



Neutral Citation Number: [2019] EWHC 1959 (Ch)

Case No: HC-2017-002416

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
PROPERTY TRUSTS AND PROBATE LIST(CH)

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

Date: 25/07/2019

Before :

DEPUTY MASTER BOWLES

Between :

Sean Baxter
- and -
Gulcan Todd

Claimant

Defendant

Brie Stevens-Hoare QC (Bar Pro Bono Unit) for the Claimant
Oliver Ingham (instructed by Davies and Partners) for the Defendant

Hearing dates: 19th, 20th, 21st and 22nd February 2019

Approved Judgment

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

.....
DEPUTY MASTER BOWLES

Deputy Master Bowles:

1. The Claimant, Sean Baxter (Mr Baxter), was, until the sudden and untimely death of his wife, in November 2016, at the age of forty three, the husband of Gul Baxter (Gul). This case concerns the property interests of Gul and Mr Baxter, primarily their respective interests in what was, for the bulk of their nearly twenty three year marriage, their matrimonial home, at Flat 2, 1 Bedwardine Road, London SE 19 (the Flat). It concerns, also, the validity of a will made by Gul, on 18th July 2016, very shortly after she was diagnosed with the severe and advanced pancreatic cancer from

which she died. An additional claim, for reasonable financial provision, under the Inheritance (Provision for Family and Dependants) Act 1975 (Inheritance Act), stands adjourned awaiting the outcome of the current trial.

2. It is Mr Baxter's case that that will was procured by the undue influence of the Defendant, Gulcan Todd (Gulcan), who is Gul's sister, and Gul and Gulcan's mother, Ruzigar Kolat (Ruzigar), alternatively that the will is invalid for want of knowledge and approval. Gulcan is one of the named executors in the disputed will. The other named executor, Saadet Celik, has, as I understand it, renounced her appointment as executor.
3. Gul, Gulcan and Ruzigar are Turkish and the properties, other than the matrimonial property, with which I am concerned are properties in Turkey. Mr Baxter's case is that he is the sole beneficial owner of the Flat and of two properties in Turkey, referred to in the pleadings as the Summer House and the Rental Property, purchased, respectively in 2002 and 2005. A third Turkish property, referred to as Juliette's property, had been purchased for Juliette, in about 2008, but had been sold, at Gul's request and to provide for Juliette's school fees, in the period between July 2016 and Gul's death in November 2016. A fourth Turkish property, referred to as the Project, which Mr Baxter contends was held by Gul on trust for herself and Mr Baxter, was also sold, in 2015, with the intention that the proceeds of that sale would also go towards Juliette's school fees. Mr Baxter's pleaded case is that any part of those proceeds which had not been disposed of prior to the death of his wife now vest in him beneficially. Correspondingly, as I understand it, although no case is brought by, or upon behalf of, Juliette, it would be Mr Baxter's position that any subsisting part of the proceeds of Juliette's house are vested beneficially in Juliette.
4. Gul and Mr Baxter met in 1993 and were married in March 1994. Relevantly to this case, Mr Baxter had had two children, Jadie and Kadie, by a previous relationship. Jadie was born in 1991 and Kadie in 1992. Jadie was a witness at the trial. In 1996, Mr Baxter was awarded parental responsibility in respect of both children.
5. At the time when Gul and Mr Baxter met, Mr Baxter was the secure tenant of a Council property, at 22 City Prospects, Oakwood Drive, Crystal Palace and it was in that property that they first lived together. In 1995, by which date they were married, Mr Baxter, by agreement with his landlord, Croydon Borough Council, transferred that secure tenancy to the Flat.
6. In early 1999, Mr Baxter, in consultation with and with the agreement of Gul, decided to exercise his right to buy, in respect of the Flat.
7. At that stage, Gul was a full time student at what was then South Bank University. She was reading for a BSc in Computer Studies, by way of a sandwich course and, in due course, in 2001, she achieved a First Class honours degree. From July 1999, as part of her course, Gul was seconded to IBM, completing that secondment in August 2000. It would appear that, in addition to her University and IBM activities, Gul, also, undertook and passed courses in Systems Administration and was accepted as a casual interpreter by the Immigration Services, at Heathrow.
8. In April 1999, the Council recognised Mr Baxter's right to buy and offered him the leasehold interest in the Flat at a price of £23,920 reflecting a 54% discount on the

then market price, by reason of his secure status and prior occupation. That offer was made to Mr Baxter alone. His evidence, however, which I accept, is that Gul, very understandably, wanted the security provided by her name being on the title as a joint owner. In consequence and with the agreement of the Council an amended offer was made by the Council, now jointly to Mr Baxter and Gul, in September 1999 and at the same discounted price as hitherto. That offer was taken up and, in October 1999 a 125 year lease of the Flat was granted at the agreed premium. That premium, or price, was funded by a 100% mortgage from the Cheltenham and Gloucester Building Society. Both the lease of the Flat and the mortgage were taken in Gul and Mr Baxter's joint names and the Flat was duly registered in joint names, on 4th November 1999.

9. It is, rightly, common ground that the effect of this purchase, in this manner, of Gul and Mr Baxter's matrimonial home, was that, thereafter and until the events to which I shall now turn, the Flat was held by Gul and Mr Baxter as beneficial joint tenants.
10. In the Summer of 2005, it became necessary for Jadie and Kadie to come to live with Mr Baxter and Gul. Previously they had lived with their mother. By that stage the two girls were thirteen and fourteen years of age. Their mother, Amanda Smith, was experiencing problems with alcohol and drugs and, at the request of social services, in the Petts Wood area, where they were then living, they came to live at the Flat with Gul and Mr Baxter. A residence order was made in favour of Mr Baxter, in June 2005, and, in November 2005, a further order was made prohibiting the girls' mother from removing them either from Mr Baxter or from their school.
11. The problem raised by this new state of affairs was that the two girls were at school in Petts Wood, in Bromley, that the journey from the Flat to Petts Wood was difficult and that the two girls' friends and connections were all in the Petts Wood area.
12. To meet this problem, Gul and Mr Baxter, with the aid, it would appear of the Social Services department of Bromley Borough Council, elected to seek and were duly granted a council flat in the Petts Wood area. As part of that process, the Flat was transferred into Gul's sole name. Mr Baxter's written evidence is that he was wholly open with Social Services as to this conduct and that the reason for the transfer was, effectively, administrative; in that it avoided, as he told me, the provision of a lot of complicated information and documentation. In his oral evidence he expanded upon this and accepted that he was aware of the possibility that his application for a tenancy in Bromley might have been hampered had he acknowledged his interest in the Flat.
13. The transfer of the Flat took place in October 2005. It was accompanied by the discharge of the existing Cheltenham and Gloucester mortgage and by a re-mortgage in favour of Gul. Mr Baxter's evidence is that he and Gul discussed and agreed that the transfer was only for convenience and to facilitate their move to Petts Wood and that it did not and was not intended to reflect any change in the actual ownership of the Flat. Gulcan denies this and asserts that, as from the transfer, Gul regarded the Flat as entirely her own. I will return to this conflict later in this judgment.
14. From about the end of 2005 until 2009, Gul and Mr Baxter lived in the Petts Wood flat. By 2009, however, Kadie had chosen to live with Mr Baxter's mother and Jadie had moved out to live with her boyfriend. In consequence the temporary need for the

Petts Wood flat ceased and Gul and Mr Baxter and, by this stage, their daughter, Juliette, who had been born on 3rd August 2006, returned to the Flat. Mr Baxter's evidence is that he and Gul saw no need to re-transfer the Flat as, from their perspective, it had always been and remained jointly owned.

