first involvement, Mr Rann was asked to advise in relation to a gift of shares by Reg. On 29 May 2018, Charlie texted Mr Rann: "*Hi Duncan, it's Charlie Bond, Kate gave me your number I hope that is ok. Dad has confirmed that he is willing to transfer 20% of the shares to each family. Is it possible to arrange a further meeting or telephone call to discuss the next steps? Thanks.*" Mr Rann texted back to ask for a private email address and they agreed to correspond using Katie's gmail, so that there was no danger of Bond International employees with access to Charlie's work email account seeing sensitive emails.

178. It is unclear who Mr Rann was advising in relation to the gift of shares. His first substantive email on this was on 31 May 2018 and it was addressed to "*Katie/Charlie*" and it set out certain tax advice applicable to the four children who would be receiving the shares from Reg. He seems to have been happy taking instructions from Katie and Charlie without ever seeing Reg or confirming that the instructions were actually coming from Reg. This should have been of considerable concern to Mr Rann in that an elderly and vulnerable man was apparently giving away a huge amount of his wealth, worth tens of millions of pounds. Mr Rann actually denied that he was responsible for advising Reg in relation to the gifts of shares; and he even went so far as to say that this was "*not a legal matter*".

179. On 14 June 2018, Reg executed the share transfers gifting a further 556 shares in Wholesale to his children (the "**2018 Gift of Shares"**); that was 139 shares to each, leaving the four children and Reg with 20% each of the shares in Wholesale. Reg also signed written board resolutions approving the transfers of the shares. The documents were all prepared by Mr Rann. As a result the 1,000 issued shares in Wholesale were then held as follows:

Reg	200 shares, being 50 each of the Ordinary A, B, C and D shares	20%
Lindsay Tom Demi	196 Ordinary A shares 2 Ordinary A shares 2 Ordinary A shares	20%
Greg	200 Ordinary B shares	20%
Mike Kieran Chantelle	196 Ordinary C shares 2 Ordinary C shares 2 Ordinary C shares	20%
Charlie	200 Ordinary D shares	20%

180. The shares transferred on this occasion were valued for Inheritance Tax purposes at a total of £30.58 million, although Lindsay and Mike have not admitted this figure. The gift amounted to the bulk of Reg's then estate, although he did still retain his super-voting rights under the articles of association, despite his shareholding being reduced to 20%.

181. Oddly Mr Rann did not date or sign the share transfer forms at the time. It appears that after Katie joined DRA and probably around the time of the Buy Out and Mr Rowley's request to see them on 25 June 2019, Katie signed and dated them. By her signature on the transfer form she was confirming that she had been authorised by the transferor, Reg, to sign the certificate and that she was "*aware of all the facts of the transaction*". Katie in her oral evidence did not think there was a problem with this. It leaves unexplained why they were not dated and signed at the time by Mr Rann. It also appears to be the case that the transfers were not properly registered at Companies House until after Reg's death.

182. After the 2018 Gift of Shares, concentration shifted to the potential sale of Wholesale. Mr Rann emailed Mr Capes at RSM, saying that he had been asked by "*the Company's shareholders to assist them with the potential sale of the Company, in particular in relation to tax and the structure of the deal*". He was asking to see their engagement letter. Mr Rann's own engagement letter, which was produced during the trial, is unsigned and was addressed to Robert at Wholesale.

(f) Early 2019: the Bregal deal

183. In early 2019, Reg was wanting to do more. He particularly wanted to travel and Lindsay recalled him repeatedly asking his doctors if he could travel to Dubai or Singapore. He also asked if he could get his driving licence back, but this was never going to happen. When travel was raised with Dr Khan on 27 February 2019, Reg was told that Dr Khan would advise nearer the time of the risks involved in travelling but that this would include the main risk of clots and may require extra medications.

184. In the first few months of 2019, Charlie, Greg and Mr Rann were heavily involved in pitching the business to private equity investors. They were regularly in London for meetings. Their pitch was on the basis that all the family would sell their shares in Wholesale but that Charlie and Greg would remain working in the business for a period after the sale.

185. After much negotiation, the family decided to sell to Bregal. On 2 April 2019, Heads of Terms with Bregal were signed by Lindsay, Mike, Greg, Charlie and Reg, who also signed on behalf of Wholesale. No concerns appear to have been raised about Reg's capacity to understand and sign the Bregal Heads of Terms.

186. The structure of the deal involved Charlie and Greg remaining invested in the business and as part of the management, while Lindsay and Mike would largely exit the business and would not be part of the management going forward. The Heads of Terms provided as follows:

(i) There would be an SPV holding company created to purchase the entire issued share capital of Wholesale.

(ii) The total consideration would be up to £125 million, comprising £95 million on completion (adjusted for the net cash and debt position and normalised working capital) and a further £30 million subject to satisfaction of earn-out conditions.

(iii) Assuming an adjusted initial consideration of £73.4 million, each of Reg, Lindsay and Mike would roll 25% or £3.7 million of their equity into the new company and receive cash out of £11 million. Each of Charlie and Greg would roll 75% or £11 million of their equity into the new company and receive cash out of £3.7 million.

(iv) There would be an allocation of sweet equity of 12.5% of ordinary share capital to incentivise new and existing management (including Charlie and Greg).

(v) Upon completion, the equity ownership of the new holding company would be: 4.2% for each of Reg, Lindsay and Mike; 12.6% for each of Charlie and Greg; 49.7% for Bregal; and 12.5% for sweet equity.

(vi) Financial due diligence would commence on 1 April 2019 (the day before the Bregal Heads of Terms were signed), with commercial and legal due diligence commencing on 26 April 2019. Tax clearance would be applied for by 14 May 2019, the SPA and other documents would be circulated by 25 May 2019, and the deal would complete by 18 June 2019.

187. Bregal wanted some non-family members on the board of Wholesale before completion of the deal. On 10 April 2019, Mr Rann was appointed as Operations Director, replacing Mike, despite admitting that he had no experience in such a role. Charlie maintained that he could bring his experience of health and safety law to the job but it does seem fairly extraordinary that this was thought appropriate. There was however no objection from any member of the family. Mr Rann thereafter worked three days a week from Bond International and he used Reg's office, something which always upset Reg. Mr Rann did not consider that there was any conflict between his new appointment as a director and as the solicitor advising Wholesale and its shareholders in relation to the sale to Bregal. He continued to act as the legal adviser to Wholesale and the shareholders, later adding to his email signature that he was also "Head of Legal".

188. Five other directors were appointed to the Wholesale board at that time: Simon Ewbank, as commercial director; Kevin Pickering, replacing Charlie as sales director; Tom, Lindsay's son, as IT director; Robert Eeles, Charlie's best man; and Ian Serginson (known as "Serge"), Wholesale's secretary and financial controller. Therefore the board then comprised: Reg, the four children, Tom, and five non-family directors.

189. It is also material to note that a deliberate decision was taken to increase Wholesale's EBITDA (earnings before interest, taxes, depreciation and

amortisation) to maximise the earnout. Therefore Charlie, Greg and Mr Rann decided to stop paying Reg's monthly salary, of just under £24,000, on the basis that this would improve the EBITDA and that when the deal had been paid, Reg would then benefit. This meant that the last salary payment to Reg was on 23 January 2019.

190. As noted above, Ms Webster's job as Reg's PA was no longer needed and she was made redundant on 10 April 2019, receiving the substantial sum of £200,000, including £170,000 paid by Reg personally. Lindsay wrote Ms Webster a glowing reference.

191. In April 2019, in anticipation of the Bregal deal completing and being paid a substantial sum, Reg spent £220,000 on a new Bentley Mulsanne, which would have to be driven for him by a chauffeur. Lindsay and Charlie took him to the showroom and helped him choose the car. Lindsay herself also purchased a Bentley GT and they managed to do a deal with the Bentley salesman as a result. However, a lot of money was spent on cars in April 2019. On 4 April 2019 Reg had a cataract operation.

(2) Summer 2019: The Buy Out

(a) Withdrawal from Bregal; and investigation of Buy Out

192. The Buy Out negotiations form a critical backdrop to the making of the 2019 Will. At the start of the negotiations, Charlie and Lindsay were still on good terms and there does not appear to have been any concerns expressed either by Charlie or Reg as to Lindsay's management of Reg's affairs, including his finances and care. This all changed sometime in June/July 2019, at the height of the Buy Out negotiations, and when they were getting a little fraught. There is no dispute that this led to Charlie and Mr Rann developing their secret plan, even if the alleged purpose of Reg "*taking back control*" is challenged by Lindsay and Mike on the evidence.

193. In May 2019, Charlie and Greg had become concerned about the burden of the due diligence that they were required to do in relation to the Bregal deal. They were also exercised by the fact that they would be required to continue working for the business, including travelling to London a lot of the time, yet not being in control and the possibility that, in the end, they might not be paid the earn-out under the Heads of Terms.

194. On 9 May 2019, Charlie messaged Lindsay to say that, having discussed the Bregal deal with Mr Rann, they had agreed to put it on hold for a month. Mr Rann informed RSM of their decision. Lindsay responded "*Yes ok*", but this had come out of the blue without any prior consultation with her. Nothing happened until 21 May 2019 when Mr Rann emailed RSM to inform them of the family's decision in relation to the Bregal deal. He said: "*The family would like to put the deal on hold or if that is not possible to withdraw from the deal*."

195. By this date, Charlie and Mr Rann had been speaking to Mr Scott Christian at HSBC, Wholesale's bankers, about the possibility of HSBC providing funding to enable a buy out through a newly incorporated holding company purchasing the shares in Wholesale. On 21 May 2019 Mr Rann emailed Mr Christian, copied to Charlie, with the proposed shareholdings in the new holding company as follows:

> "Reg Bond – 20/120
>
> Greg Bond – 36/120
>
> Charlie Bond – 36/120
>
> Sweet Equity – 20/120
>
> Mike Bond – 4/120
>
> Lindsay Bond – 4/120"

196. There was no explanation as to these shareholdings and in particular why Reg was going to receive a lower percentage of shares than Charlie and Greg. Clearly the implication of this was that Lindsay and Mike were being bought out and this was to be effected by way of a bank loan rather than a sale of the business to a third party.

197. On 12 June 2019, Mr Rann emailed Lindsay setting out some proposals in respect of the potential Buy Out. It is odd that this was just sent to Lindsay and Mr Rann was uncertain as to who he was acting for at this stage. When pressed, Mr Rann said that he was essentially putting forward a proposal on behalf of Charlie, Greg and Reg, but at that point he was still acting for Mike and Lindsay and he does not appear to have consulted or taken instructions from Reg.

198. The proposal set out by Mr Rann was for Lindsay to receive £5 million on completion, with a further £6 million within 3 to 5 years. The £11 million total was similar to the upfront payment on the Bregal deal. Lindsay would retain a 3.3% stake in the business, worth approx. £3.669 million. The deal would be structured using a new holding company as the purchaser of the shares in Wholesale.

199. Lindsay was generally positive about the proposal but, understandably, she wanted to take independent advice. She assumed that Reg would be selling his shares in Wholesale, like her and Mike (who was then being negotiated with separately). It is impossible to know what Reg knew about the proposals. Charlie maintained that he kept Reg informed but there is little doubt that he would not have known any of the detail, only possibly whether he was being bought out or not.

(b) Instruction of Mr Rowley

200. Later in June 2019, Lindsay instructed Mr Rowley of Harrowells to act for her in relation to the Buy Out. She had already accepted the deal in principle but

she wanted it to be scrutinised by Mr Rowley and for tax advice possibly to be taken.

201. On 25 June 2019, Mr Rowley sent an innocuous email to Mr Rann with some reasonable questions about the current proposal. However Charlie was incensed by the email and it appears to have precipitated the fallout between him and Lindsay. Mr Rowley's email began as follows:

> "Lindsay Bond has instructed me in relation to the proposal to purchase her shares in the above and in her capacity as Reg Bond's attorney to understand the implications and proposals for Reg."

One of Mr Rowley's questions concerned establishing who Mr Rann was acting for. He asked:

> "1. Who is/are your client(s)? Are you acting for Charlie and Greg in the intention to purchase Lindsay's shares or are you instructed on the basis of acting for the Company itself please? I presume that the shares are being bought back by the company?"

202. Two days later, Katie sent three texts to Charlie to tell him that: "*I don't think Matt can act for reg…*"; "*Duncan is acting for him and she doesn't have power of attorney*"; and "*All his questions relate to Lindsay anyway*". Charlie then sent the following message to Mr Rowley:

> "Just to make you aware if you think I would rip my dad off in anyway you don't know me that well. I work my hardest day in day out for that man. Thanks for all your help in the past and good luck for the future. Please pass on any outstanding work notes you have for bond to Serg."

203. Charlie's response is both baffling and indicative. Mr Rowley's email did not anywhere suggest or insinuate that Charlie was not acting in Reg's best interests; it does ask some questions in relation to Reg's position, including for instance why he was no longer registered as a PSC at Companies House. Mr Rowley's reply to Charlie's message clarified what was obvious anyway: "*Hi Charlie, no implication of anything untoward at all. Just need to understand what's already happened so that I can advise on the deal. Hopefully should have it all done quickly for you all. Matt*".

204. Charlie accepted that he was angry about Mr Rowley's email but he had difficulty articulating why that was so. He said that it was "*Because I read it that Matt basically was – in a format that Matt was basically accusing me of not acting in my dad's best interest.*" Mr Rann said that Charlie had taken it to imply that "*he wasn't looking after Reg's affairs properly, that he didn't care about Reg"*; and Ms Daddy's evidence was that this email was the source of accusations against Charlie of "*bullying his father"* which had "*upset Charlie*".

205. In my view, Charlie's complete over-reaction to Mr Rowley's email was because it touched a raw nerve and Charlie could see that it may appear to an outsider that Reg's best interests were not in fact being looked after and protected. Charlie was also probably concerned about Harrowells being

involved, given their previous close connections with the business and Reg, and knowing a lot about the past history, including the 2014 LPA and Reg's previous wills. As Charlie admitted in his evidence, he wanted Mr Rann to act for Reg, as well as himself and Greg.

206. It appears that Charlie's misinterpretation of and reaction to Mr Rowley's email was the trigger for Charlie to stop speaking with Lindsay altogether. Charlie sought to suggest that it was to do with later events, namely the meetings that Lindsay had with Reg at the end of July. But the relationship was broken from this point on and the last ever text that Charlie sent to Lindsay was on that day, 27 June 2019.

(c) 12 July 2019: the revised offer; incorporation of Holdings

207. On 12 July 2019, Mr Rann, acting on behalf of Charlie and Greg, sent separate letters to Mike and Lindsay (via Mr Rowley) revising the Buy Out terms. He said that they were still prepared to pay £11 million to each of Mike and Lindsay for their shares but that they could not afford the bank loan that would be required to make the originally offered upfront payments, which were: £5 million to each of Mike and Lindsay; £2 million to Reg; and £1 million to each of Charlie and Greg. Instead they proposed paying Mike and Lindsay: £3 million upfront; £6 million each over the next three to five years depending on company performance; and the final tranche of £2 million on any sale of the company. They also revised down the other upfront payments: Reg would receive £1 million; and Charlie and Greg, £500,000 each.

208. It was envisaged from the very beginning that Mike and Lindsay were going to retain shares in Wholesale. Mr Rann sent Mr Rowley a further email on the same day in which he explained why the holding company needed to purchase the shares and that in order to avoid a large tax bill on payment for all the shares they needed to be purchased in tranches. Ultimately, under the SPOA, Mike and Lindsay were to, and would, remain voting shareholders in Wholesale until it was sold.

209. The 12 July 2019 letter indicated that Reg was to keep the majority of his shares and that his shareholding would increase over time. It also made clear that Reg's shares would be inherited by the four children equally:

> "In terms of the shares, before issuing any equity to the management team, and depending on how much we pay him out at this point in time, Dad's shares will increase to about 30% of the company from 20% and <u>therefore you will at some point in the future still have a substantial interest in the company (25% of his shares)</u>. Hopefully those shares will increase in value over a period of time." (emphasis added)

This is similarly indicated by a later email from Mr Rann to Mr Rowley that afternoon which referred to inheritance tax and in particular to Reg's shares benefitting from business property relief "*when his time comes"*. However, Reg's shareholding did not, ultimately, increase.

210. On 17 July 2019, Mr Rann incorporated Holdings, allotting himself 62 shares, Charlie 1,000 shares and Greg 1,000 shares. Mr Rann said that he had agreed with Greg and Charlie that he would receive a 3% interest in the business as part of the inducement for him to join the business. He was the first non-family shareholder in the business. Mr Rann said that Charlie had told him that Reg had approved him receiving shares, but this does seems unlikely given Reg's concern that the business remained in the family's control and that Charlie did not appear to understand what was happening in relation to the shareholdings. It is inexplicable that Mr Rann should receive shares ahead of Reg.

211. The evolution of the shareholdings in Holdings is confused. Information about the number and holders of shares in Holdings was not filed at Companies House until after Reg's death. In relation to Reg's shareholdings, Mr Rann's letters to HMRC regarding tax clearance, the first of which was dated 15 August 2019, stated that, before the share exchange took place, Holdings was to have a share capital of £2,474 (rather than £2,062), and Reg was to be allotted 412 C shares. After the share exchange, Reg was to end up with 1,412 Ordinary C shares in Holdings, which would amount to a shareholding of 25.7%. However, Mr Rann, despite having written this letter to HMRC, was unable to assist the court as to why the tax clearance application had provided for Reg to receive 1,412 shares but he had ended up with only 1,000. This cannot be explained by the refusal of tax clearance on 31 October 2019 as Charlie and Greg's intended shareholding did not change.

212. In any event, it is common ground that Reg's shareholding in the business did not ultimately increase. Indeed, it was diluted from 20% to 19.7%. Greg and Charlie said that Reg had instructed them in a conversation that he wanted to continue holding 20% and did not want his shareholding to increase; Charlie was insistent that Reg had "*fully told"* this to him personally and he swore on his father's "*afterlife"* that his father gave him these instructions. In my view it is improbable that such a conversation ever happened, given that it is difficult to see where it fits in with the chronology of Reg's constantly evolving shareholding in Holdings, which Charlie did not understand and even Mr Rann was unable to explain. There is, as Greg admitted, "*nothing in writing, no instructions"* to confirm that; and Charlie was asked at least four times when this important conversation took place but he could not identify any particular conversation at which Reg purportedly gave these instructions. Instead, he simply repeated on at least three occasions that: Reg wanted to retain 20%; he did not want his shareholding "*diluted*"; he did not want the sweet equity to come out of his 20%; he wanted £1 million per year; he had already given away 80%; and that Charlie and Greg were putting all the hard work in.

213. The revised offer of 12 July 2019 was not immediately accepted by Lindsay. Mike did not then have lawyers acting for him and he may have accepted the revised offer in principle. However, Mr Rann asked Mr Rowley if he would act for Mike as well as Lindsay. At the same time Mr Rann was separately corresponding with Mike and Lindsay and pressing them for an answer on the revised offer. He told them that they would be prepared to do a deal with Mike, even before he had the opportunity to take legal advice, which seems a little unfair.

214. Mike did instruct Mr Rowley and he wrote on 18 July 2019 to Mr Rann, copying Ms Mortonson and Ms Precious of Harrowells, because he was on holiday from 19 July 2019 for two weeks and they would need to deal with this in his absence. This was the email which contains Mike's lie about Reg agreeing with the position that Mike and Lindsay were taking. It basically said that the reduction from £5 million to £3 million in the upfront payments was insufficient and suggested that the extra £2 million each could come over the next quarter from a reduction in stock levels and a pause in the business' development projects.

215. Over the next two weeks, while Mr Rowley was away, after Mr Rann had made clear that the 12 July 2019 revised offer was "*not the opening move of a negotiation*", Mr Rann continued to press Harrowells, Mike and Lindsay for an answer. Mr Rowley had said that they needed time to discuss this with their families and to look at their financial position. But Charlie and Greg were very keen to get things tied up and for Mike and Lindsay to exit the business.

(d) The "no money" conversation

216. Charlie and Greg prefer to base their "*take back control*" plan to the meeting between Lindsay and Reg at which she is alleged to have said to Reg that he had no money to pay for his horses and carers, and that this had made Reg extremely upset. To my mind this construction of events, to which all the Claimants' witnesses contributed, has the confected feel of creating a narrative after the event to justify actions that were taken supposedly in response to it. It was not referred to in the Claimants' pleadings and it only became their focal point in the witness statements that were served. It was not therefore dealt with in Lindsay's witness statement, understandably.

217. There was some conflation in Charlie's and other of the Claimants' witnesses' evidence between the alleged "*no money*" conversation between Lindsay and Reg and a later conversation when Mike was also there on 29 July 2019 when there were said to have been "*raised voices and slamming of doors*". It appears that there is no dispute that, during the week of 22 July 2019, there was a conversation between Lindsay and Reg about his financial situation. Lindsay thought it likely took place on 23 July 2019 which was the day of the month that Reg usually received his salary and she is shown as having visited Reg in the care diary. Only Lindsay can give evidence about what actually happened. But the Claimants invite me to look at other surrounding evidence, such as what Reg allegedly told Charlie or Ms Daddy about the meeting and/or by reference to contemporaneous documents.

218. Lindsay said in cross-examination as follows:

> "I was concerned that dad was getting no funds into his bank account, his salary to pay for things. What I actually said to dad was, "Dad, you've got no money coming in from your wages into your bank account, and because you've paid out for your Bentley, you've paid out Denise", and this deal – I didn't know where we were with this deal at that moment in time. I was concerned as to whether or not any money

> was going to be coming in, any time soon. And so that's the discussion I had with dad…
>
> I told dad what was in his bank account at the time and I said to him that wouldn't last him, like, ages because obviously I think he had a lot to pay out every month with his carers. His horses, on average, would be £15,000/£20,000 a month, and his carers. So I was concerned that if we didn't get it resolved, because I didn't know what was happening with dad and the deal, because he was coming out with the private equity deal, I thought he was coming out with us on the buy out deal, and then I didn't have a clue what was going on. So I was trying to find out. But like I would always, I would report it to my dad and keep him in the loop and see what he wanted to do."

219. To put this in context, Lindsay was, at that time, in charge of Reg's finances and had access to his bank statements so as to monitor the position. In December 2018, Reg had £820,000 in his savings account. However, as noted above, from January 2019, Reg had stopped receiving his monthly salary of approx. £24,000 so as to improve the EBITDA for the purposes of the Bregal deal. In April 2019, he had spent almost £400,000 on the Bentley and paying Ms Webster for her redundancy. By July 2019, the savings account had a balance of £170,000. Furthermore the family had withdrawn from the Bregal deal and the Buy Out was under negotiation. There was therefore uncertainty as to how much money Reg would have going forward. This was what Lindsay tried to express in her oral evidence and I have no reason to doubt her recollection.

220. As to Reg's reaction to this, Lindsay did not recall him being upset. All he said was that he would like to see Charlie to discuss the situation.

221. The Claimants' case is that Reg was in floods of tears as a result of the conversation and that this was the turning point of Charlie's relationship with Lindsay and it was when he "*disowned*" her. Ms da Silva was said to have been there when Lindsay visited (in fact she said in her witness statement that both Lindsay and Mike had been there, which is an example of the conflation of the meetings). Her evidence was that she called Ms Daddy who came round to Reg's house and they called Charlie, who left work and came to see Reg. Ms da Silva had told Reg not to worry and she showed him some of the cash that was in the safe.

222. It was suggested on behalf of the Claimants that Lindsay telling Reg that he had no money was connected to the Buy Out negotiations and Mike and Lindsay at that time refusing to accept the lower upfront payment offered in the revised proposal of 12 July 2019. Charlie said that the conversation was one of the reasons why he and Greg withdrew their offer later that week. It seems to me that that is very unlikely as there is no mention of it in any of Mr Rowley or Mr Rann's emails around that time.

223. Charlie repeated his account several times in his oral evidence, saying that Reg was "*beside himself*", in "*floods of tears*" and that he had never seen him like this before – "*you don't forget it, seeing your father like that*". However, there

is no record of Reg being in such a distraught state in the care diary (there was on other occasions), and Charlie is not referred to in the care diary as having come round to the house after Lindsay had visited and when Ms da Silva was working. Ms Webster and Mr Ostler both said that they heard from Reg what he said Lindsay had told him.

224. The Claimants also apparently rely on Katie's and Mr Rann's evidence that Charlie had told them about this incident. And they suggest that there are some contemporaneous texts between Charlie and Ms Daddy (actually they are from later in the week) that could be interpreted as referring to the "*no money*" conversation. In my view this is weak evidence in support of the Claimants' version of events.

225. Charlie said that he tried to reassure Reg by telling him that the business was making a lot of money and that he could take what he wanted out of it. He also later in the week brought along the monthly accounts and some of Reg's bank statements showing that he did have money. According to Charlie, this led Reg to want to instruct Mr Rann, rather than Ms Precious, so as to "*take back control*" of his life. It seems highly unlikely that Reg would have said this, as he hardly knew Mr Rann and did not like him because he had been using his office at work. Furthermore Charlie's evidence about the bank statements being shown to Reg by him then cannot be squared with the fact that Charlie did not in fact obtain access to Reg's bank statements until around 14 August 2019 following arrangements made by Mr Rann with HSBC after Reg had signed the August PoA and an authority to redirect the statements to Charlie's house.

226. In short, I do not accept the Claimants' evidence that Reg was in such a state about his finances following Lindsay's conversation with him that this was the catalyst for the events that followed, namely the "*plan*" to "*take back control*". I think that this has been grossly exaggerated by Charlie and his other witnesses so as to attempt to provide some form of justification for him to take over complete control of Reg's affairs and for Lindsay to be ousted.

227. Furthermore, as Ms Reed KC submitted, if Reg was really so upset by what Lindsay had told him about his financial situation, that adds weight to Mike and Lindsay's case on capacity as it demonstrates what a vulnerable and fragile person Reg was at that time.

(e) 25 July 2019: Withdrawal of 12 July 2019 deal

228. Ms Mortonson of Harrowells was looking after this matter while Mr Rowley was away and there were some emails between her and Mr Rann on 24 July 2019 in which Mr Rann was chasing for a response to the 12 July 2019 revised proposal. Ms Mortonson was asking for some more time as it was a complex situation and she was having difficulty getting instructions from Mike and Lindsay.

229. On 25 July 2019, Charlie and Greg had run out of patience and instructed Mr Rann to withdraw the offer. He did so by an email at 2.06pm sent to Ms Mortonson, Mr Rowley and Ms Precious. He added to the email that he had been asked in his capacity as a director of the company to write to Mike and

Lindsay to invite them to a board meeting on Monday 29 July 2019 "*for the purpose of considering the June management accounts and the roles of the various directors of the company going forward.*"

230. Following the withdrawal of the offer, Charlie exchanged text messages with Ms Daddy. He had said that these proved the "*no money*" conversation, but given their timing on the evening of 25 July 2019, it is much more likely to be his expression of frustration with Mike and Lindsay in relation to the Buy Out. In response to Charlie saying: "*I can not believe them"* with an angry emoji, Ms Daddy texted:[1]

> "Now you no why I'm keeping a good eye on your Dad and I may be have to tell a few porkies but I wouldn't find anything out otherwise but he was genuinely shocked with what you said…it would not do them any good in the end but it wants to be said in a meeting in front of everyone with him in it you just watch there faces when the truth's on the table all I will say is I was asked to bring him up to see Duncan I didn't no what it was about".

