



Neutral Citation Number: [2021] EWHC 936(Ch)

Case No: PT-2019-000994

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

IN THE ESTATE OF R (DECEASED)

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date: 16 April 2021

Before :

MASTER TEVERSON

Between :

(1) J

(2) H

(a child, through his litigation friend and
mother N)

Claimants

- and -

- (1) S (as executrix and beneficiary of the estate of
R deceased)
(2) M (as beneficiary of the estate of R deceased)
(3) L (as beneficiary of the estate of R deceased)

Defendants

Elaine Palser (instructed by **Tees Solicitors**) for the Claimants
Mark Baxter (instructed by **Spire Solicitors LLP**) for the Defendants

Hearing dates: 19, 20 and 21 January 2021

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.

I direct pursuant to section 39 of the Children and Young Persons Act 1933 that no publication or report of this Judgment is to disclose the names, addresses or schools or universities of the Claimants.

This Judgment will be handed down remotely at 2pm on 16 April 2021 without the attendance of the parties.

.....
MASTER TEVERSON

MASTER TEVERSON:

1. This is a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (“the 1975 Act”). As the Claimants were both children under the age of 18 when the claim was issued, and one Claimant is still at school, I consider it appropriate to anonymise the names of the parties and the witnesses. I propose further to make an order under section 39 of the Children and Young Persons Act 1933 as part of the final order.
2. The claim relates to the estate of R (“the Deceased”) who died on 4 October 2018 domiciled in England and Wales aged 41.
3. The First Claimant (“J”) was born on 7 November 2002. He was 18 last November. The Second Claimant (“H”) shares a birthday with his brother J. He was born on 7 November 2003 and is aged 17.
4. The Claimants are the children of the Deceased by his marriage to N. The marriage between N and the Deceased ended in divorce on 16 May 2012.
5. The First Defendant, S, was the partner of the Deceased during the last 7 years of his lifetime and is the sole executor of his estate. The Second and Third Defendants, M and L are the parents of the Deceased.
6. At the time of his death the Deceased was the holder of 80 of the 100 £1 Ordinary shares in RCL. RCL is a trading company. Its principal trading activity is metal blasting and protective coating. The remaining 20 shares were held as to 10 each by M and L. The Deceased was also the holder of 80 of the 100 £1 Ordinary shares in RPS. RPS is the freehold owner of an industrial estate in Norfolk. It comprises an established industrial estate having on it a total of 30 small industrial units from which it derives a rental income. RCL trades from the northern part of the estate in an area I shall refer to as the RCL Estate. As with RCL, the remaining 20 shares in RPS were held as to 10 each by M and L.
7. By his last will dated 1 June 2018 the Deceased appointed his partner S as his sole executor. He gave his shares in RCL to M and L. He gave his shares in RPS to S. He left the residue of his estate to S. The Deceased made no provision in his will for J or H.
8. The value of the Deceased’s 80% shareholding in RCL at the date of his death was valued for probate at £144,400 and the estimated value of his 80% shareholding in RPS at the date of his death was valued for probate at £950,000. The combined value of the two shareholdings was £1,094,400. The net value of the Deceased’s estate for probate applying those share valuations was £813,836. The value of the net estate for the purposes of the 1975 Act is lower than the probate valuation on the methods of valuation adopted by the single joint expert. As at the date of the hearing the net estate was valued at £519,081 on the assumption the industrial estate was sold on the open market as one lot subject to existing leases (MV1); at £560,881 on the assumption of a sale in 3 lots without vacant possession (MV2) and at £720,481 on the same basis as MV2 but with vacant possession of Lot 3 (MV2b). Lot 3 is the RCL estate. It was accepted on behalf of the Claimants that if MV2b were adopted the value placed on the Deceased’s shareholding in RCL of £77,037 should be deducted from the value of

the net estate as on that assumption RCL would not continue trading. Under MV2b the value of the net estate would become £643,444. It is possible the values placed on the Industrial Estate might be exceeded by as much as 30% but that depends entirely on competitive market interest at the time of any sale.

9. At the time the claim was issued on 2 December 2019, J and H were both under 18. Their claim was brought on their behalf by N as their mother and litigation friend. In J's case, N's appointment as litigation friend ceased when he reached 18. Notice was served under CPR 21 rule 9(4) stating that J intended to carry on the proceedings previously brought on his behalf by N. Since reaching 18, J has continued to rely on N and the solicitors instructed by her to conduct the claim on behalf of himself and H. The solicitors instructed by N were the solicitors who represented her in connection with her divorce from the Deceased.
10. The Deceased was born on 21 February 1977. On leaving school he started to work in the business established by M and L in 1972. According to M, the Deceased started at the bottom learning every job that was necessary in order to fully understand the business.
11. N and the Deceased were married on 28 December 2001. Prior to the marriage, the Deceased had a daughter ("C") by a previous relationship who was born on 6 October 2000. C lived with her mother.
12. J was born some 10 months after the marriage and H a year later. Initially the Deceased and N lived in a village in Norfolk nearby to M and L. They then purchased a barn that was located in the same village as M and L that required complete renovation.
13. In 2004 the Deceased was diagnosed with Sarcoidosis, an incurable lung disease. As a result of his medical condition, the Deceased was susceptible to infection and was frequently hospitalised for treatment. Initially his symptoms were similar to that of severe asthma. Over time, the disease caused the Deceased to lose 70% of his lung capacity and to be in need of a lung transplant in order to be able to enjoy a reasonable quality of life. By the time of his divorce from N, the Deceased was contemplating that he might have to retire early on health grounds.
14. In 2006 the opportunity arose to purchase the site from which the business operated together with the adjoining industrial estate. To fund this purchase M and L loaned their savings of £340,000 to RCL. The purchase price was £1,250,000 and RCL required borrowings of £950,000 to assist in the purchase. RCL obtained a loan from HSBC which involved it entering into interest rate swaps. These interest rate swaps subsequently caused RCL considerable financial difficulties.
15. At the end of February 2011 N and the Deceased separated. It was apparent to L from 2010 the marriage was in difficulty. J and H and N moved in with N's mother for a short time. They then moved to a bungalow that was just over a mile from the farm that A lived on. N had met A through their respective children attending the same school. N says it was only after she and the Deceased were separated that her relationship with A became an intimate one. I am not concerned with the causes of the breakdown of the marriage.