15. The key question, in this litigation, is whether, that was their joint intention and, if so, whether and how, as a matter of law and equity, that intention was reflected in the beneficial ownership of the Flat at the date of Gul's death.
16. By 2005, Gul, having obtained her degree, was working. Following her graduation, she found employment in the NHS, as a computer analyst, with a starting salary of about £24,000 per year and continued to work in the NHS, rising through the grades, until the birth of Juliette, in 2006. When Jadie and Kadie came to live with her and Mr Baxter, Mr Baxter, for a period, gave up work to look after his daughters. Accordingly, at the date of the transfer to Gul, Gul was the principal breadwinner. Following the birth of Juliette, Gul remained in employment, in the NHS. In 2008/2009, however, she decided that teaching might be a better career to accommodate motherhood and, in consequence, left her employment with the NHS in order to acquire a teaching qualification. In that period she would only have had such income as she received during her periods of probationary teaching. In the event and because she wished a larger income than that available in teaching, primarily to enable Juliette to have a private education, she elected to return to the NHS, as a project manager. She was first re-engaged at a salary of about £32,000 per year and by the time she ceased work, in March 2016, she was earning some £37,000 per annum.
17. In addition to her work and to the usual pressures of parenthood, including, in the period 2005 to 2009, assisting in the bringing up of the two teenage girls, Jadie and Kadie, Gul suffered from a neurological condition which affected both her walking and her hearing. To compound this, Juliette, too, is in poor health. She has a condition called phenylketonuria (PKU), which requires that she maintains a special protein free diet. In her lifetime, Gul took the primary responsibility for the bulk of the arrangements necessary to ensure that Juliette complied with her dietary requirements.
18. Mr Baxter's own earning and employment position came under some attack at trial. It was suggested, in essence, that, throughout his marriage to Gul, she had been the main breadwinner and that Mr Baxter had relied upon her and, in effect, battered upon her for money. In an affidavit dated 27th April 2017, it was stated by Gulcan that he had not worked for twenty years. In her witness statement for trial, Gulcan asserted that Mr Baxter had not worked regularly.
19. At a broader level, the picture sought to be painted by Gulcan and by a friend, Hatice Oz, was of a lazy, drunken, cannabis smoking ne'er do well, of a marriage on the verge of divorce and of Mr Baxter as a husband who was bullying and abusive.
20. Mr Baxter's own evidence, which, as set out later in this judgment, I found to be fundamentally honest and reliable and which forms the source of much that I have already set out, provided a much more balanced picture of his relationship with Gul and of the financial arrangements which existed between them. He acknowledged that he did drink and that Gul had not approved. He acknowledged that he did, or

had, on occasion smoked cannabis. He acknowledged that there had been stresses and strains in his relationship with Gul, particularly in the early part of 2016, when, as he saw it, the then undiagnosed pain that Gul was suffering affected her conduct and their relationship. He acknowledged that, for reasons described and explained later in this judgment, in the period after Gul's diagnosis with terminal pancreatic cancer, in early to mid-July 2016, and continuing up until her death in November 2016, very great strains were imposed upon their relationship.

21. In regard to his work and to the financial arrangements existing, during his marriage, between himself and Gul, Mr Baxter explained that the balance of earning power between himself and Gul had changed from time to time during their marriage. He had, for example, been the main bread-winner while Gul was studying for her degree and when training to teach. Equally, when Jadie and Kadie had come to live with him, in 2005, he had given up work for a period, in order to look after them. At the time that Gul gave up work she was earning more than he was. At other times, his earnings as a self-employed builder and decorator exceeded hers. Because it was their custom to spend substantial periods of time in Turkey, the flexibility of his self-employment suited both of them.
22. In regard to their financial arrangements, Gul and Mr Baxter had each retained their own accounts, but had shared domestic expenditure. Once Gul had found her employment with the NHS, she had paid the mortgage. Gul had also organised their finances and dealt with the paperwork. Mr Baxter had, as he put it, put his money on the table and paid what Gul told him to pay. This had included, when he was earning well, all their outgoings, by way of utilities, food and social activities. Presumably, when Gul was teacher training, it would also, in that period, have included the mortgage.
23. In regard to the mortgage, over the period of their marriage, the Flat was re-mortgaged on a number of occasions. It is common ground that it was the monies from these re-mortgages which funded the Turkish properties and it is also common ground that, other than Juliette's property, which, as already stated, had been purchased for her, in, or about, 2008, the beneficial ownership of the Turkish properties followed the beneficial ownership of the Flat, as at the date of the relevant purchase.
24. In March 2016, Gul was forced to give up work. On 9th March 2016, she attended Accident and Emergency at King's College Hospital suffering from severe abdominal pain. No diagnosis was forthcoming. Thereafter, for a number of months, various tests and investigations took place, during which Gul remained ill, unhappy, in pain and without diagnosis. Mr Baxter described this period as a period of great strain. Gul seemed to be different and he, Mr Baxter, could not understand what was going on. Things reached a point where he came to believe that Gul might be having an affair. He checked her mileage and even hid in the boot of her car to see where she was going.
25. In July 2016, Gul, who had carried out her own research and believed that she was suffering from cancer, was investigated at a different hospital; the Mayday Hospital, in Croydon. She was admitted on 6th July and discharged on 8th July. For the first time, pancreatic cancer was suspected. On 11th July, a biopsy was carried out and by 15th July 2016, the diagnosis of what appeared to be and was terminal pancreatic

cancer was confirmed. On 15th July, Gul was admitted to St Christopher's Hospice in Sydenham.

26. Even before the final confirmation of her diagnosis, Gul contacted solicitors, Quality Solicitors Amphlett Lissimore (QSAL) with a view to making her will. She first contacted those solicitors in the morning of 13th July. Thereafter, between that morning, when she first discussed her will with Miss Brett, a legal executive in the firm, and the afternoon of 15th July, when Miss Brett and her assistant, Shelagh O'Connell, visited Gul at the hospice a number of drafts were exchanged by email and a number of changes made. It had been the intention of Miss Brett and, I think, Gul, to execute the will at that meeting. In the event, however, further amendment was required and, in consequence, the will was not executed until 18th July 2018.
27. The core of Gul's instructions are set out in the attendance note prepared by Miss Brett on 13th July 2016. Her concerns, as stated in that attendance note, were for Juliette and her education. She wanted money to be available to Juliette for that purpose. She also wanted the Flat, although to be held, as it is put, in the attendance note, 50/50, as between Juliette and Mr Baxter, to be retained. She told Miss Brett that this was because she felt that keeping the Flat would enable Juliette to retain her memories of her mother. She was against the idea that the trust arrangements described by Miss Brett, in the attendance note, should enable Mr Baxter and Juliette to move to other property and was 'adamant' that the Flat should not be sold. She was, I think, disappointed when told by Miss Brett that the retention of the Flat could not be achieved indefinitely and that provision would have to be made for sale if circumstances so required. In regard to trustees, she was clear that she did not want Mr Baxter to be a trustee.
28. Following those initial instructions, the will went through a number of iterations. The substance of Gul's position, however, always remained the same, namely that Juliette was her absolute priority. I have no doubt at all, having heard all the evidence and read the transcripts that this was true and that this was, throughout the period when Gul was ill and dying, her entire motivation. This is what she told Miss Brett. This is what she told, her long standing and close friend Sharon Johnson, who gave, virtually unchallenged, evidence before me. This is what, as set out later in this judgment, underlay all of her conduct.
29. The will, as executed, appointed Gulcan and Saadet Celik as executors and trustees and made provision for alternative guardians for Juliette in the event that Mr Baxter was unwilling, or unable, to care for her.
30. In the circumstances as they have arisen, it purported to give her interest in the Flat to trustees to hold on trust and provided that the trustees must allow the Occupiers (defined as Mr Baxter and Juliette) to occupy the Flat as their main residence, but that that so-called right of occupation would terminate if they died, married, or entered a civil partnership, or ceased to occupy the Flat as their main residence. During the pendency of the right of occupation, the Occupiers were to be entitled to live in the Flat rent free and Mr Baxter was to pay all outgoing, including any outstanding mortgage, keep the Flat in the same state of repair as existed at the date of Gul's death keep the Flat insured to the satisfaction of the trustees.