231. Neither Charlie nor Ms Daddy were able to explain what "*porkies*" Ms Daddy was telling. Her evidence was that she was telling lies to Charlie and Lindsay in relation to the Buy Out. That was, she said, to elicit the truth so that she could decide which side, Lindsay or Charlie, she was on. Ms Daddy said "*the truth"* in this message was:

> "About the – about the selling of the company. Lindsay was saying she was getting pushed out of the company. Charlie was getting accused of being – bullying people and that he was bullying his father, which wasn't true. Lindsay wasn't getting pushed out of the company; that wasn't true."

232. Ms Daddy claimed to have found out that it was a "*lie"* that Lindsay was getting pushed out of the company and she found this out from Charlie. In other words, she believed Charlie and not Lindsay. Even though she claimed not to be on anyone's side at this stage, it is clear that, at least from this point on, she was very firmly in Charlie's "*camp*". Ms Daddy's final text message in this chain – "*Every dog has it's day and you day is coming Xx"* – indicates that the plan for Charlie to take control was already underway.

(f) 26 July 2019: Lindsay and Mike visit Reg

233. On Friday 26 July 2019, Ms Mortonson emailed Mr Rann with an offer in similar terms to that which had been proposed on behalf of Charlie and Greg on 12 July 2019. The offer was almost immediately rejected by Mr Rann: "*My instructions are the deal is off and they have not changed in that regard."* He then renewed the invitation to Mike and Lindsay to a board meeting on the Monday, emailing them and Harrowells directly. It must have been fairly clear

[1] Many of the texts and messages in this case have innumerable spelling and grammatical mistakes. I will not clutter the judgment with putting "sic" after each one, but will retain the original drafting.

to Mike and Lindsay that the purpose of the board meeting was to remove them from the business.

234. Mike and Lindsay therefore went to see Reg to ask him to "*consider putting things back to how they were before Duncan came on the scene"*. Reg still had his supervote and could control the board, and he had always wanted the board to be back in family control. The likelihood is that this meeting took place on 26 July 2019, as the deal was off and the board meeting was due to take place the following Monday. Further the care diaries say that Lindsay, Mike *and* Greg visited on 26 July 2019. While they said that Greg was not with them in the meeting, both Mike and Lindsay remembered Greg being in the house and walking through the room while they were having this conversation with Reg.

235. Lindsay described in her oral evidence the purpose of going to see Reg:

> "We asked dad what he wanted to do. We basically said we didn't know whether he knew what was going on with the deal, which is what I explained before about when I went and told him that he was getting no money – salary paid into his account. And so we basically went up to see dad and said to him. "Dad, I've got a hunch about this meeting on Monday, it's getting quite tense with all the family unit, with Duncan's involvement. Do you want to sack us, me and Mick?" And dad's response was "No". He said "You're my kids", he said "I love you kids, you do a good job for me". And I think he asked what was going on, so we told him our interpretation of what we felt at that moment in time, that we were unsure where dad's position in all of this was, and we said basically that they had brought onboard Duncan on the board; we had brought – sorry, we – we'd agreed, as Ms Stanley had said, that with the Bregal deal, we had brought on these additional directors, but that was through the private equity deal. And all of a sudden, it had changed, but all these people were still on the board. So we didn't really know what was happening.
>
> I can recall saying – I don't know whether it was myself or Mike saying to dad – I think it was maybe Mike – "Did you know that Rob Eeles and Kev Pick has been put on the board" And I recall, I think my dad said something like, "Kev Pick?" He didn't say about Rob, but he said "Kev Pick?" And Mick said, "Yeah" and he said, "I didn't know." So, you know, we didn't know what was happening, really. So it was our concerns, and we went to speak to dad about it."

(g) 27 July 2019: York Races

236. Reg attended York races on both Friday evening and on Saturday 27 July 2019. Charlie and Reg celebrated a double winner that day with the horse "Rise Hall" winning at Newmarket and "Ladies First" winning at York. Reg collected the trophy at York and there is a video, taken by Greg, of Reg, in his wheelchair, collecting the trophy, kissing it and cheering the name of the trainer, Mick

Easterby. The video shows Reg in a very good mood, but he does not really say anything and he is in a friendly environment.

237. This was the occasion that Greg suddenly remembered during the trial that he and Charlie had had a significant meeting with Reg at which Reg had told them that he wanted to "*take back control*". This became a huge moment in the Claimants' narrative, but before Greg added this to his evidence, it did not appear to be so.

238. Charlie's witness statement stated that they went into a private box to talk to Reg for about 30 minutes. He said the discussion was only about "*the deal*" – ie the Buy Out. He said:

> "We talked for about 30 minutes about the deal. I remember he kept saying, 'Just remember I'm the boss'. My Father said the deal was still high-risk, but he trusted in what we were building together. We all agreed that we would put the offer back on the table, which is what Duncan then did."

239. The Claimants' skeleton argument picked up on what Charlie had said and merely stated: "*At the races, Charlie, Greg and Reg spoke privately and agreed to put the offer to Mike and Lindsay back on the table*." It then linked this to a text that Charlie sent to Mr Christian the next day: "*Could do with a 5 min chat to tell you what's happening Monday as we spoke to dad yesterday*".

240. Charlie and Greg probably realised that for their "*take back control*" thesis to work, they needed to point to an occasion when Reg actually instructed them to take whatever steps they deemed necessary in order to "*take back control*" and to make it look as though this was being driven by Reg. It therefore became a much more significant occasion when Greg made that intriguing addition to his witness statement and his assertion that it was at this meeting when Reg told Greg and Charlie that he wanted to "*take back control"*. Greg said that the meeting had apparently been requested by Reg, attended by him, Charlie, and Ms Daddy and claimed that his father had said:

> "I want the £1 million, I want to go to Dubai, I want the bank card." Things what had been discussed with him in prior meetings, with all four siblings. And basically he asked us to get it sorted; as my father usually did in business."

Greg said that "*from that meeting at York racecourse, I started to make sure we were doing what father wanted."*

241. Charlie gave oral evidence after Greg, and following Greg's new evidence, Charlie's account of the conversation with Reg then went far beyond what he had said in his witness statement; he said the conversation covered "*everything"* and asserted that it was the meeting at which Reg gave him "*the go-ahead"* and justified it as Reg directing him to take control of his affairs: "*I'd been given the power by my dad on the 27th. His word was strong enough for me that I had to sort stuff."* Charlie then justified the steps he took, the "*plan*", by reference to Reg's alleged instruction to sort "*everything*" out.

242. There is no documentary support for Charlie and Greg's evidence about this meeting. Even if they did speak privately at York races, in my view it is extremely unlikely that Reg would have said something like "*take back control"* or "*get my life back*" or that he envisaged the "*plan*" that Charlie set in motion around this time. The fact that it was in neither Greg's nor Charlie's witness statements is telling. Much more likely is that any such meeting was, as Charlie originally described it, purely about whether to put the Buy Out offer back on the table.

(h) 29 July 2019: the Buy Out is back on; meeting of Mike, Lindsay and Reg

243. At 7:07am on 29 July 2019, as agreed over the weekend, Mr Rann on behalf of Charlie and Greg put the original offer back on the table but with some additional conditions that: Lindsay pay back her loan account; Mike and Lindsay each contribute £50,000 to RSM's costs and £30,000 towards HSBC's costs; and Mike and Lindsay start to "*transition their roles in the business"* as soon as the deal was agreed. Mike had seen the email by 9:08am as he emailed Mr Rann then to say he would come back via Harrowells.

244. The care diaries record Mike and Lindsay visiting Reg on 29 July 2019 shortly after 11am. They must have known by the time they visited that the deal was back on. The Claimants confused this meeting with the one on 26 July 2019, suggesting that it was on 29 July 2019 that Mike and Lindsay were urging Reg to use his supervote to remove Mr Rann and the other non-family members from the board. But it is unlikely that Mike and Lindsay would have been saying that on 29 July 2019 when they knew that the deal was back on. Ms Stanley KC submitted that Lindsay's evidence was to the effect that she did not know that the deal was back on at the time she visited Reg with Mike. While Lindsay may have been a bit confused during her cross-examination about what she knew and when in relation to meetings that took place 5 years ago, I do not think there can be much doubt that they did in fact know that the deal was back on when they visited Reg.

245. There was a series of WhatsApp exchanges between Charlie and Ms Daddy on 29 July 2019 that indicate their concerns about what Mike and Lindsay might have persuaded Reg to do and show how Charlie was planting in people's minds the notion that Mike and Lindsay were only interested in themselves, not Reg and that they would fire the care team if they were able to stay in control.

(i) At 8am, Charlie messaged Ms Daddy: "*I can't take seeing him tied to a bed. It's doing my head in".* This is a little confusing as Reg had just been to York races on three days the week before. It looks as though Charlie was trying to blame Mike and Lindsay for something, but there was no substance to it. Neither Charlie nor Ms Daddy could explain this message.

(ii) At 9.44am, Charlie messaged Ms Daddy to say that Lindsay "*is on her way somewhere. It could be to see dad at jack Berry"*; Charlie admitted in evidence that he had "*started to keep tabs on her".* At 10:56am he

told Ms Daddy that they needed to change the code on his gates "*ASAP*". Charlie said in evidence that this was because:

> "Lindsay used to come to my house quite often, and I didn't want her anywhere near me after what she'd done to my dad on the 22nd week. Couldn't stand to be anywhere near her".

(iii) Ms Daddy's response to Charlie's message indicates that Mike and Lindsay had already convinced Reg to get rid of the non-family directors the previous Friday:

> Ms Daddy (10:59): "…they have convinced your dad to get rid of Duncan and rob I think me and Den have convinced him not to do that and to sign nothing…"
>
> Ms Daddy (11:07): "I have told Den everything and told her to concentrate on getting him to understand Duncan cannot go the company and you need him to move forward."

(iv) Ms Daddy's tactic of persuasion appeared to have been to tell Reg that if he agreed with Mike and Lindsay, all of his care team would be fired and Mike and Lindsay would "*drop him like a stone"*:

> Ms Daddy (11:13): "I have told your dad if he agrees with them today he is throwing us all under the bus he has sad its D day and I have told him if he doesn't finish it I will one way or another because it's killing you and it's not far and if he agrees with them they will drop him like a stone once they have what they want but there will be no one left they will make sure of that."
>
> Charlie (11:15): "Thanks"
>
> Ms Daddy (11:25): "I have reminded him everything that was said sat I have also told him about the 1.5 million a year I have told them that you need Duncan to support you to make sure the company goes forward so the company can afford to pay them out there not interested in the company only money I am back now Den is going to have a good talk with him she knows what's at stake she also knows Reg is putting himself in a very bad position if he sides with them kx"

246. There is no evidence that Mike and Lindsay were proposing to do that. On the contrary, Lindsay greatly appreciated what the care team were doing for Reg. The likelihood is that this is another story dreamed up by Charlie to ensure that Ms da Silva, Ms Daddy and Ms Webster remained firmly on his side.

247. After Mike and Lindsay left Reg, Charlie messaged Ms Daddy to ask: "*if den is still there can you get Sam away while she can chat to him to find out what was said?"*. Ms Webster could not remember anything about this day. She did say, however, in adopting the mantra, that Mr Rann was going to help Reg "*move on in his own life"*:

> "He was wanting to get his own life back, and he wanted to do things he wanted to do, he wanted to go on holidays, he wanted to do things that people stopped him doing."

248. In any event, Ms Mortonson emailed Mr Rann accepting his offer at 1:45pm, shortly after Mike and Lindsay had left Reg's house. Half an hour later Mr Rann informed Ms Mortonson that Mike and Lindsay were no longer required to attend the board meeting which would "*now be a management meeting to discuss the management accounts"*. Charlie texted Ms Daddy to tell her "*Thanks for all your help. I will never forget it"*.

249. The meeting between Mike, Lindsay and Reg on 29 July 2019 was more likely about the Buy Out deal and to ask Reg about who he wanted to act for him. It appears that Reg agreed to Ms Precious acting for him (none of them appreciated that Harrowells might be conflicted as they were acting for Mike and Lindsay). Lindsay emailed Ms Precious shortly afterwards to tell her that:

> "Reg has told me to let you know his request that he wants Harrowells to act for him and he will be personally charged.
>
> He has told myself and Mike both last week and this week that he will sign no documentation on anything going forward unless Pam is with him.
>
> At this stage we do not wish to add fuel to the fire by informing Duncan, Charlie or Greg of this yet but once any documents need signing he wants you present.
>
> If you want to see Reg in the meanwhile please let me know."

250. The reference to "*last week"* was likely to the 26 July 2019 meeting; Reg had therefore told Mike and Lindsay twice that he wanted Ms Precious to act for him. This is also demonstrated by Lindsay's texts with Ms Precious on 30 July 2019, in particular that "*Dad said he won't sign anything without you x"*.

251. Mr Rann must have got wind of this because he emailed Ms Mortonson at 17:45 to say that DRA acted for Greg, Charlie and Reg because:

> "his position is aligned with that of Greg and Charlie in the sense that he is not entering into an agreement effectively for the sale of all of his shares in the company but is exchanging his shares for those of the new company"

This was the first time that Mr Rann had mentioned that there would be a share exchange agreement after completion, such that Reg, Charlie and Greg would be shareholders in the holding company, but Mike and Lindsay would remain shareholders in the trading company.

252. That evening, Charlie and Greg visited when Reg was in bed. Charlie said that Reg was "*out of it"* and Greg said that he was "*in bed, and he was settled. So I don't think we talked much at all."* Greg accepted that it was unusual for him to visit with Charlie at that time. It is not clear whether they discussed anything with Reg that evening. Charlie said in his oral evidence that he had been told by

the carers that Lindsay and Mike had raised their voices in the conversation earlier in the day and had slammed the door on the way out, putting undue pressure on Reg. Charlie then repeatedly suggested that this had caused the TIA on the following day. There is no documentary or other evidential support for this and I reject it.

(3) August 2019: the start of and implementation of the "plan"

(a) Reg's TIA

253. On the evening of Tuesday 30 July 2019, Reg suffered from a suspected TIA presenting with slurred speech and facial droop. An ambulance arrived, but after he seemed to recover, it was sent away. The next day, Reg saw Dr Khan in clinic and Dr Khan advised that Reg should be admitted as an inpatient, but there were no available beds; but on 1 August 2019 he was admitted to hospital. He was discharged on 5 August 2019 and the discharge summary stated that: "*Symptoms likely precipitated by stress and has been advised to keep stress levels down."*

254. As I have said above, Charlie asserted on numerous occasions that Reg's TIA had been caused by Mike and Lindsay's "*raised voices and slamming of doors"*. Mr Rann also asserted this. It seems to me that this is another attempt to justify the "*plan*" which was purportedly designed to "*protect*" Reg.

255. Even though the Claimants had consistently denied that there had been a plan for Charlie to take over control of Reg's affairs, it was admitted by Charlie in his oral evidence. Although he maintained that this was a plan for Reg to "*get his life back*", it remains vague as to why that required Charlie to be in control. There is no real basis for the Claimants' assertion that Lindsay and Mike were acting so terribly in relation to Reg, and making his life a misery, that such drastic steps needed to be taken and to be kept secret from Mike and Lindsay.

256. On 31 July 2019, the day after Reg's TIA and shortly before he was admitted to hospital, Mr Rann and Charlie exchanged the following messages:

> Mr Rann: "Would you like me to have a chat with Karen/Rita/Denise or any one of them? We might need to make some money available. I can sort some out if it will make things easier."
>
> Charlie: "I think we need to sort a meeting at my house with all 3 of them."

257. This appears to be the first steps in relation to the "*plan*", although it is odd that Mr Rann was offering to make money available for the purpose, presumably meaning his own money. The plan took further shape while Reg was in hospital. There is a "*to do list*" written by Mr Rann on a diary page for 29 July 2019. It referred to changing the mandates on Reg's bank accounts to Charlie and getting new bank cards. It also referred to TWDHL, which was not incorporated until a month later. It is therefore unlikely that the whole list was written on 29 July

2019. It appears more likely that it was a work in progress, begun on 29 July 2019, and added to later.

258. What one does not see is any input or involvement of Reg in devising the "*plan*". His voice was largely absent and there is no evidence that Reg ever gave instructions to either Charlie or to Mr Rann to begin constructing this "*plan*" to take back control of his own affairs. Mr Rann accepted that Reg did not instruct him directly and everything came through Charlie; Charlie could not, however, give a consistent explanation of how his father had given instructions for it, latterly just falling back on the alleged instructions given at York races on 27 July 2019.

(b) 5 August 2019:meeting with carers and letter of wishes

259. The meeting with the carers, referred to in Mr Rann's message, took place on 5 August 2019, the day that Reg was discharged from hospital. It was held secretly at Charlie's house, presumably so there would be no risk of Lindsay or Mike discovering it, if they were visiting Reg. Charlie went so far as to ask Ms Daddy in a message to: "*park the horsebox on the left as you pull into our house please. So you can not see the cars from the road*." Both Charlie and Ms Daddy confirmed that this was so that Mike and Lindsay would not be able to see who was at Charlie's house.

260. It is unclear what was discussed or agreed at this meeting. Ms da Silva said that the chaperoning idea was talked about because of the "*feud between the siblings*". It is more likely that the care team letter of wishes was the main topic of conversation. That does not refer to chaperoning. Reg was not at the meeting.

261. The care team letter of wishes was drafted by Mr Rann on 5 August 2019 while Reg was still in hospital. He could not have taken any instructions from Reg in relation to it. Charlie suggested that Reg had some input, but this is unlikely in the circumstances.

262. The care team letter of wishes was dated 5 August 2019 and said as follows:

> "I have been giving some thought as to the provision of my care. I want to be clear about what I want going forward, which is as follows:
>
> I want my core care team comprised of the following people:
>
> Rita Silva, as team leader.
>
> Karen Daddy
>
> Denise Bigg
>
> I trust these people implicitly, both with my care and with the cost of providing care. Should they consider it necessary to hire additional people I am happy for them to find and hire such people and should they no longer be required, for them to dismiss such person on my behalf.

> I would like all my care paid for out of Bond Thoroughbred. I would like Denise to be able to make payments out of my bank account and would like her to have a bank card and cheque book.
>
> […]
>
> In the event that I am too unwell to give direct instructions I would like the best care that can be provided for me and I am happy to use all the money I have available to me for the provision of that care. To the greatest extent possible I wish to avoid spending time in hospital and in the event that I am obliged to go into hospital other than in an emergency I wish for my care to be provided privately."

As an indication that this was drafted by Mr Rann who knew little about what was going on is the reference to "*Denise Bigg*", which was Ms Webster's maiden name and had not been used by her for many years.

263. Mr Rann said he was not with Reg when the letter was signed. Nor could Charlie remember if he was with him. It may not have even been signed on 5 August 2019. Mr Rann said that it was for the care team's benefit so that they could produce it to whoever might challenge their position.

264. Reg returned from the hospital at around 4.15pm and Lindsay came to visit shortly thereafter. Ms Daddy informed Charlie that Lindsay had arrived at Reg's but that: "*Luckily I managed to say a few things before she arrived kx*". In her evidence Ms Daddy explained what she had told him:

> "I told him it was his life, his choice, and if he wanted to own his own life again, he had to do something himself about it. If he wanted to travel and do the things he wanted. That's what I told him."

The implication of this is that she was trying to get Reg to believe that Lindsay was preventing him doing the things that he wanted to do. But I do not understand where that notion came from.

265. By this stage, Charlie had managed to secure those looking after Reg on his side and against Mike and Lindsay. Ms Daddy despised Mike and his family from a long time ago, and it is clear that she had also turned against Lindsay. Similarly with Ms da Silva who had never liked Mike's family. Ms Webster seemed happy to do whatever Charlie asked her to. This was probably because of the fiction created by Charlie that if Lindsay was in charge of Reg's care and finances, they would all be sacked.

266. This led to Ms Daddy, Ms da Silva and Ms Webster spying for Charlie on Lindsay and Mike's movements. There are numerous examples in the WhatsApp messages throughout the following months of Ms Daddy, Ms da Silva and Ms Webster reporting to Charlie on Mike and Lindsay's whereabouts and in particular if they were visiting Reg. They all undermined their own evidence by denying that they were spying; and Charlie freely admitted that they were. Charlie was most concerned if Lindsay looked as though she was

going to Reg with paperwork, which she might ask Reg to sign or that she may try to use the 2014 LPA.

267. Allied to this was the institution of the so-called "*chaperoning*" rule, which although in general terms prevented anyone from seeing Reg alone without a carer, it was obviously designed to prevent Mike and Lindsay from seeing Reg alone and perhaps getting him to sign something contrary to Charlie's interests.

268. Lindsay's evidence was that she was not told about the rule until 3 September 2019. But the evidence indicates that it was in force from the beginning of August. Messages from Ms Daddy to Charlie on 6 August 2019 suggest that she was already organising for people to be in the house so that Mike and Lindsay would not be able to "*bully"* Reg.

269. Ms da Silva maintained that the chaperoning rule was her idea following Reg's TIA and that it was for his health. She denied that it had been instigated by Charlie although she said she had discussed it with him. Lindsay and Mike were not consulted about it. However Ms da Silva had told Lindsay that it was Charlie's idea and Charlie did not deny that in cross-examination:

> "Q: That was your instruction, wasn't it? It was all part of this keeping tabs on Lindsay, that she wasn't allowed to be alone with your father without a carer?
> A: We would have stuff drawn up and then get my dad's sign off.
> Q: Sorry, you would have stuff drawn up and get your father to sign up?
>
> A: Sign-off, if he was happy with it, for his protection, of what had gone on from the TIA on the 29th."

270. The rule was meant to apply to everyone without exception, meaning that even if Charlie or Ms Webster would be visiting Reg, there would have to be a carer in the room with them. (Ms Webster said that she was apparently allowed to see Reg by herself and discuss business because it was "*confidential*" while Mr Duerden was in the house.) Mr Ostler stated that he was aware that there was a rule that Reg was not permitted to see anybody by himself and he would tend to be there when Charlie visited in the evenings or when Reg went to see Charlie to watch the football.

(c) Preparation of the August PoA

271. The next step in the plan was the preparation and signing of the August PoA. It was signed on 7 August 2019 and it made Charlie and Ms Webster Reg's attorneys with full power in relation to his shares in Holdings and Wholesale, the management of his care team and BTC. It was drawn up by Mr Rann on Charlie's instructions, he would say pursuant to Reg's instructions to Charlie and Greg at York races to "*take back control*". In fact, and as I pointed out to Charlie during his cross-examination, the August PoA put control in Charlie's hands. Charlie insisted that this was for his father's protection and because his father trusted him and Ms Webster "*like there was no tomorrow*."

272. The instructions to Mr Rann appear from an exchange of messages between him and Charlie on 1 August 2019:

> Mr Rann: "Do you want you and Greg to be your Dad's attorney or just you? Also, I am preparing the power of attorney on the basis that it covers (a) voting etc in the new holding company … and (b) allows you to sign the agreements for your Dad in relation to the deal with Mike and Lindsay."
>
> Charlie: "Just me. Greg will not want the responsibility"
>
> Mr Rann: "And both things? Running the company and the deal"
>
> Charlie: "Yes as we will not pay the money if she is involved."

"*She*" was a reference to Lindsay.

273. The Claimants relied heavily on an alleged meeting between Mr Rann and Reg that was said to have taken place on 6 August 2019 at the Marriott Hotel in York. Mr Rann said that he clearly remembered this meeting and that Reg confirmed that he wanted to be back in control of his own affairs and he did not want Lindsay in charge. If this meeting truly happened it was an incredibly important one because this was the one and only time that Mr Rann met with Reg alone to take instructions. Yet Mr Rann did not even bother to make an attendance note, or record the instructions in any form. He did not open a file for Reg or send him an engagement letter. Mr Rann admitted he should at least have made an attendance note. The fact that he did not, and that there is no other record of the meeting taking place, makes it unlikely that it did.

274. The Claimants refer to a number of matters that they say support the meeting having taken place.

(1) The care diary entry for 6 August 2019 shows that after 10am Reg went to York – to "*M+S*" and "*Field and Fawcett*" - returning home at 2pm. So Reg was in York that day. The diary does not refer to any meeting with Mr Rann, but Charlie said that this would not have been put in the care diary because Lindsay might have seen it and "*everything would have been stopped from that point*".

(2) At 3.08pm on 6 August 2019, Mr Rann sent a WhatsApp message to Charlie, a redacted version of which had been disclosed:

> "I have some amendments to the power of attorney and the bank authority letter…which I will let you have later in an envelope".

(3) The Claimants have surmised that the addition of Ms Webster to the August PoA must have been one of Reg's instructions to Mr Rann at the meeting because Charlie himself would never have put Ms Webster forward as an attorney.

275. However, Mr Rann did not refer to this in his witness statement. And we do not know what discussions took place between Mr Rann and Charlie between 1 and 6 August 2019. The message refers to amendments to both the power of attorney and bank authority letter, indicating that Mr Rann had realised that there needed to be some such amendments in the drafting.

276. There were further changes to the August PoA on 7 August 2019, the day it was signed. On Charlie's instructions, Mr Rann added the clause dealing with BTC as Charlie suddenly realised that should be included:

> Charlie: "Does it cover Bond Thoroughbred*"*
>
> Mr Rann: "No, but I can add that right away if you like? I get the sense that your Dad would like you to have control in relation to the horses over and above anyone else*"*.

277. Mr Rann only had "*the sense"* that Reg wanted Charlie to have control in relation to the horses, despite having apparently met Reg the day before to take instructions on the August PoA. He did not tell Charlie that he had met Reg as Charlie admitted that he did not know that any such meeting had taken place. The message did not refer to the meeting.

278. In the circumstances, I am not satisfied that such a meeting took place. I think that it is more likely that Ms Webster was included in the August PoA because she was trusted by Reg and it would look better to have two attorneys rather than one, as it would otherwise appear that Charlie had absolute control. He did have such control however, because he knew that Ms Webster would go along with whatever he wanted. And what Charlie wanted was to control Reg's shareholdings and voting rights and prevent Reg or Lindsay from removing Mr Rann from acting for Reg in the Buy Out.