16. A decree nisi was granted on 7 November 2011. Under the terms of a consent order dated 22 April 2012, approved by the court on 3 May 2012, N and the Deceased settled their financial provision claims against each other. They agreed that the former matrimonial home would be sold and that N would be paid 80% of the net proceeds of sale provided she received no less than £184,000. N acknowledged that she had no legal or beneficial interest in the shares of RCL (the name at that time of the company owning the industrial estate) or RSS (a company that at that time carried out contracts for shot-blasting and coating on construction sites).
17. A decree absolute was granted on 16 May 2012. On 29 June 2012 N and A were married. A had three children of his own from a previous marriage. They continued living with their mother in Norfolk.
18. In the meantime, the Deceased had met and entered into a relationship with S. S knew M and L as part of a wide social circle. Through them she had met N and the Deceased. S met the Deceased again on 27 April 2011 whilst preparing for a family party. A relationship started. S was married to JS. S left JS in early June 2011 to live with the Deceased.
19. In December 2012 the sale of the former matrimonial home was completed. N received £168,343.52 representing 80% of the net sale proceeds and a further £22,000 representing 80% of a parcel of adjoining land, making in total £190,343.52. From this N had to discharge the legal fees of her solicitors and to repay monies she had borrowed from her mother to fund school fees. At the time of the separation of N and the Deceased, J and H were at a fee-paying preparatory school. In September 2011, N arranged for J and H to move to another fee-paying preparatory school in Norfolk. In his Form E Financial Statement dated 31 October 2011, the Deceased stated that he was unsure whether the costs of private schooling would continue to be realistic.
20. A letter written by the Deceased in around March 2013 to a solicitor acting for him in relation to contact arrangements with J and H records the child maintenance payments the Deceased told his solicitor he had been making. The Deceased says he had paid maintenance for J and H in the sum of £666 in January and February 2012; that his payment had reduced to £112.66 per month between March and June 2012 as his earnings had dropped by 75% in February 2012; that he had missed a payment through being in hospital in July 2012; and that when he came out of hospital he had tried to restore payments but the account was shut. In January 2013 the Deceased wrote directly to N's solicitors saying N was refusing to accept child maintenance payments from him.
21. On 25 February 2013 the Child Support Agency wrote to the Deceased about an application for child maintenance by N. The CSA said it had worked out that the Deceased should pay £15 per week from 12 February 2013 for J and H. This was based on the Deceased having a net weekly income of £129.38. On 4 March 2013 the CSA informed the Deceased his liability for child maintenance had ended on 12 February 2013. The letter stated that the other party (N) had told them they didn't want the application or case to continue.
22. N rejected the CSA assessment and asked for a re-assessment because of concerns the Deceased was understating his income. She says she ran out of energy to argue that the Deceased should be paying more than £7.50 per week per child. N says she was

exhausted by the whole divorce process and that by this time the divorce had taken its toll on her emotionally and physically. She says she weighed only 6.5 stone and had been hospitalised following a suspected stroke. She also says the Deceased threatened to pay less if she challenged the award. As to that allegation, I make no finding of fact. The allegation is uncorroborated. For the purpose of this claim, I proceed on the basis that N for whatever reason did not after the CSA assessment pursue the Deceased for child maintenance.

23. On 4 March 2013 the Deceased made a will (“the 2013 Will”) under which he appointed M and L as his executors together with the partners at his death in the firm of Rudlings Wakelam in Bury St Edmunds, Suffolk. The Deceased gave all his shares in “R & Co” to his father, M, or if M should die before him, to his mother L. The Deceased gave the residue of his estate to his children (excluding C) who survived him and attained 25. The Deceased declared in the will that he had made no provision for C as he had put in place a life insurance policy for her benefit which would pay out in the event of his death before she reached her majority. At the time of the 2013 Will, RCL was the name of the company that owned the industrial estate. It appears that the Deceased intended that J and H and any future children he might have should share in his non-business assets. At the time the 2013 Will was made, the Deceased was still seeing J and H under agreed contact arrangements. They were still living in Norfolk.
24. In July 2013 N and A moved to live in Scotland relocating J and H with them. They moved to a farm whose purchase was completed in around June 2013. In December 2013 their son F was born.
25. The Deceased only found out about the planned move of J and H to Scotland a few days before it occurred. He applied in July 2013 for a contact order from the court. An interim order was made on 14 October 2013. A final order was made on 31 March 2014 in the Norwich County Court under section 8 of the Children Act 1989. It was agreed there would be indirect contact by telephone with J and H (then aged 11 and 10) every Wednesday at 7pm; that the Deceased would come to Scotland from time to time to see the boys; and that N would facilitate contact in Norfolk during the major school holidays, including October half-term where possible, at times when A was travelling to see his children. A Cafcass Report filed with the court on 21 March 2014 recorded that J and H were happy living on the farm in Scotland with N, A and F and had a negative attitude towards their father and were opposed to any further contact taking place.
26. The Deceased called J and H every Wednesday at 7pm. To begin with J and H answered but very soon afterwards this stopped. Contact between the Deceased and J and H ceased altogether at some point during 2014. The Deceased continued to send Christmas and birthday presents to J and H. M and L also sent Christmas and birthday presents but this stopped in around 2016. For the purposes of this claim I do not need to determine who was to blame for contact ceasing. The sad fact is that it did.
27. The Deceased’s health continued to deteriorate. He was required to have planned hospital stays every 8 weeks for 10 days usually at The Royal Brompton Hospital. In January 2018 the Deceased was initially rejected by the transplant team. On 11 May 2018, after five months of further tests, it was agreed by the Deceased’s medical team that they would place him on the transplant list. The Deceased wrote to N to tell her

he had been placed on the transplant list. He did not receive a reply. N says she never received the letter although S in her evidence clearly recalled posting it.

28. The Deceased died on 4 October 2018 before he was able to obtain a transplant. At the date of the Deceased's death, J was one month short of 16 and H a month short of 15.
29. By his will dated 1 June 2018 ("the 2018 Will") the Deceased appointed S as his executrix. He gave his shares in RCL to his parents M and L. By this date, and following a demerger in 2016, RCL was the name of the metal finishing company. It was no longer the property owning company. The Deceased held 80 of the 100 issued shares in RCL in his name.
30. The Deceased gave his shares in RPS to S. This was the company that had become the property owning and property investment company. The Deceased held 80 of the 100 issued shares. The remaining 20 shares were held equally by M and L. The Deceased left his residuary estate upon trust for S. The residuary estate was insufficient to meet administration expenses including IHT.
31. The 2018 Will records on its face that the Deceased had not made any provision for his daughter C or for his sons J and H. The Deceased made a Statement on the same day as the will recording the reasons he did not wish his children to benefit from his estate.
32. In relation to his daughter C, the Deceased said she would be an adult in September 2018 and it was by agreement that he would no longer be providing support for her.
33. In the case of J and H the statement refers to their mother (N) leaving him in January 2011 taking the children with her to start a life with her new husband in Scotland. (In fact N and A did not move to Scotland until July 2013). The Statement refers to the Child Support Agency offer and to N refusing the offer and closing the claim. It refers to the Deceased not having been able to make contact with J and H for over three years. It says that (N) made it clear at the time and by her continuing behaviour she did not want him to be part of J and H's life. The Statement concludes "therefore I do not wish for them to be a part of my family's life on my death and believe that J and H do not require any financial provision bearing in mind (N) has not agreed for the Child Support Agency or any other personal agreement in relation to maintenance payments".
34. The last paragraph of that statement is particularly hurtful. The position is entirely otherwise. The Second and Third Defendants do want J and H to be part of their family life.
35. Following the Deceased's death, N caused a caveat to be entered preventing probate being granted. N believes that the validity of the 2018 will is open to challenge. She told the court she had reluctantly accepted advice that a challenge to the 2018 Will on behalf of J and H would face a high bar to surmount and that the better course was to pursue a claim for financial provision on their behalf out of the estate under the 1975 Act. It was only shortly before the hearing of the claim that it was confirmed by N's solicitors the caveat had been withdrawn. Probate was granted to S of the Deceased's estate on 26 January 2021 shortly after the conclusion of the hearing. It is important to