31. The will, notwithstanding Gul's original concerns in that regard, further made provision for the purchase, if appropriate, of an alternative main residence, if called upon by the Occupiers in writing. Subject to the provisions as to occupation the will provided that Gul's interest in the Flat, or any assets representing the Flat and any added income derived from the Flat be held on trust for Mr Baxter and Juliette in equal shares.
32. Although not stated in so many words, it is clear, from the declaration at clause 10 of the will, to the effect that she, Gul, had paid for the Flat, that the conception underlying the drafting of the will was that Gul's interest in the Flat was the entire beneficial interest. On the evidence before me, this was, undoubtedly, Miss Brett's understanding of the interest that Gul was seeking to devise; the Flat was described to her, by Gul, as her property, held in her sole name.
33. For completeness, the will provided that the residue of Gul's estate be held on trust for Juliette until she attained the age of twenty one. Other than the properties, I have not been told of any other significant assets that might form part of that estate.
34. It is Mr Baxter's case that this will was executed under and by reason of the actual undue influence exercised over Gul by Gulcan and by Gul and Gulcan's mother, Ruzigar. The pleaded allegation is that, at a time when Gul was overwhelmed by the shock of her terminal diagnosis, was in great pain and was prescribed and taking significant quantities of pain killing opiates, Gulcan and Ruzigar made persistent false allegations in respect of Mr Baxter and, thereby, caused Gul to lose her trust and confidence in Mr Baxter and in respect of his intentions and motivations following her death and, in so doing, influenced Gul against Mr Baxter at the very time when she was giving her instructions and effecting the execution of her will.
35. The allegations in question are said to be that Mr Baxter had caused Gul's cancer by the stresses of their relationship; that he would immediately replace her with a new female partner; that he would give her engagement ring to the new female partner; that he was just thinking about the money he would have when she died; that he was stupid and would give everything to his new female partner; that he would not do what he could to keep Juliette in private education; that he would deprive Juliette of any inheritance, particularly in favour of any new female partner; and that he did not have Juliette's best interests at heart and would not look after her financial interests as a good parent should.
36. Materially to the foregoing, a number of matters emerged at trial.
37. Firstly and unsurprisingly, Mr Baxter was not, himself, a witness to the making of the statements alleged. My understanding is that, after the execution of the will and when Juliette was present at the hospice she heard Gulcan and her mother saying to Gul the things, or the kind of things, alleged, in Turkish and that Juliette, who speaks Turkish relayed those matters to her father, Mr Baxter, who does not speak fluent, or colloquial Turkish. The inference that I am, as I see it, expected to draw from what Juliette heard and repeated is that those same statements and their ilk were being made in the relevant period leading up to the execution of the will. Additionally, it was Mr Baxter's evidence that Gul had, at some not very clearly identified point, told him the things that Gulcan and Ruzigar had been saying. The inference, again, that I

am invited to draw is that those statements, or their like, were being made to Gul during the period when she was giving instructions for her will.

38. Secondly, it is clear from Miss Brett's evidence, which evidence, both as to this and in its entirety, I accept as honest and reliable that, on the two occasions when she met Gul, no one else was present.
39. Thirdly, the evidence, as to Ruzigar seems to me to be clearly to the effect that she was not in the jurisdiction when the will was executed, or was being prepared, and that she did not arrive in England to see her daughter in the hospice until, at earliest, 6th August 2016. It follows that if she was instrumental in making allegations against Mr Baxter, during the relevant period, then those allegations must have been made by telephone, or some other means, and not face to face.
40. Fourthly, although not mentioned by Gulcan in her written evidence for the trial, Gulcan's evidence at trial was that, by 13th July, she had left the United Kingdom, in order to make arrangements for Ruzigar to come to England and, thus, could not have been on the scene to exert the alleged influence over Gul. Her presence, or absence, during the relevant period is, as it appears to me, the main relevant factual issue in dispute in this case, although, as appears later in this judgment, not a dispute which is, in my view, fundamental to the resolution of this case.
41. Fifthly, it is not in dispute but that Mr Baxter, himself, was not party, or privy, to the discussions which took place with Miss Brett in respect of the proposed contents of Gul's will. There is some evidence, from a close friend of Gul's, Sharon Johnson, that Gul had made Mr Baxter aware, in broad terms, of her wishes in respect of her will and an email from Gul to Miss Brett, early on 18th July 2016, in which Gul instructs Miss Brett to remove Hatice Oz, as a trustee of the trust created by her will, asserts that the contents of her will now had Mr Baxter's blessing.
42. Transcripts of conversations recorded, apparently, upon Gul's telephone, but with little indication, otherwise, as to dates and provenance, show, however, that, in the period, probably, after the will was made, Gul and Baxter had heated discussions as to the arrangements that Gul had made and wished to make and, in particular as to the provision Gul was seeking to make as to the various properties, including the Flat. At some points, Mr Baxter is recorded as saying that he will overturn everything.
43. The same transcripts bear, further, upon the question of actual influence. There are references by Gul to Mr Baxter giving money to whores and to Mr Baxter living in comfort with cars and girls; reference, also, to Gul's engagement ring and to the suggestion, by Mr Baxter, but denied by Gul, that Gul is being brain washed and that it is Ruzigar who is seeking to secure money and property from Gul.
44. In addition to his plea of actual undue influence, Mr Baxter further contention is that the will fails for want of knowledge and approval.
45. The basis of that plea, to which I will return later in this judgment, is that the language of the will does not produce a workable arrangement whereby, in reflection of Gul's wishes, Juliette and Mr Baxter could retain occupation of the Flat during Juliette's minority and that had Gul known that fact she would not have approved the will.

46. In addition to her will and while still an in-patient at the hospice, Gul wrote a letter, dated 30th July 2016 and exhibited to Gulcan's witness statement. That letter, addressed 'To Whom it may Concern', makes various allegations against Mr Baxter, of alcohol dependency, drug taking, limited financial support and lack of involvement in Juliette's care. It was written, as is clear from its language, in an effort to explain the arrangements that Gul had sought to make by her will and to express the hope that Mr Baxter would not challenge those arrangements. It was written, as it seems to me, during the period of very high tension between Gul and Mr Baxter, which is reflected in the transcripts, and with the purpose of negating any efforts by Mr Baxter, foreshadowed in the transcripts, to set aside the arrangements she had made.
47. In October 2016, after Mr Baxter had had sight of Gul's will (an occasion also reflected in the transcripts) and prompted by that fact, Gul wrote a short letter of wishes, dated 17th October 2016. In that letter, a draft of which had been provided for her by Miss Brett at the date of execution of her will, Gul explained that her wish was that the funds held in trust for Juliette under the will trust, effectively the residue of her estate, were to be used for Juliette's school fees.
48. Gul died on 8th November 2016. Mr Baxter and Juliette remain living in the Flat.
49. As I have already indicated, I found Mr Baxter to be a fundamentally honest and reliable witness. He acknowledged and did not try to hide his weaknesses and the tensions which developed between himself and Gul, when her cancer came upon her and when faced with the fact of her terminal diagnosis and the situation in which he found himself following that diagnosis. He was honest, for example, about the suspicions that he formed in respect of Gul in 2016, leading him to spy upon her by hiding in the boot of her car. He was honest, also, in admitting to a further incident when he had pulled Gul's hair and when police became involved. He did not hold himself out as whiter than white.
50. I found his account of his long term relationship with Gul persuasive and convincing. It was the everyday account of the way that couples organise and share their lives and wholly credible as such.
51. He, like Gul, herself, had been faced with the family trauma arising from her diagnosis and her terminal condition. On the one hand his wife of twenty three years was dying. On the other hand, he was to be left with the care of Juliette and with the need to remake his life, in circumstances where Gul was determined, as I find, to protect, at all costs, Juliette's future and where, to that end, she was prepared to assert control over what Mr Baxter saw as his property. It is that tension which emerges, starkly, from the transcripts of their conversations and which gave rise to the heated argument disclosed by those transcripts.
52. In making my assessment of Mr Baxter, I do not overlook Gul's letter of 30th July 2016. That letter must, however, be seen in its context; that context being, as set out above, Gul's fixed determination to make the arrangements that she thought right for Juliette.
53. In that context and to ensure, as she hoped, that her arrangements would not be attacked. I have no doubt that Gul was prepared to exaggerate Mr Baxter's

deficiencies and to overstate his weaknesses. Gul was perfectly prepared, as is clear from Miss Brett's evidence and the declaration in her will, to hold herself out, when she needed to, as the sole owner of the Flat. That she did not, in truth, so regard herself is clear from the letter of 30th July itself, which refers to her desire that Juliette would inherit her half of the assets (necessarily implying Mr Baxter's ownership of the other half), and from at least one of the transcripts, in which she states that 'half of the houses .. ', meaning, as it seems to me, half of each of the houses '...are mine'.