(d) Signing of the August PoA

279. The fact that Reg signed the August PoA on 7 August 2019 is only apparent from WhatsApp exchanges between Ms Daddy and Charlie and the date of Greg's secret video recordings. He also signed a letter directing HSBC to provide historic copies of his bank statements from 1 August 2016 to 31 July 2019 to Charlie, at Charlie's address, as well as future statements. Such was the distrust of Lindsay, that Charlie wanted to scrutinise the old statements to see if there was any evidence of Lindsay mismanaging Reg's funds. In Charlie's "*jobs to do list*" (as he described it) which he sent to Mr Rann on 1 September 2019, the first item was: "*Get an accountant to go through all of dads accounts. See how much is missing!*"

280. I have seen no evidence that this was in any way driven by Reg or that he had any understanding of the documents before he went to Charlie's house to sign them. Reg had been discharged from hospital only two days before and, on the day, he was returning from a hospital appointment; he had also been for a large meal at Toby Carvery. From the timing of certain messages between Charlie and Ms Daddy, it appears that the meeting must have taken place at around 3.30pm and probably lasted around 45 minutes. As Reg was known to get tired

after a big meal, Charlie was concerned that Reg was sufficiently "*fresh"* for the meeting (Charlie used the term in two separate messages to Ms Daddy that afternoon).

281. However Reg did not appear "*fresh*" on the videos. Greg took the videos covertly and became emotional when he was asked questions about them in cross-examination. He said that he took them because he was worried that there may be a challenge later on to the signing of the documents but I think he must have realised, as is apparent to anyone watching them, that Reg was not with it at all: he looks tired, disengaged and confused. He was surrounded by people: Ms Daddy, Ms da Silva, Charlie and Greg were all there and I believe he would have felt some pressure to sign.

282. I have to say that I was quite disturbed by these videos. Ms Daddy said initially that she thought Reg had read through the document but I think she realised that that could not possibly be the case. He did not have his reading glasses, which Lindsay said he needed, certainly to read a document like that. Ms Daddy said that Greg's video started about 5 minutes after they had started talking about the August PoA. She herself had not read it before and it is obvious that she did not have a clue about what she was reading out. The video started off with Ms Daddy attempting to summarise the first part of the August PoA, saying that Charlie and Ms Webster "*have full powers to deal with Bond International, so, say, like the stocks and everything*". She then concluded her summary with: "*So it covers everything from the horses to your houses to everything that's in your name*".

283. Charlie then interrupted Ms Daddy to say as follows:

> "So what it means is, Dad, that we can get you money out of Bond International, yeah? And you get all your care team and basically what it means is I'll give you your own bank card that you go off and do whatever you want with your care team. That's what it's, sort of, saying."

284. The August PoA said nothing about a bank card or getting money out of Bond International. It is another one of Charlie's made-up stories that Reg did not have a bank card; he did have one and the carers were able to use it. It was one of those issues that Charlie would use to persuade Reg that Lindsay was making his life a misery. Reg in any event continued to look blank. So Ms Daddy then said: "*So again, it's entirely up to you whether you sign it or not*". And Reg just resignedly said, in a very soft voice: "*I will sign it*".

285. I put to Ms Stanley KC in her closing submissions that if Reg had presented like that to Ms Martin, she could not possibly have thought that Reg had capacity at that time. She seemed to accept that but said that he clearly was not like that in any of the six meetings with Ms Martin, because Ms Martin would have recorded that in her attendance notes.

286. The August PoA must have been signed before 4:17pm when Charlie texted Ms Daddy: "*Tell Rita to say nothing we only use it after the deal is now signed. He can live life to the full now. Over the moon for him!"*. So in Charlie's mind this

was very much linked to the Buy Out, although how it enabled Reg to live life to the full, is a bit mysterious if it was not actually going to be used.

287. The August PoA provided for it to be effective for 36 months from the date of execution. The document that we now have is dated 15 August 2019 and Reg's signature appears next to those dates. It was not dated when it was signed on 7 August 2019 or when scans of it were sent to Katie on 16 August 2019, when Mr Rann told her that the original August PoA (as well as the original care team letter of wishes and HSBC authority letter) was kept in Mr Rann's office at DRA in Hull (to be kept secret). It was not dated by 21 February 2020 when Jill Botham, Ms Martin's legal secretary, scanned in the original kept in Mr Rann's office and sent it to Ms Martin. There is no dated version in circulation until 11 March 2021, four days before Reg's death, when Mr Rann scanned it to Ms Martin. Lindsay and Mike only discovered its existence when it was disclosed in these proceedings.

288. Perhaps this just exemplifies Mr Rann's haphazard approach to his professional obligations. But it is worrying that he did not feel it necessary to be with his purported client, Reg, when he was signing these important documents. He should have been there to explain properly what they were about and to satisfy himself that it was appropriate for Reg, in his then mental state, to sign them. He left it to Ms Daddy, Reg's stud manager, and Charlie, for whose benefit the documents were being signed, to explain them to Reg and get him to sign them. That indicates to me that, far from providing Reg with protection, he was deprived of any independent advice or protection in signing these documents.

(e) Buy Out Heads of Terms

289. Heads of Terms in relation to the Buy Out (the "**Buy Out Heads of Terms**") were finalised and agreed between Charlie, Greg, Mike and Lindsay in mid-August 2019.

290. The Buy Out Heads of Terms provided as follows:

(i) Holdings would purchase the entirety of the issued shares in Wholesale;

(ii) Each of Mike and Lindsay would sell their 196 shares in Wholesale to Holdings as follows:

a) 54 shares would be sold on completion for £3 million;

b) 55 shares would be the subject of a put and call option for £3 million;

c) 55 shares would be the subject of a second put and call option for £3 million; and

d) The remaining balance of 32 shares would be the subject of a third put and call option, exercisable only on a sale to a third party, for £1,780,000.

(iii) Each of Mike and Lindsay's children would sell their shares in Wholesale for £110,000;

(iv) Reg would sell 18 of his Ordinary A shares in Wholesale for £1 million, and exchange the rest of his shares in Wholesale for 1,000 Ordinary C shares in Holdings; and

(v) Each of Greg and Charlie would sell 9 of their shares in Wholesale for £500,000, and exchange the rest of their shares in Wholesale for 1,000 shares in Holdings.

291. On 15 August 2019, Mr Rann wrote to HMRC seeking tax clearance for the Buy Out.

292. There was some discussion between Mr Rann and Mr Rowley about Reg receiving independent legal advice in relation to the Buy Out. Reg was in a different position to both Charlie and Greg, and Mike and Lindsay, and it is fairly obvious that in such a complicated and important transaction, he should have received proper advice. As noted above, Reg had indicated on 29 July 2019 that he wanted Ms Precious to advise. But Mr Rowley frankly admitted in his evidence that that could not possibly have happened because of a potential conflict with him acting for Mike and Lindsay. It was suggested that Mr Matt Smith of Andrew Jackson, solicitors, could act but this was never in the end taken forward. Reg never received any independent advice in relation to the Buy Out Heads of Terms.

293. Lindsay arranged for there to be a meeting at the Bond International offices on 5 September 2019 at which Reg could sign the Buy Out Heads of Terms. There would then be a buffet lunch at the offices, which would also be in recognition of the anniversary of Betty's death. However when Lindsay went round to Reg's house on 3 September 2019 to make these arrangements, she was told of the chaperoning rule and was very upset by it. She told Ms da Silva that she did not want her to clean her house anymore, although she ensured that Ms da Silva's overall pay from the family did not decrease.

294. Mr Rann and Mr Rowley exchanged phone calls and emails about the chaperoning rule and Mr Rann said that it had been decided that no business should be discussed with Reg. However, if that rule applied to Charlie, as well as Mike and Lindsay, as Charlie was maintaining, it meant that he could not have taken any instructions from Reg about business. Yet Charlie was insisting that he did receive instructions from Reg about the Buy Out deal and about the setting up of TWDHL.

295. As a result of this, Lindsay left it to Charlie and Greg to arrange for Reg to visit the office to sign the Buy Out Heads of Terms. To her surprise, Reg had already apparently signed the Buy Out Heads of Terms on 5 September 2019 before Lindsay had even arrived. It is totally unclear how much Reg knew of the Buy Out Heads of Terms.

(f) Incorporation of TWDHL

296. Charlie was worried about what would happen to the £1 million that Reg was going to receive under the Buy Out Heads of Terms. In his "*jobs to do list*", he included: "*Which bank account should Dads money be paid into?*" He was again paranoid that Lindsay should not have access to this money. So Mr Rann suggested incorporating a new company, in which both Charlie and Reg would be directors and shareholders, and into which the money could be transferred together with the horses in BTC. In other words, the new company would be essentially a bank account for Reg but controlled by Charlie who could prevent any interference by Lindsay.

297. Mr Rann explained this in a WhatsApp message to Charlie on 2 September 2019:

> "The long-term plan would be incorporation of Bond Thoroughbred into a limited company, your Dad's money (including from the deal) and any sponsorship would go in there. You and he would be directors and both of you would be shareholders. We would then hive the existing business into there in exchange for shares issued to your Dad. Incidentally (and I don't know why I didn't think about it before) but putting the horses into a company of which you are a shareholder and director would mean that you could prevent them being sold even if the others somehow manage to get your Dad to change his will. I will get on with that company today I think. Ideally, after that is done we put into play the power of attorney and care team plan. I would prefer that this is the last step and that we don't show Lindsay what we have found about the bank accounts, until everything is in place as this will make it easier to sort out (less contentious) the other stuff." (emphasis added)

298. This was how TWDHL came into being. It was more to do with control of Reg's money, than the horses, although the fact that it would take over the horses would make it easier to justify leaving it to Charlie in Reg's will, as Reg had already decided that he would leave the horses to Charlie in the August 2017 Will. Charlie agreed to the company being set up, but there is no evidence that Reg did, or that he knew anything about it. Once again, this was all being driven by Charlie and Mr Rann.

299. Mr Rann admitted that he "*did not, at any time, discuss with Reg the setting up of a company into which his horseracing business was going, and ultimately his money was going*". This is extraordinary, as was Mr Rann's explanation:

> "A: We have skirted around, and there's a very important, -- very important motivation in my relationship with Reg.
>
> So after the 29th and what happened on that day, I felt that anything I did for Reg would be attacked, and I felt that if I gave Reg advice personally, that that would be attacked for presumed undue influence. So my method of operating was to get instructions from Charlie so that that couldn't be an issue.
>
> …
>
> Q: Well, my point is this: that you thought it was better, from your point of

> view, when you were worried about presumed undue influence, to take instructions from the person who was benefitting?
>
> A: Well there's two answers to this, but you have kind of twisted the question. You know the point is that you are – you have let it be presumed that Charlie was benefitting, and I don't understand that. It was never in my mind that Charlie would benefit from those transactions.
>
> The second thing is that the way that undue influence – presumed undue influence operates is by that connection, by the advice that's given. You know it's not – it's my operation verbally to Reg or someone else that would create that presumption."

300. Mr Rann went on to state that Charlie would never have done anything that Reg did not want, and he was therefore satisfied that, even though Reg was also his client, he did not need to ensure he was getting instructions directly from him.

301. TWDHL was yet to be incorporated but it featured prominently in the "*to do list*" drafted by Mr Rann and sent to Katie on 10 September 2019, entitled "*RCB – Private Affairs*". This list set out in greater detail Charlie's and Mr Rann's plan to ensure Charlie's control over Reg's affairs and funds.

302. Charlie was becoming ever more concerned about Lindsay and this may have been what triggered Mr Rann's preparation of this list on 10 September 2019. There was a series of texts exchanged between Ms Daddy and Charlie in which she passed on Ms da Silva's information that Lindsay had asked for Reg's post to be redirected to hers; this followed Reg's phone line being cut off because Lindsay had not received reminders. Charlie had already redirected Reg's bank statements to his address and Ms da Silva had also been intercepting letters from the hospital and passing them to Charlie. Charlie seems to have been particularly concerned that Lindsay was intending to use this situation to "*kick in"* the 2014 LPA. Lindsay, of course, had no idea of the steps that had by then been taken by Charlie; she was just concerned that there appeared to be something wrong with the post.

303. Mr Rann's list included at items 1, 2 and 3: revoking the 2014 LPA; making new LPAs; and a new will. This was, as I have said above, prepared without reference to Reg or what he might want in relation to his affairs. Mr Rann had already taken steps in relation to the items on the list, as indicated by his additions in red and his comment to Katie and Charlie that "*I have set out where I have done things or where they are in train"*. The document was sent and addressed to Katie and said to be "*For you and Charlie"*. Katie said that she would have discussed it with Charlie, but denied that she had been giving instructions or discussing it with Mr Rann.

304. Mr Rann's item 4 was "*Form new limited company*" in which Reg would have 1,000 shares and Charlie would have one: the note indicated that he had already applied to incorporate TWDHL before he sent the letter and had asked Mr Christian at HSBC to open a deliberately secret bank account in its name. Furthermore, even though it was intended in time to become BTL, the name TWDHL was chosen by Mr Rann to make it look like it was connected with the

tyre business, rather than Reg's personal affairs, to avoid alerting Lindsay and Mike.

305. Mr Rann's admitted intention was that Reg's money from the Buy Out would be paid straight into TWDHL so that Reg could have: "*complete control over it, and it couldn't be – it wasn't then available to Lindsay or anyone else"*. However, the reality is that the company was set up so that Charlie could have control over this money. Reg did not need to be involved at all and it seems that he did not know about it when he first met Ms Martin. Mr Rann's list included that there should be a "*shareholders agreement giving the shareholders the ability to veto certain matters such as spending and borrowing/lending"*. This would enable Charlie, with only one share compared to Reg's 1,000 shares, to prevent any outside interference in the company.

306. TWDHL was incorporated on 11 September 2019, with Reg and Charlie as directors and shareholders. According to Mr Rann's list, it was anticipated that the £1 million that Reg would receive from the Buy Out deal would be loaned by him to TWDHL, "*plus balance of remaining cash*", effectively giving Charlie control over Reg's money.

307. As noted above, a new will and new LPAs were the first items on Mr Rann's list and I therefore now turn to the most important part of this case, the preparation of the 2019 Will.

(4) The Making of the 2019 Will

(a) Early September 2019: first involvement of Ms Martin

308. As well as her attendance notes, Ms Martin's electronic time recording sheets included narrative comments that filled some of the gaps. The file was entitled "*Lasting Powers of Attorney and Will*" and Reg was listed as the client. On 10 September 2019, Ms Martin made her first time recording entry which was a 12 minute call with Mr Rann about Reg:

> "attending Duncan re deed of revocation, new LPAs, and Will. DAR will create newco, and newco will own the horses, he wishes to leave all shares in newco to Charlie, and then rest of his estate to be divided equally between his four children."

309. This mirrors Mr Rann's "*RCB-Private Affairs*" note, which below the LPA and will items stated that an appointment had been set for 24 September 2019. Item 3 was as follows:

> "New will – GEM to take instructions and prepare. CSB to receive shares in Newco and all other assets shared four ways.
>
> Appointment set for 24th September 2019."

("GEM" are Ms Martin's initials.)

310. It is clear that Mr Rann and Charlie recognised that under Reg's existing will, the August 2017 Will, the shares in TWDHL would go into residue and therefore be divided four ways between the children. That would have defeated the purpose of the incorporation of TWDHL, which was to channel Reg's money through its bank account to which Lindsay would have no control, and so the inclusion of the horses in TWDHL would be a justification for it to be left to Charlie. But it is significant that it was assumed that all other assets, including the shares in the business, would be left equally between the four children. It is unclear if the Claimants are saying that those were Reg's instructions at the time.

311. Mr Rann said in his witness statement that Charlie had come to see him in Reg's office and explained that "*Reg wanted me to get his affairs sorted. He mentioned that Reg wanted to make a new will*". Mr Rann then recommended Ms Martin as "*she had (and has) a very good way with clients and I trusted her to do a good job*". However Charlie's witness statement did not refer to this meeting; nor did it refer to any instructions from Reg that he wanted to make a new will. Charlie was insistent that he did not get involved with Reg's will and did not discuss it with him. In which case, there is no evidence as to where those initial instructions in relation to Reg's new will, as recorded in Ms Martin's entry in the time recording as being given by Mr Rann, actually came from.

312. I do not believe that Reg expressed any desire to make a new will. The issue only arose because of the incorporation of TWDHL, which Reg, at that time, knew nothing about. Mr Rann told Ms Martin exactly what he had set out in the "*RCB-Private Affairs*" note and he clearly assumed that there would not need to be any other substantive changes to the August 2017 Will. In other words, Mr Rann told Ms Martin what he expected would go into the new will and he probably assumed that Reg would confirm that in due course, once he realised what was going on. Mr Rann said that this was what he thought Reg would want to do and that it would be up to Ms Martin to take specific instructions from Reg.

313. Ms Martin did not seek to confirm the instructions with her client, Reg, that he wished to meet to discuss a new will. She accepted the instruction from Mr Rann and arranged to meet Reg on 24 September 2019. Nor did she feel uncomfortable with the fact that she was getting instructions from Mr Rann, who had got them from Charlie, the husband of her colleague and friend Katie, and who appeared to be the only child of Reg receiving an extra benefit under the proposed new will.

314. In relation to the LPAs, Mr Rann's "*RCB-Private Affairs*" note stated that the 2014 LPA should be obtained from the "*OPG*", the Office of the Public Guardian, and that a deed of revocation would need to be prepared with notice given to the OPG and Lindsay. For the new LPAs, Mr Rann asked whether Lindsay "*or someone else*" should be the attorney alongside Charlie. Mr Rann said in evidence that he believed there was a possibility of an "*olive branch [being] held out*", but Charlie would not have contemplated that.

315. Ms Martin's time recording had two further entries for 10 September 2019: "*email to DAR attaching deed of revocation*" and "*Research re copy LPAs from OPG*". It appears that Mr Rann remained involved but the email has not been disclosed and was not on Ms Martin's file.

316. On 11 September 2019, Ms Botham sent to the OPG a request for information about Reg's existing LPAs. The OPG responded on 13 September 2019 and Ms Botham forwarded this to Katie and Ms Martin. Ms Martin then forwarded it to Katie and Mr Rann, clearly wanting to keep them in the loop.

317. On 13 September 2019, Mr Rann went on holiday to the US, returning on 29 September 2019. On the same day, HMRC had responded to his tax clearance application in relation to the Buy Out asking the reason why Charlie, Greg and Reg were receiving cash consideration as well as shares in Holdings.

(b) 24 September 2019: the first meeting with Ms Martin

318. On 20 September 2019, pursuant to Ms Martin's acceptance of instructions from Mr Rann on behalf of Reg to meet on 24 September 2019, Ms Botham booked a meeting room at the Marriott Hotel, York from 9.30-11.30. The Marriott Hotel was chosen as Reg was often taken swimming there, so it would not arouse suspicion from anyone who was not to know that these meetings were taking place, such as Lindsay and Mike. This had been discussed between Katie and Ms Daddy, and Katie then told Ms Botham that that was where the booking should be made. The care diary entry for 24 September 2019 referred to Reg going to the Marriott for swimming and then for lunch but the true purpose was not recorded. Everyone involved was aware of the need to conceal these meetings from Lindsay and Mike.

319. On 23 September 2019, Ms Martin's time recording entry stated that she prepared "*draft H&W and Financial LPAs and … note for meeting*." Ms Martin downloaded templates for a will and LPAs and she began to fill in the latter with Reg's name and address. In the property and affairs draft LPA, she also filled in, prior to taking any instructions from Reg, that nobody should be notified of the registration of the LPA. There is no evidence that this was actually discussed with Reg but it was important for Charlie's plan that all of this had to be kept secret.

320. Also on 23 September 2019, Ms Daddy texted Charlie to say that Ms da Silva had just taken Reg to lunch "*to get this list in his head*". Ms Daddy seemed to think that the "*list*" was about which people should be his attorneys on the new LPAs. She and Ms da Silva did not want Reg to name them on the financial LPA. In any event, this indicates that Reg needed to be primed before attending a meeting at which he was going to be asked what he wanted to do.

321. On 24 September 2019, Reg went with Ms Webster, Ms Daddy and Ms da Silva to the meeting with Ms Martin. Ms Martin prepared a two-page attendance note the following day and it recorded that the meeting lasted 90 minutes. It also recorded that Reg was accompanied by "*Rita, Karen and Denise*" as though Ms Martin knew who they were before their first meeting. They spent about 10 minutes all together: "*taking [sic] about the basics of Lasting Powers of*

Attorney both Financial and Health, and then gently removed Rita, Karen and Denise from the room." The meeting then proceeded for some time between just Reg and Ms Martin, but this, and the final meeting on 19 November 2019, were the only two times that Ms Martin did meet with Reg alone. That was probably because of what happened at this first meeting.

322. Ms Martin's first topic to discuss with Reg was the new LPAs. Ms Martin had been told by Mr Rann that the existing 2014 LPA in favour of Lindsay would need to be revoked. Curiously, the 2014 LPA and its revocation was not mentioned in Ms Martin's attendance note and it appears that no instructions were taken from Reg as to its revocation or as to any reason why Reg might wish to revoke the 2014 LPA. It is also unclear whether Reg would have remembered anything about the 2014 LPA. Ms Martin could not explain why this was not discussed.

323. When Ms Martin asked Reg who he wanted to appoint on the financial LPA, he said he wanted Ms Webster and Ms Daddy as his attorneys. Ms Martin explained about the difference between joint, and joint and several appointments, and Reg indicated that he wanted them to act jointly, and for Ms da Silva to be their replacement. As Ms Martin noted: "*There was no mention of Charlie at this point*". The meeting was not going as she thought it would. Furthermore, there was no mention by Reg of any of his children. And choosing Ms Daddy and Ms da Silva on his financial LPA was contrary to what they had tried to tell him before the meeting.

324. Ms Martin continued to seek instructions on the LPAs. Reg indicated that he wanted the LPAs "*only to be used if he lost capacity*", which Ms Martin seemed to be advising him against. In relation to the health and welfare LPA, Reg said that he wanted Ms da Silva to be his attorney, with Ms Daddy and Ms Webster as her replacements. It appears that Reg was looking at those he came with to the meeting as his attorneys and not considering that his children should be involved at all.

325. Ms Martin then decided to see if she could get instructions from Reg about his new will. There was no discussion about Reg's existing will and why he might have wished to change it. Ms Martin's attendance note recorded the following:

> "We turned to his Will and he said that he did not know how he wanted to divide his estate, and that there would be problems. He said they were going to form a new company, and I said for the horses? He said no to replace R & R C Bond wholesale. I said I wasn't going to take instructions on his estate today, we would do that next time. He did mention that his property had been recently valued at £1,000,000."

326. Ms Martin said in her witness statement that, even though she did not record this in her attendance note, when they had started to discuss Reg's will, he "*became emotional. Tears welled up in his eyes. I didn't note this in the attendance note but I do remember it. I recall that I made a conscious decision to end the meeting after Reg became emotional when discussing his new will*." Not only did Ms Martin not record this; she also did not think that his reaction

raised any concern about Reg's capacity to make a new will or even his desire to make a new will.

327. Ms Martin had been told by Mr Rann that the "*newco*" in respect of which the new will was to make provision was in relation to the horses. Hence her question to Reg about whether this was the new company that he was referring to. As soon as she received the unexpected answer that it was to do with the tyre business, she decided not to try to take any instructions in relation to the new will. The fact that Reg must have seemed confused and that what he was saying to her was inconsistent with what she had been told about his intentions does not appear to have concerned her, either in relation to his capacity or as to whether this was being orchestrated by others without Reg's knowledge. In my view, alarm bells should have already been ringing for Ms Martin in relation to the new will, and the ability to get proper instructions from Reg in that respect.

328. After failing to get anywhere in relation to the new will, Ms Martin decided to call "*the ladies back in*". They discussed the LPAs and who should be appointed as attorneys, despite Reg's instructions that he had just given. Her attendance note continued to say as follows:

> "I explained to them who Reg wanted to appoint, and there followed a discussion about Charlie being appointed too. Denise said that Reg needed Charlie as an attorney and Karen and Rita agreed and said it would be wrong for him to be excluded. I said it would be a sensible choice, but I [sic] conscious that I had to ask Reg who he wanted, and that I had not suggested his attorneys to him. I said that Charlie should be given specific sole authority to deal with anything in relation to the business, and that a joint and several appointment on both LPAs would be more flexible."

329. There is no evidence that Reg actually agreed to all of this. Clearly Ms Martin was expecting to draw up LPAs in which Charlie would be at least one of the attorneys on each of them. However, Reg did not say this when he was alone with Ms Martin. It was only when Ms Webster, Ms Daddy and Ms da Silva, all of whom were very much in Charlie's camp and had been briefed on what he wanted the LPAs to contain, were part of the discussion, that Charlie was put on the LPAs. Ms Martin even agreed that Charlie was a good choice but how could she know that, save from Charlie himself, or his wife, Katie. She was not able to explain this in her evidence, including why she was suggesting that Charlie be given sole authority in relation to the business.

330. I do find this rather extraordinary, that Ms Martin did not get the instructions she was expecting from Reg, so together with Ms Webster, Ms Daddy and Ms da Silva, they just agreed to put in the attorneys that they had been told to put in before the meeting. Even though this was the first "*getting to know you meeting*" (as described by Ms Martin), she not only did not ask anything about Reg's family and other children, or about previous wills or LPAs, but also Ms Martin simply ignored what Reg had instructed her to do, and put Charlie in as an attorney on all the LPAs. It does look like she was following instructions she had received before the meeting or was quite prepared to accept instructions from Ms Webster, Ms Daddy or Ms da Silva without Reg really being involved.

331. Ms Martin's attendance note recorded at the end that they had agreed to meet again in a week's time on 1 October 2019. Ms Martin noted that she needed to do an engagement letter and "*find the deed of revocation*", which makes it even more odd that the 2014 LPA was not discussed with Reg.

332. After the meeting, Ms Daddy texted Charlie to tell him what happened. Ms Daddy indicated that documents relating to Yapham Grange may have been signed at this meeting (this directly affected Ms Daddy), although there was nothing in the attendance note to such effect. Ms Daddy said that Reg was:

> "very nervous that you were not here and has ended up putting us all on the power of attorney for financial and health but she did say we will go threw it again next week and tailor it to his needs he keeped picking her card up which said Duncan Rand on it but he settled towards the end".