state at the outset that a claim under the 1975 Act cannot be used as a means to overturn or re-write a will. It is a claim which is predicated on the validity of the will.

36. So far as applicable to the claim, the provisions of the 1975 Act may be summarised as follows:-

- (1) A child of a deceased is entitled to apply to the Court for an order under section 2 on the grounds that the disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for him: section 1(1)(c);
- (2) On such an application, "*reasonable financial provision*" means such financial provision as it would be reasonable in all the circumstances for the applicant to receive for his maintenance: section 1(2)(b);
- (3) In determining both whether the disposition of the deceased's estate effected by his will is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, how to exercise its powers under section 2, the court is required to have regard to specific matters being matters referred to in sections 3(1) and (3).
- (4) The matters referred to in section 3(1) are:-

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

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

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

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

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

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

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

(5) Section 3(3) provides that:-

"Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that

subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, ...

(6)Section 3(5) provides that:-

“In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.”

(7) Section 3(6) provides that :-

“In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.”

37. Section 2(1) of the 1975 Act provides that:-

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

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

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

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

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

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

(f) an order varying any ante-nuptial or post-nuptial settlement...

..(h) an order varying for the applicant’s benefit the trusts on which the deceased’s estate is held...”

38. Section 2(4) provides that:-

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

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

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

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

39. The claim of J and H for reasonable financial provision from the Deceased's estate is limited by section 1(2)(b) to such provision as it would be reasonable for them as applicants to receive for their maintenance.

40. In *Ilott v Mitson (No 2)* [2017] UKSC 17, [2018] AC 545, Lord Hughes JSC referred to the concept of maintenance in paragraphs 12 to 15 of his Judgment (with whom the other members of the court agreed). At paragraph 14, Lord Hughes stated:-

"The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) shows that it cannot extend to any or every thing which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living."

Later in paragraph 14, Lord Hughes said:-

"The summary of Browne-Wilkinson J in In re Dennis, decd [1981] 2 All ER 140, 145-146 is helpful and has often been cited with approval:

"The applicant has to show that the will fails to make provision for his maintenance: see In re Coventry, decd ...[1980] Ch 461. In that case both Oliver J. at first instance and Goff LJ in the Court of Appeal disapproved of the decision in In re Christie, decd...[1979] Ch 168, in which the judge had treated maintenance as being equivalent to providing for the well-being or benefit of the applicant. The word 'maintenance' is not as wide as that. The court has, up until now, declined to define the exact meaning of the word 'maintenance' and I am certainly not going to depart from that approach. But in my judgment the word 'maintenance' connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be maintenance."

At paragraph 15 Lord Hughes said:-

“The level at which maintenance may be provided for is clearly flexible and falls to be assessed on the facts of each case. It is not limited to subsistence level. Nor, although maintenance is by definition the provision of income rather than capital, need it necessarily be provided for by way of periodical payments, for example under a trust. It will very often be more appropriate, as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years...”

Lord Hughes added:-

“But it is necessary to remember that the statutory power is to provide for maintenance, not to confer capital on the claimant.”

41. At paragraphs 16 to 23 of his Judgment Lord Hughes considered the conditions for making an order under the 1975 Act. At paragraph 16, Lord Hughes said that the condition for making an order under the 1975 Act was that the will does not “*make reasonable financial provision*” for the claimant. He said these are words of objective standard of financial provision, to be determined by the court. The 1975 Act does not say that the court may make an order when it judges that the deceased acted unreasonably.
42. At paragraph 17, Lord Hughes highlighted the need for the court to be alert to not asking itself the wrong question whether the deceased acted reasonably. At paragraph 18, Lord Hughes said the right test was well set out by Oliver J. in *In re Coventry, decd; Coventry v Coventry* [1980] Ch 461, 474-475:

“It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court’s powers under the Act and to fiscal demands, an Englishman still remains at liberty at his death to dispose of his property in whatever way he pleases or, if he chooses to do so, to leave that disposition to be regulated by the laws of intestate succession. In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant-and that means, in the case of an applicant other than a spouse for that applicant’s maintenance. It clearly cannot be enough to say that the circumstances are such that if the deceased had made a particular provision for the applicant, that would not have been an unreasonable thing for him to do and therefore it ought now to be done. The court has no carte blanche to reform the deceased’s dispositions or those which statute makes of his estate to accord with what the court itself might have thought would be sensible if it had been in the deceased’s position.”

43. At paragraph 19, Lord Hughes said that all cases which are limited to maintenance will turn on the asserted needs of the claimant. He said need for maintenance in those cases is a necessary but not a sufficient condition for an order. Need, plus the relevant relationship to qualify the claimant, is not always enough. At paragraph 22, Lord

Hughes said that needs are not necessarily the measure of the order which ought to be made. He said:-

“It is obvious that the competing claims of others may inhibit the practicality of wholly meeting the needs of the claimant, however reasonable. It may be less obvious, but is also true, that the circumstances of the relationship between the deceased and the claimant may affect what is the just order to make. Sometimes the relationship will have been such that the only reasonable provision is the maximum which the estate can afford; in other situations, the provision which it is reasonable to make will, because of the distance of the relationship, or perhaps because of the conduct of one or other of the parties, be to meet only part of the needs of the claimant.”