54. In the same way that she was prepared to assert ownership of the Flat to her solicitor, to achieve her purpose, I am satisfied that she was prepared to gild somewhat Mr Baxter's drinking, cannabis smoking and so-called domestic violence and to downgrade his work record to the same end.
55. In so saying and as I have hoped to make clear, I do not judge, or hold out, Mr Baxter as a perfect husband; nor, I am sure, would he hold himself out in any such way. I think it likely that in the stresses and strains of 2016, when Gul was seeking diagnosis, divorce was probably mentioned. Subject, of course, to the question of the impact of any undue influence, the fact that Gul chose to make her will the way she did and to give, by that will, Mr Baxter a position of guardianship rather than trustee plainly suggests that she had concerns about him.
56. That said, I found myself wholly unconvinced by the highly coloured view of Mr Baxter that Gulcan and her friend and witness Hatice Oz sought to present to the court.
57. I did not regard either of them as witnesses upon whose testimony I could rely and it was, indeed, conspicuous that Mr Ingham, who represented Gulcan pro bono and with very great skill, rightly placed no reliance upon either her, or Ms Oz, in making his final submissions.
58. The hallmark of both Gulcan's and Ms Oz's evidence was their blatant and extreme animosity towards Mr Baxter. Gulcan and to an even greater extent Ms Oz utilised their evidence to poison the well against Mr Baxter. Much of their evidence was of very limited, if any, relevance to the matters in issue and was, or seemed to be, designed solely to blacken Mr Baxter's character.
59. Ms Oz, in particular, chose, in almost all instances, to refrain from answering any question put, but to use the forum of the witness box purely as a means of attacking Mr Baxter. I regard her evidence as having no value at all.
60. In regard to Gulcan, very much the same applies. She chose, for example, to bring into evidence material relating to Mr Baxter's previous convictions, which, contrary to the confidentiality applicable to that information, she had culled from an unsuccessful contact application in respect of Juliette. Some of those matters went back nearly forty years to Mr Baxter's boyhood and the bulk of them related to incidents well over twenty years old. The only matters within, even, the last decade related to the hair pulling incident to which reference has already been made and which resulted in no action and an allegation of assault, in 2011, which appears to have arisen out of an allegation that Juliette had been sexually touched at school and which was dealt with by a caution. Gulcan had not disclosed, prior to trial, the source of this information, or that, following a Cafcass Report, which would have looked

into Mr Baxter's conduct and circumstances, Gulcan's application for contact had been denied. It is hard to see what vestigial relevance these matters have had to the issues with which I am concerned and it seems to me manifest that they have been raised gratuitously and simply to paint Mr Baxter in a bad light.

61. Gulcan also chose to make sweeping allegations against Mr Baxter, such as, as already indicated, that Mr Baxter had not worked for twenty years, which were palpably untrue. That allegation is contradicted even by Gul's downgraded description of his work record and, more importantly, by the reality that Mr Baxter financed Gul, albeit, no doubt, with the aid of student loans etc., through her degree years and her teacher training years. It is also contradicted both by Mr Baxter and by the explicit evidence of Jadie, who gave evidence of her father's considerable work input which was not challenged, at all, by Gulcan, or on her behalf.
62. Gulcan also gave evidence to the effect that, as far as she, Gulcan, was concerned, from the moment that the Flat was transferred to Gul, Gul regarded the Flat as hers alone. I have already set out some of the material which shows that that was not how Gul regarded the Flat. When pressed in cross examination as to the basis upon which she took the view that Gul regarded the Flat as hers alone, it emerged that she had never actually talked to Gul at all about the ownership of the Flat and that her view was based, if based at all, solely upon the fact that Gul saw the mortgage as her responsibility
63. In other aspects of her evidence, I found Gulcan to be evasive in her answers, to deliberately misunderstand simple questions, to consciously avoid giving any answers that might benefit Mr Baxter and, wherever possible and like Ms Oz, to use any opportunity she could, however extraneous to the question put, to launch a criticism, or attack upon Mr Baxter. I got no sense at all that she was seeking to give a fair, or unbiased account of any of the matters in issue, or one upon which I could sensibly rely.
64. On the one, potentially, important issue of fact, relating to the plea of undue influence, Gulcan told the court that at the key dates (13th to 18th July 2016) she was out of the jurisdiction, making arrangements for Ruzigar to secure a visa to enter the United Kingdom. Given the pleaded allegation that it was during this immediate post-diagnosis period that Gulcan and her mother had exercised actual undue influence it might have been expected, if true, that Gulcan would have explained in her witness statement that she had not been in the country, or with Gul, at the relevant dates and, thus, could not have exercised the influence, or acted in the way, alleged. It might have, further, been expected that travel documents demonstrating her absence from the United Kingdom at the key dates would have been forthcoming. Despite assertions that such documents existed, nothing was produced. Nor was any real explanation given either as to the absence of these, obviously, important materials, or for the significant lacuna in her evidence.
65. The submission made on behalf of Mr Baxter, by his counsel, Brie Stevens-Hoare QC, who, like Mr Ingham, appeared pro bono, is that the reason for these omissions from Gulcan's evidence and disclosure is, quite simply, that she was not out of the jurisdiction at the relevant dates and that her contention, that she was, is untrue and an invention, designed, late in the day, to distance her from the allegation that she had exercised undue influence.