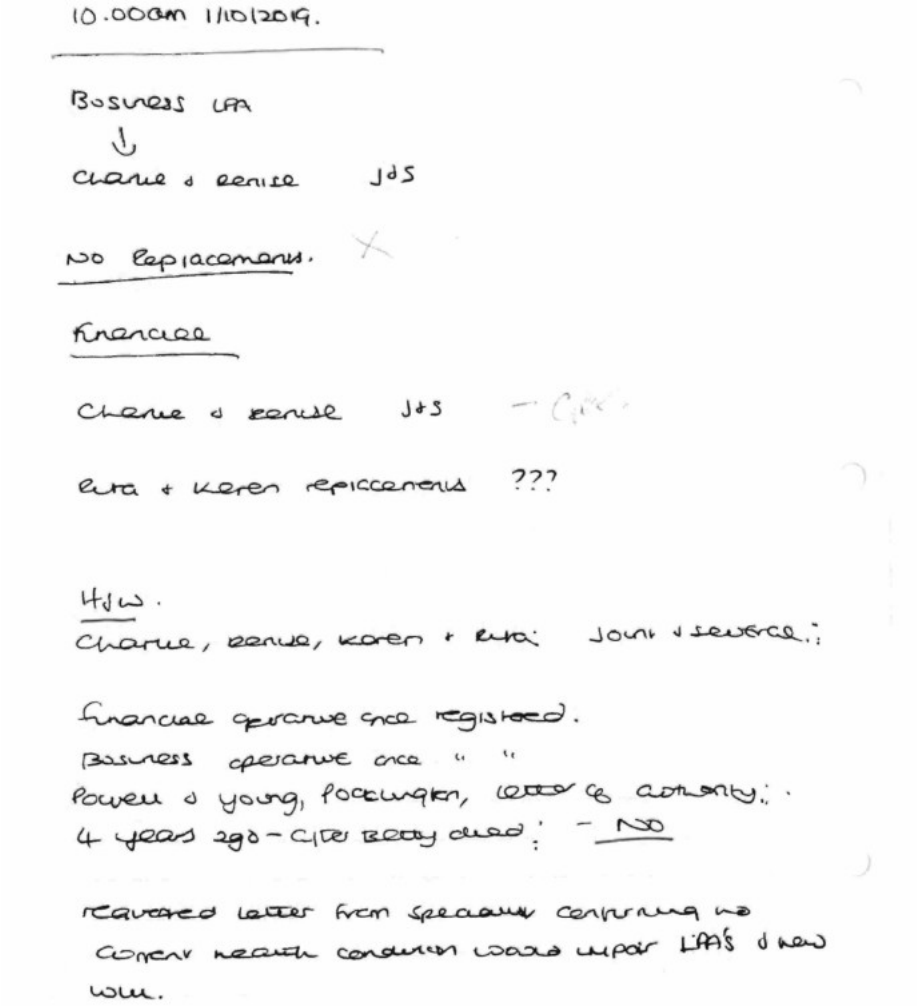
333. Reg was obviously nervous and uncomfortable. He did not particularly like Mr Rann and he was meeting Mr Rann's colleague for the first time, in a strange setting, and not apparently at his own instigation. Ms Martin said that he seemed reserved and a little shy and he was not forthcoming at the first meeting. He also probably did not understand what he was meant to say. I am surprised that Ms Martin was not more concerned about the situation. She simply said that it was not unusual for clients to take a few meetings to resolve their wills and that they would normally get more relaxed as they became more familiar with her and the process.

(c) 1 October 2019: second meeting with Ms Martin

334. The same venue was booked by Ms Botham for the second meeting at 10am on 1 October 2019. According to Ms Martin's time recording entries, the meeting lasted one hour and she spent one hour travelling. The day before, Ms Martin had amended the draft LPAs "*in readiness for meeting with client tomorrow*."

335. There is both a manuscript note and a typed attendance note of this meeting. They broadly coincide, but not in all respects. The typed note recorded that Reg was again accompanied by "*Karen Daddy, Rita Fryer, Denise Webster*" (Ms Martin could not explain the mistaken surname for Ms da Silva). After a "*general chat*" with all of them in the foyer, Ms Martin went into the meeting room with Reg and Ms Webster. Ms Martin said that she invited Ms Webster in this time because she knew (although she could not say how she knew) that Ms Webster had been Reg's PA for many years and it was to make him more at ease and so that Ms Webster would be able to attend to any follow-up questions should they be needed. Ms Martin insisted that it was not because of difficulties in taking instructions from Reg, although that would be the more likely explanation in my view. The reason for Ms Webster's requested attendance was not explained in either note of the meeting.

336. The manuscript note was as follows:



10.00am 1/10/2019.

Business LPA
↓
Charlie & Denise J&S

No Replacements.

Financial

Charlie & Denise J&S

Ruta + Karen replacements ???

H&W.
Charlie, Denise, Karen + Ruta: Joint & several.;

financial operative once registered.
Business operative once " "
Powell & Young, Pocklington, letter of authority;.
4 years ago - after Betty died; - NO

Required letter from Specialist confirming no current health condition would impair LPA's & new will.

337. This therefore contained the details of the attorneys on the new LPAs. Charlie was included on all them, with Ms Webster on the business LPA and the personal financial LPA, the latter having Ms da Silva and Ms Daddy as replacements – "*because he saw a lot of them*". According to the typed note, Ms Martin explained the problems that might arise if there were no replacements on the business LPA, but Reg seemed prepared to accept the risk. He wanted these LPAs to be effective on registration. He wanted all four on the health and welfare LPA on a joint and several basis. Again there was no mention, and therefore apparently no discussion, in relation to Reg's other children who might be thought to be more appropriate attorneys. Nor was there any discussion as to why the instructions had changed from the first meeting.

338. The item that was in the manuscript note that was not in the typed note was the reference to "*Powell & Young, Pocklington, letter of authority; 4 years ago – after Betty died:- NO*". Ms Precious was at Powell & Young before it merged with Harrowells. She was Reg's solicitor for his previous wills; she dealt with the 2014 LPA and Betty's estate. The note indicated that she or her firm should not be approached for any letter of authority. The Claimants submitted that this was an instruction from Reg, mainly because Charlie suggested that only Reg would have thought in terms of Powell & Young, whereas he would have referred to the firm as Harrowells. However it seems most unlikely to me that Reg would have said this in this context. If he had done, Ms Martin would have

been bound to include that in her typed note as an instruction from Reg. Later on in the chronology there is a note of a conversation between Charlie and Ms Martin on 18 October 2019. At the end of her note, Ms Martin said: "*Don't request copy will from Powell & Young*". Charlie again denied that came from him for the same reason. But the two notes are consistent with his plan, to which everyone had bought into, to keep this all secret from Lindsay and Mike. If Ms Martin had contacted Ms Precious, she would likely have spoken to Lindsay and let the cat out of the bag. Ms Martin was happy to go along with this.

339. At the end of the typed note, Ms Martin said that she "*again asked about the letter from his consultant, Dr Khan and he said he had ann [sic] appointment tomorrow.*" The manuscript note was a bit more explicit as to the purpose of the letter: "*Requested letter from specialist confirming no current health conditions would impair LPA's [sic] and new will*". Ms Martin could not explain how she knew about the appointment with Dr Khan. As I have said above, Ms Martin's evidence about why she wanted the letter was unconvincing. She could not initially accept that it was to do with Reg's capacity but then agreed that it really was only about capacity. Perhaps she could not bring herself to accept that because she knew that Dr Khan was not a mental capacity specialist or because she appreciated that it would mean she did have a concern in that respect but did not record those concerns anywhere.

340. There was no mention in either note about the signing of documents in relation to Yapham Grange. Katie said in her witness statement that Ms Martin had telephoned her during the meeting so that she could run through the proposed Option Agreement for Ms Daddy to purchase Yapham Grange for £400,000 from Reg. That Option Agreement is dated 7 October 2019 but Ms Martin had witnessed Reg's signature and there was no further meeting between them until after 7 October 2019. It is curious that Ms Martin did not record this but I suppose that was not to do with the LPAs or new will.

341. At 4:02pm on 1 October 2019, Katie set up the email address charliebond234@gmail.com. The purpose of this email address, to which Katie had access, was so that Katie and Charlie could liaise with Ms Martin privately as Charlie only had a Bond International email address, which was not private.

342. On 2 October 2019, Ms Martin wrote to Charlie at that new email address, signing off as "*Ged*", her nickname. Ms Martin could not remember how she knew about the new email address and her attendance notes did not refer to it or to the fact that she had been authorized by Reg, her client, to liaise with Charlie in relation to what she was doing with Reg, which was largely for Charlie's benefit. It is clear from this email that Ms Martin considered that it was appropriate to involve Charlie in the process, when she should probably have been somewhat more wary of only dealing with one of Reg's children, particularly the one that appeared to be securing for himself the most benefit. Ms Martin said that this was because he was one of the attorneys and it was only in relation to the LPAs. But she should have appreciated the wider context as to what was really going on.

343. The email of 2 October 2019 began: "*As you know I have had a couple of meetings with your father about putting in place new Lasting Powers of Attorney";* she attached copies of the OPG Guidance Notes and examples of "*instructions and preferences*" to include in the LPAs, and said she "*would be grateful if you would go through these with him, and advise me whether he wishes to include any"*. Ms Martin could not really explain why she was taking instructions about these preferences from the proposed attorney rather than the donor but this does rather follow her pattern of asking others rather than Reg what her instructions were. She also said: "*I will also talk to Duncan about what specific instructions may be required in relation to company matters too. I could do with a brief chat with you before I see him again on 18th October."*

344. At the end of the email, she referred to the consultation with Dr Khan that day:

> "Finally I have explained that we should obtain a letter from his specialist (whom I believe you are seeing with him today) that in his opinion Reg has capacity to revoke his existing Financial LPA and make a new Financial and Health Care LPA and also to make a new Will too."

This expressly clarifies the purpose of Ms Martin's request for a letter from Dr Khan. She immediately forwarded the sent email to Mr Rann: "*Fyi. Welcome back! Hope you had a good time.*"

345. It was a routine appointment with Dr Khan on 2 October 2019, but this was the first time that Charlie had attended such an appointment with Dr Khan. I imagine that that was because of the importance of obtaining a capacity letter for Reg to be able to sign the LPAs and a new will. Charlie said it was because of the planned holiday for Reg in Dubai and he wanted to ensure that Dr Khan was content to allow him to fly.

346. Dr Khan's letter dated 3 October 2019, on which the Claimants place much reliance, stated as follows:

> "I noticed that with the passage of time his fitness is improving. He has always been compus mentis [sic] and retained a very good memory.
>
> As expected when he is tired and been through a stressful period, especially a time when his horses have been running, he tends to slow down which is not a surprise. I have explained to Reginald his threshold for tiredness will be much lower being on chemotherapy.
>
> […]
>
> Towards the end of [November] [Reg] will be travelling to Dubai to attend the Formula One racing and meeting up with friends. At his next appointment in 4 weeks time I will reassess him for this purpose and we will also negotiate a treatment break so he can enjoy his holidays.
>
> <u>As things stand Mr. Bond is fit and well for all purposes including running his business and making decisions. If he requires any formal statement in this regard I would be happy to provide it on request</u>." (underlining added)

347. Ms Martin accepted that the letter from Dr Khan was not a capacity assessment for the purposes of making the LPAs and the 2019 Will. Dr Khan did not know of the *Banks* test for testamentary capacity and simply carried out the 10-point abbreviated mini mental state examination. Two days later Charlie texted Dr Khan to say that a horse was going to be named after him – "Dr Khan Junior" – and in fact this was one of Charlie's foals.

348. On 12 October 2019, Ms Martin finally began to draft an engagement letter. This provided for "*preparation and execution of a new will, Health and Welfare Lasting Power of Attorney, personal and business Financial Lasting Powers of Attorney*"; and that the "*person with overall responsibility for the work which we do in this matter is Mr Rann*". The letter gave cost estimates of £450 + VAT for the preparation of the will and £900 + VAT for the preparation of three LPAs. The letter was never signed and another one was prepared on 20 October 2019, after the next meeting, and that gave greater precedence to the making of the LPAs rather than the will. There was no signed engagement letter on the file but Ms Martin said that was not unusual.

(d) 18 October 2019: third meeting with Ms Martin

349. On 16 October 2019, Charlie and Katie were going on holiday to Dubai until 26 October 2019. Before they left, Katie telephoned Ms Botham to say that the meeting with Reg on 18 October 2019 would be going ahead. She also said that if Ms Martin needed to speak to Charlie, she could do so the following day. Ms Botham again booked the Marriott Hotel for the meeting at 12noon.

350. Ms Martin made an attendance note for this third meeting on 18 October 2019 (she typed it up on 20 October 2019). It stated in the second paragraph that she had spoken with Charlie on the telephone at 8.30am that morning. There is a handwritten note of this telephone call and it started off by saying: "*Discussed with Charlie, Reg's instructions"* and provided that the finance attorneys (for both the personal and business LPAs) were to be Charlie and Ms Webster, with the replacement now to be Greg; the health and welfare attorneys would be Charlie, Ms Webster, Ms da Silva and Ms Daddy.

351. The note concluded with the following: "*Don't request copy will from Powell & Young"*. I have mentioned this in [338] above, as it mirrors what was said in Ms Martin's manuscript note of the 1 October 2019 meeting where the word "NO" appeared next to the reference to Powell & Young. As I pointed out there, if Ms Martin had requested the existing will from Reg's previous solicitors, it would have alerted Ms Precious to the fact that Reg was making a new will. Until Charlie gave evidence, the Claimants had admitted that this had been agreed in the conversation, but Charlie then denied it, claiming that he would not have referred to Powell & Young. I do not accept his evidence, as there is no real explanation as to why it is on a note of a conversation that was admittedly with him. And it fits with the fact that he was desperate to keep his plan secret. The reason why he may have been keen to distance himself from this request is that it related to his father's will and he has persisted in claiming that he was not involved at all in the will-making process, as opposed to the new LPAs. This undermines that case.

352. The effect of this was that Ms Martin did not know what was in Reg's existing will; nor could she therefore discuss with him the reasons why he wished to change his testamentary dispositions. Again Ms Martin said that this was not unusual and that sometimes it is better to start with a clean slate. That may be so where that is what the testator wanted to do. In this case, it must have been fairly clear to Ms Martin, that Reg did not know what he wanted to do, at least at the first three meetings.

353. The attendance note for this third meeting stated that the meeting lasted for 90 minutes. Reg was again accompanied by Ms Webster, Ms Daddy and Ms da Silva, and after a "*brief chat*" with them all, Ms Webster and Reg went into the meeting room with Ms Martin.

354. The attendance note repeated what Ms Martin had discussed with Charlie on the telephone earlier. But instead of saying that Reg had given her instructions in accordance with what Charlie said, the attendance note referred to an agreement as to the attorneys on his LPAs. It said:

> "It has been agreed that for his personal financial LPA the attorneys will be: Charlie and Denise on a joint and several basis, and that Greg will be his replacement. For his business LPA the attorneys will be the same."

355. This was the first mention in any of the meetings of Greg. Yet there is no explanation from Reg as to why he had decided to include Greg. It looks as though this was basically put to Reg as a result of Charlie's instructions. Reg apparently agreed to the same attorneys for his business LPA.

356. There was also the first mention of Lindsay in this attendance note. But this was not in respect of any discussion about Lindsay being on any of the new LPAs. Instead it was about the revocation of the 2014 LPA. It provided as follows:

> "We agreed that I would prepare a new deed of revocation of the existing financial LPA which will revoke Lindsey's [sic] role as attorney but I would coordinate with Charlie as to when this was going to be dated/OPG notified (the OPG will have to be notified when we submit the new ones for registration)."

357. Ms Martin knew all along that the 2014 LPA in Lindsay's favour was going to be revoked, as that was always part of the plan and what she had been told by Mr Rann on 10 September 2019. It does not appear from any of her attendance notes that Ms Martin ever explored this with Reg to check that this was what he actually wanted to do.

358. Turning to the health and welfare LPA, Ms Martin stated in the attendance note that the attorneys would be Charlie, Greg, Ms Webster, Ms Daddy and Ms da Silva on a joint and several basis. Oddly the note continued as follows: "*I think initially Greg was put forward as a replacement again but I think it would be appropriate subject to Reg confirming that Greg is NOT excluded from this LPA."* It is wholly unclear why Ms Martin would not have checked this with Reg at the meeting. This sentence looks as though it contains her thoughts rather

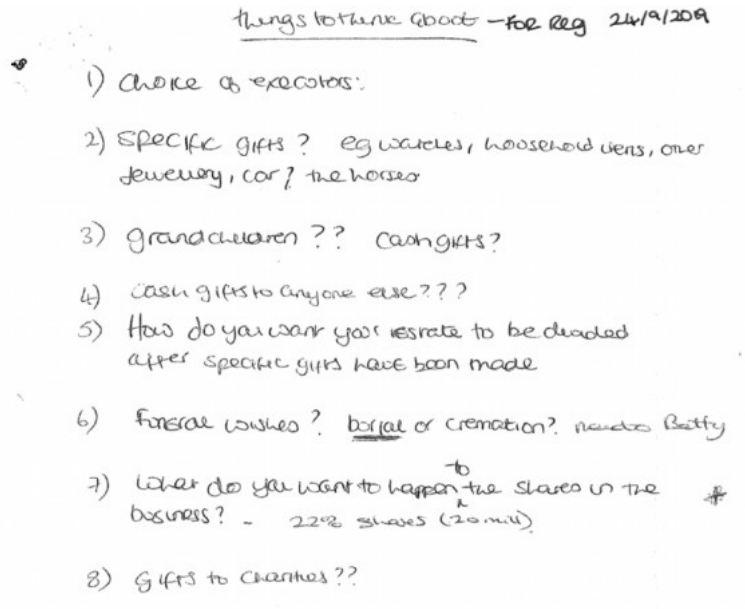
than instructions. She was right to question Greg's appointment for health and welfare as he was never involved on those matters in relation to his father.

359. Ms Martin then confirmed that they went through the instructions and preferences, but it appears as though it may have been more with Ms Webster: "*with Denise in attendance only, and I confirm she did not in any way influence Reg with his decisions, but was merely there as a support*". The note said that Ms Martin confirmed that she could have the LPAs ready for signature next Friday (25 October 2019) and that they would meet again at 12noon that day.

360. They then turned to the will again but the note stated that, even by this third meeting with Ms Martin, Reg still did not know what he wanted to do in relation to a new will:

> "We then turned to his Will. He is not yet ready to give me instructions, but might be able to next Friday. I prepared a list of things he needed to think about during the week which are:-
>
> - Choice of executors;
> - Funeral wishes – burial/cremation
> - Specific gifts (horses, watches, other jewellery, cars, household contents);
> - Cash gifts to grandchildren/anyone else;
> - What does he want to happen to the shares in the Company?
> - Gifts to Charities;
> - How does he want to split what is left – residue."

361. This list was very similar to a manuscript note prepared by Ms Martin and it is probably this list that was given to Ms Webster at the meeting. Confusingly, the manuscript list has a date, in a different pen, of 24 September 2019 written on the top, but Ms Martin could not explain that and it would more likely fit with the chronology if this was the list given to Ms Webster and Reg at the 18 October 2019 meeting. The manuscript note was as follows:



Things to think about – for Reg 24/9/2019

1) choice of executors:

2) specific gifts? eg watches, household items, other jewellery, car? the horses

3) grandchildren?? cash gifts?

4) cash gifts to anyone else???

5) How do you want your estate to be divided after specific gifts have been made

6) funeral wishes? burial or cremation? remember Betty

7) what do you want to happen to the shares in the business? - 22% shares (20 mil)

8) Gifts to charities??

362. The manuscript note had a slightly different order to the attendance note. It also had comments added to items 6 and 7 and that handwriting was Ms Webster's. In particular, next to what he wanted to do about the shares in the business, Ms Webster wrote "*22% shares (20 mill)*". None of the witnesses could explain that figure or say where it came from. Ms Webster said that she might have been told it by Ms Daddy. Nobody suggested it came from Reg.

363. Two days later, on 20 October 2019, Ms Martin edited the suggested "*instructions and preferences*" for the LPAs; created a second engagement letter dated 20 October 2019; and sent Ms Botham two emails (at 12noon and 12.43pm) asking her to send the engagement letter to Charlie's private email at charliebond234@gmail.com and not by post to Reg because "*Lindsay may see it"* and "*I believe Lindsay opens her father's post*". Ms Martin at first in her oral evidence tried to suggest that she was sending this material to Charlie because there were problems with the post. However when confronted with her own emails, she backtracked and confirmed that it was nothing to do with postal problems and that it was because everything had to be kept secret from Lindsay. She said she knew that there were problems in the family, but going to these lengths means she obviously knew full well that this was being orchestrated by Charlie, and that Lindsay and Mike were not to know anything. It did her no credit to have tried to pretend that post was going to Charlie because of postal problems.

364. Furthermore, there is nothing in any attendance note or her time recording that indicated that this was being done on the instructions of Reg. It means that all communications, save those at the meetings, were via Charlie or Katie, both in relation to the LPAs and the new will. There is no evidence that Reg saw, let alone signed, the engagement letter which was sent to Charlie.

365. On 21 October 2019, Charlie telephoned Ms Martin from Dubai, but Ms Martin missed the call. They did, however, speak for 6 minutes on 24 October 2019, the day before Reg's next meeting with Ms Martin, where the LPAs were due

to be signed. Ms Martin's time recording entry for that day states that the topic of conversation was "*re Deed of Renunciation and schedule of assets".* There is no note of this telephone call and Ms Martin said that she could not remember it although she accepted that by "*Renunciation*" she presumably meant "*Deed of Revocation*". This is perhaps an indication of Charlie keeping an eye on things, making sure that everything was going ahead as planned.

366. Indeed Charlie was clearly very keen for Reg to be in the right frame of mind for the meeting on 25 October 2019. On 24 October 2019, he texted to Ms Daddy some photographs of the hotel in Dubai that they were planning for Reg to go to in November after the documents had been signed. Ms Daddy texted back that she would show Reg because: "*it will give him a boost for tomorrow*." Charlie responded: "*This is just what he needs. Let's hope everything goes to plan for him*"; and Ms Daddy replied: "*Fingers crossed hopefully Karma is just around the corner for them.*" Charlie could not have sent the photographs to Reg's phone as there would be a danger that Lindsay might see them.

(e) 25 October 2019: Fourth meeting with Ms Martin

367. Ms Martin's evidence was that it was at this fourth meeting with her on 25 October 2019 that Reg gave instructions as to what he wanted to do with his shares in Wholesale and Holdings (he did not have any shares in Holdings at that stage). Unfortunately, Ms Martin did not prepare an attendance note of this important meeting. Nor is there any documentation evidencing that a meeting room was booked at the Marriott Hotel, York, as there was with the other meetings. (It may have been booked when Ms Martin was at the 18 October 2019 meeting.)

368. Ms Martin's time recording entries for this stated as follows:

> "Travelling to meeting at the Marriot Hotel, Tadcaster Road to finalise the Lasting Powers of Attorney."
>
> "attending Reg Bond at the Marriott Hotel to finalise three Lasting Powers of Attorney and take initial instructions on his Will."

The main purpose of the meeting seems to have been the signing of the LPAs. This appears not only from the above entries but also from the attendance note of the meeting on 18 October 2019, which referred to that happening at the next meeting on 25 October 2019, and the engagement letter sent to Charlie on 20 October 2019 also made a number of references to the meeting. All the same people attended and Ms Webster was with Reg in the meeting with Ms Martin.

369. The LPAs are dated 25 October 2019, so they were probably executed by Reg on that day. Ms Martin witnessed his signatures and signed as the certificate provider. Ms Martin also witnessed Ms Webster's, Ms Daddy's and Ms da Silva's signatures in the respective LPAs in which they were named as attorneys. It is curious that Ms Martin did not record the execution of the LPAs anywhere.

370. In relation to the new will, there are a number of documents that need to be considered and from which it is possible to discern what happened at the meeting. There are the will questionnaires that Ms Martin said were how she recorded Reg's instructions; there are also manuscript notes – one from Ms Webster and others from Ms Martin.

371. Ms Martin's manuscript note entitled "*things to think about*" (reproduced in [359] above) was, in all probability, given to Ms Webster at the 18 October 2019 meeting. Ms Martin's attendance note of that meeting also set out a similar list of matters to be considered by Reg in relation to his will. As noted above, Ms Webster filled in next to what Reg wanted to do about the shares in the business, "*22% shares (20 mill)*". It is likely that this note, with Ms Webster's comments, was handed to Ms Martin at the 25 October 2019 meeting.

372. The Claimants say that Ms Webster also handed over another handwritten note by her which is a list of instructions broadly corresponding to the list in Ms Martin's attendance note of the 18 October 2019 meeting and her handwritten "*things to think about*" list. The difficulty with the chronology and timing of some of these documents, and therefore understanding when particular instructions were given and by whom, is that Ms Martin did not record when documents were given to her and when additions were made, including by her. For instance, Ms Webster's note is largely in her handwriting, but the date "*25 October 2019*" written at the top of the document, and some other annotations, are in Ms Martin's writing. She could not say when she did this.

373. Ms Webster said that she had gone through the list with Reg, over a number of discussions when he had the energy to deal with it, and wrote down what he wanted to do. Ms Martin obviously thought it appropriate to delegate to Ms Webster the task of taking instructions from Reg as to what was to go into his will. Ms Martin said that she went through the list in the meeting with Reg to confirm that these were his instructions. But that is not the same as asking Reg open questions about his testamentary wishes and understanding why they had changed from his previous will.

374. Ms Webster's list dealt with choice of executors which Ms Webster noted to be Charlie, Ms Daddy, Ms Webster and Greg, thereby removing Mike and Lindsay who were named in the August 2017 Will. It then referred to some specific gifts: the horses to Charlie (there was no reference to the new horses company, TWDHL); watches and jewellery to Charlie, Mike and Greg; the cars to be sold and proceeds divided between the grandchildren (Ms Martin added "*£200,000*" next to this item); items in house to be split between four children; cash gifts of £5000 to each of Ms da Silva, Ms Daddy, Ms Webster and Mr Warters (to which Ms Martin added "*(gardener)*") and if they were still caring for Reg at his death to Mr Duerden and Mr Ostler; and two charitable gifts to the hospitals that had cared for Reg. As to funeral wishes, Ms Webster wrote that Reg wished to be buried next to Betty. All of these items found their way into the draft will and the will questionnaires.

375. However, and significantly, Ms Webster wrote at the bottom of her list: "*not covered shares in business*". Ms Martin wrote next to that "*22%*", which I

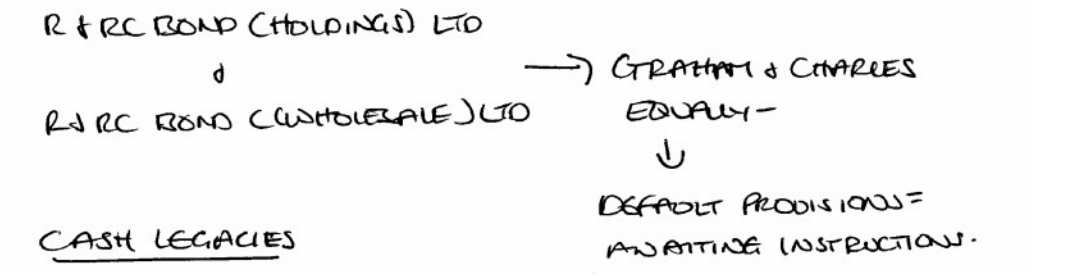
assume she took from Ms Webster's inexplicable addition to Ms Martin's "*things to think about*" list. If these were Reg's instructions as taken by Ms Webster and presented to Ms Martin at the meeting on 25 October 2019, it appears that he had no instructions in relation to the shares in the business. Even though he had been specifically asked in relation to the shares in the business in Ms Martin's notes, and it may be questioned why he was specifically being asked this, given that it had been assumed that they would be split equally between the four children, Reg was still unable to say what he wanted to do. That is not particularly encouraging in terms of his capacity and whether he was actually engaged with or wanted to change his will.

376. There are two iterations of the will questionnaire and Ms Martin accepted that some of the information in them was added later. She was insistent however that the instructions in relation to the shares in Wholesale and Holdings were given and recorded at the meeting on 25 October 2019. She said she could specifically remember that this happened.