44. At paragraph 23, Lord Hughes said it has become conventional to treat the consideration of a claim under the 1975 Act as a two-stage process: (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made? Section 3(1) of the Act is equally applicable to both stages. Lord Hughes said the two questions will usually become: (1) did the will/intestacy make reasonable financial provision for the claimant and (2) if not, what reasonable financial provision ought now to be made for him? At paragraph 25, Lord Hughes said that in answering these questions, the relevant date provided by section 3(5) is the date of the hearing.
45. The Claimant in *Ilott v Mitson (No 2)* was an adult daughter who had been estranged from her mother for 26 years. J and H are young persons one of whom has recently started at university and the other is in the sixth form at school. They were both of school age at the time of their father’s death. The issue before the court may be expressed as to whether, and if so, how far the Deceased’s estate should be required to provide for their maintenance until they are in a position to earn a reasonable wage or salary.
46. At the time the claim was issued both J and H were still at school. It was disclosed in N’s third witness statement dated 22 December 2020 that in September 2020 the decision had been taken that J would go to university a year early, as is possible at Scottish universities. She said that J had recently started a four year business course at a Scottish university. She said that as a result of a lack of financial provision from the estate or from his grandparents, and having to pay for this litigation, she could not afford to keep both H and J at their private school. In oral evidence N said the decision for J to go to university a year early was 90% a financial issue and 10% as a result of his having received an unconditional offer from the university.
47. H is a boarder in his first sixth form year. N says that H hopes to continue at school until he completes his Advanced Highers in the summer term of 2022. She says he hopes to be able to study Economics for three years at an English University.

The financial resources and financial needs that the applicants have or are likely to have in the foreseeable future.
48. As at 19 November 2019, J had savings of £2,725.08 and H had savings of £2,096.88. N says that J and H have no assets of any consequence and are not in receipt of any income. They are dependant for their needs on her and A.

49. Details of J and H's maintenance needs as calculated by N were provided in a summary sheet with six schedules showing the breakdown of figures in the summary sheet. Five of the schedules were attached to N's first witness statement and the sixth added by her third witness statement in December 2020. The schedules are of:-

(1) Current and future living expenses. These are said to be the expenses of maintaining J and H when living at home.

(2) School related expenses including school fees and school extras;

(3) Car related expenses;

(4) University costs including tuition fees (where applicable) and university accommodation costs;

(5) Future housing costs; and

(6) Psychology/counselling costs.

For J, the schedules total £353,518.70 and for H, £458,431.00. The combined total is £811,950. This is considerably higher than a preliminary indicative schedule of income needs covering both children set out in a letter before claim dated 17 January 2019 which totalled £470,000 for both children. It appears that future housing costs were subsequently added substantially increasing the size of the claim.

50. The schedules are prepared on the basis that the full amount of J and H's maintenance needs from the date of the Deceased's death should be met from the Deceased's estate. It was submitted by Ms Palser on behalf of J and H that as N had met those needs since 2012 without any contribution from the Deceased it was reasonable and fair for N to look for those needs to be met from the Deceased's estate after his death. That submission needs to be judged in the context of each schedule against the Section 3 matters as a whole and all the background circumstances. Looked at broadly, it does not seem right that the entire maintenance obligation and responsibility should be shifted to the Deceased in consequence of his death in circumstances in which child maintenance was not sought from him after the CSA assessment in 2013. It was open to N once school fees were becoming burdensome to have approached the Deceased.

51. On behalf of the Defendants it was submitted that the court must take into account the financial positions of both N and A when considering the resources available to J and H. In the case of A, plainly some account must be taken of the fact that he is the step-father and not the natural father of J and H. A has four children of his own including F, his child by N, to whom he owes obligations and responsibilities. F is now 7. I was told that A has twins aged 15 and a daughter aged 20 who has Downs Syndrome. The financial resources of N are closely linked to those of A. This is reflected in the way N and A arranged to pay private school fees for J and H after the move to Scotland by a procedure involving loans made to A's family company. N receives £250 per week to meet household expenditure and bills from the family company.

52. N received a total of around £192,000 from the divorce settlement. Out of this she was required to pay her solicitors' legal fees and to repay sums she had previously

borrowed from her mother to pay school fees for J and H following her separation from the Deceased. N contributed £78,845 on 4 June 2013 towards the deposit required to purchase the Farm in Scotland. The Farm was purchased before A had completed the sale of his farm in Norfolk. N in paragraph 60 of her first witness statement said that apart from savings of £1,600, she had no other assets of any consequence. In her oral evidence N claimed she had a beneficial interest in the farm house but not in any of the farm land. She insisted however that her interest in the house had no value as it was charged along with all the farmland to AMC. On behalf of the Defendants it was put to N that the correct approach must be to apportion the borrowing between the farmland and the farmhouse. N was unwilling to accept that. N's position was plainly untenable. A schedule was helpfully prepared by Ms Palser, counsel for J and H, attributing a value of between £223,000 and £329,000 to N's share of the equity in the house. That equity does represent an asset belonging to N. It is an interest in the family home. I accept however that it is not readily realisable as a source of funds for J and H's maintenance.

53. On 22 August 2013 N paid £25,000 to the family farming company. On 22 February 2016 £145,421 was paid directly that company by or on behalf of N's mother as a gift to N. These two payments sums were treated as loans to enable the school fees of J and H to be discharged through the company.
54. A has a total of £2,962,850 in net assets. This consists of G Farm including W Farm with an estimated equity of £2.28 million and £2,667,083 in a Barclays Wealth account offsetting borrowing of £1,656,6333. A came under pressure from the bank to reduce the level of borrowing below £2m. To achieve this and to help pay school fees he sold a flat in Edinburgh. The net assets figure of £2,962,850 is reached by deducting £327,000 representing a 25.2% share of the liabilities of the family company from A's financial position.
55. N chose to send J and H to an independent secondary school following their move to Scotland. There is no evidence that the Deceased was consulted about this decision. The sum of £145,421 received in February 2016 from N's mother would have covered the school fees at day boy rates for around 4 years. N said in her evidence that the loans to the family company had been repaid and exceeded through the payment of school fees. N says she and A were unable to afford to pay for J to board in what turned out to be his last year at school. N says in the following school year they could not afford for J to remain at the school whilst at the same time paying boarding fees for H from September 2020. N says that without provision from the Deceased's estate it will not be possible for H to continue as a boarder at the school for another school year. I accept N's evidence that she and A have come under financial pressure from the bank. This is supported by the sale of the Edinburgh flat. In part, the pressure will have been the result of legal fees related to investigating a probate claim and this claim.

The financial resources and needs of any other applicant

There is no other applicant. N says in her third witness statement that the Deceased provided maintenance for C in his lifetime by making maintenance payments to C's mother of about £40 per week. Following the death of the Deceased it was discovered that a life policy with Liverpool & Victoria Plan Number 702593 was held subject to a declaration of trust deed of which M and L were the trustees. The sum assured of

£60,000 was returned from the estate to M and L as the policy trustees and paid out by them to C as the default beneficiary under schedule 2 of the trust deed. The trustees had power under schedule 1 to appoint in favour of any child of the Deceased within 24 months of his death. It was said by N on behalf of J and H that on a comparative basis they should receive maintenance well in excess of £100,000 given that the Deceased is said to have broken off contact with C when she was only aged 2. In my judgment, it is the needs of J and H that are relevant to their claim not maintenance provided to C.