66. Ms Stevens-Hoare backs up this submission by reference to the evidence given by Gulcan, herself, under cross examination. In that evidence, Gulcan agreed that she had been present when Gul had had her biopsy and present when the result of that biopsy came through two days later. The biopsy took place on 11th July and the result, which gave rise to her terminal diagnosis, therefore, came through on 13th July. That was the day when Gul first contacted solicitors. Gulcan's further evidence was that she then left two to three days to a week after that result; that is to say between 15th and 20th July 2016. The will was executed on 18th July 2016 and, as appears from the solicitor's attendance note, in respect of Gul's conversation with her solicitors, on the morning of 13th July 2016, the core of her instructions, including that she did not wish Mr Baxter to be a trustee of her will trust, were put into the hands of her solicitors at that time.
67. That evidence strongly suggests that Gulcan was in the jurisdiction at the key time and that her assertion, at trial, that she was not and that she had left for Turkey on, or about 8th July was not true.
68. Taking both the absence of any contention, prior to trial, that she had not been in the country and with Gul over the key period and the evidence, just discussed, suggesting that she was, I am satisfied that the clear probability is that Gulcan was in the United Kingdom at the time when Gul gave her instructions as to her will and, given that there is no suggestion that, while in the country, Gulcan was not in contact with Gul, I am further satisfied that Gulcan was in a position to seek to exercise influence over Gul in the way that is alleged.
69. In the light of all the foregoing, I turn to the issues for my determination.
70. As already indicated, the key issue is that pertaining to the ownership of the Flat. That issue is not merely important in itself, given that the Flat is the subject of the trust purportedly created by Gul's will, the major potential asset of Gul's United Kingdom estate and Mr Baxter's and Juliette's home, but, also, because, it is common ground that the ownership of the Flat, as at the date of the purchase of each of the Turkish properties, in each case with monies, extracted by way of re-mortgage of the Flat, is, with the exception of the property acknowledged to have been purchased, beneficially, for Juliette, determinative of the ownership of that property. If, as contended by and on behalf of Mr Baxter, he is both the sole owner of the Flat and of the two remaining Turkish properties, such that none of those three properties fall into Gul's estate, then the trust purportedly created in respect of the Flat never came into being and there is, so far as I am aware, very little left in Gul's estate to be subject to the dispositions made by her will.
71. The essence of Mr Baxter's case, in respect of the Flat is that, at the point when the Flat was transferred to Gul and arising from that transfer, the Flat became subject to a constructive trust, whereby, beneficially, it was held on the same joint tenancy as had preceded the transfer. Monies, borrowed, by way of the re-mortgages of the Flat, and used to purchase the Turkish properties, whether before or after the transfer, constituted joint borrowings, invested in the Turkish properties, as joint property, and held, in consequence, as between Gul and Mr Baxter, on the same basis and with the same joint intentions as to their joint ownership as was the property, the Flat, from which the funds were derived and such that, at the date of Gul's death the Turkish properties, as well as the Flat, were owned, beneficially, by Gul and Mr Baxter as

joint tenants. The consequence of that beneficial joint tenure of the Flat and the Turkish properties (other than Juliette's) is that, at Gul's death and by reason of survivorship, Mr Baxter became the sole beneficial owner of all the relevant properties, including the Flat.

72. It is apparent from the foregoing, given that the derivative nature of the beneficial title to the Turkish properties is not in issue, that the central question as to the ownership of all the properties, save, I think, the one Turkish property purchased prior to the transfer, turns upon the existence, or otherwise, of the constructive trust for which Mr Baxter contends.
73. As to that, the starting point, already touched upon, is the joint intentions of the parties as to the beneficial ownership of the Flat, post-transfer. I am completely satisfied that the joint intentions of Gul and Mr Baxter were precisely the same post-transfer as they had been prior to the transfer and, therefore, that, as a matter of intention, the intention was that the Flat should continue to be held, as it is agreed that, as a matrimonial home, it had always previously been held, under a beneficial joint tenancy.
74. I base that conclusion upon a number of matters.
75. Firstly, I accept Mr Baxter's evidence that was what was agreed between himself and Gul, in 2005, when the Flat was transferred was that the transfer would not affect the existing beneficial ownership.
76. Secondly, given that the purpose underlying the transfer (not, in itself, in contest) was to facilitate Gul and Mr Baxter, in acquiring a Council tenancy convenient for Jadie's and Kadie's schools, there is no good reason why, as between Gul and Mr Baxter, that transfer should, or would, have affected, or changed, their intentions as to ownership. The fact of the transfer, given its context, does not, in any way, point to any change of intention. It is, in any event, intrinsically, unlikely that Mr Baxter, having been able to acquire the Flat in large part because of his entitlement to a substantial statutory discount, would, for no apparent reason, elect to intentionally deprive himself of his interest.
77. Thirdly, it is completely clear from the transcripts and, indeed, at the heart of the tensions within the transcripts that Mr Baxter was, throughout, asserting his continuing rights in the Flat and, as I read the transcripts, the Turkish properties. As regards the Flat, for example, in what seems to be one of the early transcripts, he talks, specifically, about the Flat, as his house, and about the monies he had paid for it. There is no suggestion, at all, that he had transferred, or altered, his interest.
78. Fourthly, as is clear from the matters already referred to (the letter of 30th July 2016 and at least one of the transcripts), Gul, herself, whatever she may have said to her solicitors, plainly did not regard herself as having acquired sole ownership as a result of the transfer.
79. All of these matters, taken together, point to a continued intention and understanding, as between Gul and Mr Baxter, that the transfer of legal title was not to affect the pre-existing beneficial ownership and, hence, that post-transfer, their intentions as to the

beneficial ownership of the Flat remained the same as they had been prior to the transfer.

80. I have already touched upon the possible countervailing indications.
81. The instructions given by Gul to her solicitors, in which Gul purported to treat the Flat as her own, have to be understood in the context of Gul's overriding desire to protect Juliette and in the context of her own acknowledgment, including that in the letter of 30th July 2016, that half the assets, including, therefore half the Flat, belonged to Mr Baxter. Gulcan's evidence, that Gul regarded the Flat as her own, turns out to be no more than assertion, in circumstances where the question of ownership had never been the subject of any discussion between them. I am satisfied that neither of those matters come close to unseating, or altering, my conclusion that, as between Gul and Mr Baxter, their understanding and intention was that the Flat remained, as it always had been, their jointly owned matrimonial home and that the transfer had not, in any way, modified their intentions as to ownership.
82. Those intentions, of course, however clear cut, are not, in themselves, sufficient to create a constructive trust, or, in themselves, to override, or negative, the presumption that equity will follow the law, such that beneficial title follows legal title. What will have that effect is the detrimental reliance by the party asserting the constructive trust upon the understanding, or agreement, that the property in question would be held in the way which had been agreed, or understood between that party and the party holding the legal title; that is to say, in accordance with their agreed joint intentions; such that it would be unconscionable for the party holding the legal title to deny that the property was held in accordance with those intentions, or to resile from those intentions.
83. In some cases, where the parties have not overtly agreed their joint intentions and where, therefore, the same conduct has both to constitute detrimental reliance and provide the basis upon which the requisite joint intention can be inferred or imputed, the detrimental conduct in question will have to be conduct of a kind which would only be expected of a person having an interest in the property in question. In other cases, such as this case, where the parties joint intentions as to ownership are agreed, the detrimental reliance may be indirect and may be found in conduct other than that directly referable to the acquisition of an interest in the land and other than that only to be expected of a land owner.
84. In this case the detrimental reliance could not be more obvious. In reliance upon his agreement with Gul that the transfer of the legal title would not affect his beneficial interest in the Flat, Mr Baxter transferred his legal interest to Gul, such that, if she resiled from their agreed intentions, his entitlement to occupy his home and to retain his interest in his home and his legal rights in his home would be put at risk. It is the clearest possible instance of detrimental reliance.
85. Mr Ingham argued, nonetheless, that no constructive trust came into being. His submission was that, on the facts of this case, it would not be unconscionable to deprive Mr Baxter of his intended beneficial interest, notwithstanding his reliance upon his agreement with Gul that his interest should be unaffected by the transfer of legal title.