377. The two versions of the will questionnaires were disclosed at different times: the first to be disclosed in the will file in 2021 can be identified by the fact that on the front page, in manuscript, above a scratched out date, is the date, 25 October 2019; the other one, which was disclosed only with Ms Martin's witness statement in October 2023, has the same scratched out date, but 25 October 2019 has not been written on it. The parties are agreed that the scratched out date is 14 November 2019. The former questionnaire must therefore have been later than the latter one and Ms Martin has added the 25 October 2019 date. She surmised that the earlier one with the date scratched out had been copied by her and then further bits were added to the copy, including her dating it 25 October 2019. She was unable to explain why she would have put an earlier date on a document that was dated 14 November 2019.

378. Ms Reed KC submitted that this was highly suspicious and the 25 October 2019 date was put on to fit the Claimants' narrative that instructions from Reg about the shares in the business were given on that date and they did not come later from Mr Rann or Charlie. There are a number of other indications, explored below, that the Claimants' chronology is not correct.

379. There are only slight differences between the two versions: in the later one, Rebecca was oddly included as a child of Mike; there had also been added an inaccurate list of business assets with the wrong company names; and next to TWDHL, there had been added "*horses*", presumably to indicate that this was, or would be, the horses company. The critical entries were however identical and in the following form:

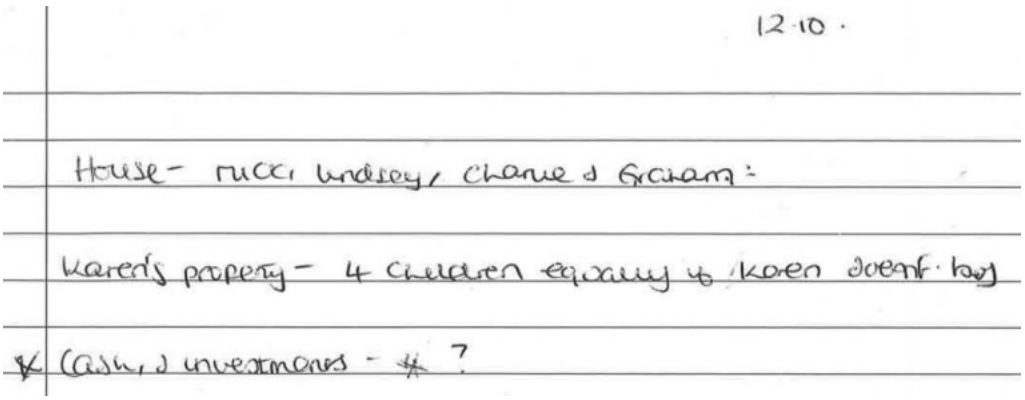


380. Ms Martin's insistence that she wrote this down at the meeting on 25 October 2019 is at odds with the fact that she did not yet have company information including the specific company names until after 31 October 2019, when company searches were done, or after she had met Mr Rann on 8 November 2019. Ms Martin agreed that Reg would not have been able to provide such information. The note as to default provisions is also interesting as on the next page of both questionnaires after the instructions in relation to residue was the following: "*Awaiting default provisions – see email to Denise attached*." The only such email in relation to default provisions was sent to Ms Webster after the next meeting on 14 November 2019. Another indication that this was not completed until later is that Ms Martin did not find out Mr Duerden and Mr Ostler's surnames until later but they are included with their surnames just below the entries in relation to the shares in Wholesale and Holdings.

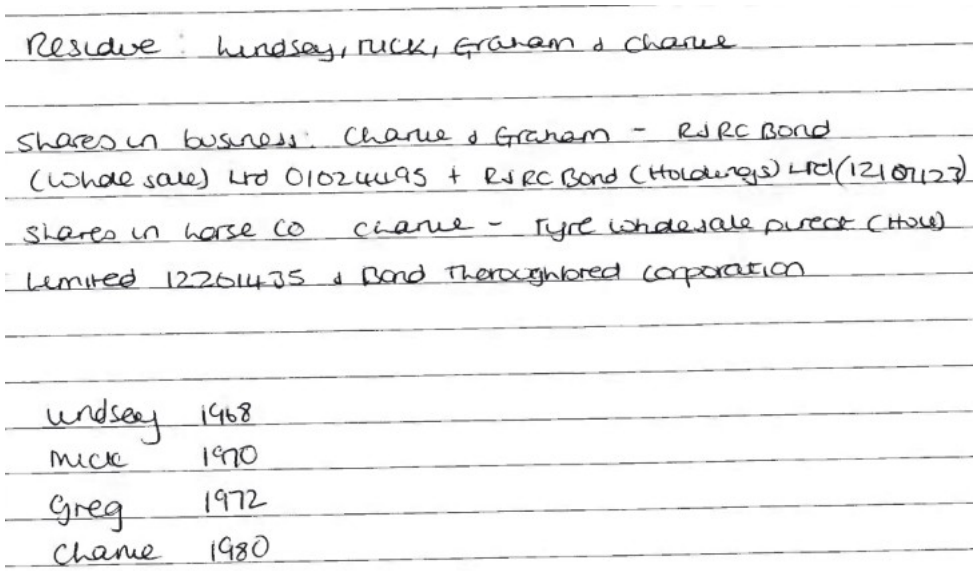
381. The Claimants relied on two further handwritten notes of Ms Martin that were undated but which they say were probably written at the meeting on 25 October 2019. Again it is most odd that if they were written at the meeting, Ms Martin did not think to put them into a typed attendance note. Alternatively, it could be asked why she felt the need to keep separate notes from the will questionnaires which she had claimed took the place of an attendance note. Furthermore, there is no reason why there are two notes, rather than including it all on one sheet.

382. The notes were these:

(1)



(2)


Residue : Lindsay, Nick, Graham & Charlie

Shares in business: Charlie & Graham - RJRC Bond (Wholesale) Ltd 01024495 + RJRC Bond (Holdings) Ltd (12107127)

Shares in horse co Charlie - Tyre Wholesale Direct (Hold) Limited 12261435 & Bond Thoroughbred Corporation

Lindsay 1968
Nick 1970
Greg 1972
Charlie 1980

383. Note (1) has "*12.10*" at the top and Ms Martin said this would be the time. The 25 October 2019 meeting started at 12 noon. Furthermore those provisions are not dealt with in the will questionnaires and they did not end up in the 2019 Will, save insofar as the Paddock and Yapham Grange would have fallen into residue.

384. Note (2) is even more unlikely to have been written on 25 October 2019. The Claimants accepted that Ms Martin did not have the company numbers at that stage. She did not even know their proper names. Ms Martin was unable to explain why she would have made this separate note at the meeting, while also putting the same information into the will questionnaire, as she said she did.

385. My conclusion then in relation to the 25 October 2019 meeting is that I am not satisfied on the balance of probabilities that Reg gave instructions to Ms Martin that he wanted to leave his shares in Wholesale and Holdings just to Charlie and Greg. I think that it is likely that the position they reached in relation to the will is what was contained in Ms Webster's handwritten list, which was possibly transferred at some point into the will questionnaire. That list stated clearly that no decision had been made about the shares in the business and, based on the documentation available, I do not think it can be said that Reg gave instructions in relation to the shares at that meeting. The entries in the will questionnaire to that effect and Ms Martin's note (2) are very likely to have been prepared later and the date of 14 November 2019 scratched out and changed is, in my view, significant.

386. It is also interesting that neither at nor immediately following the meeting of 25 October 2019 were any arrangements made to meet again to finalise the will. Furthermore, Ms Martin did not start drafting the will until 12 November 2019, although she said that this was because of pressure of other work.

387. Charlie was keen to find out how the meeting had gone. He texted Ms Daddy to ask but she replied that they were still in the meeting. Ms Webster later texted Charlie to say: "*He's ok, done well today signed documents, few things*

Geraldine going to speak to you & Dunan next week , have safe journey home". Charlie was still in Dubai but had continued to send photos and to ask whether Reg liked them and whether he was looking forward to going on holiday there.

(f) 25 October 2019 to 14 November 2019: events before next meeting

388. On 31 October 2019, Ms Martin's time recording showed that she spent one hour checking the LPAs, preparing a note to Ms Botham and "*Checking co information at Companies House BETA*". Ms Martin's memorandum to Ms Botham, contained the following:

> "I have asked Katie and Duncan for details of all the companies which Reg is involved with, including the new one, but not received any info yet. I have found out so much from Companies House and have included it in the Business LPA, but I need to check with Duncan that this is correct before we send the letters out.
>
> Charlie's letter also needs to include a bound Deed of Revocation for him to obtain his father's signature when he can next week. Please ask him not to date it."

389. The first part of the memorandum quoted from above indicated why Ms Martin would not have been able to record the exact company names in the will questionnaire. She did not know the names sufficiently precisely to have included them in the business LPA, which details she only filled in later. As to the second part, it is unclear why Ms Martin wanted Charlie to organise the signing of the Deed of Revocation, if she was going to see Reg shortly to finalise the will on which she had just taken some instructions. That letter was sent to Charlie on 1 November 2019.

390. On 4 November 2019, Ms Botham emailed Charlie at the charliebond234@gmail.com address saying: "*Geraldine advises that you were going to send her a list of your father's assets. She would be grateful if you could now forward these to her as she now has initial instructions regarding the will.*" It is unclear whether Ms Martin had previously asked Charlie to provide the list of assets but from this email it seems likely. The email indicated that Charlie was more involved in the will-making process than he or Ms Martin were prepared to accept. Ms Martin said that she was only asking Charlie to provide this information because it was convenient to do so and she also had no doubt that Reg was aware of "*his significant assets and the ones that I was probably trying to capture were the more minor ones*".

391. While this was going on, the Buy Out negotiations had continued. On 31 October 2019, HMRC wrote to Mr Rann granting certain tax clearances in respect of the Buy Out, but refusing to grant clearance insofar as the proposed Buy Out involved Reg, Charlie and Greg realising significant amounts of cash while continuing to control the company and increasing their economic stake and control. As a result of this, Mr Rann sought to restructure the Buy Out so

that Reg, Charlie and Greg would only be exchanging their shares in Wholesale for shares in Holdings, and they would not be receiving cash consideration.

392. On 5 November 2019, Mr Rowley emailed Mr Rann (copying Mike and Lindsay) attaching an amended version of the SPOA. The amended SPOA not only retained Reg as a party but also, in a new clause 7, introduced a term that Charlie, Greg and Reg (together defined in a new definition in clause 1.1 as the "Guarantors") personally guaranteed the obligations of Holdings under the SPOA, including the payment of the consideration to Mike and Lindsay. This was on the basis that the sale of Mike and Lindsay's shares was in reality to Charlie, Greg and Reg, as the owners of Holdings. This was firmly rejected by Mr Rann on behalf of Charlie and Greg, who seemed to have been quite upset by the suggestion. Charlie said that he was "*furious on my dad's side*". Of course, no one was separately advising Reg. Mr Rann's response to Mr Rowley on 6 November 2019 was that "*if this is one of your red lines, then the deal will not go ahead*" and he formally rejected the proposal of personal guarantees the next morning.

393. On 6 November 2019, Ms Martin's time recording entry showed a 6 minute call with Ms Webster in which she was asking for a further meeting. It seems that Charlie had asked Ms Webster to do this, as she had texted him after the call to say: "*Spoke to Geraldine she's gonna ring me tmrw as she's in London today , I will be with Reg and Rita so will get meeting arranged !*".

394. However Ms Martin's time recording entry for 7 November 2019 stated as follows:

> "Tel call from Charlie and Duncan re Reg and request for meeting/finalise will before he goes on holiday on 24th November. Requested schedule of assets and agreed to see him next Thursday at 3.30pm."

395. There was no attendance note of this call. The time recording said that it was 2 units, meaning 12 minutes, but Ms Martin said that that could mean it was between 6 and 12 minutes. Ms Martin said that she thought that Charlie and Mr Rann were on speaker phone, but this was contradicted by Mr Rann who said that he thought that he and Charlie were in the car together and that he was driving and therefore could only hear one side of the conversation. As Ms Martin recorded that they were both on the call, her note is more likely to be correct. But she did not have any real memory of the call, save what was contained in her time recording entry, and that it was therefore about setting up another meeting with Reg and the schedule of assets. She did not think that she had been told about the latest developments in the Buy Out negotiations and she probably knew very little about them.

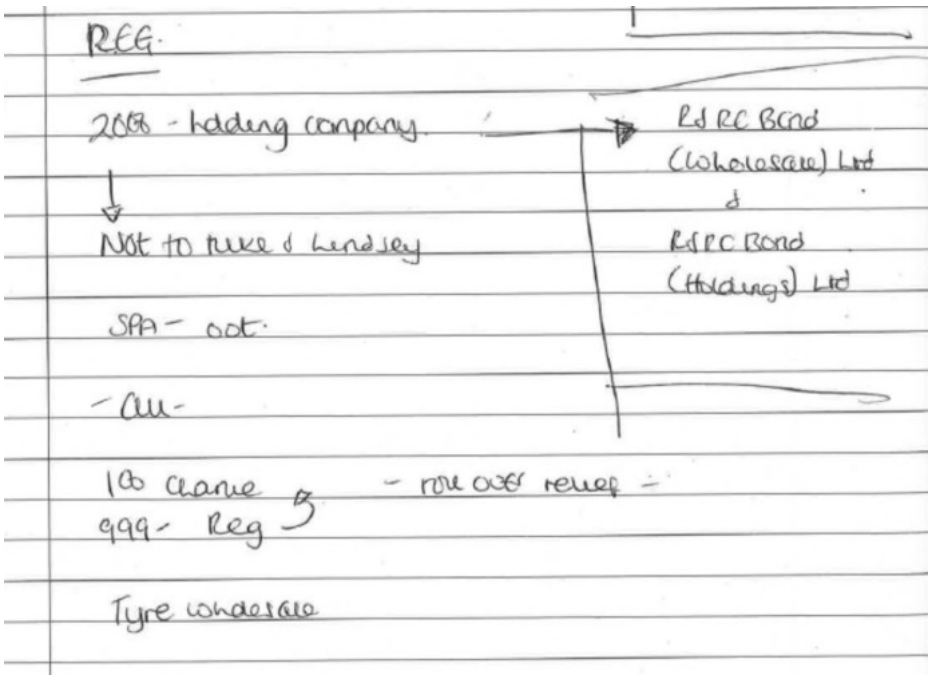
396. Charlie's evidence was that he was setting up the meeting because Reg had told him that he wanted to get his will done before going away to Dubai. However, by that stage, no flights had been booked and there is no evidence that Reg was ever anxious about getting a new will done. Furthermore there is no entry in Reg's care diary for Charlie visiting on 6 or 7 November 2019, although they did watch football together on the evening of 5 November 2019. Mr Ostler's

clear evidence is that when they were watching football, they never discussed business and it is even more implausible that they would have been discussing Reg's will in front of one of the carers. The urgency of the meeting may have been more related to the Buy Out which had a completion date of 22 November 2019. In my view, this shows that the will-making process and the meetings with Ms Martin were largely being controlled by Charlie and Mr Rann.

397. On that day, 7 November 2019, Ms Botham booked the meeting room for the Marriott Hotel for 14 November 2019. She also told Katie that she had left a "*large envelope*" on her desk for Katie to give to Charlie. Ms Martin said that this was probably to do with the LPAs. It was on this day that Katie said her phone crashed and she could not retrieve any information. She also said that from this point on, neither she nor Charlie were able to access the charliebond234@gmail.com email address.

398. The next day after the phone call, 8 November 2019, Mr Rann and Ms Martin met at the offices of Walker Crips Group plc, investment advisors, in York, where Ms Martin tended to work on Fridays. Her time recording entry stated: "*attending Duncan at WCGPLC to discuss Reg's Will/various shareholdings and the Business LPA*." It recorded the meeting as having lasted 24 minutes. It seems fairly obvious that this meeting had been arranged on the telephone call the day before. It was specifically to talk about Reg's will. Mr Rann said that he had "*completely removed himself from the will-making process*" save for this meeting, but this seems to be unlikely.

399. There is no attendance note of the meeting and Mr Rann and Ms Martin gave somewhat conflicting evidence as to what was said. There is however a handwritten note which Ms Martin accepted could be a note she took at the meeting (this note was not included in the will files as originally disclosed). This is the note:



400. The note therefore contains the actual names of the tyre companies on the right hand side. Underneath "*REG*" it records that his "*20%*" of the holding company, ie Holdings, which is what he was going to get on the Buy Out, was "*Not*" to be left to Mike and Lindsay, who were "*out*" of the SPOA. In other words, it looks as though Ms Martin was writing down what Mr Rann was telling her, namely that, as Mike and Lindsay were being bought out in the Buy Out, they should not receive any part of Reg's shares in the business under his will. It is difficult to read the note any other way. Ms Martin would not be recording on this paper what Reg had allegedly instructed her on the 25 October 2019. Furthermore, as her 31 October 2019 memorandum to Ms Botham made clear, she needed to see Mr Rann to get the company details, so she would not have been in a position to write those details in the will questionnaire on 25 October 2019.

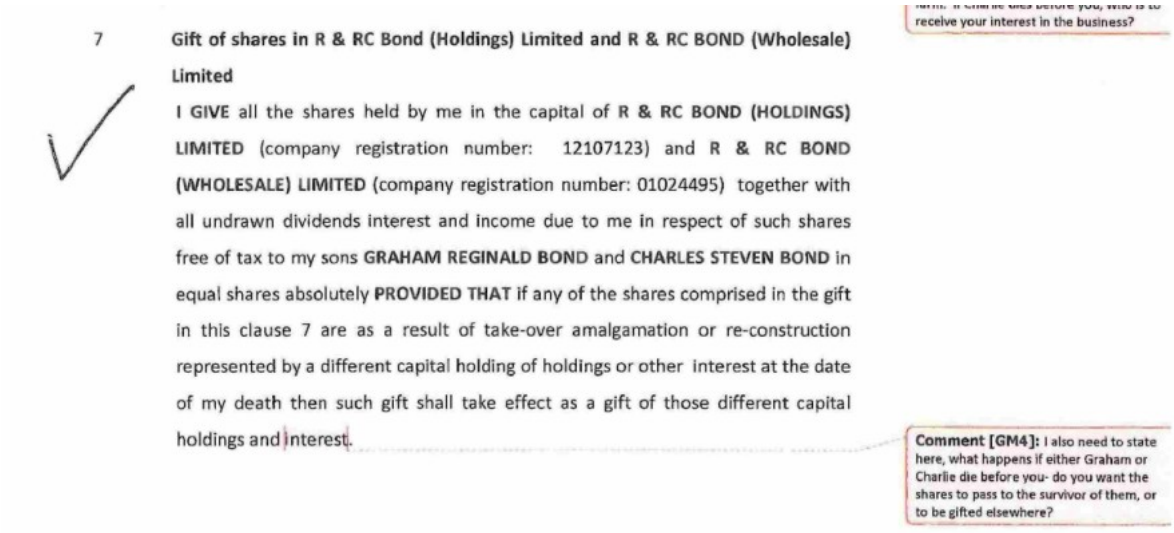
401. Mr Rann said that Ms Martin told him at the meeting that Reg had decided to leave the shares just to Charlie and Greg and that he was "*shocked*" by this and said that he thought this "*would ultimately cause a massive fight*". Ms Martin said that she did not remember telling Mr Rann this. She was adamant however that she would never take instructions from Mr Rann about the contents of Reg's will: "*I take my job very seriously, and I have done it for a very long time and worked very hard. There is no way I would take instructions on those shares from Duncan*." However there is only a problem with taking instructions in this way if there are concerns about whether it was truly the testator's intention to deal with his estate in that way and confirmation was not possible. Furthermore, Ms Martin got her instructions in the first place from Mr Rann and he seemed to know what was to go into the will.

402. Even if Mr Rann told Ms Martin that these were Reg's instructions in relation to the shares, she still had plenty of opportunity to confirm those instructions with Reg. However, her suggestion that Reg gave instructions to such effect on 25 October 2019 does not fit with the chronology as shown by the documents. It is the fact that she has sought to retrofit the will questionnaires to establish that course of events that is troubling about her evidence.

403. It was only after the meeting with Mr Rann that Ms Martin began drafting the will. The time recording entry for 12 November 2019 had two hours for "*PREPARING FIRST DRAFT OF WILL*". On 13 November 2019, she spent a further hour "*Amending Will and preparing covering letter*". At 8.42am she emailed Charlie to his private email address with the subject "*Your Dad's Will*" and said that she had prepared a draft Will "*in line with his instructions*". It is somewhat extraordinary that she was corresponding with Charlie about the will, given that he is a major beneficiary of it, but it is also indicative of his close involvement. She again asked him to provide "*a list of his assets*" before the meeting tomorrow. Ms Martin was very keen that Charlie should see the email, as a minute later she messaged Katie asking her to "*make sure he sees it*". Katie responded to say that she may have difficulty logging in to the email as her phone had crashed.

(g) 14 November 2019: fifth meeting with Ms Martin

404. On the morning of 14 November 2019, Ms Martin modified and printed off the draft will which had comment bubbles for the outstanding points. These were principally as to: the substitutionary beneficiaries for the interests in TWDHL and BTC should Charlie predecease Reg; for the shares in Wholesale and Holdings if Charlie or Greg predeceased Reg; in relation to the residuary estate if one of the children predeceased Reg; and the full names and addresses for Mr Duerden, Mr Ostler and Mr Warters. The primary beneficiaries had already been established. For instance, this was the comment next to the gift of shares in Wholesale and Holdings in clause 7 of the draft will



receive your interest in the business?

7 **Gift of shares in R & RC Bond (Holdings) Limited and R & RC BOND (Wholesale) Limited**

I GIVE all the shares held by me in the capital of **R & RC BOND (HOLDINGS) LIMITED** (company registration number: 12107123) and **R & RC BOND (WHOLESALE) LIMITED** (company registration number: 01024495) together with all undrawn dividends interest and income due to me in respect of such shares free of tax to my sons **GRAHAM REGINALD BOND** and **CHARLES STEVEN BOND** in equal shares absolutely **PROVIDED THAT** if any of the shares comprised in the gift in this clause 7 are as a result of take-over amalgamation or re-construction represented by a different capital holding of holdings or other interest at the date of my death then such gift shall take effect as a gift of those different capital holdings and interest.

Comment [GM4]: I also need to state here, what happens if either Graham or Charlie die before you- do you want the shares to pass to the survivor of them, or to be gifted elsewhere?

405. This was time recorded as a 90 minute meeting. The entry said as follows:

> "attending Reg Bond at the Marriott and taking him through the draft Will and the additions to the company details on the Business LPA, which he agreed. My draft will includes footnotes so he can see where I need further instructions and I am to email Denise to set these out, so he can give me further instructions over the weekend and finalise the will on Tuesday."

406. Ms Martin made a short attendance note of the 14 November Meeting. It is as follows:

> "We met to go through the first draft of the Will. The draft includes notes showing where I need further instructions and Reg asked me to email these to Denise so he can give it further thought over the weekend. We agreed to meet again on Tuesday 19th November 2019. We also discussed the LPA for his business interests and the inclusion of the relevant company details (R & RC Bond Wholesale) R & RC Bond Holdings, Tyre Wholesale Direct and Bond Thoroughbred."

407. Even though the attendance note does not say so, Reg was accompanied by Ms Webster, Ms Daddy and Ms da Silva, and Ms Webster was with him in the meeting with Ms Martin. This seems to have been the first time that Wholesale, Holdings, TWDHL and BTC were mentioned by name in the attendance notes – but this was only in relation to the business LPA (which had already been signed on 25 October 2019), not the will.

408. It is unclear how much detail in relation to the draft will was gone into at the meeting. The attendance note does not mention the will questionnaire or any particular provisions of the draft will; nor does it indicate that Reg had already given instructions about the companies in relation to the draft will. What is clear is that the outstanding points in the comment bubbles, as explained above, concerning the substitutionary beneficiaries and the like, were not gone through with Reg because Ms Martin decided that she was going to leave it to Ms Webster to try to get instructions from Reg in those respects over the weekend. It indicates the difficulties that Ms Martin seemed to face in being able to get any instructions from Reg about the will and she needed Ms Webster to provide those instructions when she was not with Reg. There appears to be little, if any, engagement by Reg in the process. This should have rung alarm bells for Ms Martin as to Reg's capacity and/or whether the instructions were truly coming from him.

409. There is a printed copy of the 12 November 2019 draft will with the comment bubbles which was annotated in manuscript, including that Reg wished to be buried at Pocklington Church, the grant to Charlie of an option to purchase the Paddock, and Mr Duerden and Mr Ostler's surnames; these details were included in the will questionnaire, pointing towards the likelihood that Ms Martin began to fill it in on 14 November 2019, as its scratched out date suggested. There were ticks next to some of the clauses, including the gift of shares, although there was no explanation as to why some were ticked and why some were not.

410. The Deed of Revocation revoking Lindsay's 2014 LPA was also dated 14 November 2019. The attendance note did not describe its signing but Reg's signature was witnessed by Ms Martin. Ms Martin had originally asked Charlie to organise the execution of this document.

411. Charlie seems to have been particularly exercised about how Reg was going to perform at this meeting. Ms Daddy texted him while the meeting was going on at 4.07pm to say that Ms Webster "*is with him keeping things right*". Presumably there was a concern that Reg would not do as he had been told in relation to the will. (It could not have been to do with the LPAs which had already been signed.) Later that evening Charlie checked with Ms Webster if Reg was OK. She replied that she was out but that "*Reg was great today, don't worry* □ ". It shows how involved Charlie was in his father's new will and it is hard to imagine that he would not have known exactly what was in that draft will, in particular the respects in which he was going to benefit.

(h) 19 November 2019: the sixth meeting with Ms Martin; execution of the 2019 Will

412. There were still a number of outstanding points in relation to the new will which Ms Martin needed instructions on before the planned execution on Tuesday 19 November 2019. Ms Martin sent two emails to Ms Webster on Friday 15 November 2019: at 3.02pm she set out a list of "*further instructions I need to finalise Reg's Will*" and these largely tracked her comment bubbles on the draft will that they had at the 14 November 2019 meeting but on which she clearly

had not been able to get Reg's instructions; the second email at 3.25pm concerned Reg's dogs which were going to Charlie, but if he predeceased Reg, they were to go to Ms Daddy and Ms Martin wanted instructions as to how much money should be left to Ms Daddy in those circumstances to look after them.

413. Ms Martin's time recording entries for 15 November 2019 were as follows:

> "amending Will and perusal of papers from Charlie re his Mum's estate." – 2 hours recorded;
>
> "3 emails to Denise re further instructions required" – 18 minutes recorded.

414. Even though Ms Martin had asked Ms Botham on 15 November 2019 to book the meeting room at the Marriott for 10.30am on 19 November 2019, this was not done until Monday 18 November 2019. When it had been booked, Ms Martin, at 1.35pm, emailed both Charlie and Ms Webster, and addressed it to both – "*Dear Charlie and Denise*" – informing them that the meeting room had been booked. She then asked: "*Have you managed to obtain Reg's instructions on the final points so I can finalise his Will and have it ready for signing tomorrow?*". The "*final points*" were all the outstanding matters in her emails to Ms Webster on 15 November 2019.