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

56. S is in her 40's. She has no children of her own. She was a child actor. She had a successful career for 23 years as an actor, choreographer and producer. She has kept up her Equity membership. More recently since around 2012 she has invested in property. She currently has a portfolio of 8 properties, one of which is her home and one of which is the home of her mother which she allows her mother to occupy rent-free. Her property portfolio has a total value of around £2,229,000 and an equity of around £1,038,059. The gross rental income received by her from the portfolio is £62,380. The net rental income which S claims to have received after maintenance and repairs and agents' fees is £20,943 representing a 1.26% return on capital.
57. S has a total of around £205,000 in bank accounts and premium bonds. After the Deceased's death, she paid £40,997 to pay off the finance on the Lamborghini motor car owned by the Deceased. The car is now registered in her name. It was purchased by the Deceased for £80,000. S told the court she had never driven the car and that it scared the life out of her. She says the car is included within the assets of the estate.
58. S works full time for RCL as its production manager and for RPS as its estates manager. She started working for the companies in January 2019 when she was paid a daily rate. She has since April 2020 being paid at the rate of £500 per week (£26,000 per year) out of RPS. She is not a director of either company. S said in her evidence she lives everyday as it comes and does not know for how long in the medium term she will continue working for the companies.
59. S owned a house in Norwich jointly with the Deceased. She purchased this house together with the Deceased in March 2016. It passed to her by survivorship. It has an equity of around £83,475.
60. S received a sum of £40,755.58 from a life policy that the Deceased had with Royal London Life. She used part of that sum to reimburse herself for payments that she had already made on behalf of the estate. She transferred a balance of £35,311.58 to the estate's solicitors on 2 August 2019 and the majority of those funds were used to pay the first instalment of IHT in the sum of £27,450.63. S in her third witness statement dated 21 December 2020 says since then she has also made a payment of £60,000 to the estate to assist with the costs of the administration.
61. Under the 2018 Will S was left the Deceased's 80% shareholding in RPS. That shareholding is estimated to have a value of £722,608 under MV1 (sale in one lot at open market value). The gift will however be abated significantly by the obligation to discharge IHT and its value reduced.

62. M and L together own 20% of the shareholdings in RCL and RPS. M is in his 70's and is not in good health. He has a history of heart disease.
63. M and L have savings of around £83,000. Their savings have been depleted by legal fees relating to this claim. M relies on these savings as provision for private medical care. M and L own their home and two other properties that are rented out. They also own a plot of land. Their properties have a net equity value of around £1,196,500. L also has a one third share in another property and its rental income by way of an expected family inheritance. Her share of capital from that property will be around £130,000. Her third share of the gross rental income pending sale is £4,800.
64. M and L have a combined pension income of around £18,000 and net rental income of around £14,720 from gross rental income of £25,800.
65. They receive from RCL a yearly income of around £19,740. This represents around a third of their income.
66. Under the 2018 Will M and L were left the Deceased's 80% shareholding in RCL. This has an estimated value of £77,037 on the assumption RCL continues trading. The value put on the whole of RCL by Larking Gowen in their report dated 13 January 2021 was £101,364 using a price earnings method with an EBITDA multiple of 3.5.

The obligations and responsibilities owed by the Deceased to any applicant and towards any beneficiary.

67. At the heart of the claim are the issues whether the Deceased at the date of his death continued to owe any obligations and responsibilities to J and H and, if he did, what was the nature and extent of those obligations and responsibilities. It was submitted on behalf of the Defendants that at the time of making the 2018 Will and at his death the Deceased was under no continuing obligation or responsibility to make provision for the maintenance of J and H. Reliance was placed on the following matters:-
 - (i) the Deceased had not been providing maintenance for J and H since 2012;
 - (ii) no efforts had been made by N to compel him to do so since the 2013 CSA assessment;
 - (iii) all direct contact between the Deceased and J and H had ceased during 2014 a few months after they moved to Scotland, and more than four years before the making of the 2018 Will;
 - (iv) the responsibility for providing for the maintenance of J and H had since 2012 been assumed entirely by N and A.
 - (v) in those circumstances, it was submitted that there can have been no basis for expecting that the Deceased would make any financial provision for the maintenance of his J and H either during the remainder of his lifetime or after his death.
68. On behalf of J and H it was submitted that the Deceased both at the time of making the 2018 Will and at his death continued to have obligations and responsibilities towards them as his children. It was submitted that these obligations arose from the fact that he was their father and that at the time of his death, J and H were children of

school age whose education and training would be likely to continue for a number of years.

The obligations and responsibilities owed by the Deceased to S.

69. By the time of his death, the Deceased had been living together with S for 7 years. They purchased a house together in March 2016 which passed to S subject to the mortgage by survivorship. Throughout the lifetime of the Deceased S remained married to her ex-husband JS. He filed for divorce a few months after she left him but did not then pursue his divorce petition.
70. JS gave evidence that he and S had a continuing intimate relationship. He said in February 2014 he met with the Deceased to discuss “the bizarre triangle they were in”. He says he was shocked when on 23 March 2018 S asked him to agree to divorce her. He suggests she wanted to be free to marry the Deceased in order to avoid paying inheritance tax on anything he might leave her.
71. S says that in 2018 after JS repeatedly refused to apply for a decree nisi, she applied for his divorce petition to be dismissed. Once the petition was dismissed she immediately issued her own petition based on 5 years separation. This was defended by JS. A decree nisi was granted on S’s petition in November 2018, the month after the Deceased’s death. A decree absolute was granted on 6 February 2019. A consent order was signed on 22 January 2020 under which S and JS agreed they would keep their own assets. S says it is relevant that N and JS only became friendly following N’s separation from the Deceased and the start of S’s own relationship with the Deceased. S says that had JS not refused to apply for the decree nisi she would have been divorced and in a position to re-marry the Deceased.
72. S did not deny in terms in her oral evidence that she continued to have sexual relations with JS after she started living with the Deceased. Whether she did or not is irrelevant to the merits of this claim. According to JS, the Deceased was aware of the relationship. I accept S’s evidence that by 2018 she and the Deceased were planning to be married and that they were prevented from doing so by the decision of JS to defend her divorce petition having not pursued his own petition for many years. It is clear that by 2018 S had become the most important adult person in the Deceased’s life. In the last year of his life, S played a significant role in supporting the Deceased as his health deteriorated.

The obligations and responsibilities owed to M and L.