86. He put the argument two ways. Firstly, he submitted that, because, under the will, Mr Baxter was left a half share in the Flat and a right of occupation, on terms, in the Flat, it was not unconscionable to deny him his intended interest. Secondly, he submitted that, because the transfer had been effected in order to assist Mr Baxter in securing a local authority tenancy and because, so he submitted, it was a device intended to mislead the local authority as to his financial resources, at a time of great housing need, he had himself been guilty of unconscionable behaviour, such that equity should not intervene in his favour by imposing a constructive trust.
87. Mr Ingham put his arguments with great skill. I am, however, not persuaded.
88. It seems to me to be wholly unconscionable to deny to a party, who, in agreement with his co-owner, that the transfer of his legal title to his co-owner would not affect his beneficial rights in a given property, and who, in reliance upon that agreement transfers his legal title, the very beneficial rights that it has been agreed that he should retain, on the basis, or footing, that he has been granted, or is to be granted, a lesser, but, arguably, sufficient right. To endorse that conclusion would as it seems to me, to be, in essence, to uphold the conduct of such a co-owner, in resiling, at least in part, from that which he had agreed and to be, even if not in its most extreme form, precisely the kind of conduct that has always been regarded as inequitable and against which courts of equity have always set their face.
89. On the facts of this case, the inequity and injustice, which would be occasioned if Mr Ingham's submission was acceded to, is obvious. By allowing, in effect, Gul, or her estate, to resile from that which had been agreed and acted upon, even with the grant of an alternative interest, Mr Baxter would be deprived of one of the key elements of the beneficial interest to which it had been agreed that he was to be entitled, namely his right of survivorship in respect of the beneficial joint tenancy that he had held in the Flat prior to the transfer and which he had agreed with Gul he would retain notwithstanding the transfer.
90. Mr Ingham's alternative submission also fails. On the facts, which I will discuss, in a little more detail, later in this judgment, I do not regard the conduct of Mr Baxter which is complained of as having such a quality of unconscionability as to warrant the refusal of a court of equity to intervene in his favour.
91. Mr Ingham's submission further overlooks the fact that the unconscionability with which equity is concerned, when imposing a constructive trust is not, as it were, an external unconscionability, relating, in some manner, to the world at large, but the unconscionable, or inequitable, conduct which arises where, borrowing the language of Lord Diplock in his seminal speech in **Gissing v Gissing [1971] AC 886 at 905**, the holder of a legal title 'has so conducted himself that it would be inequitable to allow him to deny' the party claiming an interest 'a beneficial interest in the land..'.
92. It is the conduct of the land owner, in leading the party claiming an interest 'to act to his own detriment in the reasonable belief that in so doing' he is to acquire, or, as in this case, retain an interest in land, which renders it inequitable, or unconscionable, for the land owner to resile from the belief that has been created and to deny the existence of the relevant interest in the land and it is in that circumstance that equity will intervene by the imposition of a constructive trust.

93. In this case, Gul agreed with Mr Baxter that the transfer of the Flat to her would not affect his retention of his then existing beneficial joint tenancy. In reliance upon that agreement with Gul and to his detriment, should Gul resile from what had been agreed, he transferred his legal interest to her. In those circumstances it was, or would have been, inequitable for Gul, or latterly her estate, to deny that he retained the interest that he had had prior to the transfer and, in consequence, a constructive trust came into being immediately upon the transfer, whereby the beneficial interest in the Flat continued to be held upon a beneficial joint tenancy. At Gul's death and by reason of survivorship the entire beneficial interest in the Flat vested in and remains vested in Mr Baxter. Because the Turkish properties were purchased with joint borrowings, extracted by way of mortgage from the jointly owned Flat, and because, in consequence, they were held beneficially upon the same basis as the Flat, those properties, or any relevant residual proceeds of those properties, also vest in Mr Baxter.
94. It remains to consider Mr Ingham's final submission, in respect of the Flat; namely that, irrespective of and notwithstanding the court's findings as to beneficial ownership, the court should, nonetheless, decline to enforce, or give effect to those findings, by way of declaration, or otherwise, on grounds of illegality, or, more precisely, as his argument developed, on grounds of what Mr Ingham termed public morality. His submission, was that the transfer of the Flat into Gul's name to avoid the possibility that his interest in the Flat would hamper Mr Baxter's application for a council tenancy had been a device to mislead the council as to Mr Baxter's, financial resources and needs, at a time when demand for social housing was high and supply very low, that, as a matter of public morality, in respect of the allocation of social housing, that was a wrong thing to have done and, that, for that reason the constructive trust arising out of that wrongful transfer was one that the court should not enforce.
95. That submission is obviously applicable to the Flat. It cannot, however, as it seems to me be applicable, at all, to the Summer House, purchased in 2002, three years prior to the transfer, of which Mr Ingham makes complaint and where the beneficial title is not, in any sense, dependent upon the transfer, or the circumstances of the transfer.
96. It does, however, I think, affect the second of the residual Turkish properties; the Rental Property, purchased in 2005. My understanding is that that property was purchased with the proceeds of the re-mortgage that took place in October 2005, at the same time as and as part of the process whereby the Flat was transferred. In the absence, therefore, of the constructive trust and the joint beneficial tenancy arising out of the constructive trust, that re-mortgage would have been effected at a time when Gul was the sole beneficial owner and the Rental Property would have been solely hers. Mr Baxter's beneficial title to that property is, accordingly, dependent upon the constructive trust and, in consequence, cannot be made out if the constructive trust is one that the court will not enforce.
97. The starting point for Mr Ingham's submission is Lord Mansfield's dictum, in **Holman v Johnson (1775) 1 Cowp 341**, to the effect that '(n)o court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act'.
98. In his careful submissions he acknowledged that he could not point, in respect of the matters he complained of, to any specific illegality in Mr Baxter's conduct. For that

reason he founded upon Lord Mansfield's reference to immorality and submitted that, although not demonstrably illegal, Mr Baxter's conduct was immoral and, as he put it, contrary to public morality.

99. He submitted that there was nothing in the recent decision of the Supreme Court, in **Patel v Mirza [2017] AC 467**, to suggest that the public policy underlying the doctrine of illegality, namely that the court should not enforce an illegal transaction if to do so would harm the integrity of the legal process, or, possibly, aspects of public morality, did not equally apply to an immoral transaction, or that, if I may put it this way, the immorality limb of Lord Mansfield's dictum no longer had any place in the law. In consequence, he submitted that, in determining whether, in this case, the constructive trust, arising from the transfer to Gul, should be enforced, the court should apply, in so far as applicable, the approach endorsed by the majority, in **Patel v Mirza**, as set out by Lord Toulson, in paragraph 120 of his judgment.
100. Paragraph 120 of Lord Toulson's judgment enjoins a court, dealing with a question of illegality, or, as Mr Ingham would have it, immorality, to have regard, in determining whether the enforcement of the claim would damage either the legal system, or public morality, to the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by a denial of the claim; to consider any other relevant public policy on which the denial of the claim might have an impact; and to consider, also, whether the denial of the claim would be a proportionate response to the illegality (or, in this case, immorality) in question.
101. Applying that approach and, in particular, since he could not point to a prohibition which had been transgressed, focusing on the question of whether the enforcement of Mr Baxter's constructive trust claim would impact on any relevant public policy, Mr Ingham submitted that the enforcement of Mr Baxter's claim would discourage plain dealing with local authorities in respect of their limited housing resources and encourage a lack of transparency in the application process.
102. In regard to proportionality, he submitted that the denial of his trust claim by the court would not be a disproportionate result, in circumstances, where, under the will, he fell to obtain a half share in the Flat and in circumstances where he had the prospect, if the court so determined, of further relief, under his adjourned claim for reasonable financial provision under his Inheritance Act claim. In that context, the refusal of the court to enforce his trust claim, in support of the public interest in plain dealing in social housing, was, Mr Ingham submitted, not a disproportionate response.
103. I am not persuaded.
104. I entirely accept that there is a public interest in the existence of an open and transparent process in the provision of social housing and that, as a matter of public policy, the courts should, where appropriate, support such a process. I am not satisfied, however, that, as a matter of fact, Mr Baxter conducted himself in a way that contravened that process, let alone that his conduct can properly be stigmatised as immoral. Even if it could be so described, I think it abundantly clear that to deprive him of his property interest in the Flat and, consequentially, in the Turkish Rental Property would be an wholly disproportionate and unjust response to his supposed wrongdoing.