415. Ms Martin said in her evidence that it was a mistake to have addressed this email to Charlie. But it was not just that she included Charlie's email address by mistake, she actually addressed it to Charlie. In answering a question of mine, she said: "*The only explanation I can give you is I was busy and I clearly wasn't thinking properly, which is an error on my part*." I am afraid that I do not accept that explanation. She had earlier sought information from Charlie about Reg's assets for the purposes of his new will. She had spoken to him on the telephone a few times about the will and the meetings with Reg, including with Mr Rann on 7 November 2019. She did not appear concerned about dealing with Charlie over Reg's will and the clear implication of this email is that Charlie knew what was proposed for the new will and that he should be involved in the instructions for the outstanding issues, mainly the default substitution provisions. Charlie said that he did not receive the email because of the problems with accessing his private account, and he certainly did not respond to it in writing.

416. At 2pm on 18 November 2019, Ms Webster emailed Ms Martin. She said

> "I have spoken to Reg few times
>
> Hopefully got most of information but there' a few things I haven't managed to get ie addresses Chris who has just moved house & Mark Waters
>
> Number plates still an issue
>
> Reg does apparently own his van as well as the Bentley
>
> I will have another chat before we get to you tomorrow"

Even though she says that she had spoken to Reg a few times already, she did not set out any instructions as to the most substantive matters, being the substitutionary gifts. She said she would have another chat with Reg before the meeting.

417. Five minutes later, Ms Martin emailed Ms Webster back to ask for the instructions that she had, in particular the "*the most important items*" being the substitutionary gifts in respect of the shares going to Charlie and Greg, and the residuary estate, if Reg wanted to pass the respective shares down to the grandchildren. She said not to bother about the other matters such as addresses and number plates as: "*If we can get a Will signed tomorrow, we can always amend and re sign when he gets back from Dubai*". Five minutes later, at 2.10pm, Ms Webster said: "*Will do my best busy most of afternoon x*". At 2.22pm, Ms Martin told Ms Webster that the meeting could be put off until Thursday if she could not get instructions that day, as she would not be able to amend the draft will at the meeting.

418. Then suddenly, seven minutes later, at 2.29pm, Ms Webster emailed to say: "*What time have I got till , I have the answers might be easier to call you*." It is unclear how she obtained the answers in that short space of time. The care diary showed that she was not with Reg at this time, as she had left at 1pm. Both she and Charlie denied speaking in that time. The Claimants said that, as she had made clear in her first email, she had spoken to Reg a few times already, the implication being that she had instructions on all the important points already. But if that is so, it is difficult to understand why she did not make that clear.

419. In any event, it appears from the time recording entry that Ms Martin and Ms Webster had a 6 minute telephone call that afternoon. Ms Martin sent an email to her own personal account with the instructions she received from the call, which she said had happened at 2.49pm. In the email, Ms Martin stated that Ms Webster had told her that "*she had taken Reg's instructions on the o/s points below*" – these were the important points in the emails of 15 and 18 November 2019. Ms Martin recorded those instructions next to each individual outstanding point. The instructions were:

- Shares in TWDHL going to Charlie – "*Shares to Katie, but business managed by Karen*"; (Katie said she was surprised by this, when she found out);
- Interest in BTC going to Charlie – "*interest in business to Katie, but managed by Karen*";
- Shares in Holdings and Wholesale going to Charlie and Greg – "*If Graham dies, his share to Charlie, and vice versa*";
- Reg's residuary estate going to the four children in equal shares – "*deceased child's share goes back into the pot and increases the value of the surviving three children NOT TO GRANDCHILDREN*".

420. That last instruction to cut out the grandchildren, which was a change from his previous wills, is particularly surprising and concerning. Charlie did not have any children, so it benefitted him the most. Ms Webster also confirmed that Ms Daddy should receive a cash legacy of £2000 if she became responsible for Reg's dogs.

421. Following the telephone call, according to Ms Martin's time recording, she spent 30 minutes on: "*amending and incorporating Reg's instructions into the draft Will in readiness for meeting with Reg on 19th Nov*." Ms Martin obviously felt unable to speak to Reg on the phone to take instructions, but she was accepting from Ms Webster that these were indeed his instructions.

422. On the morning of 19 November 2019, Ms Martin time recorded 30 minutes on: "*Preparing summary of main terms of Reg's Will to approve and sign along side his will*." The time recording entry for the meeting itself stated that it lasted 48 minutes with the following narrative:

> "attending Reg at the Marriott Hotel. Taking him through my summary of his finalised will including why the horse/stud are being left to Charlie, and an explanation as to why he is leaving his shares in Holdings and Wholesale to Charlie and Graham. I read the note through to him and asked him to confirm that was correct and he confirmed it was. I made a handwritten note to also reflect that he had asked me to include an option to purchase the Paddock for Charlie on such terms and [sic] the trustees agreed and he signed it. I also asked him if anyone had tried to influence him about any of his instructions and he said they had not, they were his wishes."

It appears that Ms Martin did not take Reg through the will itself, only her summary of it.

423. Ms Martin made an attendance note for this meeting and this confirmed the point above that Ms Martin only went through her summary of the will with Reg, not the redrafted will that he was to execute. The attendance note recorded that the same persons were there, alongside Reg: Ms Webster, Ms Daddy and Ms da Silva. However, this time Ms Martin wanted to meet with Reg alone, after an initial chat with all of them outside the meeting room. This chat is recorded in the note as follows:

> "Denise said there were some small amendments, she had addresses for Sam and Chris and also he wanted to increase the legacies to her, Rita and Karen in view of them taking on the role as attorneys. They were each currently to receive £5000 each but he wanted to increase this to £10,000. I said it was important we got something signed today in view of his holiday and these changes could be dealt with in a codicil. I asked Denise whether Reg had read through the draft will with footnotes which I had left with him after our meeting last week (the notes set out what further instructions I

> required to finalise the will before his holiday). Denise confirmed that she had taken him through it carefully (this had been done over two sessions)." (underlining added)

424. It might be thought that it would be uncomfortable for the beneficiary of an increased legacy to be informing the will drafter of that increase rather than the testator. But neither Ms Webster, nor Ms Martin, seemed concerned about that. Ms Martin said she would have been concerned if it had not been confirmed by Reg, but she said that Reg did confirm it there and then. Her recollection was that this was said by Ms Webster when the other two beneficiaries, Ms Daddy and Ms da Silva were standing away from Reg and Ms Martin, and that she immediately asked Reg to confirm that those were his instructions, which he apparently did, probably by nodding his head. Again, I have to say that even though these are relatively small amounts, it does seem extraordinary that instructions are being given in this manner without anything really coming from Reg himself. While he was with the beneficiaries, he is merely asked to confirm that he does indeed wish to double their legacies.

425. The section of the attendance note that I have underlined is more significant and indicative. Ms Martin asked Ms Webster, not Reg, whether he had read the draft will given to them on 14 November 2019. The fact that Ms Martin seemed to be unable to ask Reg this question shows the extent to which she had become dependent on Ms Webster for taking instructions on behalf of Reg but also the unlikelihood that Reg would have actually read the draft will himself. Ms Webster said many times that she went through documents "*line by line*" with Reg, but she could not say what she actually took him through in the two sessions mentioned in the attendance note. Even the Claimants admitted that Ms Webster was not a highly educated person and that she would not understand the intricacies of legal transactions. I do not think it is credible to suggest that she was able to explain the detail of the provisions in his proposed will or to know whether Reg understood them.

426. Ms Martin's attendance note then continued to deal with Ms Martin's meeting alone with Reg:

> "Reg was taken through to the meeting room and I explained that I had prepared a summary of his wishes which I took him through very carefully. I asked him to confirm that each gift and the default provision were correct and we talked again about why the shares in R&RC Bond Wholesale were just being gifted to Graham and Charlie and not Lindsay and Mike and he confirmed my note reflected his reasons, they were negotiating to buy them both out, and he did not want them to receive shares in the company on his death which would bring them back into the company." (underlining added)

427. So this contained a reason why Reg was leaving his shares in Wholesale (it does not refer to Holdings) just to Charlie and Greg, namely that Mike and Lindsay were being bought out and he did not think that they should be brought back in when he died. This was what Ms Martin had put in the will summary in relation to the shares:

> "You made it clear to me as Michael and Lindsay are currently being bought out of the business, you would not want them to inherit shares from you on your death, which would then bring them back into the business again, as this would defeat the object of the current negotiations."

428. There is no evidence as to when this reason was made "*clear*" to Ms Martin. It was not in the will questionnaires or any other attendance notes or relevant documentation. The first time it appeared was in the will summary, drafted the day before the meeting. The manuscript note of the meeting with Mr Rann on 8 November 2019 referred to Mike and Lindsay being "*out*" of the "*SPA*", which could be an indication as to a reason for them not sharing in Reg's shares of the business. There seems to be no reference to the value of the shares; nor any acknowledgment that they formed the bulk of Reg's estate. Ms Stanley KC said that Reg certainly knew this, but this is disputed by Ms Reed KC who said that it appears never to have been discussed with Reg and he would not, in any event, have understood the detail of the Buy Out and therefore what shares he was going to be left with. The oblique handwritten reference by Ms Webster to "*22% shares (20 mill)*" could not be explained by anyone.

429. The will summary dealt with the shares in TWDHL and in BTC (even though it was not a company and did not have shares). It then referred to his wish to leave the "*horses/stud*" to Charlie. It is unclear if Reg appreciated what TWDHL was, and whether, for example, he knew of Charlie and Mr Rann's plan to put all of Reg's money, including that which he would receive from the Buy Out, through TWDHL. It was not simply the horses company. The will summary did not explain this.

430. The Claimants and Ms Martin relied heavily on the fact that there was a manuscript addition to the will summary just after the reference to the shares in BTC about granting an option to Charlie to purchase the Paddock. This addition was initialled by Reg and Ms Martin's evidence was that this was specifically noticed by Reg when they were going through the will summary and he wanted it to be included in that place. In fact Ms Martin had included it further down in the will summary, and it was in the will itself, but the Claimants emphasise that this shows that Reg was engaged in the process and understood the discussion on the will summary and that the place he wanted it mentioned made more sense.

431. Ms Martin continued to go through the will summary. Even though the attendance note did not say this, Ms Martin said in her oral evidence that she thought she had actually taken Reg through the main parts of the will. There is no indication that Reg actually read it himself.

432. The explanation for not leaving the share of residue to the grandchildren should their parent predecease Reg was explained in the attendance note as being because: "*they are being provided for from the sale of his Bentley and the van*." That also is not easy to understand as to why the family should not benefit in those unfortunate circumstances.

433. According to the attendance note, Reg confirmed that he wished to increase the legacies to Ms Daddy, Ms Webster and Ms da Silva to £10,000. The note said:

> "I said it was really important that no one had tried to persuade, or influence him in any way over his wishes for this will and asked him if anyone had tried to. He said they hadn't and the will contained his wishes, this is what he wanted."

Ms Martin said in her evidence that she remembered Reg being "*on good form*" and "*relaxed*" at the meeting. He was "*excited about his holiday and quite jovial*".

434. Reg then presumably executed the 2019 Will. The attendance note does not record that he did. The witnesses were Ms Martin and a Mr Steven Anderson who was the conference and events manager at the Marriott. The Claimants did not call him to give evidence.

435. The attendance note did refer to a letter that was signed by Reg at the meeting. This letter was addressed to the Wholesale board and it appointed Charlie as Managing Director and Reg as the Chairman with immediate effect. Ms Martin scanned a copy of the letter to Mr Rann and Charlie and gave the original to Katie to hand over to Charlie. It is a mystery why Ms Martin was getting involved in business matters but it maybe that Charlie wanted this done at the same time as Reg was signing the 2019 Will as some form of encouragement to him to do so. There was no other particular urgency to it that I can detect.

436. On 20 November 2019, when she typed her attendance note, Ms Martin drafted a memorandum to Ms Botham asking her to email Charlie at his private email and to "*check with Katie that he has access to it"*, and:

> "ask him when he wants us to register the three Lasting Powers of Attorney, warn him that once we send them to the OPG they may alert Lindsay to the fact that the LPA she is attorney under, has been revoked. He may want us to wait until they have got the deal sorted. […]."

This indicates that it was Charlie who was orchestrating events. Such a decision as to registration should be made by Reg but Ms Martin was asking Charlie about this because it all related to the family fallout and Charlie's desire to get the Buy Out sorted before alerting Lindsay to some of what they had been doing in relation to Reg. There is no evidence that a signed copy of the 2019 Will was ever sent to Reg.

(5) Events after the 2019 Will

(a) Reg's trip to Dubai

437. Reg went on holiday to Dubai from 25 November 2019 to 6 December 2019. He was accompanied by a large coterie of carers: Ms Webster, Ms da Silva, Ms Daddy and Mr Duerden. It must have been quite an effort to get him there (and

their flight was cancelled on 25 November 2019). Apparently he had a fantastic time and many photos and messages were sent by Ms Daddy and Ms da Silva to Charlie showing that he was enjoying going in the pool and out to restaurants and meeting with his old friend Mr Kandhari, who had been told by Charlie not to discuss business with him.

438. The trip was concealed from Lindsay and Mike, even after it had taken place. They had tried to visit Reg while he was away, much to the amusement of Charlie, Katie and Ms Daddy, as appears from their messages to each other. Mike and Rebecca visited Reg on the day of his return; Ms da Silva told Charlie that she had deliberately tried to hide Reg's tan by turning the lights down and telling them, if they asked, that he had been swimming at the Marriott. Lindsay did not know that Reg had gone to Dubai until March 2020 when her taxi driver by chance told her that he had taken Reg back from the airport.

439. It was suggested that Mike and Lindsay might have tried to prevent Reg going to Dubai, but there is no evidence to support that. It was no secret that Reg wanted to go to Dubai and he would ask his doctors about it at most appointments. It seems to me that the secrecy was all bound up with the execution of Charlie's plan, and needing to keep all elements from Mike and Lindsay, lest something might leak out. As Ms Reed KC submitted, it may not be a coincidence that the flights to Dubai were booked on 8 November 2019, the day after Charlie and Mr Rann had arranged for the 2019 Will to progress to a signing before he went away. And it was the same day as Mr Rann and Ms Martin met to talk about the draft will.

440. While Reg was away, Charlie met with Ms Martin to prepare his own will. There is a time recording entry for Ms Martin on 4 December 2019 which stated that she met with Charlie for an hour. There is no attendance note for this meeting. The entry was as follows:

> "attending Charlie re Reg's affairs. Agreed that we would not register the LPAs until deal with Lindsay and Mick done nor file the deed of revocation. Discussed o/s issues with his mother's estate, aviva and phoenix policies and the property and took instructions on Charlie's own Will."

441. Reg returned on 5 December 2019. He went to the Gimcrack dinner on 10 December 2019, together with Lindsay and Ms da Silva. Among others, Reg spoke to Mr Darling KC and Mr Smart. Reg saw Dr Khan on 11 December 2019 and they chatted about his trip to Dubai. Dr Khan said in his witness statement that he remembered that Reg said he had made a will before leaving for Dubai and "*it was regarding his business and his wish for the family to continue with it.*" This was not recorded in writing anywhere.

(b) The Codicil

442. Ms Webster had notified Ms Martin at the 19 November 2019 meeting that Reg wanted to increase the legacies to the carers who were there with him, but it was not possible to include this in the 2019 Will itself. Ms Martin therefore put it into the Codicil and tasked Ms Webster with arranging for it to be executed. Although Ms Webster could not recall this, it appears that the first draft of the

Codicil that was sent to Ms Webster at her home address was not executed and she telephoned DRA on 9 December 2019, according to Ms Martin's time recording narrative, and a new Codicil and covering letter was sent to Ms Webster shortly after that.

443. There is no attendance note of the signing of the Codicil. It was witnessed by Ms Bryony Hildreth and Ms Michelle Harrington, who worked in a café that Ms Webster and Reg had gone to (neither of them were called as witnesses). Ms Martin wrote to Reg, again c/o Ms Webster at her home address, by letter dated 23 December 2019, thanking him for returning the signed Codicil. The letters were being sent to Ms Webster's home address to avoid Lindsay or Mike seeing them.

444. Ms Martin sent her invoice for the three LPAs and the 2019 Will, which came to a total of £8,143.18, directly to Charlie, as well as a second letter asking for him to give Katie cash or a cheque for the LPAs to be registered, and that she would register them "*as soon as you advise me that the agreement with Lindsay has been finalised."*

445. Oblivious to the fact that the 2014 LPA had been revoked, Lindsay still tried to continue to manage Reg's affairs as usual and went to see him about the carers' Christmas bonuses on 22 December 2019. On that day she sent a text to Mike:

> "I've asked dad if he wants to pay Karen her Xmas bonus as usual and he replied I have got it sorted somewhere he had a think then said it's in my will I've left money to my Carer's do we need to see Matt about this?"

446. There is nothing to suggest that Lindsay or Mike did speak with Mr Rowley. When asked about this in cross-examination, Lindsay elaborated on it as follows:

> "He said to me Charlie had sorted it. And I said "What do you mean, Charlie sorted it?" And he said something about "In my will". And I said, "What will?" And he said, "Charlie's sorted it. Charlie said he would look after the carers." So I said, "I'm not talking about the will, I'm talking about bonuses". And I said, "What do you mean, your will?" And he said, "I don't know." So I said, "Right". I said, "Do you need me to get anybody to see you on this?" He said "I don't know". So I just left it at that and informed Mick."

447. Mike said that when he discussed this with Lindsay he had thought that Reg was "*obviously confused. It is nothing to do with a will. These people expect their yearly bonuses, so do what you usually do and just pay it*." Lindsay paid the bonuses and neither Mike nor Lindsay felt the need to do anything about the reference to Reg's will. If anything, this indicates, contrary to the Claimants' assertions, that Reg did not have any particular desire to keep the 2019 Will secret from Lindsay. The Claimants said that this would indicate that Mike and Lindsay knew something about a new will but chose not to follow it up. However, as Ms Reed KC submitted, I think it shows that Reg was confused probably by the Codicil but also did not necessarily want to keep the 2019 Will a secret. That was all driven by Charlie and Mr Rann.

(c) Completion of the Buy Out

448. I referred above to Reg signing the Buy Out paperwork on 6 February 2020 and the Buy Out formally completing on 12 February 2020. It had originally been scheduled to complete on 22 November 2019 but was delayed by Mr Rann because of an undisclosed issue with HSBC. Mr Rowley sought to revive the deal shortly before Christmas and he wanted to add Charlie, Greg and Reg into the SPOA as a form of protection for Mike and Lindsay. Mr Rann resisted Reg becoming a party to the SPOA, principally it seems to avoid Reg needing independent legal advice. This was ultimately agreed and Reg was not a party to the SPOA, although he did have to sign the Share Exchange Agreement, swapping his shares in Wholesale for shares in Holdings, and he also signed a letter to Mr Rann confirming that he was aware of Mr Rann's potential conflict of interest in acting for him as well as Charlie and Greg. Even though they were all exchanging their 200 shares in Wholesale for 1,000 shares in Holdings, Charlie and Greg already had 1,000 shares in Holdings and Mr Rann had 62. This meant that after the exchange, Charlie and Greg each held 39% of Holdings, whereas Reg held 19.7%. He also lost his supervote.

449. In addition to the Share Exchange Agreement, Reg also signed the following:

(i) A document waiving his pre-emption rights in his Wholesale shares in relation to the sale of Mike, Lindsay and their children's shares;

(ii) A document waiving his pre-emption rights in his Wholesale shares in relation to the share exchange;

(iii) A written resolution of Holdings which waived his pre-emption rights in Holdings shares in the event that HSBC enforced its security over the shares;

(iv) Four stock transfer forms, dated 12 February 2020, transferring his shares in Wholesale to Holdings.

450. Although Reg did not receive independent legal advice at the time about entering into these transactions, nobody at the time expressed any concern that Reg lacked capacity to sign the documents.

451. During 2020, the following sums were paid into an HSBC current account in the name of TWDHL (later BTL), set up by Mr Rann, which was in Charlie's control:

a) On 12 February 2020, Wholesale paid the sum of £500,000 into an HSBC current account in the name of TWDHL;

b) A further £375,237.02 was paid in on 17 March 2020; Mr Rann said that this was a tranche of £500,000 subtracting Reg's Wholesale loan account (this was largely spent on the flights to Dubai);

c) The sum of £300,000 was paid in on 23 November 2020.

452. The IHT400 indicated that the payment to Reg was characterised as a loan from Wholesale, although it did not appear in the Wholesale accounts as such, and that Reg then made an interest free loan of £1,537,380 to TWDHL/BTL. It was part of Charlie and Mr Rann's plan in September 2019 that the funds that Reg was to receive from the Buy Out would be paid into an account in the name of TWDHL/BTL, which Charlie would have ultimate control of.

(d) Registration of the LPAs and the "My Affairs" letter

453. Following completion of the Buy Out, Charlie and Mr Rann decided that it was now time to come clean to Mike and Lindsay in relation to the LPAs and the revocation of the 2014 LPA. The new LPAs were registered in March 2020. They were disclosed to Mike and Lindsay in Reg's "*My Affairs*" letter dated 6 March 2020. This was drafted by Mr Rann on Charlie's instructions (Ms Martin had done a first draft but Mr Rann was not happy with it). Mr Rann admitted that he had not met Reg to discuss it. The letter was addressed to all four children and it was from "*Dad*". It enclosed the signed Deed of Revocation and the 3 October 2019 letter from Dr Khan. It had some of the familiar themes of Charlie's "*take back control*" narrative. After referring to the finalising of the Buy Out deal the letter said as follows:

> "I am also pleased that the deal has freed up some funds for me and given me an opportunity to make my own decisions and do the things that I want to do in my life. As you all know I have been through a hard time with my illness but now I am well enough to make my own decisions and deal with my own affairs.
>
> I am grateful for what you all have done for me but it is not necessary for any of you to run my affairs for me now. From now on, I intend to run my own affairs, both financial and in terms of my care team. I have appointed Denise as my PA and Rita as my head carer and between them they will help me run my financial and health affairs on my own. Where needed but only where needed, Charlie will assist with my financial affairs.
>
> In addition Charlie and I have agreed to set up and run a combined bloodstock business, which will be called Bond Thoroughbred Limited. Charlie and I will be directors and shareholders of that business and the combined businesses of Bond Thoroughbred and CS Breeding will go into that new company.My PA and care team will be employed by Bond Thoroughbred Limited.
>
> In order to put my wishes into effect, I have signed a new lasting power of attorney for financial affairs and for health and welfare affairs, with Charlie and Denise as my attorneys. The lasting power of attorney is only to take effect in the event that I lose capacity. I am very happy that I currently have capacity to deal with all my affairs and wish to do so. This has been confirmed to me in writing by my neurologist, Dr Khan. I have also signed a deed of revocation of the old lasting power of attorney and enclose a copy with this letter. In Lindsay's case this letter is also notice that I have revoked the power of attorney dated 3rd September 2014, which means that she will

> no longer have authority to deal with my financial affairs or my health and welfare affairs. Should the time come when I am unable to deal with my own affairs, these matters will be dealt with by my new attorneys.
>
> I have also asked the bank to return the mandates for my personal and business accounts to where they were previously i.e. that I am the only person with access to my own bank accounts. This is not meant to hurt or upset anyone, in particular Lindsay to whom I am grateful for looking after my finances since 2014 but is simply a statement by me that I now need to look after my own affairs, with my own team.
>
> In relation to the business of Bond International, I am very happy to leave all matters in relation to the day to day running of that business to Charlie and Graham. I understand that I am now the Chairman of the company and am happy to retain a direct connection with the business. I am very confident that Charlie and Graham will lead the business on to a great new future."

454. This does not have the feel of Reg's voice. It refers to "*Graham*" rather than "*Greg*"; and it places heavy reliance on Dr Khan's letter, while mistakenly referring to him as a neurologist. As Lindsay said, she had never received a letter from her father before and he had not mentioned it to her before she received it on 10 March 2020.

455. It must have been a very upsetting letter to receive, particularly for Lindsay, and totally out of the blue. She said that she felt "*let down by everybody, my dad included"*. Shortly after receiving the letter, Lindsay began to suffer from Covid symptoms and so could not see Reg, although she telephoned him and bought him a birthday present. Then Covid lockdown began and they were all unable to visit Reg. Lindsay did not question the terms of the letter with Reg because she did not want to cause him extra stress. But in Instagram messages between her and a close friend, Harry Hughes, on 26 March 2020, Lindsay said that: "*my family have hurt me like no one will ever know and I've just got to come to terms with that for the future now"*.

(e) The last months of Reg's life

456. In [47] above I have referred to the effect of the Covid pandemic and the last months of Reg's life. When Reg went into hospital on 12 January 2021, both Katie and Mr Rann must have been concerned as to whether Reg would survive and were keen to sort out certain matters to do with Reg's personal affairs and the 2019 Will.

457. On 13 January 2021, Katie notified Ms Martin to press on with the sale of Yapham Grange to Ms Daddy. On the same day, Mr Rann emailed Ms Martin, who had moved to Andrew Jackson a few months earlier but had continued to deal with Reg's affairs, from his personal gmail address with the subject line "*Reg Bond*" asking a very specific query about the gift of shares in the 2019 Will:

> "Can you confirm that the gift of shares would cover the fact that his shares

> in R & R C Bond (Wholesale) Limited have been exchanged for shares in R & R C Bond (Holdings) Limited. Otherwise, we may need to do a codicil."

458. Mr Rann said that he had asked this question because Reg had gone into hospital "*and I was being told at the time that he might not come back out"*. But if that was his belief, it is odd that he thought that Reg might be able to sign a codicil in his then current state. Furthermore, there is no suggestion that this had come from Reg. Rather, this appears to be a panic on Mr Rann's, and presumably Charlie's, part that the 2019 Will might not have specified that Reg's shares in both Holdings and Wholesale should go to Charlie and Greg, and not Mike and Lindsay.

459. Just under 10 minutes later, Ms Martin sent to Mr Rann a copy of the 2019 Will, asking him: "*Are you happy with this?"*. Mr Rann's response, three hours later, was:

> "Thanks Ged. That is perfect. We obviously thought about this issue beforehand and I am happy that it covers everything we need."

The use of the phrase "*everything we need*" indicates that this was what Mr Rann and Charlie wanted to make sure was provided for in Reg's 2019 Will, and shows that they were well aware that this was the major disposition in the 2019 Will going to Charlie and Greg, and not wanting it to fall into residue. This was quite a significant intervention by Mr Rann.

460. There was also a flurry of activity in relation to Reg's personal affairs in the days before Reg died and on the date of his death on 15 March 2021. This further confirms that Charlie and Katie knew the contents of the 2019 Will.