73. M and L contributed at the outset to the wealth of the Deceased. They founded the metal coating business and operated it for 20 years before the Deceased joined. They made possible the purchase of the industrial estate from which the business operated and the adjoining industrial estate by their loan to the company. They kept the business afloat by a further loan and made further loans to the Deceased. The Deceased contributed very significantly to the business by his own exertions. He would have been aware of the weekly wage drawn by his parents from RCL and that if they were to lose these wages, it would represent a loss of income to them both which at their ages it would be difficult to replace. M receives a weekly wage of £163.00 from RCL and L receives £195.86 per week. This totals £18,660.00 per annum.

The size and nature of the net estate of the Deceased

74. The Deceased's shareholdings in RCL and RPS were valued for probate by Larking Gowen in their report dated 28 March 2019 ("the first LG report") with a valuation date of 4 October 2018. The Deceased's shareholding in RPS was valued at £950,000 and his shareholding in RCL at £144,500. The first LG report adopted a valuation of £2,200,000 for the industrial estate based on a market valuation in that amount dated 22 January 2018. In reaching the RPS share valuation, account must be taken in particular of the bank borrowing in excess of £1.2m. Using those valuation figures, resulted in an estimated net estate for probate of £813,835 after deducting debts, administration expenses and IHT of £287,471,20 and IHT interest of £13,500.
75. For the purpose of this claim the industrial estate was valued by Mr Mark Critchley of Eddisons, an RICS registered valuer, acting as a single joint expert in his report dated 30 October 2020. The inspection and valuation date is 30 September 2020. The report values the estate in four possible ways. MV1 assumes the sale of the freehold as a whole subject to the existing leases. The market value for MV1 is £1,935,000. MV1a assumes a sale on the same basis but at auction after a restricted marketing period. The market value for MV1a is £1,741,500. MV2 assumes a sale of the property in three separate lots subject to the existing leases. The market value under MV2 is £1,990,000. MV2a is on the same assumptions as MV2 but at auction after a restricted marketing period. The market value under MV2a is £1,691,500. At the request of the Claimants' solicitors, a fifth valuation (MV2b) was provided on the basis that Lot 3 would be offered for sale with vacant possession. Lot 3 is the RCL estate. The market value of the industrial estate under MV2b is £2,200,000. The difference between MV2 and MV2b is £210,000.
76. For the purpose of these proceedings Mr J.C. Minns of Larking Gowen valued the Deceased's shares in RCL and RPS in a report dated 13 January 2021 ("the second LG report"). For RCL he adopted a price earnings method. For RPS he used a net assets method applying the same five ways as Eddisons. In the second LG report the Deceased's shareholding in RCL was valued at £77,037. The Deceased's shareholding in RPS was valued under MV1 at £722,608, under MV1a at £575,548, under MV2 at £764,408, under MV2a at £537,548 and under MV2b at £924,008. In paragraph 5.3.1 of his report, Mr Minns said that if there were two willing purchasers involved in a competitive bidding process the price achieved could be inflated by up to around 30%. In paragraph 7.3.9. Mr Minns says that in his opinion MV1 is the most appropriate basis of valuation "as RPS is operating as a going concern and there was no intention to sell the properties, split the estate into three separate lots, or need to sell them with a restricted marketing period at the date of their valuation". The valuation methods do however all assume a sale. In my view, it is reasonable to assume that the most beneficial outcome for shareholders would be sought. S says in paragraph 29 of her first witness statement that if the industrial estate had to be sold her view is that RCL would no longer continue to trade and the family business would cease. She says that 8 employees would be made redundant.
77. The size of the net estate varies significantly according to which type of sale of the industrial estate is adopted. It would be wrong in my view to reduce the value by assuming a sale at auction with a restricted marketing period. On the other hand, the addition of 30% to reflect the possibility of competitive bidding is speculative. On the evidence before the court, it is not possible to fix upon the exact size of the net

estate. By their nature the value of shareholdings in private companies have a degree of volatility depending on the value placed on the underlying assets and on trading performance. In determining the claim, I proceed on the basis that the net estate on the evidence before me at the date of the trial falls within a range of £519,081 under MV1 to £720,481 under MV2b but may have a higher value if and when the market is tested and upturns post-Covid.

Any physical or mental disability of any applicant or any beneficiary

78. None of the parties suffers from a physical or mental disability. H has however had difficulties with his mental health which became particularly bad at the end of the summer term 2020. The school's pastoral officer reported that H had experienced suicidal thoughts.

Any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant

Neither J nor H can in any way be held responsible for the unhappy consequences of their parents' divorce. They were aged 11 and 10 at the date of their parents' separation. It is a sad outcome of the divorce that J and H ceased to have any contact with their father or their grandparents.

The manner in which J and H were being or might expect to be educated or trained.

At the time of their parents' separation J and H were at private school. Because of the financial trouble that the company was in at the time of the divorce as a result of the interest rate swap products, it was uncertain whether the cost of private schooling would continue to be affordable. There was the concern too that the Deceased's health would impact on the family financial position. Nevertheless, I find that subject to affordability, there was an expectation that J and H would be educated privately.

Did the 2018 Will make reasonable financial provision for J and H?

79. In my judgment, the 2018 Will did fail to make reasonable financial provision for J and H by excluding them from any benefit out of the Deceased's net estate in circumstances where no other form of provision had been made for them. There is in my view a distinction between an application under section 1(1)(c) made by a child of the deceased and an application made under section 1(1)(d) by a person (not being a child of the deceased) who was treated by the deceased as a child of the family. In the latter case, but not in the former, section 3(3) requires the court to have regard to whether the deceased maintained the applicant, and, if so, the length of time and the basis on which the deceased did so; whether and, if so to what extent, the deceased assumed responsibility for the maintenance of the applicant; and, to the liability of any other person to maintain the applicant. In the case of an application by virtue of section 1(1) (c) the obligations of a parent towards his child made it inappropriate to include these additional considerations. Whilst there may be exceptional or extreme cases, it will not generally be open to beneficiaries in response to an application by a child of the deceased to rely on the fact that the deceased failed to provide child support (even if not called upon to do so), or to rely on the fact that the child was treated by a step-father as a child of his family and assumed responsibility for his maintenance. Lack of contact and the assumption of responsibility by another person

are factors capable of impacting on the value of the claim. Only in the most exceptional circumstances would I expect the court to accept that the obligation to maintain had been completely severed. The concept of a clean-break is not generally applicable in respect of child maintenance.

80. The present case is clearly distinguishable from *In Re Jennings, decd* [1994] Ch 286. In that case the applicant was 50 years old. He had been brought up by his mother and step-father. The deceased had no contact of any kind with the applicant from the age of four. The applicant owned and ran two companies. He was married with two daughters aged 25 and 21 respectively. At the time of their father's death, J and H were one month short of 16 and 15 respectively. It is true they had had no contact with the Deceased for four years. They remained his children. The Deceased undoubtedly continued to love them. He rang the landline provided to him every Wednesday evening and clearly wanted to remain part of their lives. S to her credit gave evidence that the Deceased talked regularly about J and H and their passions including football and Formula 1 motor racing.