105. As to the facts, it is, as cogently submitted by Ms Stevens-Hoare, very unclear as to whether Mr Baxter did anything untoward. There is no evidence that he lied in any application, or on any application form, or, as Ms Stevens-Hoare put it, he was asked about any property interests that he might have had and gave an untrue answer. There is, on the contrary, convincing evidence that the local authority, at least in its social services incarnation, were well aware that, at the least, Mr Baxter had other accommodation at the Flat. It was social services which intervened to procure the placement of Jadie and Kadie with Mr Baxter and, inevitably, therefore, they must have been aware of where he was living, even if they were not aware of the tenure upon which he occupied the Flat. The most that can be said is what Mr Baxter, himself, said, namely that the Flat was transferred in recognition of the possibility that any declaration of his interest in the Flat might have hampered his chances of obtaining a tenancy from the council close to his girls' school. I struggle to describe that conduct as immoral, in either a private, or a public sense.
106. Even if that behaviour could be characterised in that way, I am completely clear that it would be an entirely disproportionate response to Mr Baxter's conduct, or behaviour, to deprive him of his property rights in the Flat and, consequentially, in the Rental Property.
107. There can be no sensible suggestion that the enforcement of Mr Baxter's rights in the Flat would be harmful to the integrity of the legal system, or the legal process. A persuasive argument exists to the opposite effect. It is, as it seems to me very harmful to confidence in the legal process if the court is seen to stand by, to refuse to enforce legal and equitable rights and to allow, in the context of the current case, a person, or the estate of that person, to resile from something which has been agreed and acted upon without redress.
108. In regard to the possible protection of public morality, I am far from persuaded that the individual conduct of those involved in applications for social housing, even granted the public interest in the provision of such housing and of an open process in regard to such housing, can properly be regarded as a matter of public morality.
109. Even if it can, it seems to me that it would only be in an extreme and obvious case that the denial by the court of enforcement of legal, or equitable, rights, where those rights relate to some misconduct in respect of an application for social housing, would be an appropriate means of protecting the process.
110. I have no doubt that experienced housing authorities already have stringent processes in place to ensure that the process of provision is not abused and it seems to me that the intervention of the civil court, by way of a refusal of relief to an otherwise entitled litigant, in effect pour encourager les autres, is not, in any usual case, including the present case, one which is appropriate, or necessary, to prevent harm to the social housing process. Rather, it seems to me, in this context, also, that, from the perspective of the overall perception of the legal system and the legal process and the integrity of that process, the refusal to enforce rights, where rights exist, is more likely to be of harm than if the courts lean in favour of the enforcement of rights which have, otherwise, been made out.
111. That view seems to me to reflect and to derive support from Lord Toulson's judgment, in **Patel v Mirza**, at paragraph 116. In that paragraph, Lord Toulson

indicates that, in respect of a claim by an owner to enforce his title, it will be a rare case, turning on particular reasons, where the court will refuse to assist the owner and posits, by way of example of the rare case, a claim where the assistance of the court would have the effect of giving assistance to a drug trafficker. The rationale for that approach is, as I see it, the importance, as a matter of public policy and faith in the legal system, that an owner of property should not readily be precluded from enforcing his rights.

112. Finally, on the question of proportionality, I think it important to stand a little back from the picture and evaluate this aspect of the case in the round.
113. On the one hand is the conduct complained of; the transfer to Gul, to meet the possibility that, without that transfer, the application for a tenancy would be hampered. On the other hand is the fact that, unlike cases, such as **Tinsley v Milligan [1994] 1 AC 140**, where a jointly owned property was held in a sole name to allow fraudulent benefits to be obtained, or cases where joint property is placed in a sole name for some other purpose of financial advantage, in this case no question of financial advantage arises and the underlying purpose was, in fact, the wholly laudable one of providing the best possible care and assistance for two young women, moving from a troubled environment.
114. Mr Ingham submitted that, while it might have been difficult to effect a move closer to Petts Wood, some other way of achieving that purpose could have been found. That, with respect, misses the point, which is that the conduct for which it is said that Mr Baxter should be seriously penalised was conduct which had, at its root, his desire to assist his children and was not conduct designed to procure, for Mr Baxter, or, indeed, Gul any material advantage.
115. In regard to the penalty, as I put it, to which Mr Baxter would be subject if the court declined to enforce his rights, I have already described, in paragraph 89 of this judgment, the extent of the loss, namely his rights by survivorship, which he would suffer should he not be able to enforce his constructive trust. To that should be added the loss of the Rental Property, where his rights are contingent upon the constructive trust, as is explained in paragraph 94 of this judgment.
116. In the result, I am clear in my mind that, even if Mr Baxter's conduct, in respect of the transfer, brings him within range of the doctrine of illegality, as it relates, or may relate, to immorality, as to which I have grave doubts, this is manifestly a case where it would both be disproportionate to Mr Baxter's alleged wrongdoing to refuse to enforce his rights and a result which, far from endorsing, or upholding, the public interest, or faith, in the integrity of the legal system and legal process, would tend to diminish public perception in the integrity of the system.
117. For very much the same reasons and as foreshadowed in paragraph 90 of this judgment, I am quite satisfied that it would not be and is not unconscionable to impose a constructive trust in favour of Mr Baxter, on the facts of this case.
118. The consequence of the foregoing is that I will make declarations to reflect my conclusions at beneficial ownership, as set out in paragraph 93 of this judgment. The further consequence, as set out in paragraph 70 of this judgment, is that Gul's estate is, as it seems to me, denuded of the bulk of its assets.

119. Notwithstanding this last, the question of probate and of the validity of Gul's will must still be determined.
120. In this regard, I note that, contrary to CPR 57.8(1), Gulcan has served no Counterclaim in respect of the validity of Gul's will. That question, however, must not be left and large and, in those circumstances, I shall treat Gulcan's Defence as if it advanced a Counterclaim that the will be propounded in solemn form.
121. I am not persuaded that the will fails either on grounds of actual undue influence, or on grounds of want of knowledge and approval.
122. For the former ground to prevail, it must be established that influence was exercised over Gul either by way of coercion, in the sense that her will was overborne, or by way of fraud. The allegation, here, is that, at a time when Gul was faced with the shock of her terminal diagnosis and when she was taking a considerable quantity of painkillers, including opiates, a series of false statements were made to her, by Gulcan, or by her mother, and that these statements, given the circumstances in which they were made, overbore her will, or, perhaps, operated fraudulently upon her mind, such as to improperly influence the dispositions that she made in her will.
123. I have been left in no doubt, at all, that that was not the case.
124. In deciding whether a testator, or testatrix, has been affected by undue influence, the character, or disposition, of that person is, very obviously of considerable importance. In this case all the evidence points one way; namely that Gul was a person of very strong character and not one to be readily influenced.
125. Mr Baxter described Gul as a strong woman, not a push over and not one who liked to give up control. Jadie described her as someone who was outspoken and who did not hold back. The manner in which Gul had built up her life and her career is indicative, also, of a strong minded, determined and even driven person. None of that reflects that Gul was, or was likely to be, suggestible to influence, when it came to her illness, the consequences of her illness, or the dispositions that she chose to make as a result of her illness.
126. The evidence, as I see it, is all the other way. Her conduct, even prior to her final diagnosis, was clear-minded and decisive. She was going to make a will that protected her daughter and to achieve that end, as I have already set out, she was prepared to bend the truth and to gild the lily. Far from her will being overborne, she was going to and did control events. The woman who speaks in the transcripts is not a subdued person, or frail in character.
127. Nor, is there any suggestion, within the transcripts, or in her dealings with her solicitors, that she was anything other than clear in her intentions, or operating under any influence other than her single-minded desire to protect Juliette. Miss Betts, who spoke to her on the telephone and took her initial instructions, on 13th July, who engaged in email exchanges with her over several days and who saw her on both the 15th and 18th July had no doubts but that she knew exactly what she was doing and saw no signs that Gul was acting under pressure.