461. Ms Martin drafted and sent, presumably on Charlie's instructions, a letter to Harrowells signed by Charlie and Ms Webster as Reg's attorneys, under the August PoA and the 2019 financial LPA, seeking the release of Reg's files, including his wills, four days before Reg died. The primary purpose of this letter seems to have been to obtain a copy of Reg's August 2017 Will from Harrowells without the risk of Harrowells seeking Reg's consent. Mr Rann duplicated that letter to Harrowells in respect of files relating to Charlie, Greg and Wholesale, which Charlie and Greg signed. The four letters were sent to Harrowells on the date of Reg's death, after Ms Martin had had telephone conversations with both Charlie (on 10 March 2021) and Katie (on 15 March 2021) about the authorities to obtain the files.

462. At the same time, Katie and Charlie were also seeking to complete the sale of Yapham Grange. Ms Daddy was obviously concerned about this going through before Reg died. She emailed her solicitor on 10 March 2021 asking for Yapham Grange to be sold to her as soon as possible because:

> "if Reg died his family would immediately freeze all property and businesses it would be a long and bitter Court case which I do not want to be in the middle of"

Ms Daddy was unable to explain why she thought there would be a court case if she did not know what was in the 2019 Will.

463. Ms Martin's time recording entry for 15 March 2021 indicated that on that day she had seven telephone conversations with Katie (Mr Rann was recorded as attending two) on the date of Reg's death about Yapham Grange and the sending of the authorities to Harrowells and exchanged text messages with Charlie. Katie said in her witness statement that during a telephone call on the day Reg died, Ms Martin told her that the horses would be looked after.

H. LEGAL PRINCIPLES

(1) Testamentary Capacity

464. The common law test for testamentary capacity remains that set out over 150 years ago in *Banks*. As the Court of Appeal said in *Sharp v Adam* [2006] WTLR 1059 at [66], "[*Banks*] *has withstood the test of time*". While the Mental Capacity Act 2005 contains a statutory test for the making of decisions generally, it does not affect and has not overridden the *Banks* test for testamentary capacity: see *Clitheroe v Bond* [2021] EWHC 1102 (Ch) at [82].

465. The classic passage in *Banks* where the test is set out was preceded by a discussion as to the differences between English law and other jurisdictions, explaining that English law gives testators absolute freedom in the disposal of their property on death whereas foreign jurisdictions are more prescriptive. Cockburn CJ's judgment recognises that the unfettered discretion that testators have carries with it a moral responsibility that testators should be aware of. I set out below the familiar passage containing the formulation of the test (and using the lettering that was added in *Sharp v Adam* for ease of reference to the limbs of the test) but including the sentence before for context:

> "It is obvious…that to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. It is essential to the exercise of such a power that a testator **[a]** shall understand the nature of the act and its effects, **[b]** shall understand the extent of the property of which he is disposing; **[c]** shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, **[d]** that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

466. Capacity is concerned with the ability or potential to understand or recall. It is not a test of memory: see *Simon v Byford* [2014] EWCA Civ 280 at [39]. Despite the use of the words "*shall understand*" in the *Banks* test, it is well-established that the test does not require actual understanding - that is what knowledge and approval is concerned with. If the testator does have actual understanding: "*then*

that would prove the requisite capacity, but there will often be no such evidence, and the court must then look at all the evidence to see what inferences can properly be drawn as to capacity": see Hoff v Atherton [2004] EWCA Civ 1554 at [34].

467. In relation to limbs (b) and (c) of *Banks*, the only ones really in play in this case, the testator needs to be able to understand the extent of his own estate and the potential beneficiaries that the testator ought to be considering. The degree of mental capacity required may therefore depend on the complexity of the testator's financial affairs and the family situation and this in turn can be affected by whether a proper and accurate explanation was given to the testator so that he was able to understand. As was said by Mr Nicholas Warren QC, as he then was, sitting as a Deputy High Court Judge in *Hoff v Atherton* [2004] EWHC 177 (Ch) at [13] and [18]:

> "The relevance of [*Re Beaney* [1978] 1 WLR 770] is that, in the present case, it may be that Mrs Krol was capable of understanding the effects of the dispositions of the Will but only if those effects were explained to her which, on one view, they were not …
>
> …It may be that a testator only has capacity to understand his will if it [sic] actually explained to him and it is at that level, rather than at the level of knowledge and approval, that the case should, I think, be analysed."

This was approved by the Court of Appeal at [35].

468. I have referred above to the Golden Rule, which all will practitioners are familiar with and is a principle of best practice. It originates from the judgment of Templeman J, as he then was, in *Re Simpson* (1977) 121 SJ 224:

> "In the case of an aged testator or a testator who has suffered a serious illness, there is one golden rule which should always be observed, however straightforward matters may appear and however difficult or tactless it may be to suggest that precautions be taken: the making of a will by such a testator ought to be witnessed or approved by a medical practitioner who satisfied himself of the capacity and understanding of the testator, and records and preserves his examination and finding.
>
> There are other precautions which should be taken. If the testator has made an earlier will this should be considered by the legal and medical advisers of the testator, and if appropriate, discussed with the testator. The instructions of the testator should be taken in the absence of anyone who may stand to benefit, or who may have influence over the testator. These are not counsels of perfection. If proper precautions are not taken injustice may result or be imagined and great expense and misery may be unnecessarily caused."

469. However, the Golden Rule should not be taken too far in terms of judging capacity. As Briggs J, as he then was, explained in *Key v Key* [2010] EWHC 408 (Ch) at [8]:

> "Compliance with the golden rule does not, of course, operate as a touchstone of the validity of a will, nor does non-compliance demonstrate its invalidity. Its purpose, as has repeatedly been emphasised, is to assist in the avoidance of disputes, or at least in the minimisation of their scope. As the expert evidence in the present case confirms, persons with failing or impaired mental faculties may, for perfectly understandable reasons, seek to conceal what they regard as their embarrassing shortcomings from persons with whom they deal, so that a friend or professional person such as a solicitor may fail to detect defects in mental capacity which would be or become apparent to a trained and experienced medical examiner, to whom a proper description of the legal test for testamentary capacity had first been provided."

470. Templeman J only referred to a "*medical practitioner*" and it is accepted that there does not need to be a formal assessment by a psychiatrist. A GP's assessment may be all that is required – see *Sharp v Adam* [2006] EWCA Civ 559 at [27]. But as Briggs J said in *Key v Key*, the doctor does need to know the *Banks* test in order to assess testamentary capacity at the time of the making of the will. Ms Martin accepted that she did not comply with the Golden Rule in this case and Dr Khan did not know the test for testamentary capacity.

471. There does need to be some caution around Templeman J's comments on earlier wills. These now have to be looked at in the light of *Hughes v Pritchard* [2022] Ch 339 where the Court of Appeal allowed an appeal in a probate case where the Judge had found against the will because the experienced solicitor and GP who had carried out a proper capacity assessment had not explored with the testator the changes from his old will. Asplin LJ said at [94]:

> "Although it may be prudent for a solicitor and for that matter, for a medical practitioner whose attention has been drawn to significant changes in testamentary intentions, to ask the testator about those changes there is no rule to that effect. It seems to me that all that Templeman J meant in *In Re Simpson decd* was that reference to the terms of a previous will may be a helpful safeguard when seeking to confirm that the testator is aware of those who have call upon his or her bounty…..It is a helpful tool when seeking to confirm that the *Banks v Goodfellow* test and its third limb, in particular, is satisfied."

472. I do not think that Asplin LJ was saying that changes in testamentary intention do not need to be explored with a testator. It is perhaps one factor to take into account in assessing capacity but, if it is not discussed, it does not necessarily mean that the solicitor's or medical practitioner's opinion on capacity will be rejected. It seems to me that it would be a natural matter to discuss with a testator, and if it was not, there would need to be a plausible explanation for not doing so.

473. As to the evidence of an independent and competent private client lawyer that the testator had testamentary capacity, this should carry considerable weight, particularly where there are detailed attendance notes of meetings with the testator: see *Hawes v Burgess* [2013] EWCA Civ 19, per Mummery LJ at [57]

and [60]; and *Todd v Parsons* [2019] EWHC 3366. Asplin LJ in *Hughes v Pritchard* at [79] explained Mummery LJ's dicta in *Hawes v Burgess* as not amounting to a true presumption, but a "*statement of the obvious*" where the will is "*explicable and rational on its face*" and where the "*independent lawyer…is aware of the relevant surrounding circumstances*."

474. Ms Reed KC referred to *Theobald on Wills* 19th Ed at para 4-021 which makes clear there are many cases in which wills prepared by legal practitioners have been found invalid for want of testamentary capacity, and that: "*Any view the solicitor may have formed as to the testator's capacity must be shown to be based on a proper assessment and accurate information or it is worthless […]*". It was held in *Buckenham v Dickinson* [2000] WTLR 1083 that a solicitor should ask open questions to minimize the risk of a testator being able to disguise a real cognitive deficit with a good "*social façade*".

475. In *Simon v Byford*, supra, the testator's dementia meant that she could not recall the terms of a previous will she had made, but the Judge had at first instance found that she was capable of remembering. Lewison LJ held that a testator need not be capable of understanding the collateral consequences of leaving assets to a particular beneficiary, as opposed to the immediate consequences. In that case the testatrix left shares in the family company to her children equally, thereby increasing the risk of deadlock, rather than leaving them to the son who was managing director, as she had done in a previous will.

476. Where a testator has good days and bad days, in other words fluctuating capacity, it is important to focus on the testator's condition when (a) instructions were given for the will, and (b) the will was executed: see *Cowderoy v Cranfield* [2011] EWHC 1616 (Ch) at [144].

477. As to the burden of proof, Briggs J in *Key v Key*, supra, at [97] explained it as follows:

(i) While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then the court will presume capacity;

(ii) In such a case the evidential burden then shifts to the objector to raise a real doubt about capacity;

(iii) if a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity nonetheless.

478. Ms Stanley KC referred to *Schrader v Schrader* [2013] EWHC 466, particularly to Mann J's comments on capacity in [82]:

> "I do not think that this evidence is anything like strong enough to be a badge of lack of capacity, and certainly not strong enough to outweigh the evidence going the other way. Testators do strange things and are entitled to be whimsical, capricious, vindictive, wrong in belief or their acts beyond explanation without that of itself proving lack of capacity (though those factors may contribute to a bigger

> picture demonstrating it). They are entitled to change previous provisions in previous wills without explanation or discussion, without that being taken as a serious demonstration of want of capacity."

479. I entirely agree that Judges should be wary of finding a lack of testamentary capacity based purely on odd provisions in the will and maybe a slight loss of mental capacity through, say, early stage dementia. Otherwise many wills made by elderly testators might be vulnerable to attack from disgruntled potential beneficiaries. There must be careful scrutiny of all the evidence that might relate to capacity, and a realistic view of such evidence taken, putting aside the distressing emotional background to the litigation that the family has not been able to resolve out of court.

(2) Knowledge and Approval

480. The distinction between capacity and knowledge and approval was neatly explained by Lewison LJ in *Simon v Byford*, supra at [47]: "*Testamentary capacity includes the ability to make choices, whereas knowledge and approval requires no more than the ability to understand and approve choices that have already been made*". Knowledge and approval is shorthand for the will representing the testamentary intentions of the deceased: see *Gill v Woodall* [2011] EWCA Civ 1430; [2011] Ch 380 at [14].

481. The burden of establishing knowledge and approval is on the person propounding the will. That burden is normally discharged by proof of testamentary capacity and due execution, but where the circumstances attending the preparation and execution of a will or as to its contents are such as to excite the suspicion of the court, the propounder must affirmatively prove knowledge and approval so that the suspicious circumstances are removed and the court can be satisfied that the will represents the last wishes of the testator: see *Fuller v Strum* [2001] EWCA Civ 1879, [2002] 1 WLR 1097 at [30]-[34] per Peter Gibson LJ, [64]-[72] Chadwick LJ, and [77]-[78] Longmore LJ. The greater the suspicion, the harder it is for the propounder to dispel it: see *Wintle v Nye* [1959] 1 W.L.R. 284, at 291.

482. Although that may indicate that there is a two-stage approach to knowledge and approval, and some courts have adopted such an approach (that is: (i) whether there are suspicious circumstances; and (ii) if so, whether the propounder has satisfied the burden of proof), that has been doubted by Lord Neuberger MR, as he then was, in *Gill v Woodall* [2010] EWCA Civ 1430. He said that the court should approach matters in a more holistic way to see whether, after considering "*all the relevant evidence available and, drawing such inferences as it can from the totality of that material*", those propounding the will have established that the testator knew and approved its contents. Lewison LJ said in *Simon v Byford*, supra at [47] that: "*It is a holistic exercise based on the evaluation of all the evidence both factual and expert*."

483. The requirements for a court to be satisfied as to knowledge and approval are stricter in circumstances where the testator is vulnerable, see *Hoff v Atherton*, supra where Chadwick LJ said at [64]:

> "Further, it may well be that where there is evidence of a failing mind — and, *a fortiori*, where evidence of a failing mind is coupled with the fact that the beneficiary has been concerned in the instructions for the will — the court will require more than proof that the testator knew the contents of the document which he signed. If the court is to be satisfied that the testator did know and approve the contents of his will — that is to say, that he did understand what he was doing and its effect — it may require evidence that the effect of the document was explained, that the testator did know the extent of his property and that he did comprehend and appreciate the claims on his bounty to which he ought to give effect. But that is not because the court has doubts as to the testator's capacity to make a will. It is because the court accepts that the testator was able to understand what he was doing and its effect at the time when he signed the document, but needs to be satisfied that he did, in fact, know and approve the contents — in the wider sense to which I have referred."

484. But where a will has been prepared by a solicitor, and was read out or properly explained to the testator and was duly executed, a court should be "*very cautious*" about accepting that such a will is open to challenge, because, as Lord Neuberger MR said in *Gill v Woodall*, supra at [16]:

> "Wills frequently give rise to feelings of disappointment or worse on the part of relatives and other would-be beneficiaries. Human nature being what it is, such people will often be able to find evidence, or persuade themselves that evidence exists, which shows that the will did not, could not, or was unlikely to, represent the intention of the testatrix, or that the testatrix was in some way mentally affected so as to cast doubt on the will. If judges were too ready to accept such contentions, it would risk undermining what may be regarded as a fundamental principle of English law, namely that people should in general be free to leave their property as they choose…"

485. Ms Stanley KC relied on the test as set out in *Perrins v Holland* [2010] EWCA Cvi 840, [2011] Ch 270 but I agree with Ms Reed KC that some care needs to be taken with that case as it was based on the rule in *Parker v Felgate* (1883) 8 PD 171 where a testator who had capacity when instructions for the will were given need only be sufficiently capable at execution to understand that he is making a will for which he has previously given instructions. As *Theobald on Wills*, 19th Ed at para 4-045, points out, where this rule applies, it is not necessary for the testator to understand the effect of the will at the time of execution and knowledge and approval is different.

I. TESTAMENTARY CAPACITY

(a) Burden of proof

486. The 2019 Will was executed properly in accordance with the Wills Act 1837; there was an experienced STEP practitioner involved in the preparation and execution of the 2019 Will; and on its face it could be said to be rational. It is therefore for Mike and Lindsay to raise a real doubt about capacity for the evidential burden to shift back to Charlie and Greg to prove on the balance of probabilities that Reg had testamentary capacity on the day he executed the 2019 Will, and the Codicil.

487. Ms Reed KC submitted that the real doubt stems from the fact that Reg had a brain tumour since 2010, which was growing and getting worse over time, and various other medical problems. The experts were agreed that this would have affected his cognitive abilities and executive functions. However this was not easy for the experts to assess because of the limited testing that appears from the medical records. They did agree that Reg would have fluctuating capacity, such that he would have good days and bad days. This was confirmed by Mike and Lindsay, and I do not think it was seriously disputed by the Claimants' witnesses. The question is therefore whether on the day that Reg signed the 2019 Will and the Codicil he was on a sufficiently good day so as to have had capacity to sign.

488. Ms Reed KC also submitted that Ms Martin did a poor job in relation to taking instructions from Reg for the LPAs and the 2019 Will and that her evidence was generally unreliable. Therefore any assessment she made at the time as to Reg's capacity is similarly unreliable; in any event she did not say anything about capacity in her attendance notes save for referring to the need to get a letter from Dr Khan.

489. I agree that there is a real doubt over Reg's capacity such that the burden is on the Claimants to prove that he did have capacity in relation to the 2019 Will and the decision-making process involved in preparing the 2019 Will.

(b) Ms Martin's evidence

490. The Claimants rely heavily on Ms Martin's evidence that she was completely satisfied, having sat through six meetings with Reg, that he had testamentary capacity. Ms Stanley KC submitted that Ms Martin was not challenged on her evidence that at the final meeting on 19 November 2019 when the 2019 Will was signed, Reg was "*on good form*", "*relaxed*" and "*excited about his holiday and quite jovial.*" She based herself on Mummery LJ's comments in *Hawes v Burgess*, supra, that it would be "*a strong thing*" for a judge to go against the evidence of the will writer who had the advantage of meeting the deceased twice at crucial meetings. I also take the point that Ms Martin was not expected to be a bloodhound and constantly suspicious about what was going on. Her job was to take instructions from her client and convert those instructions into documents for the client to sign in accordance with their wishes. The mistakes that she made were, it was said, trivial and inconsequential (and probably the result of being overworked) and such that they do not undermine the overall work that she did and her evidence as a whole.

491. However, I am afraid to say that I do have serious doubts about some of the evidence that Ms Martin gave. This principally concerns whether she actually received instructions from Reg himself about what he wanted to do in his will; or whether those instructions were received from others, and they came from one side of the family that was substantially to benefit from a will in those terms. Added to that was the secrecy that she went along with, whereby only the side of the family with whom she was dealing were going to benefit and the unusual steps she was required to take, such as not posting anything to Reg's house, so as to ensure that the other side of the family who were losing out never found out that this was going on. Ms Martin may say that these were Reg's wishes but they are not recorded anywhere and it is fairly obvious that these matters were being controlled by Mr Rann and Charlie.

492. I simply do not believe that it was at the meeting on 25 October 2019 when Ms Martin received instructions from Reg about what he wanted to do with the shares in Wholesale and Holdings. Critically she did not make an attendance note for what she maintained was the crucial meeting; instead relying on what was written in manuscript into two versions of the will questionnaire, both of which had the date 14 November 2019 scratched out. Much more likely, and I so find, is that the only instructions that were given by or on behalf of Reg at that meeting were those in Ms Webster's handwritten list which she had compiled before the meeting and which specifically stated that the shares in the business were "*not covered*". I do not believe that Reg would have contradicted that at the meeting and instructed Ms Martin, out of the blue, that he wished to leave his shares to Charlie and Greg.

493. This exemplifies Ms Martin's problems with getting any instructions from Reg and I am surprised that Ms Martin did not perceive there to be an issue with Reg's capacity. There is no example of she herself asking Reg open questions as to what he wanted to do with his will and why. She came into the first meeting having been told by Mr Rann that Reg would want to leave the new horses company to Charlie, whereas everything else would be split equally between the four children. She never asked Reg why he was meeting her or whether and why he wanted to make a new will. She just went along with the instructions she had received from Mr Rann.

494. Instead of Reg coming along and making clear that he wished to make a new will – and it was never explored or discussed what the existing will contained and why he wanted to change it – when Reg was asked about the new will he seemed to have no idea about the new horses company and got confused with the reorganisation of the tyre business companies pursuant to the Buy Out. Ms Martin very quickly realised that Reg was unable to give coherent instructions on his will while alone with her and had become emotional about it. She also should have been concerned that in relation to the LPAs that he was giving completely different instructions when he was alone with her to when Ms Webster, Ms Daddy and Ms da Silva were with him. From then on she does not seem to have even attempted to take instructions directly from Reg, instead using Ms Webster either in the meetings or outside of them, to take instructions purportedly from Reg. She also had to get information from Mr Rann, Charlie and Katie on different occasions.

495. At the third meeting on 18 October 2019, Reg again declared that he was not ready to give instructions for his will. So Ms Martin sent Ms Webster away with a list of "*things to think about*" in relation to the will, and the partial answers were then handed over at the next meeting on 25 October 2019. No further meeting was arranged to finalise the will at the 25 October 2019 meeting and it does not appear that Ms Martin sent Reg and Ms Webster away with things to think about. Nor did she set about drafting the will based on instructions received at the meeting. Instead she sought information from Charlie and Mr Rann, about the companies, the shares in the companies and Reg's assets. It was only after speaking to Charlie and Mr Rann that a further meeting was arranged; and it was only after meeting Mr Rann on 8 November 2019 that Ms Martin started drafting a will, which included the gift of the shares to Charlie and Greg.

496. Again at the meeting on 14 November 2019, Ms Martin was unable to get any instructions from Reg and she asked Ms Webster to see if she could speak to him over the weekend to sort out the outstanding issues, principally concerning the substitutionary beneficiaries. Ms Webster provided those instructions on the telephone on 18 November 2019, saying that she had discussed them with Reg. The point is that Ms Martin was always receiving what were said to be Reg's instructions but from someone else. She never received them first and directly from Reg. There is no sense of any of this coming from Reg; it had to be squeezed out of him by others who then told Ms Martin that it had come from him. Given that that was the way instructions were being given on Reg's behalf, I think alarm bells should have been ringing very loudly in Ms Martin's head as to whether Reg really knew what was going on and intended these to be his testamentary dispositions.

497. Ms Stanley KC submitted that none of this matters because the gifts that Reg was making in his will, principally in relation to the shares in Wholesale and Holdings, were clear and simple to understand and this was carefully gone through by Ms Martin with Reg when she explained the 2019 Will using the will summary. And Ms Martin had no concerns about capacity as, for example, Reg showed that he was sufficiently engaged in the process by suggesting an amendment to the will summary, and having had confirmation that Reg was happy with the will, the court should trust her opinion on capacity.

498. However, as Ms Reed KC submitted, Ms Martin, despite her experience, did not have a good grasp as to how testamentary capacity is tested. Even accepting that it did not require a psychiatrist to assess capacity to comply with the Golden Rule, Ms Martin seemed to think that such a doctor would be able to test testamentary capacity by asking a "*series of random questions to test his memory*." The Claimants' expert, Professor Howard, did not think much of this description as to how a medical practitioner tests for capacity in these circumstances.

499. It is striking that in none of Ms Martin's attendance notes is there any mention of Ms Martin's view as to his capacity. She had sufficient concerns about it to seek a letter from Dr Khan and she mentioned his 3 October 2019 letter in her attendance note of the meeting on 18 October 2019. But neither on what she said was the critical meeting on 25 October 2019 when she received the

instructions from Reg about the shares in the companies, nor at the 19 November 2019 meeting when the 2019 Will was executed does she record her opinion on Reg's capacity.

500. The Claimants like to compare the earlier transactions which are not being challenged and in particular the fact that Ms Precious and Mr Rowley considered that Reg had capacity to enter into those transactions. What is interesting about their attendance notes are the references to Reg's capacity: in the 21 November 2016 note, Ms Precious is recorded as saying to Mr Rowley that Reg's capacity "*came and went and that we would need to see on the day whether he had sufficient capacity in order to understand the steps that we were proposing to take.*" While that supports the experts' view that Reg's capacity fluctuated, it also highlights that there are no such comments in any of Ms Martin's attendance notes.

501. In terms of limbs (b) and (c) of the *Banks* test, it appears that Ms Martin never discussed with Reg the value of his assets, in particular of his shares in the business. There was the curious note in Ms Webster's handwriting of "*22% shares (20 mill)*" which bore no resemblance to anything but which may indicate Reg's or Ms Webster's valuation of his shares in the business. Ms Stanley KC submitted that Reg obviously knew that the shares were worth at least £11 million, as that was the figure he was due to receive under the Bregal deal, and was the total consideration that would be paid to each of Mike and Lindsay for their 20% of the shares in Wholesale under the Buy Out. In any event she submitted that Reg would have known and appreciated that the shares formed the bulk of his estate.

502. The trouble with that submission however is that it does not appear from Ms Martin's attendance notes that this is what was either discussed with Reg or what he knew. The Buy Out was complex and ever-changing and there is no evidence, apart from Charlie saying that he kept his father up to speed with the negotiations, that Reg knew what the structure of it was, the shares that he was getting or retaining or the amount that he might be receiving in respect of his shares. Ms Martin herself admitted that she did not know any of the detail and that she did not discuss it or attempt to explain it to Reg. He also knew nothing, it seems, about TWDHL and it does not appear that it was ever explained to him either that it was taking over the horses business from BTC but also that its account was to be used to receive Reg's money from the Buy Out.

503. As to Reg's appreciation of the claims of his other children, there is a distinct absence of reference to Mike and Lindsay in Ms Martin's attendance notes. From Mr Rann's original instructions she had understood that everything apart from the horses company would be left to the four children equally. Ms Martin was told, probably by Charlie, not to ask for the previous will from Harrowells and she decided not to ask Reg about his previous wills, for no good reason save that she suggested that she wanted to start from a clean slate. But even if that is correct, Ms Martin should have discussed why Reg wanted to benefit two of his children, including the one who was substantially involved in and controlling the secretive process, so much more than the other two, who were deliberately excluded from and kept in the dark about the process.

504. The reason that was given in the will summary and recorded in the 19 November 2019 attendance note was that Reg did not want Mike and Lindsay to come back into the company when they were leaving the company through the Buy Out. If there had been any understanding of the Buy Out by Reg, Ms Martin or Ms Webster, they would have known that such a reason did not make sense, as Mike and Lindsay would be retaining shares in Wholesale until the whole business was sold to a third party. The final tranche of consideration would only be paid in such an event. Therefore they already remained as shareholders in the business and a further 5% each on Reg's death would not give them any greater power within the business.

505. I think it is doubtful that this reason came from Reg. It looks like an explanation that could be said to come from Reg with a superficial understanding of the effects of the Buy Out. But there is no apparent discussion about the fact that this goes against the principle of equality that Reg had adopted in relation to his prior wills, save for the horses going to Charlie because of his special interest in them and they being more of a liability than an asset, and that being the starting point for the new will so far as Ms Martin was aware. If there was no discussion as to the fact that Reg was deciding to leave the bulk of his estate to two of his four children when he had not fallen out with the other two, or even that the shares formed the bulk of his estate, then I do not see how Ms Martin could have reached a reliable view as to Reg's testamentary capacity, in particular as to whether he was capable of understanding that that was the effect of the gift of his shares.

506. Ms Stanley KC submitted that it was entirely logical to give the shares to Charlie and Greg because, under the Buy Out, Mike and Lindsay were receiving a fixed price for their shares to exit the business and, if they were to receive more shares on Reg's death, then it would undermine that fixed price and there would have to be a further negotiation over those newly-acquired shares. Furthermore, it was Charlie and Greg who had the great burden of continuing to run the business and to deal with the bank loan used to pay off Mike and Lindsay, and Reg would have thought that Mike and Lindsay should not take the benefit of any increase in the value of the business brought about by Charlie and Greg's hard work. It was at least cogent for Reg to have considered that the shares should go to those who were remaining in the business and not cashing out.