Assessing the value of the claims

81. I do not accept the submission made by Ms Palser that all of J and H's needs should after the death of the Deceased fall to be met from the Deceased's estate. It was argued in effect that this would be equitable as, since 2012, N had been the only parent who had contributed to their maintenance. In my view, N as the parent with care cannot reasonably expect the entire obligation for maintaining J and H to have shifted to the Deceased's estate consequential upon his death. In the case of school fees, I accept that a particularly heavy financial burden has fallen on N as the parent with care. I consider this should be reflected in the award under that head.
82. The court must in my view guard against unreasonable claims made on a child's behalf by the surviving parent especially in circumstances in which the claim is limited to what is reasonably required for the child's maintenance and where there is a proper ground for concern that the claim is being viewed as an attempt to re-write the 2018 Will.
83. On the other hand, I accept for the reasons already stated that the 2018 Will did not make reasonable financial provision for the Claimants' maintenance. On behalf of the Defendants, it was submitted by Mr Baxter that the provision the court could order under section 2 was limited to payments which would enable the applicants in the future to discharge the costs of their daily living expenses. Thus, Mr Baxter argued, if by the date of the hearing, a term's school fees had already been discharged, the cost of those fees could not be included as a payment to be ordered.
84. In support of that submission, Mr Baxter relied on a passage from the judgment of Browne-Wilkinson J in *In Re Dennis, decd* [1981] 2 All ER 140, 145-6 relating to the concept of maintenance quoted by Lord Hughes at paragraph 14 of his judgment in *Ilott v Mitson (No 2)*. The relevant part reads:-

“The court has, up until now, declined to define the exact meaning of the word ‘maintenance’ and I am certainly not going to depart from that approach. But in my judgment the word ‘maintenance’ connotes only payments which, directly or

indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him” (underlining added).

85. The Applicant in *In Re Dennis* was seeking maintenance to enable him to pay the Capital Transfer Tax that had arisen on a lifetime gift of £90,000 made to him by his late father since dissipated by the applicant. The application for permission to bring a claim out of time under the 1975 Act failed on the ground there was no realistic prospect of success. Browne-Wilkinson J. said the applicant was not to his mind asking for maintenance but for a capital sum to pay off his creditors. He said it was not suggested that the payment of the Capital Transfer Tax would do anything to help the applicant’s future maintenance.
86. In my view, Mr Baxter’s argument is either not correct or goes too far. The court does in my view have power under the 1975 Act jurisdiction in an appropriate case to back-date its award of maintenance to the date of death or such later date as it considers appropriate. In *Re Debenham (Deceased)* [1986] 1 FLR 404, in addition to ordering periodical payments, Ewbank J. ordered a small capital sum to meet immediate needs and to obviate the need to backdate the periodical payments order to the death of the deceased.
87. The court has power under section 5 of the 1975 Act to make an interim order but, as pointed out by Ms Palser, that power is not always available. It arises where it appears to the court (a) that the applicant is in immediate need of financial assistance and (b) that property forming part of the net estate of the deceased “*is or can be made available to meet the need of the applicant*”. In the present case, the nature of the property in the net estate made it unlikely that an interim order under section 5 could have been obtained.
88. In my view, maintenance within or pending the period of the claim may be appropriate. I agree with Mr Baxter that back-dating maintenance to the date of death would be inappropriate in the context of the present claim.

The Schedules relied on by the Claimants

89. The Claimants provided the court with six schedules. Including housing costs, the total claimed was £811,949.99. It was recognised by Ms Palser that in view of the January 2021 share valuations, the claim for housing costs so far as it included the purchase of a property in Edinburgh at a costs of £200,000 for each child was not sustainable. The total claimed excluding any provision for future housing was £395,949.99 for both Claimants. The total including a 15% deposit on a property of £30,000 for each child was £471,949.99.
90. A further version of the schedules was prepared by Ms Palser during the trial showing the amounts claimed if historic costs (pre-trial) were removed and property costs were limited to property deposit or rental costs. On that basis, the total claimed for J was £117,831.00 and for H was £230,935.17 making £348,766.17 in total.

Schedule 1: home living costs

91. This schedule estimates the expenses of J and H when living at home on an annual basis. It was prepared when both J and H were day boys attending school. For J, the

annual amount of £7,477.50 is claimed. For H, £8,167.50 per annum is claimed. Maintenance under this head is claimed for J until January 2025 when he will be 21 and for H until January 2026.

92. On behalf of the Defendants, it was submitted by Mr Baxter that this schedule was calculated on the basis that both Claimants were living at home whilst attending school as dayboys. It was submitted that as J has since September 2020 been at university his living expenses when at home should not be included. In my view, it is reasonable to assume that J will be living at home during university vacations. Even if he does not, he will continue to have living expenses. Apart from accommodation, they are not included within Schedule 4: university expenses.
93. In H's case, it was submitted that the figures were unchanged from when H was a day pupil and that now H is boarding and living at school 50% of the time, the figures for 'food' and 'sharing of household expenses' should be reduced by 50%. This would give a figure for H of £6,354.25 per annum.
94. In the case of living expenses, calculated on the basis that J and H were living at home, I do not consider it appropriate to order that the estate bears 100% of those expenses. In my view, the living expenses should be shared. I consider that a reasonable payment under this head would be 50% of £6,000 per annum for each child. The period would run from January 2020 until January 2025 in the case of J and until January 2026 in the case of H. The total for J would be £15,000 and for H, £18,000. I take January 2020 as the month after the claim was issued.

Schedule 2. School fees

95. Under section 3(3) of the 1975 Act, the court is required "*to have regard to the manner in which the applicant was being or in which he might expect to be educated or trained,..*". Prior to the breakdown of the marriage between N and the Deceased, J and H were being educated privately. There was an expectation this would continue so long as the financial resources were available.
96. On behalf of the Defendants it was submitted that the claim that school fees are a reasonable maintenance need was not made out. Alternatively, it was submitted that if the claim was made out at all, it is in respect of day fees only. It was submitted the claim should be limited to future fees and calculated on the basis that J had left school and that H had at the date of the hearing approximately 1 and a half years left at school.
97. I do not consider it is right to back-date school fees for any period significantly prior to the issue of the claim. For J, I consider that a claim for maintenance lies in respect of his day boy fees for his last year at the school. I think it reasonable to expect the estate to bear 100% of those fees taking into account the payment of school fees was up until then being entirely funded by N's mother or by N and A. For J, the school fee contribution from the estate is £23,532.
98. In the case of H, I consider looked at objectively it would be reasonable to expect the estate to fund 100% of his fees as a day pupil in fifth form. H started boarding in the sixth form in September 2020. It is important that H should not have to leave the school a year early. In H's case, there is a strong pastoral and emotional benefit in H

continuing to board in his last year at the school. This has been recommended by the school. It will enable H to receive counselling and support at the school and to continue in the position of leadership he has at the school. I consider his welfare on this aspect is paramount.