128. Ms Stevens-Hoare makes reference to the drugs regime to which Gul was subjected and, in particular, to the prescription of opiates. This is not, though, a case of alleged want of capacity and the suggestion must, therefore, be that the drug regime caused her confusion and, thereby, rendered her susceptible to the influences which are said to have been imposed. While there is some evidence, from Sharon Johnson, that a point came when Gul was affected by the morphine, as Ms Johnson recollected Gul calling it, the body of her evidence clearly confirms that Gul had a very good and clear idea of what she was doing and why. As already stated, Miss Betts had no concerns as to either Gul's capacity, or her understanding. As she told me, when discussing complex matters with someone, one soon becomes aware if there is a want of understanding. She, Miss Betts, had no such awareness in her dealings with Gul.
129. In regard to the conduct, or misinformation, which it is said may have overborne Gul's will, I have already indicated that I think it highly likely that Gulcan was in the jurisdiction at the time when Gul was giving instructions for her will and was, therefore, in a position to seek to exercise influence. Having heard Gulcan give evidence and having experienced the way that she and her witness took every opportunity to poison the well in respect of Mr Baxter, I have very little doubt but that Gulcan and, in due course, her mother did, during the period of Gul's final illness, make the kind of allegations in respect of Mr Baxter which are pleaded against her. Ms Johnson confirms that allegations of the kind pleaded were made. Juliette, evidently, heard unpleasant things said about her father and reported them to her father. The transcripts, as I have already mentioned, in paragraph 41 of this judgment, reference some of the matters said to have been raised against Mr Baxter and reference, also, his suggestion that Gul had been, or was being, brainwashed.
130. Where, however, I part company with Mr Baxter's case on undue influence, is in the contention that these matters were causative of the contents of Gul's will.
131. Firstly and primarily, I am completely satisfied that Gul's conduct in respect of her will, was motivated by one thing only; her desire to protect her daughter. That desire ran through all her actions, from the moment that she received her provisional diagnosis, and was not, as it seems to me, prompted by any one, or anything, other than her concerns as to Juliette's future.
132. In this regard, I am wholly unpersuaded that Gul was at all likely to have been influenced by her sister, or anyone else. Gul was, on all the evidence that I have seen and heard, always her own person and not one to be overborne, or to become a cipher for another.
133. Secondly, the timing does not seem to me support the allegation that the will was entered into under Gulcan, or Ruzigar's, undue influence. Ruzigar was not in the country at the time when the will was executed and it is fanciful to suggest that she could have overborne the mind of a strong woman, like Gul, in the course of even a number of telephone conversations.
134. While Gulcan was, I find, present in the jurisdiction, in, or in part of, the period when the will was being discussed and prepared, the fact is that the core instructions in respect of the will were given to Miss Betts in the morning of 13th July 2016 and that those core instructions, specifically, as to the will trust did not alter in the days

between 13th and 18th July 2016. Unless, therefore, Gul's mind had been poisoned by, or before, 13th July, preceding, therefore, even her final diagnosis, there was no time available for Gulcan to exert influence, by that means, prior to those instructions being given. There is no evidence and, indeed, it is not Mr Baxter's case that that is what occurred.

135. In the result, the claim in undue influence fails. Far from the facts being inconsistent with any hypothesis other than undue influence (see Lewison J, as he then was, in **Edwards v Edwards [2007] WTLR 1387**), the facts are wholly consistent with Gul's character and personality and with the single-minded desire, on her part, to protect her daughter, which shines out from the evidence in this case.

136. I turn, finally, to Mr Baxter's case in want of knowledge and approval.

137. The case put by Mr Baxter is that, notwithstanding the presumption of knowledge and approval, arising from the fact that this was a professionally prepared will, discussed, on two occasions, as between Gul and Miss Betts, and properly executed, in the presence of Miss Betts and her assistant, and because the dispositions that Gul made in her will did not have the effect that she believed that they would have had, Gul, had she known the true effect of those dispositions, would not have approved them.

138. In making that case, Ms Stevens-Hoare focused upon the fact that the will contemplated that Mr Baxter, when exercising the right of occupation, created by the will, was to pay the outstanding mortgage. She submitted that, in circumstances where Mr Baxter was not and would not be the legal owner of the Flat, following administration of the estate, and where he was not and would not be in a position to communicate or deal with the mortgagee, that provision did not create a workable arrangement for his and Juliette's continued occupation of the Flat, pursuant to the right of occupation and as contemplated by Gul.

139. Ms Stevens-Hoare also drew attention to what were termed, by Miss Betts, at trial, the 'trigger' points, in respect of the termination of the right of occupation, and to the fact that, literally construed, the right of occupation, which arose, in circumstances where, in broad terms, 'they', meaning Mr Baxter and Juliette, died, married, or ceased to occupy, would only terminate upon the death etc. of both of them, with the apparent consequence that if, say, Mr Baxter re-married, or died, Juliette's right of occupation would not cease.

140. It does not seem to me that these matters bear, significantly, upon Gul's knowledge and approval of the dispositions made by her will.

141. I do not accept that the provisions as to the payment of the mortgage create an unworkable arrangement. It seems to me that, with sensible co-operation, as between Gulcan, as trustee, and Mr Baxter, the arrangement could have been made to work perfectly well. Gulcan could have provided any necessary conduit between Mr Baxter and the mortgagee and Mr Baxter could, via Gulcan, have made the mortgage repayments, as they fell due. If need be, at the termination of the administration of Gul's estate, the Flat could have been transferred to Gulcan, subject to the existing mortgage, and, provided that the mortgage payments continued to be made, it is unlikely that the mortgagee would have sought to call in his loan. If, because the

mortgage could not be paid, there had to be a sale, then a sale would have had to have taken place. That, however, was always in Gul's contemplation, in that she was made aware, by Miss Betts, from the outset, that the Flat could not be retained indefinitely and that a sale would have to take place if circumstances so required.

142. In regard to the termination of the right of occupation, it is far from clear that the fact that the right of occupation might not cease at the death, marriage, or moving out of one of Juliette and Mr Baxter is something, of which Gul would not have approved. Gul was anxious that the Flat be retained and remain unsold. Provisions, tending to that effect, would, as it seems to me, have been likely to have met with her approval. Nor is there reason to think that the possible effect of those provisions was, necessarily, unintended by Gul. She wanted the Flat to be Juliette's continuing home. There is no reason to think that she would have wanted it sold if Mr Baxter had died, or remarried, or ceased to occupy. This was not a trust intended, only, for Juliette's minority. The last thing that Gul would have wanted would be for Juliette, living in the Flat and of age, to have to move out because Mr Baxter had, say, remarried.
143. In the result, this challenge to the will is, also, not made out.
144. In those circumstances, I shall pronounce in favour of Gul's will.
145. I add, in so doing, one caveat. I should not be understood, by this judgment, to uphold Gulcan, as a proper person to act as Gul's personal representative, in respect of her estate.
146. I have already indicated my views as to Gulcan as a witness and identified the overt hostility that she shows and has shown towards Mr Baxter. In the course of the evidence, I became, also, aware of her conduct, to date, as named executor. In that capacity, no doubt motivated by her hostility, she has shown no willingness to co-operate with Mr Baxter, in arrangements relating to the Flat. She has refused to provide information and her stance can be summarised by her statement, in evidence, that she does not regard herself, at least pending a grant of probate, as under any obligation to do anything in respect of the estate.
147. I regard that approach as obstructive and unhelpful and not one calculated to assist in the proper administration of Gul's estate. I am not able to say what may be involved in that administration, but, given that Juliette, the residuary beneficiary, is a minor and given, therefore, that it is likely that the estate will need to deal with Mr Baxter, on her behalf, it seems clear to me that Gulcan is not a suitable person to be entrusted with this administration. I make no ruling as to this, as I do not regard the issue as before me. I mention it at all because I would not want my pronouncement in favour of Gul's will to lead to any conclusion that I approve Gulcan as an appropriate executor, or personal representative, and because the views that I express may be of value to any other tribunal charged with the determination as to whether Gulcan should be appointed to, or retain, that role.
148. I cannot conclude this judgment without recording my sincere thanks to both counsel and, in Gulcan's case, to her solicitors. As I have indicated earlier, both parties come before me with pro bono representation. That representation has been of the highest standard and has been of enormous assistance. I am very grateful.