507. Ms Stanley KC said that, in any event, following *Simon v Byford*, supra, Reg did not need to have the ability to understand the collateral consequences of the gift of the shares. Even if it was a mistaken view, that would not be an indication that he lacked capacity.

508. In my view, that is not the correct way of looking at this. It was not about the collateral consequences of leaving assets to a particular beneficiary. It was about Reg's ability to understand that the direct consequence of leaving his shares in Wholesale and Holdings to Charlie and Greg was that he was depriving two of his children of their half share of the bulk of his estate. Everything that he had done to date, including the gifts of shares both in the Deed of Variation in 2017 and the lifetime gifts in 2018 was on the basis of strict equality between the children. I cannot see that there is any evidence that Reg actually appreciated

that that was the effect of what he was doing in the 2019 Will; nor was this clearly explained to him by Ms Martin.

509. I also think that the cutting out of the grandchildren from sharing in the residue if their parent predeceased Reg is indicative of Reg's lack of appreciation as to what was being proposed and the fact that the instructions did not come from him direct. That provision only benefits Charlie who has no children. The stated reason was that the grandchildren would be sharing in the proceeds of sale of the cars, including the Bentley, but that is not a good reason for cutting the family of a child who unfortunately predeceased Reg out of their share of residue. There is no evidence that Ms Martin explained this to Reg or that he understood it.

510. Ms Stanley KC submitted that Ms Martin was not challenged on certain parts of her evidence and that there were some important points on which Mike and Lindsay now rely that were not put to her. I do not accept that. In particular she said that it was not put to Ms Martin that she had received instructions from Mr Rann, rather than Reg, in relation to the gift of the shares. I remember vividly how Ms Martin actually answered that question almost before it was put, indicating that she was ready for it and knew that this was an important issue. The fact that I have disbelieved her evidence on this central point seriously undermines the credibility of her other evidence.

511. In short, I do not feel able to place the sort of weight on Ms Martin's assessment of Reg's capacity in relation to the 2019 Will that the Claimants invite me to do. It alone does not satisfy me on the balance of probabilities that Reg had capacity. I do not think that she was acting wholly independently of the side of the family that were substantially benefitting from the 2019 Will and she was prepared to involve them in the process while being told to keep it all from the other side of the family. She was also prepared to receive instructions from people other than Reg as to what was to go into the will and Reg's voice and input is almost undetectable. In that situation, Ms Martin should have been far more cautious about accepting that Reg had capacity and should have complied with the Golden Rule and got an opinion at the time of the execution of the Disputed Documents, which might have avoided this unfortunate litigation.

(c) Dr Khan's Letter

512. Both the Claimants and their expert rely quite heavily on Dr Khan's evidence and in particular his letter of 3 October 2019 which, to repeat, said that:

> "I noticed that with the passage of time his fitness is improving. He has always been compus mentis [sic] and retained a very good memory.
>
> …
>
> As things stand Mr. Bond is fit and well for all purposes including running his business and making decisions. If he requires any formal statement in this regard I would be happy to provide it on request."

513. Professor Howard described "*compos mentis*" as a layman's, rather than medical, term. But he thought that it meant that Dr Khan had never found Reg to be confused or to have been lacking in cognitive function. However, we now know that Dr Khan did not have any awareness of the *Banks* test for testamentary capacity and that he only carried out a simple 10-point Abbreviated Mental Test examination. The results are not anywhere recorded but Dr Khan said that if the score had been low, he would have gone on to do the detailed 30-point Mini-Mental State Examination.

514. It is true to say that Dr Khan had been seeing Reg since 2016/2017 and was his treating oncologist since May/June 2018, seeing him in clinic every month or so. They clearly built up a friendly relationship and enjoyed seeing each other. The naming of one of Charlie's horses after Dr Khan (shortly after the receipt of the 3 October 2019 letter) is an indication of their friendship. Professor Howard accepted that if a patient feels more relaxed with their doctor they are more likely to find the testing of their capacity less challenging.

515. Again I think that limited weight can be placed on Dr Khan's assessment of Reg's capacity. I do not know what business decisions Dr Khan had in mind but he was certainly not considering testamentary capacity. The lack of detail in the medical records as to the testing of Reg's capacity and cognitive ability has hampered the experts and me in approaching the issue of capacity in any sort of scientific way. Dr Khan's opinion satisfied whatever Ms Martin's concerns were over Reg's capacity. However, given the surrounding circumstances and the difficulties in taking instructions from Reg, I do not think that she should have left the capacity question there and she should have obtained an opinion from an independent doctor specifically as to his capacity to make a new will of the sort being contemplated.

(d) The Expert evidence

516. I have set out in [129] to [136] above a broad summary of the expert evidence. As I said there, I am really in as good a position as the experts in assessing the relevant contemporaneous evidence in relation to Reg's capacity and ultimately, as they recognised, it is for me to decide, based on that evidence, whether Reg had testamentary capacity on the dates he signed the Disputed Documents. Their expertise lies in being able to assess the medical records and explain the impact that frontal lobe syndrome and the medication that Reg was on had on his capacity.

517. Both experts agreed that Reg suffered cognitive and behavioural changes as a result of the brain tumour and its treatment with surgery, radiotherapy and chemotherapy. They also agreed that he would have had fluctuating capacity, experiencing good and bad days. Professor Howard accepted that executive function is difficult to measure and that chemotherapy was likely to have an impact on capacity.

518. Professor Howard placed specific reliance on Dr Khan's letter of 3 October 2019 and on the opinion of and assistance provided to Reg by Ms Martin. However, Professor Howard accepted that Dr Khan had not carried out a

testamentary capacity assessment. Nevertheless, he said that it was reasonable of Ms Martin to have relied on Dr Khan's letter, and as it would have been difficult to arrange for a doctor to assess someone with fluctuating capacity at the relevant time, the best evidence is from Ms Martin as to how she regarded Reg on the day he signed the Disputed Documents, and she clearly concluded that Reg had capacity.

519. I have already decided that I do not place that sort of weight on Ms Martin's evidence or Dr Khan's letter, for the reasons set out above. That being so, I think that to the extent that Professor Howard's opinion is based on his acceptance of the strength of that evidence, he probably placed rather too much reliance on it.

520. Dr Series, by contrast, was more circumspect about that evidence and considered that there was insufficient contemporaneous evidence to enable him to come to anything other than a caveated view as to limbs (b) and (c) of *Banks*, particularly bearing in mind the complexity around the Buy Out and the ability of Reg to understand what was happening to his shareholding and the effect of the gifts in his will. In my view, this was a more realistic position to adopt in relation to the evidence, essentially leaving it to me to determine the impact on Reg's capacity. Accordingly the Claimants do not derive much support from the expert evidence.

(e) The Other Transactions

521. Reg signed plenty of other documents between 2017 and 2020 and the Claimants understandably rely on the lack of challenge by Mike and Lindsay to Reg's capacity to do so. Indeed, Mike and Lindsay seek to uphold the August 2017 Will as Reg's last valid will, thereby implying that they accept he had capacity to make it.

522. I have referred above to Ms Precious' comment that Reg's capacity fluctuated and that they would have to see whether on that particular day he actually did have capacity. As it happened they formed the view that Reg did have sufficient capacity to enter into, for example, the complex changes to Wholesale's articles of association in 2017. I think that the test for commercial documents rather than wills is very different because there are normally many more people involved and the professional advice to the board would generally be accepted. There are not the specific elements of the *Banks* test that need to be satisfied. Having said that, Ms Precious and Mr Rowley took care to record what they had concluded in relation to Reg's capacity to sign.

523. The 2017 Wills followed on straightforwardly from the amendments to the articles, ensuring that the shares in the business and residue were divided equally between the four children, with substitutionary gifts of the residue to the respective grandchildren. The only difference between the March 2017 Will and the August 2017 Will was the gift of the horses to Charlie, something which perhaps Reg had forgotten about in March 2017.

524. The Deed of Variation in 2017 was a simple equalisation of each of the four children's branches of the family. And the 2018 gifts of shares were again to all four equally. Mr Rann handled that transaction and no one has challenged it,

presumably because all four children received the same substantial gifts. There was no capacity assessment at the time and Mr Rann did not think that Reg should have had separate representation and advice, although he now recognised that perhaps he should have done.

525. As the Claimants correctly point out, there was no evidence of any material decline in Reg's cognitive abilities between these transactions and the events in 2019. He was back on chemotherapy and he did have the suspected TIA on 30 July 2019, but seemed to recover from that quite quickly. In April 2019, he had signed the Bregal Heads of Terms on his own behalf and on behalf of Wholesale.

526. From mid-2019, I do not believe that any conclusions can be drawn in relation to Reg's signature on other documents. I am particularly concerned about the August PoA because of Greg's videos of that event and Reg's signing of the document. Those videos, and another video taken on 3 September 2019, have had an impact on me in relation to Reg's capacity. From the videos of 7 August 2019, I would not have been satisfied as to Reg's capacity to sign the August PoA, and Greg's reason for videoing this backfired. I think this was obvious to everyone and Ms Stanley KC virtually admitted that this would have been classed as a bad day. But she said that he clearly did not present like that to Ms Martin as it would have been noted by Ms Martin that he was in that state and that she was therefore not satisfied as to his capacity.

527. The 3 September 2019 video was taken by Ms Webster and it showed Ms da Silva asking Reg some very basic questions – "*how many walks you've been on today?*"; "*where are you going in November?*" – and shows Reg singing and generally being treated in an infantilised way by those caring for him. This was when he was "*in good form*", as Ms Webster said to Charlie when sending him the video. But this seems to me to demonstrate further that Reg was not very with it and had, by then, a generally unsophisticated approach to life, needing to be cajoled into action. He had to be made "*fresh*" in order to be able to perform at important meetings.

528. As for the other documents that Reg signed in this period, such as the Buy Out Heads of Terms on 5 September 2019 and the documents associated with the Buy Out in February 2020, I do not believe that these provide any evidence as to Reg's capacity. There are no attendance notes in relation to the signing of these documents and Reg had no independent advice and nobody seems to have thought about assessing his capacity.

(f) Anecdotal Evidence

529. In [102] to [105] above, I have referred to the anecdotal evidence from the more minor witnesses called by the Claimants. As I said there, I do not think that this really adds to the evidence as to Reg's testamentary capacity on the days he signed the Disputed Documents. Most of those witnesses' evidence is tainted by the fact that they remain closely connected with Charlie or work for him. It is also largely unsupported by contemporaneous documentation save for the care diaries which confirm some of the incidents in the night that Mr Ostler

talked about. Professor Howard accepted that such evidence of Reg's behaviour in social interactions with others, while it may be illustrative of how he could be in a friendly relaxed setting, cannot be determinative of someone's ability to make a will.

530. Ms Stanley KC referred to some further evidence of Mr Ostler, Ms da Silva and Ms Daddy, supported by their messages, that Reg was always reading the "*big, boring papers*" and keeping abreast of current affairs. In particular Ms Daddy said that he would study the Racing Post and discuss with Charlie the new and up and coming stallions to whom they might wish to send their mares. Ms da Silva said that he would explain to her the form and which horses to back.

531. Ms Stanley KC also relied on the 22 December 2019 text from Lindsay to Mike about the Christmas bonuses to the carers and Reg mentioning his will in which he had left money to the carers. She said that this showed that Reg had remembered making a will in which he left certain pecuniary legacies. But as I said above, this indicates that there was some confusion in Reg's mind as to the difference between the Codicil, which he had recently signed, and the Christmas bonuses that he always gave. I do not think it demonstrates capacity to make a will, that he remembered doing something in a will (but not much more than that) and that that will had only days before been signed by him, purportedly pursuant to his instructions.

532. The further incident that the Claimants relied upon was Greg's evidence that in around June 2020 he discussed with Reg the merits, at the height of Covid, of paying the premium manufacturers in Europe over the Chinese manufacturers. Reg persuaded Greg, and this was passed on to Charlie, that he should pay the Chinese manufacturers rather than the European ones and this turned out to be very good advice and the right decision for the business.

533. Ms Stanley KC said that Mike and Lindsay showed no concern about Reg's capacity during 2019 and 2020. They were quite happy for him to sign the Buy Out documents and they did not respond to the 6 March 2020 "*My Affairs*" letter signed by Reg. It is certainly an odd letter and one might have expected a response from Mike and Lindsay. But as to what it says about Reg's capacity, in my view, it is self-serving and drafted by Mr Rann to try to convey that Reg now had full capacity and therefore wished to take control of his life, whereas the reality was that he had transferred control to Charlie and the fact that he could not see that rather demonstrates that he was not able to appreciate what had happened.

(g) Conclusion on testamentary capacity

534. In my judgment, the Claimants have not proved, on the balance of probabilities, that Reg had capacity to execute the Disputed Documents. While the terms of the 2019 Will were not, on their face, particularly complex – although they do depend on an understanding of the various different companies involved – the background to them certainly was complicated, not only in relation to the Buy Out, but also the fact that a new company, TWDHL, had secretly been set up and Reg did not appear to know this.

535. It is obvious that Reg had good days and bad days and that everyone knew that. It was why there were constant references in the text messages to keeping Reg "*fresh*" or "*sharp*", or to try to get things into his head before a meeting; and why Charlie was often keen to find out after a meeting whether he had performed "*well*" or not. No one watching the video of 7 August 2019 when Reg signed the August PoA could fail to be alarmed by the state he was in on that occasion, and by the fact that he was surrounded by Charlie, Greg and others on their side, and effectively made to sign a document in respect of which he received a wholly inadequate and misleading explanation and which it is impossible to say that he knew what he was signing.

536. It was part of Charlie and Mr Rann's plan for Reg to make a new will, and their particular concern was to ensure that TWDHL would be left to Charlie, as not only would the horses be put into that company but also all of Reg's money would be channelled through it. I do not need to repeat what I have said above in relation to Ms Martin's evidence as to the will-making process and her six meetings with Reg and the taking of instructions. At some point, the original assumption about the new will changed, and Reg's remaining shares in Wholesale and Holdings were to be left to Charlie and Greg alone, and Mike and Lindsay were being cut out of their share in the bulk of Reg's wealth.

537. I have concluded that there is insufficient evidence to persuade me that those instructions came voluntarily from Reg. Furthermore, there is no evidence that Reg's holding of shares, both before and after the Buy Out, and their value, was discussed or established. While I understand that it is not the law that Reg needs to have remembered exactly what was in his estate and what each asset was worth, for the purposes of limb (b) of the *Banks* test, the Claimants have not proved that he understood that he was leaving most of his estate to just two of his four children. Ms Stanley KC submitted that Reg obviously knew that the shares in the tyre business were his most valuable asset and that for good reason Reg decided to leave them to Charlie and Greg. But the evidence does not indicate that Ms Martin knew this. The effect of the gift was to cut out Mike and Lindsay from most of Reg's wealth and Ms Martin does not appear to have explained this clearly to Reg, either in the will summary or from Ms Martin's attendance notes.

538. As to limb (c) of *Banks*, there was no consideration of his existing will because Ms Martin had been told not to retrieve it from Harrowells and, for some strange reason, she did not think it appropriate to discuss with Reg. There is virtually no mention in any of the attendance notes of Mike and Lindsay and there seems to have been nothing emanating from Reg about why he was not contemplating Mike and Lindsay in relation to the LPAs or his new will. The clauses in the will were predominantly directed in Charlie's favour and against Mike and Lindsay; not only were they being removed from the gift of shares in any of the companies; but also they were to be removed as executors and their children removed as substitutionary beneficiaries of the residue. There was no reason to do that, save that it was all being driven by Charlie and Mr Rann and was part of their secret plan. It feels as though nothing was actually coming from Reg direct and that it was all being orchestrated by others.

539. I have said above that I cannot place sufficient weight on Ms Martin's evidence as to Reg's capacity that would take the Claimants over the line on this issue. I was quite frankly unconvinced that she had made any proper assessment of Reg's capacity and, given the way she had gone about receiving instructions in relation to his will, including as to the gift of shares, I am not persuaded that Reg was playing any real part in the process and was merely, if anything, just agreeing to whatever was being put before him. The fact that he was so disengaged, and actually unable to give instructions to Ms Martin in relation to his will, means that there should have been huge question marks around whether he was capable of understanding what he was doing.

540. Accordingly, I find that the Claimants have not satisfied me on the balance of probabilities that Reg had testamentary capacity to make the 2019 Will. That also applies to the Codicil, about which there is no evidence, save from Ms Webster, about how Reg was on the day. But in any event the Codicil will fall with the 2019 Will.

J. KNOWLEDGE AND APPROVAL

541. It inevitably follows from my conclusion that Reg lacked testamentary capacity in relation to the Disputed Documents that he also did not know and approve their contents. Knowledge and approval is only a live issue in this case if I had found Reg to have had testamentary capacity. In dealing with this issue, I therefore need to assume that Reg had testamentary capacity, but this is difficult because it may be relevant whether it was borderline, or more certain, capacity that Reg had and this in turn may affect whether he knew and approved the the contents of the Disputed Documents.

542. It is further complicated by the fact that much the same evidential material is relied upon for the purposes of testamentary capacity and knowledge and approval. Adopting the holistic approach to the evidence, rather than the shifting burdens two-stage approach (see *Gill v Woodall*, supra) means that the same evidence has to be considered again, but on the basis that it did not establish that Reg lacked testamentary capacity.

543. Mike and Lindsay rely on the unsatisfactory and, they say, suspicious will-making process, together with the evidence in relation to Charlie and Mr Rann's clandestine plan, to found their case that the 2019 Will did not represent the true testamentary intentions of Reg. There is no doubt that Reg was extremely vulnerable and required constant care for his daily needs. He was always accompanied by three carers - Ms Daddy, Ms da Silva and Ms Webster - when he went to meet Ms Martin. They were all firmly on Charlie's side, being parties to the need to keep everything secret from Mike and Lindsay and spying on them at Charlie's instruction. Charlie himself was almost paranoid that Mike and Lindsay might bully Reg into signing something that might not benefit him.

544. I will not repeat my findings set out above in relation to the will-making process and particularly Ms Martin's evidence in such respect. Mike and Lindsay rely on Mr Rann's first involvement and then the plan purportedly instigated

following Lindsay's meetings with Reg in late July 2019 and Reg's alleged instruction to Charlie and Greg at York racecourse on 27 July 2019. As I have said above, I think that there is a lot of *ex post facto* exaggeration of these events to fit the Claimants' narrative that Reg wanted to "*take back control*" and as a justification for the plan to oust Lindsay from any involvement with Reg's affairs. This started with the signing of the August PoA and the care team letter of wishes, both of which happened within a couple of days of Reg leaving hospital after his suspected TIA. I have commented extensively above on the disturbing nature of the videos of 7 August 2019.

545. It is not disputed that Charlie and Mr Rann were pursuing such a plan, part of which involved Reg meeting Ms Martin, and LPAs and a new will being signed. Charlie maintained that a new will was not part of the plan, but that is not credible by reference to Mr Rann's "*RCB-Private Affairs*" document. It may be that he could say it was not part of the plan at the outset for Reg's new will to leave the shares in the business to him and Greg; but they certainly wanted to ensure that TWDHL would be left to Charlie in the new will. However, I do not think that Reg ever knew anything about TWDHL and what its purpose was, aside from possibly the fact that the horses business would be put into it.

546. As it was part of the plan, it was Mr Rann who instructed Ms Martin as to what she was to do in relation to Reg, and his new LPAs and will. This was not instigated by Reg and it does not appear that he had any idea about why he was doing a new will or what was going to go into it. Ms Stanley KC submitted that, whether or not it was instigated by Reg, he knew exactly what was going on and had the opportunity over several meetings with Ms Martin to consider and decide what should go into his new will. This, she said, could be compared to the manner in which his previous wills had been prepared. Those wills, prepared by Ms Precious, had normally been suggested by her, rather than Reg, so as to deal with a particular change in circumstance, such as the amendment to Wholesale's articles of association. Reg did not have the opportunity or the time in relation to those wills to contemplate certain matters, such as his place of burial, what he wanted to happen to his dogs and chattels and the people to acknowledge by way of pecuniary legacies. He was able to consider such matters with Ms Martin.

547. Ms Reed KC submitted that if Reg had himself wanted to make those changes and to consider those matters, there would have been no reason not to go back to Ms Precious, someone with whom he had had a longstanding relationship and whom he trusted. He did not care for Mr Rann and did not know Ms Martin. Yet it was essential for Charlie and Mr Rann's plan that this had to be kept secret from Mike and Lindsay, and that was why Ms Precious could not be used and it had to be done through Ms Martin.

548. As to the secrecy, Ms Stanley KC was right to say that Reg was perfectly entitled to keep his new will, and the fact that he was making a new will, confidential. His previous wills had not been widely broadcast and indeed Lindsay took care to ensure that their details were not unnecessarily disclosed. She also said that Reg was prepared to keep some things secret from Mike and Lindsay, such as his trip to Dubai in November 2019, about which he had joked that he would

tell people if they asked that they had been to Blackpool. But it is the lengths that were gone to, by all concerned, including Ms Martin, that were so extreme in this case, and makes it clear that this was an integral part of Charlie and Mr Rann's plan to take effective control of Reg's affairs, and it is unlikely that this was specifically instructed by Reg. There is nothing in Ms Martin's attendance notes to suggest that Reg had told her to maintain such a level of secrecy, but somehow she knew that that was what she had to do.

549. Charlie, Ms Webster and even Ms Martin insisted that Charlie had little or nothing to do with the will-making process and certainly that he did not give instructions on behalf of Reg. Ms Martin maintained that her engagement with Charlie was mainly in relation to the LPAs in which he was being appointed as attorney; and in relation to the will, it was limited to administrative arrangements and the obtaining of details from Charlie as to what Ms Martin described as Reg's "*minor*" assets, although her emails to Charlie sought details of all Reg's assets. I do not accept that his involvement was that detached. The records show that Ms Martin spoke to Charlie at least on three occasions: 18 October 2019 when they went through who should be the attorneys on the LPAs; on 24 October 2019 when she was asking about a "*schedule of assets*"; and 7 November 2019, when he was with Mr Rann trying to ensure that the will was finalised shortly. On 14 November 2019, Ms Martin emailed Charlie and Ms Webster asking if they had managed to obtain Reg's instructions on the outstanding points in relation to his will.

550. I have dealt with my conclusions on the will-making process and Ms Martin's evidence in [490] to [511] above and I will not repeat that here. Ms Stanley KC submitted that it should have been put to Ms Martin that she was lying or acting dishonestly in giving evidence that she had received instructions from Reg on 25 October 2019 that he wished to leave his shares in the business to Charlie and Greg. I have concluded that, on the balance of probabilities, Ms Martin did not receive such instructions from Reg on 25 October 2019, but she did receive instructions about the gift of shares when she met Mr Rann on 8 November 2019. That point was clearly put and Ms Martin well understood what was being put to her. It would not have added anything to have then suggested to her that she was lying or acting dishonestly in her evidence. Nor was I asked to make any findings to such effect and I do not do so.

551. There is no evidence that Reg read the 2019 Will himself. Ms Martin said in her oral evidence that she took Reg through the main parts of the 2019 Will at the 19 November 2019 meeting but this was not supported by her own attendance note which only referred to going through the will summary – or "*summary of his wishes*", as it was called in the attendance note. Much was made of the manuscript addition about the option to Charlie to purchase the Paddock showing Reg's engagement with the will summary. But this was in the will summary anyway and it was already in the 2019 Will. Maybe it was something that Reg was fixated on.

552. The purported reason for leaving the shares in Wholesale and Holdings was for the first time set out in the will summary. The only time that Reg could have given that reason was at the meeting on 14 November 2019, but Ms Martin did

not record such an important point in her attendance note and, in any event, her evidence, which I have not accepted, is that the instructions in this respect were given by Reg at the 25 October 2019 meeting. The reason did not appear in her will questionnaires or handwritten notes said to have been taken at the meeting. Therefore, the first time that this had appeared was in the will summary.

553. Ms Martin's attendance note recorded that Reg "*confirmed my note reflected his reasons*". There was no discussion about it and Reg accepted what had been put before him. In particular there was no explanation that, by making such a gift, he was excluding two of his children from the bulk of his estate. There is no indication that he realised this and that it involved a substantial departure from his previous wills which, save in respect of the horses, had treated all his children equally.

554. Reg at no time suggested that he had fallen out with Mike and Lindsay and that that was why he wanted to cut them out of his will. On the contrary, save for whatever Charlie and those on his side had said to Reg about Mike and Lindsay, there is no evidence whatsoever that Reg's relationship with them had changed since the last will such that he would want to take such drastic steps to reduce their share of his estate on his death. I can only conclude that this was not what he really wanted to do and it did not represent his true testamentary wishes.

555. I was struck by the emails between Mr Rann and Ms Martin on 13 January 2021 (referred to in [457] to [459] above) where Mr Rann appeared very relieved to find out, when Reg was seriously ill in hospital, that "*we*" had included the shares in both Wholesale and Holdings in the 2019 Will – "*it covers everything we need*". Mr Rann was clearly concerned on Charlie's behalf that they wanted to make sure that all the shares were going to him and Greg, and not Mike and Lindsay. That indicates that the 2019 Will was really what they wanted rather than representing Reg's own wishes.

556. Even in relation to the Codicil, the circumstances by which that came about were uncomfortable and unseemly. Ms Webster informed Ms Martin that Reg wished to increase the legacies from £5,000 to £10,000 to the three women who were with Reg at the meeting on 19 November 2019. There was no increase to any other legacies. Ms Martin simply looked at Reg in Ms Webster's presence, and with Ms Daddy and Ms da Silva nearby, and he did not really react or perhaps nodded, which she took as confirmation. She then entrusted the execution of the Codicil to Ms Webster, sending post in such respect to her home address. In the end, it seems the parties controlling the process were able to get what they wanted, without Reg appearing to engage on those matters.

557. There are numerous suspicious circumstances around the making of the 2019 Will, most of which led me to conclude that Reg did not have testamentary capacity. If I was wrong on that, and taking into account that he did just about have capacity and that the 2019 Will was properly executed, nevertheless looking at all relevant matters in the round I would have come to the same conclusion in relation to knowledge and approval. The Claimants have not satisfied me on the balance of probabilities that Reg knew and approved the contents of the 2019 Will and that it represented his true testamentary wishes.

K. OVERALL CONCLUSION AND DISPOSITION

558. In the circumstances, I find in favour of Mike and Lindsay on their counterclaim which means that I set aside the 2019 Will and the Codicil and pronounce in favour of the August 2017 Will. More formally, I therefore:

(1) Pronounce against the validity of the 2019 Will and Codicil;

(2) Pronounce in solemn form for the force and validity of the August 2017 Will.

559. Finally I would just like to say that it has saddened me greatly to see how these bitter disputes between the siblings have engulfed the Bond family and that they have not been able to settle their differences out of court. I know that Charlie and Greg, and all their witnesses, will be unhappy with the outcome as set out in my judgment but I would urge the whole family to consider carefully whether it is in any of their or their families' interests to prolong this dispiriting situation any further.

560. If the parties are unable to agree the consequential matters arising out of this judgment, then a hearing may need to be arranged in due course to deal with them.