99. I consider it reasonable looked at objectively to expect the estate to meet the bulk but not all of the boarding fees for H for his last two years at the school. I consider that 80% of the fees should come from the estate and 20% from N and A. This reflects the past contributions made to school fees but requires N to continue to contribute to the school fees. Any discount in fees that may be obtained is to be shared in the same proportions. For H, the school fee contribution from the estate is £23,532 for fifth form and £27,720 (£34,650 x 80%) for each sixth form year. This totals £78,972.

School extra costs

100. I consider these should continue to be met by N and A in view of the school fee contributions to be made from the estate and the fact that many of the school related expenses will not be required each year and may already have been purchased.

Schedule 3: Car related expenses

101. The figure claimed for both J and H is £941 for driving lessons and £10,000 for the costs of a reliable second hand car. On behalf of the Defendants it was submitted that £2,000 would buy a perfectly reasonable second-hand car and that the J and H should be expected to share a car with each other. I consider that the provision of a reliable second-hand car for both J and H is an appropriate provision for their maintenance. I consider however that a contribution of 50% to the car related expenses is appropriate. This amounts to £5,470.50 for each applicant. I will round this up to £5,500.00 for each applicant.

Schedule 4: University costs

102. I do not consider there is a reasonable maintenance need under this head for tuition fees. J is at a Scottish university. As he and his family live in Scotland, tuition fees for attendance at a Scottish university are not payable. If H succeeds in his ambition to go to an English University, then it is reasonable to expect him to take out a student loan to finance his tuition fees.
103. In relation to accommodation fees, £8,000 per annum is claimed for 4 years for J and 3 years for H. £5,000 per annum was originally claimed. In my view, the claim should be limited to £5,000 per annum in the case of H. In the case of J, I accept that a claim at the rate of £8,000 per annum is reasonable given the likely higher cost of accommodation at his university. For J, I consider that a maintenance contribution from the estate of £16,000 for university accommodation is reasonable (50% of £8,000 x 4). For H, I consider the amount should be £7,500 (50% of £5,000 x 3).

Schedule 5: Housing costs

104. The size of the net estate is not sufficient to finance the purchase of a property for H and J when they leave university. I consider that a reasonable maintenance need is to cover accommodation for a year after leaving university. On the assumption that for

that year, no other financial support will be available apart from parental support, I consider that £5,000 for J and H should be treated as reasonable (50% of £10,000) allowing for rent, furnishing expenses and commercial letting fees).

Schedule 6: Counselling

105. This claim is made on the basis that it is likely H will need some form of continuing psychological support on a weekly basis once he leaves school. It is suggested this should allow for H to have weekly sessions at £115 per hour inclusive of VAT for 52 weeks a year for four years after H leaves school. The annual cost is calculated at £5,980 making £23,920 for four years. In the case of J, although N said that although having counselling had not been raised with him, provision for 1 year of counselling at £5,980 should be made.
106. The court has been provided with a letter from H's housemaster dated 10 January 2021. It refers to the impact on H's emotional health and wellbeing of the passing of his father followed closely by the sudden death of H's closest friend. It is clear from the letter H is doing well at school and has a leadership role.
107. It is clear that both J and H have been emotionally affected by their parents' divorce and the fall out from it. I consider that in both their cases 50% of the cost of 1 year's private counselling qualifies as a reasonable maintenance need.

Schedule summary

108.

For J:-

Schedule 1:	£15,000
Schedule 2:	£23,532
Schedule 3:	£ 5,500
Schedule 4:	£16,000
Schedule 5:	£ 5,000
Schedule 6:	£ 2,990
Total	£ 68,022

For H

Schedule 1:	£18,000
Schedule 2:	£78,972
Schedule 3:	£ 5,500
Schedule 4:	£ 7,500

Schedule 5:	£ 5,000
Schedule 6:	£ 2,990
Total	£117,962

109. Standing back and looking at all the section 3 matters again, I consider that these sums represent reasonable financial provision out of the Deceased's estate for maintenance of J and H. They do in my judgment properly represent and reflect the extent of the limited continuing obligation on the part of the Deceased for the maintenance of J and H. In reaching this conclusion I have taken into account the size and nature of the estate, the financial position of each of the Defendants and the Deceased's testamentary wishes as contained in the 2018 Will and the accompanying Statement. There is no obligation on the Defendants to establish need. I have also taken into account that in order for these sums to be met it may be necessary for there to be a sale of the companies or part of their assets. It is unclear in any event for how long S will wish to continue managing the industrial estate and IHT falls to be paid.
110. I regarded the evidence of N as having shown that she did not fully understand the nature of the claim for maintenance under the 1975 Act. I have no doubt that she sees the claim as a way of challenging the 2018 Will. This led to a claim being made which sought the transfer of the whole or a very substantial part of the net estate to H and J.
111. I regarded S, M and L as truthful and reliable witnesses. I do however think it regrettable that they chose to argue as part of their case that there was no obligation on the Deceased by his 2018 Will to make any provision for J and H. In part, this was no doubt a reaction to the size of the claim being made.
112. I derived no assistance at all from the evidence of JS, insofar as his evidence was an attempt to discredit S or to influence the court, it failed.
113. I understand that neither J nor H felt able to give evidence before the court of their own and chose instead to rely on N. This did however mean that the court did not have the benefit of any witness statements describing their own positions and aspirations.

Form of order

114. It was suggested by Ms Palser on behalf of J and H that the court should direct J and H to receive a cash award coupled with a shareholding in RPS so that they could benefit from any increases in value in the net estate. On behalf of the Defendants, Mr Baxter submitted that if any award were to be made, it should be in the form of a lump sum. In my judgment, a lump sum order is the appropriate form of order.

Incidence

115. I was not addressed on this issue by Mr Baxter as he represented all three Defendants before me. I consider that the payments to H and J should so far as possible be met from RPS or discharged otherwise than through RCL.

Hand down

116. The judgment will be handed down without attendance required at 2pm on Friday 16 April 2021.
117. I would be grateful to receive any typographical corrections by 4pm on 15 April so that they may be incorporated.

Consequential matters

118. I would be grateful if dates convenient for both counsel to deal with consequential matters could be supplied to me by 4pm on 23 April with a time estimate, agreed if possible.
119. I am grateful to both counsel for their written and oral submissions.